Circuit Court for Charles County
Case No. C-08-CV-19-000279

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0264

September Term, 2021

DAVID ANTONIO HOOKER, et al

v.

AUTUMN HILLS HOMEOWNERS ASSOCIATION, INC.

Berger,
Reed,
Shaw

JJ.

Opinion by Shaw, J.

Filed: April 27, 2022

This is an appeal from an order of the Circuit Court for Charles County denying Appellants' Motion for Reconsideration of Summary Judgment. Appellants, Betty and David Hooker, are homeowners in the Autumn Hills community located in Waldorf, Maryland, which, by covenant, is subject to administration by the Autumn Hill Homeowners Association. Sometime in 2018, after receiving permission from the HOA, appellants built a fence that was later found to have encroached upon the community's common area. They received notice that the fence overextended, and appellants moved the fence. In March 2019, the HOA filed a petition in the Circuit Court for Charles County for a final injunction and a complaint for damages and attorney's fees asserting that the fence was still in violation of the covenant. The court ruled in favor of the HOA and granted an injunction as well as fines, attorney's fees, and costs. Appellants filed a Motion for Reconsideration, which was denied without a hearing. Appellants timely appealed and present three questions for our review, which we have rephrased below[1]:

1. Did the circuit court abuse its discretion in awarding fines against Appellants?

2. Did the circuit court abuse its discretion in awarding attorney's fees?

[1] Appellants' original questions were presented as follows:

1. Did the trial court abuse its discretion in ordering fines against Appellants regarding the location of their fence?
2. Did the trial court abuse its discretion in awarding Appellee all attorney's fees requested without a determination of the reasonableness of the fees?
3. Did the trial court abuse its discretion in denying Appellant's Motion for Reconsideration regarding the calculation of fines and attorney's fees when the motion was filed ten days after the judgment?

3. Did the circuit court abuse its discretion in denying Appellant's Motion for Reconsideration?

For reasons discussed below, we reverse the judgment of the circuit court.

BACKGROUND

On July 31, 2009, Appellants, Betty and David Hooker, purchased real property in the Autumn Hills community in Waldorf, Maryland. The Property is encumbered by covenants, conditions, and restrictions set forth in a document titled "Declaration of Covenants, Conditions, and Restrictions" ("the Declaration"), which established that the Homeowners Association is responsible for the administration and enforcement of the covenant restrictions. The Declaration was recorded among the Land Records of Charles County on January 27, 2005.

Appellants' property, in the rear, abuts a community common area, which is further encumbered by a Forest Conservation Easement. There are no structures or other land uses behind the Property. The Historical Plat[2] establishes the boundary line between the Property and the Common Area for the HOA.

On December 5, 2016, pursuant to Article VII, Section 7.1 of the Declaration, appellants submitted an Architectural Review Board Application to the HOA, seeking permission for the erection of a fence in the rear yard of their Property. The HOA approved

[2] The Property is further detailed in the recorded plat filed with the Circuit Court for Charles County on March 15, 2013 as "Final Plat, Autumn Hills, Phase Three," and recorded in the land records of Charles County, Maryland in Plat Book DGB 57 at Plat 1 through 8 ("Historical Plat").

their application on December 29, 2016. Appellants subsequently retained Long Fence to construct the fence on January 27, 2018.

Sometime, thereafter, the HOA, claimed that the fence was not properly installed as it encroached on the common area. There were several discussions with the appellants, including one during a March 15, 2018 board meeting. On September 18, 2018, the HOA, through counsel, sent appellants a letter stating:

> During the meeting on March 15, 2018, you indicated that you would acquire an estimate as to the cost to move your fence back within your property lines. The Board expressed some willingness to pay a reasonable cost to reimburse you to move the fence.
>
> Since that date, the Board has not heard from you concerning your progress. Please provide me with an update as to the status of the movement of your fence or an estimate to do the same. Please respond to me in the next 15 days[] or the Board has authorized me to begin legal proceedings to enforce the covenants of Autumn Hills.

(emphasis in original). Appellants again retained Long Fence on September 27, 2018 to move the fence in accordance with the HOA letter.

On March 22, 2019, the HOA filed a complaint in the Circuit Court for Charles County, contending that appellants' fence "encroached upon the Common Areas" and sought a fine of "$25 a day[] starting on November 1, 2018," until the matter was resolved. The HOA also sought "costs and attorney's fees."

After initiating the litigation, the HOA retained the Soltesz company to conduct a new survey of the Property, which was completed on April 8, 2019 ("Soltesz Survey"). On July 29, 2019, the HOA filed its first Motion for Summary Judgment, which included the

Soltesz Survey in support of its position that ". . . the [appellants'] fence extends past the[ir] property line and into the common areas" of the HOA. In response, appellants filed a Motion to Dismiss. On September 17, 2019, appellants filed a Motion for Continuance, requesting that the hearing on the HOA's Motion for Summary Judgment, scheduled for October 11, 2019, be continued because appellant David Hooker was "currently [overseas] on an emergency essential mission in support of the Department of Defense."

The court denied the continuance and held a hearing without the presence or participation of Mr. Hooker. The court entered partial summary judgment in favor of the HOA, finding that appellants' fence did encumber the common area. The court declined to enter judgment as to fines, attorney's fees, and court costs or issue a final injunction.

Following the court's ruling, appellants contacted the HOA and Soltesz to coordinate moving the fence; however, appellants were notified that Soltesz was instructed "not to comply with . . . [appellants] request" and that they could "hire another surveyor in the area to do the work" they needed. Appellants hired Bruce Landes from Surveyors and Planners to conduct a survey of the Property ("Landes Survey"), which was completed on November 3, 2019. Appellants, on November 15, 2019, moved the fence, at their own expense, inside the property markers that Soltesz placed in accordance with their survey.

On January 17, 2020, the HOA filed its second Motion for Summary Judgment, and appellants filed an answer. A hearing was held in the circuit court on July 23, 2020 and the court denied summary judgment, advising the parties that the court would entertain arguments and receive evidence with respect to fines, attorneys' fees, and injunctive relief at a bench hearing to follow, stating:

> The motion for summary judgment is going to be denied. [T]here are so many factors that a judge could think about in awarding attorney's fees, for example, . . . where do I cutoff encroachment fees, or violation fees. [I]t's susceptible to so many different branches. . . . I gotta hear the whole case before I balance all those things out. So, . . . it's more prudent for the [c]ourt just to say, when you get your day in court, we'll settle everything.

At a hearing on March 9, 2021, the court received testimony and evidence from both parties. The circuit court delivered its ruling from the bench, stating the court "finds in favor of the [HOA] . . . against the [appellants] to be jointly and severally liable for [fines in the amount of] $22,000.00, in addition to the $17,417.99 in attorneys' fees," and costs of $180.00.[3] The court entered a permanent injunction "enjoining [appellants] from erecting or maintaining a fence o[n] any portion thereof upon the real property owned by the [HOA]."

Appellants filed a timely Motion for Reconsideration and appellee filed its opposition. The circuit court denied Appellants' Motion for Reconsideration without a hearing and appellants filed a Notice of Appeal on April 27, 2021.

STANDARD OF REVIEW

In reviewing a trial court's award of attorney's fees, and a denial of a motion for reconsideration, this Court must "review a trial court's award…under an abuse of discretion standard." *Monmouth Meadows Homeowners Ass'n., Inc. v. Hamilton,* 416 Md. 325, 332 (2010). *See also SunTrust Bank v. Goldman*, 201 Md. App. 390, 397 (2011); *RRC Northeast LLC v. BAA Maryland, Inc.*, 413 Md. 638, 673 (2010). We review an

[3] The court's order, dated April 13, 2022, stated that $22,200.00 was assessed for fines.

assessment of fines utilizing the same standard. A trial court's findings of fact will not be disturbed on appeal unless this Court finds the "discretion manifestly unreasonable or exercised on untenable grounds, or for untenable reasons." *Jenkins v. City of College Park*, 379 Md. 142, 165 (2003). "A proper exercise of discretion involves consideration of the particular circumstances of each case." *Gunning v. State*, 347 Md. 332, 352 (1997). "A failure to exercise this discretion, or . . . failure to consider . . . relevant circumstances and factors of a specific case, is, itself, an abuse of discretion." *Cagle v. State*, 462 Md. 67, 75 (2018).

DISCUSSION

I. The court abused its discretion by awarding fines.

Appellants argue the circuit court abused its discretion in awarding the HOA $22,200.00 in fines. In their view, the HOA failed to follow its own procedures as outlined in the Declaration and thus, fines should not have been assessed. Appellants contend that if fines should have been assessed, the court's calculations were improper. The HOA argues that based on the evidence presented, the court properly assessed the fines and correct procedures were followed regarding notification to appellees.

The parties do not dispute that the HOA initially granted appellants permission to erect a fence. Once built, the HOA determined that it encroached on the community common area and therefore it was a covenant violation. Article VII, Section 7.16 (A) of the Declaration provides:

> In the event that the Board of Directors or the Covenants Committee determines an instance of such probable cause, it shall cause the Board of Directors to provide ***written notice*** to

> the person alleged to be in violation . . . of the specific nature of the alleged violation and of the ***opportunity for a hearing*** before the Board of Directors upon a request made within five (5) days of the sending notice. The notice shall also specify, and it is hereby provided, that each recurrence of the alleged violation or each day during which it continues shall be deemed a separate offense, subject to a separate fine not to exceed Twenty-five Dollars ($25.00) for each offense. The notice shall also specify, and it is hereby provided, that ***in lieu of requesting a hearing***, ***the alleged violator or Owner may respond to the notice within five (5) days*** of its sending, acknowledging, in writing, ***that the violation occurred as alleged and promising that it will henceforth cease*** and will not recur, and that such acknowledgment and promise and performance in accordance therewith, shall terminate the enforcement activity of the Association with regard to such violation.

(emphasis added).

The HOA's Complaint asserted that appellants "were notified to correct the violation, by *inter alia*, notices dated April 12, 2017, September 18, 2018, October 16, 2018, and January 29, 2019, said notices attached hereto collectively as Exhibit 3." The first notice dated April 12, 2017, was not referencing the fence that is the subject of this appeal, but a shed that encroached on the common area. The second notice dated September 18, 2018, referenced the fence violation. That letter did not include any of the required information outlined in the Declaration. The letter did not specify the nature of the violation, did not state that appellants could request a hearing, that fines could be assessed against them, or that they could acknowledge the violation and promise to cease the activity in order to terminate further enforcement by the HOA. The letter simply stated that a violation had occurred and requested a response to the attorney within "the next 15

days[] or the Board has authorized me to begin legal proceedings to enforce the covenants of Autumn Hills."

The third letter dated October 16, 2018, stated:

> I am in receipt of the estimate that you provided me to move your fence to your premises, and I presented it the Board, which has considered it. The Board is willing to offer you $1,000.00 to move the fence to your property.
>
> * * *
>
> Please respond within 15 days as to whether you will be moving the fence. If you do not move the fence, the Board has authorized me to file an action in the Circuit Court for Charles County to achieve compliance. Additionally, the Board will begin fining you $25.00/day from the expiration of this 15 day period. If I am to file suit, I will also be seeking attorney's fees and court cost.

(emphasis in original). This letter did not provide appellants with the necessary specifics, including an opportunity to request a hearing before the Board or "in lieu of requesting a hearing," that appellants could acknowledge that the violation occurred and promise it would cease, terminating the enforcement activity of the HOA. The fourth, and final notice was an email sent on January 28, 2019, not January 29, 2019, to Betty Hooker, stating appellants "were notified of fines against . . . the [P]roperty for noncompliance to the Bi-Laws and covenants of the community and received a violation against . . . [the] [P]roperty. Please be mindful that you are being charged a daily rate of $25.00 for each day you do not make restitution." This letter also did not meet the requirements outlined in the Declaration.

At the March 9, 2021 court hearing, which was scheduled to determine fines, fees, costs, and remedies, Mr. William Henderson, the Board President, testified. He was asked,

"Did the Association follow the procedure in the declaration for levying fines?" and he replied, "Yes." He testified that the HOA began fining appellants "15 days after [the September 18, 2018] . . . letter was sent," starting on October 4, 2018. Mr. Henderson also testified that, at the time of the hearing, he "believed" the fence still encroached upon the HOA's common area, but he did not provide any information as to the degree of encroachment.

According to appellants' answer filed in January 2020 in response to the HOA's Motion for Summary Judgment and appellants' motion for reconsideration filed in March 2021, "the fence was repositioned within the boundary/property line established by Soltesz" in "November . . . 2019."[4] They retained Bruce Landes from Surveyors and Planners the same month, who found that appellants' fence was within the Soltesz field line established in the HOA's survey. At the March 2021 hearing, Appellants presented a photograph of the fence in relation to the Soltesz field markers. We note that to the extent, there is any discrepancy, it is less than 1 inch.

To be sure, "[t]he law governing the interpretation of . . . covenant [Declarations] . . . comports with the general law of interpretation of contracts." *Point's Reach Condo. Council of Unit Owners v. Point Homeowners Ass'n, Inc.*, 213 Md. App. 222, 255 (2013). Here, in reviewing the language of the Declaration, we hold the HOA failed to provide

[4] In Appellants' answer to HOA's Motion for Summary Judgment, they state that "on or about 15 November 2019, Long Fence made the needed corrections" to the fence and in Appellants' Motion for Reconsideration, they state that "on or about November 1, 2019 – the fence was repositioned within the boundary . . . line established by [the] Soltesz . . . [company] marker pins." Nevertheless, based on our review of the record, the fence was moved in November 2019.

adequate notice that fines could be assessed. The Declaration, which essentially is a contract, provides for certain procedural requirements, including written notice of the specific violation, a hearing, and the fines that could be incurred. As such, the HOA did not act in accordance with its governing document. We observe that the complaint states that several notices were sent to appellants, but none met the requirements outlined in the Declaration. We note further that the complaint states that fines would be incurred beginning November 1, 2018, but the HOA President testified the beginning date was October 4, 2018. We conclude that the HOA violated the contractual tenants of the Covenant Declaration and the fines were improperly assessed. As a result, the court abused its discretion in awarding fines.

II. The court abused its discretion by awarding attorney's fees and costs.

Appellants argue the court's award of $17,417.99 in attorney's fees to the HOA was an abuse of discretion because the HOA failed to present evidence of the fees' reasonableness. The HOA contends the court properly concluded that it was entitled to attorney's fees and costs based on its evaluation of witness credibility, testamentary, and documentary evidence offered by the parties, and judicial notice of the payment of court costs. The HOA argues its request for attorney's fees is based on a provision in the Declaration that the HOA may be awarded its "reasonable attorney's fees incurred" in enforcement actions.

"Contract provisions providing for awards of attorney's fees to the prevailing party in litigation under the contract generally are valid and enforceable in Maryland." *Myers v. Kayhoe*, 391 Md. 188, 207 (2006); *see, e.g., Atlantic v. Ulico*, 380 Md. 285, 316, (2004).

"Even in the absence of a contract term limiting recovery to reasonable fees, trial courts are required to read such a term into the contract and examine the prevailing party's fee request for reasonableness." *Id.* "The party requesting fees has the burden of providing the court with the necessary information to determine the reasonableness of its request." *Id.* "The trial court's determination of the reasonableness of attorney's fees is a factual determination within the sound discretion of the court and will not be overturned unless clearly erroneous." *Id.*

Article VII, Section 7.16 (A) of the Declaration provides that "the Association shall have the right, through its agents and employees . . . either to take such action as is provided in Section 11.4 . . . and the costs thereof and reasonable attorney[']s[] fees incurred thereby may be assessed against the Lot upon which such violation occurred . . . ." Further, Section 11.4 provides that "[e]nforcement of these covenants and restrictions shall be by any proceeding at law . . . against any person or persons violating, . . . any covenants or restrictions, . . . and . . . all . . . the cost[s], including court costs and reasonable attorney's fees [will be enforced against] the Owner in violation." Here, we hold that because the HOA violated its covenant, fines were improperly assessed, and the HOA is not entitled to attorney's fees. It is no longer the prevailing party.

Assuming *arguendo*, fees could be assessed, the court was required to evaluate their reasonableness. When determining the reasonableness of fees, a court applies Rule 2-703(f)(3) standards which are the same factors stated in Maryland Attorney's Rules of Professional Conduct 19-301.5. They are "the foundation for analysis of what constitutes

a reasonable fee . . . ." *See also Monmouth*, 416 Md. at 337 (referencing former Rule 1.5). The list of factors to be considered are:

> (1) the time and labor required; (2) the novelty and the difficulty of the questions; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the "undesirability" of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases.

Rule 2-703(f)(3)*; Monmouth*, 416 at 334; *see also* Md. Rule Att'y 19-301.5.

Based on our review of the record, the HOA did not provide any evidence to the court regarding the *Monmouth* factors or any other basis for a determination of reasonableness. The only evidence presented were the attorneys' invoices. Board President Henderson testified, through affidavit, "[t]hat the[] [attorney's] fees are fair and reasonable[,]" but there is no basis in the record for his statement. As a result, we hold the court lacked a sufficient basis for the award, even if it was appropriately awarded.

III. The court abused its discretion by denying the Appellants' Motion for Reconsideration.

Appellants' Motion for Reconsideration requested the court consider "the calculation for damages . . . erroneous" and hear additional evidence from Long Fence regarding the repositioning of the fence. They contend that the testimony from Long Fence would have brought to the court's purview information regarding the fence's location in relation to "the boundary . . . marker pins" established by the Soltesz company, proving

there was no longer an encroachment. Further, appellants requested that the court amend its decision regarding the award of attorney's fees and find that the fees are not reasonable.

"We review the circuit court's decision to deny a request to revise its final judgment under the abuse of discretion standard." *Jones v. Rosenberg*, 178 Md. App. 54, 72 (2008). However, "courts do not have [the] discretion to apply inappropriate legal standards, even when making decisions that are regarded as discretionary in nature." *Morton v. Schlotzhauer*, 449 Md. 217, 231 (2016) (quoting *Wilson-X v. Dep't of Human Res.*, 403 Md. 667, 674-75 (2008)); *see also In re Adoption/Guardianship No. 93321055/CAD*, 344 Md. 458, 475-76 (1997) (stating that, in an appeal from the denial of a motion to revise under Rule 2-535(b), "the only issue before the appellate court is whether the trial court erred as a matter of law or abused its discretion in denying the motion").

In light of our holding that the court erred in the assessment of fines and the award of attorney's fees, we further hold that the court abused its discretion in denying the Motion for Reconsideration.

JUDGMENT OF THE CIRCUIT COURT FOR CHARLES COUNTY REVERSED. COSTS TO BE PAID BY APPELLEE.