

Circuit Court for Baltimore County  
Case No. C-03-CV-21-003031

UNREPORTED\*

IN THE APPELLATE COURT

OF MARYLAND

No. 0326

September Term, 2023

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CHAPEL RIDGE COMMUNITY  
ASSOCIATION, INC.

v.

WILLIAM CASPARI, ET AL.

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Wells, C.J.,  
Tang,  
Ausby, Kendra Y.  
(Specially Assigned),

JJ.

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Opinion by Wells, C.J.

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Filed: April 15, 2024

\* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

Appellee William Caspari and the homeowners who live at 1 through 13 Collis Court, Lutherville-Timonium (“the Homeowners”), sought a declaratory judgment in the Circuit Court for Baltimore County against their homeowner’s association, Chapel Ridge Community Association, Inc. (“Chapel Ridge”), to remedy a persistent water drainage problem to their properties. On March 24, 2023, the court issued a declaratory judgment in favor of the Homeowners, ruling that Chapel Ridge was solely obligated to pay for the recommended repairs.

Chapel Ridge timely appealed and submitted two questions for our review, which we distill into one:<sup>1</sup>

Did the Trial Court err when it found that Chapel Ridge was solely responsible for remediation of the water issue?

For the reasons that follow, we conclude the circuit court did not err and affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

On November 23, 1977, Howard Homes Building Co., Inc. (“Howard Homes”), recorded the Declaration of Covenants, Conditions, and Restrictions (“Covenant Deed”) in the Baltimore County Land Records. The Covenant Deed conveyed “open space areas” to Chapel Ridge, referring to “all real property (including improvements thereon or thereto) owned by Chapel Ridge for common use, benefit and enjoyment of the record holders.”

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<sup>1</sup> Chapel Ridge’s verbatim questions to us are:

1. Did the Trial Court err when it found that the Association was solely responsible for remediation of the water issue?
2. Did the Trial Court err when it mandated an inadequate method for its solution?

On August 17, 1978, Howard Homes conveyed the Deed of Easement for Slope Stabilization (“Deed of Easement”) to Chapel Ridge. As a result, Chapel Ridge received a thirteen-foot easement behind the fifty-six lots at Collis Court.

This easement is located on the downslope of a hill, which runs from Greenpoint Road and descends towards the backyards of the Homeowners. Notably, one of Chapel Ridge’s “open space areas” lies above the easement along the hill, closer to Greenpoint Road. Per the Deed of Easement, Chapel Ridge has the express obligation to maintain drainage controls of both the adjoining open space area and easement.

Inadequate water drainage has been a long-standing issue with the Homeowners’ properties. Before this conveyance, Howard Homes sought to address any potential water drainage problems behind 1-13 Collis Court in three ways. At the very edge of the easement, near the lots of 1-13 Collis Court, Howard Homes built a retaining wall. Further up the hill on the easement, the builder added a swale, and finally, Howard Homes installed sump pumps in the private homes.

From 1978 until the mid-1990s, the Homeowners did not report substantial issues with water drainage. Then, in the mid-1990s, the Homeowners told Chapel Ridge that water had begun to seep into their basements. Caspari, one of the appellees in this case, was the President of Chapel Ridge from approximately 1994-1997. In his capacity as president, Caspari directed Chapel Ridge to install a French Drain<sup>2</sup> on the easement behind

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<sup>2</sup> A French drain is a simple trench dug in the ground to draw in and channel away water that has collected there. <https://abtdrains.com/the-difference-between-a-french-drain-and-a-trench-drain>.

the Homeowners. Notably, in adding the French Drain, Chapel Ridge did not seek an independent legal opinion regarding its responsibilities in addressing future water drainage issues. At that time, Chapel Ridge did not employ a geotechnical engineer to survey the easement’s land before installing the French Drain, either. Ultimately, the French Drain did not solve the water draining issues. In another effort to address the problems, in 1998, Chapel Ridge replaced the retaining wall at the edge of the easement closest to the affected townhouses. This seemed to solve the drainage problem.

But by 2009, the water issues had returned. For reasons not immediately apparent, the Homeowners did not complain to Chapel Ridge until 2014, and at that time they did so through Caspari. He claimed that the sump pumps were discharging water onto the Homeowners’ front lots. According to Caspari, the sump pumps were overactive during dry spells, suggesting to him that there was an issue with underground water, not surface water. Chapel Ridge responded by hiring an attorney, who opined that Chapel Ridge was not responsible for such water issues. Nonetheless, in 2015, Chapel Ridge preliminarily reached out to an engineering consulting firm, Hardin-Kight Associates (“Hardin-Kight”), but opted not to hire them at that time. As we shall see, Hardin-Kight will play a role later, however.

Ultimately, Chapel Ridge hired Daft McCune Walker (“DMW”), an engineering firm, to do an assessment of the water problem. Eric Hadaway, a DMW land development consultant, determined that “naturally occurring ground[]water in the area” caused the wet basements. Further, Hadaway found that water from the hill behind 1-13 Collis Court was

not the only source of groundwater. He highlighted roof runoff—aided by the flat soil next to the townhomes’ building foundation—as another likely source. However, Hadaway corroborated Caspari’s original contention regarding the sump pumps, namely that the sump pumps were the cause of the water in front of the townhomes.

After the DMW report, Chapel Ridge offered to either (a) replace and improve the French Drain or (b) provide 20% of the total cost for the Homeowners’ own solution. The Homeowners rejected both proposals. The drainage problems continued, prompting Chapel Ridge to contact and engage Hardin-Kight for a geotechnical survey. On September 20, 2019, Hardin-Kight issued a report, noting that surface water was not the direct cause of the problem. Hardin-Kight opined that if *only* surface water had been the issue, that would have been evident immediately after building the French Drain in the mid-1990s. In other words, Hardin-Kight suggested that the groundwater directly caused the flooding behind 1-13 Collis Court. Hardin-Kight, nonetheless, noted a connection between the groundwater and surface water. According to Hardin-Kight, the groundwater was once “surface water that seep[ed] into the ground uphill from the slope to Greenpoint Road.”

By 2019, the groundwater levels behind the Homeowners were above the basement level. Hardin-Kight recommended that an underdrain “at least two feet below the basement floor” be built. This underdrain, per Hardin-Kight’s report, would also be constructed as close to the basements of the Homeowners as possible. Crucially, neither the Homeowners nor Chapel Ridge dispute that the underdrain would be the most effective remedy to the drainage problem.

In October 2019, Chapel Ridge received Hardin-Kight's report and then reached out to DMW for an estimate of the cost to construct the underdrain. DMW provided an estimate of \$30,900. However, neither party agreed to pay for it. Because the underdrain would be built on the Homeowners' private lots, Chapel Ridge contended it would not be legally obligated to pay for it. The Homeowners believed that only Chapel Ridge could fix a problem of this scale and that Chapel Ridge had the legal duty to do so. But Chapel Ridge also objected to the cost of the underdrain because it had an annual budget of only \$69,000.<sup>3</sup> Chapel Ridge argued that it could secure additional financing from all of Chapel Ridge's homeowners to supplement its budget, but that would require a Special Assessment under the Bylaws. Crucially, a Special Assessment would need a 2/3 majority approval vote from all 230 homeowners, and Chapel Ridge worried that the residents unaffected by the water issues would not consent to this assessment.

Finally, on September 16, 2021, Caspari filed a Complaint for Declaratory Judgment to determine each party's legal obligations regarding the water drainage issues. Chapel Ridge moved to dismiss because the original complaint omitted indispensable parties, namely the other homeowners in Chapel Ridge. Caspari, accordingly, filed an amended complaint adding the homeowners as parties.

After a bench trial, the court ultimately issued an oral ruling that Chapel Ridge was responsible for paying to remediate the drainage issues. The court duly issued a written declaration which stated:

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<sup>3</sup> Each of the 230 homeowners in Chapel Ridge contributed \$300 per year.

DECLARED AND ORDERED, that Defendant, Chapel Ridge Community Association, Inc., is declared to be obligated to, and is hereby directed to carry out the recommendations contained in Exhibit 36 (Subsurface Investigation Report of Hardin-Kight Associates, Inc. re: Units 1-13 Collis Court, dated September 20, 2019.)

Chapel Ridge timely filed this appeal. We will provide additional facts in our analysis when necessary.

## DISCUSSION

### **The Circuit Court Did Not Err in Deciding that Chapel Ridge Would Have to Pay to Remediate the Homeowners' Water Problem**

#### **A. Parties' Contentions**

Chapel Ridge asserts that under the previously mentioned Deed of Easement and the Covenant Deed it has no obligation to implement the water remediation proposal that Hardin-Kight submitted. Chapel Ridge claims that the plain language of the Covenant Deed compels them to maintain only the common area or local open spaces, including the thirteen-foot easement behind the Homeowners' lots. But because Hardin-Kight's proposal to install an underdrain would require work on the Homeowner's private lots, Chapel Ridge argues, neither the Deed of Easement nor the Covenant Deed compels them to pay for work on private property.

In addition, Chapel Ridge contends that the drainage problems extend beyond its own maintenance responsibilities because the groundwater flows towards the Homeowners' townhomes from a variety of different sources, not just Chapel Ridge's common area and easement. As a result, Chapel Ridge asserts it should not be required to ameliorate a problem that extends beyond the scope of its legal responsibilities. Finally,

Chapel Ridge maintains that even though it paid to install the French Drain in the mid-1990's, in an effort to correct the water seepage problem, that did not impose upon Chapel Ridge a duty to remediate future problems such as those that are occurring now.

The Homeowners contend that the Deed of Easement and the Covenant Deed legally obligates Chapel Ridge to pay for the proposed underdrain. Further, the Homeowners note that the water drainage issues are “a direct result of the failure of the drain system or swale in the common and easement areas.” Accordingly, the Homeowners argue, Chapel Ridge must correct its past maintenance failures which has led to the water issues that now exist.

### **B. Pertinent Law**

Maryland Code Annotated, Courts & Judicial Proceedings Article (“CJP”) § 3-409(a), states that a declaratory judgment is “a type of discretionary relief.” “Thus, we generally review a trial court’s decision to grant or deny declaratory judgment under an abuse of discretion standard.” *Volkman v. Hanover Invs., Inc.*, 225 Md. App. 602, 612 (2015) (quoting *Sprenger v. Pub. Serv. Comm’n of Md.*, 400 Md. 1, 21 (2007)). This Court’s task is to review the trial court’s applied legal standards and determine if a reasonable conclusion was made; if so, “an appellate court should not reverse a decision vested in the trial court’s discretion.” *University of Md. Med. Sys. v. Kerrigan*, 456 Md. 393, 401 (2017) (quoting *Aventis Pasteur, Inc. v. Skevofilax*, 396 Md. 405, 436 (2007)).

This case concerns itself with the interpretation of deeds and covenants, two types of contracts. Maryland courts employ an objective standard of contract interpretation for deeds. “To determine the ‘extent of an estate or interest granted by a deed,’ we construe



the deed ‘so as to best effectuate the intention of the parties.’” *Bd. Of Cnty. Comm’rs of St. Mary’s Cnty. v. Aiken*, 483 Md. 590, 617 (2023) (quoting *Green v. Eldridge*, 230 Md. 1441, 447 (1963)).

### **C. Analysis**

Here, there are two controlling documents. *First*, the Covenant Deed legally obligates Chapel Ridge to maintain common areas, also known as open space areas. The Covenant Deed notes that common areas refer to “all real property (including improvement thereon or thereto) owned by the Association for the common use, benefit and enjoyment of the record owners.” *Second*, the Deed of Easement sets forth Chapel Ridge’s responsibilities for maintaining the open space areas. It states that Chapel Ridge must “maintain the Open Space areas by, among other things, creating and maintaining an aesthetically attractive grade and slope thereon . . . , by assuring effective drainage controls and by performing any other acts of maintenance necessary to affect these and similar objectives.” The Deed of Easement also established the following duties for Chapel Ridge’s easement behind 1-13 Collis Court:

- (1) slope stabilization,
- (2) drainage control,
- (3) mowing grass and weed growth restriction,
- (4) planting and landscaping, and
- (5) other related purposes

Finally, the Deed of Easement obligates Chapel Ridge to “protect and save harmless all lot owners” for damage on their private land, arising out of Chapel Ridge’s failure to maintain the easement and common areas.

We perceive no error in the circuit court’s finding that the two deeds establish that Chapel Ridge must (1) effectively manage drainage on the common areas and the easement, and (2) then remediate townhome owners when any property damage arises out of Chapel Ridge’s failure to do so. As was presented as evidence at trial and highlighted in counsels’ closings, a hill descends towards the backyards of the Homeowners at 1-13 Collis Court. The hill’s downslope includes Chapel Ridge’s common area and easement before reaching the Homeowners’ townhomes. The court found that these two areas, which Chapel Ridge is obligated to maintain, are the source of significant rain, which then collects as surface water. According to Hardin-Kight’s report, this surface water “seeps into the ground” and becomes groundwater. As Chapel Ridge’s management agent Michael Kemper noted at trial, “The water coming in—the rainwater coming in from . . . off that embankment into the swail (sic) surface water, that’s [Chapel Ridge’s] responsibility to maintain that system put in by the builder.” We conclude the court’s finding that the deed of easement in particular obligates Chapel Ridge to manage the common areas and easement and reduce water buildup is based on facts adduced at trial and are not clearly erroneous.

In its brief, Chapel Ridge raises a question about the French Drain’s effectiveness. That issue was presented to the trial court, was argued over in closing arguments, and the presiding judge asked several questions about the French Drain during counsels’ closings. Based on the court’s ruling, the only logical conclusion we can draw is that the court

considered Chapel Ridge’s argument about the Drain’s supposed ineffectiveness and rejected it.

Finally, Chapel Ridge raises as a subsidiary argument that the circuit court’s order is unenforceable. What Chapel Ridge means is not that the order is somehow illegal, but, rather, that it will be difficult for Chapel Ridge to pay for the underdrain. Chapel Ridge asserts that to raise the capital, it would have to issue a Special Assessment to all homeowners. Under their by-laws, two-thirds of all homeowners would have to assent to the Special Assessment. And because most of the homeowners are unaffected by the water problem, Chapel Ridge contends, it would not receive approval from two-thirds of all homeowners to fund the remediation project. Therefore, Chapel Ridge says the order is unenforceable.

One answer to this contention is that this is a declaratory judgment action in which the circuit court was tasked with declaring who was responsible for remediating an on-going water drainage problem, the affected Homeowners or Chapel Ridge. The court considered the evidence, made findings of fact, and declared that Chapel Ridge would bear the costs. The court was not tasked with exploring the feasibility of how either side would shoulder the costs of the repairs.

The other, more salient response is that Chapel Ridge did not put the issue squarely before the circuit court for a decision either at trial or later by way of a motion for the court to exercise its revisory powers under Rule 2-533 or Rule 2-534. Maryland Rule 8-131(a) states that “[o]rdinarily, an appellate court will not decide any other issue unless it plainly

appears by the record to have been raised in or decided by the trial court. . . .” Accordingly, the issue is not preserved for our review, and we decline to exercise our discretion to consider it.

**THE JUDGMENT OF THE CIRCUIT  
COURT FOR BALTIMORE  
COUNTY IS AFFIRMED. CHAPEL  
RIDGE TO PAY THE COSTS.**