Circuit Court for Wicomico County
Case No. 22-C-15-001032

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0677

September Term, 2020

C. EUGENE GARRETT, ET UX.

v.

EDNA FAYE HOLLOWAY, ET AL.

Graeff,
Leahy,
Friedman,

JJ.

Opinion by Leahy, J.

Filed: February 8, 2022

This marks the parties' second trip to this Court in the long battle over the use of Layton Lane, a small road in Wicomico County. At the outset of this litigation, Ms. Edna Faye Holloway and Ms. Patricia Ann Dize (collectively, "Appellees") owned two adjacent parcels of land in Wicomico County ("the Holloway Property" and "the Dize Property," respectively).[1] Mr. C. Eugene and Ms. Mary Jane Garrett ("the Garretts" or "Appellants") also own a parcel of land in the area. Layton Lane, the focal point of this litigation, is a private road that runs over land owned by the Garretts and that divides the Dize Property from the Garrett Property.

We issued our first decision in this litigation in an unreported opinion in 2018. *Holloway v. Garrett* ("*Holloway I*"), No. 1528, September Term 2016, slip op. (filed August 22, 2018), *cert. denied*, 462 Md. 88 (2018). In *Holloway I*, we determined that the circuit court correctly found that the Holloway Property benefitted from a 12-foot express easement establishing a right to use Layton Lane. With respect to the Dize Property, however, we found nothing in the record to support the court's finding that the easement known as west Layton Lane benefitting the Dize Property was express and that it was 12 feet wide. Accordingly, we remanded the case for the circuit court to determine both the width and the nature of the easement benefitting the Dize Property.

[1] By the time the proceedings on remand commenced, Ms. Dize had deeded her land to Ms. Holloway. For the sake of clarity, however, we will continue to refer to the property as the Dize property even though Ms. Holloway now owns both the Holloway and Dize Properties.

On remand, the circuit court held two days of hearings to address the issues we ordered it to consider in *Holloway I.* Meanwhile, on April 2, 2019, Ms. Holloway and Ms. Dize filed a petition for constructive civil contempt and other relief against the Garretts. Ms. Holloway and Ms. Dize complained that the Garretts had violated the 2016 judgment by—among other things—moving, narrowing, and interfering with the maintenance of the right-of-way.

On August 19, 2020, the circuit court entered two orders, one resolving the issues we directed it to consider on remand, and one resolving the contempt petition. In its order, the court once again found that the Dize Property benefits from a 12-foot-wide express easement known as Layton Lane as well as a 3-foot "protective zone" on either side of the right-of-way. In the contempt order, the court found the Garretts in civil contempt and provided that they could purge themselves of the contempt citation by paying for an independent survey to mark the 12-foot right-of-way declared by the court in 2016. Additionally, in both orders, the court enjoined the Garretts from placing fencing or other impediments along the Dize Property's right-of-way within the 3-foot "protective zone" on either side of the right-of-way.

The Garretts appealed both orders and present five questions for our review, which we have reordered and reworded slightly for clarity:[2]

[2] The questions presented in the Garretts' brief read:

I. "Was there any evidence in the record on remand to support the declaration of the trial court that Appellee Holloway has a permanent and

I. Did the scope of right-of-way benefitting the Dize Property become a moot issue on remand once the Dize Property was conveyed to Ms. Holloway?

II. Was there any evidence adduced on remand to support the trial court's declaration that a permanent and perpetual express easement exists, 12 feet in width, appurtenant to the former Dize Property?

III. May a court effect a *de facto* expansion of an express right-of-way of a determined width by enjoining the owners of the servient estate from the use and enjoyment of their land which abuts but does not lie within the express right-of-way?

IV. Was there sufficient evidence for the court to determine that the Garretts willfully violated the revised declaratory judgment dated September 16, 2016?

V. Were the purge provisions imposed by the trial court in its contempt order lawful?

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perpetual express easement 12 feet in width appurtenant to the property formerly owned by Appellee Dize?"

II. "May a Court effect a *de facto* expansion of an express right-of-way of a determined width by enjoining the owners of the servient estate from the use and enjoyment of their land which abuts but does not lie within the express right of way?"

III. "Was there sufficient evidence from which the Court could find that the Appellants willfully violated the revised declaratory judgment dated September 16, 2016?"

IV. "Were the sanctions/purge provisions imposed by the Court in the order following a finding of constructive civil contempt lawful?"

V. "Did the scope of Appellee Dize's right-of-way on remand become a moot issue as a result of the conveyance of the property by Dize to a third party before the case was remanded to the trial court?"

We affirm the circuit court's finding that the Dize Property is benefitted by an 18-foot-wide easement known as west Layton Lane. We also affirm the circuit court's determination that the central 12 feet of the easement or right-of-way may be used as a roadway, and that the remaining 3 feet on each side may be maintained as necessary to ensure sufficient clearance for emergency vehicles. Regarding the court's contempt order, however, although we affirm the court's decision to hold the Garretts in contempt, the order itself improperly contains only sanctions and no purge provisions. Because the Garretts have no ability to rid themselves of the contempt, we remand with instructions to modify the contempt order to include proper purge provisions.

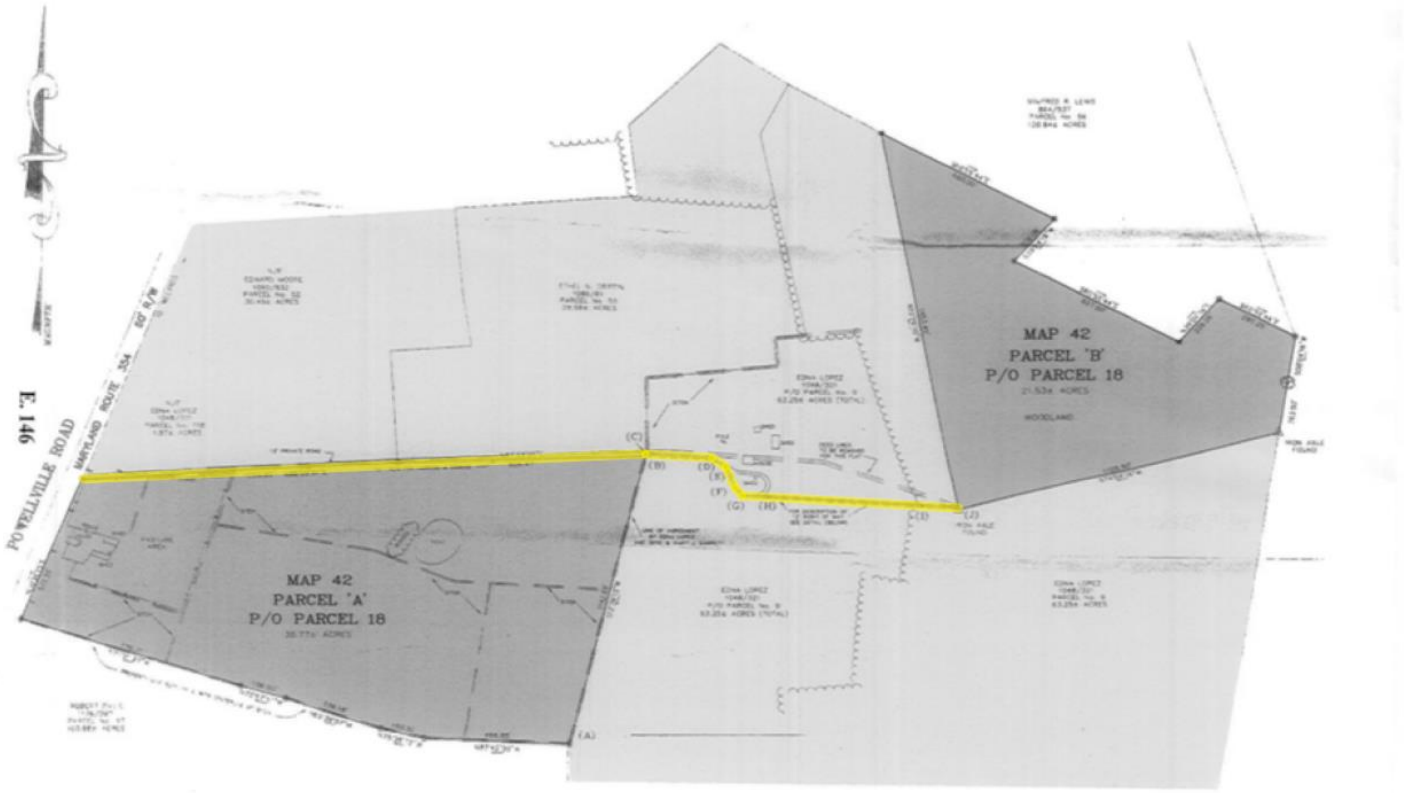
BACKGROUND

The history of the properties involved in this appeal was set out in full in our 2018 unreported opinion. *Holloway I*, slip op. at 3-9. Accordingly, we offer only an overview of the facts relevant to this appeal.

A. The Land at Issue

The following map depicts the properties at issue in this case.[3]

[3] We have highlighted Layton Lane in yellow to clarify its position on the map.



We described the division of property on this map in *Holloway I*:

> The parcels at issue here were once part of a larger property owned by Thomas A. Jones. As reflected in two surveys, each dated December 19, 1903, Thomas A. Jones's heirs conveyed two parcels from the greater property to John J. Layton and Samson E. Truitt. The surveys utilized an existing private road—now known as Layton Lane—in their metes and bounds descriptions, but those descriptions do not contain any language creating an easement or right-of-way over Layton Lane. The resultant deeds established ownership on either side of Layton Lane. According to Appellants' land surveying expert at trial, this "created the J[ohn] J. Layton lands to the north, which [Ms. Holloway's and Ms. Dize's] propert[ies] are a part of as well as what the [Garretts'] property would have been to the south [of Layton Lane]." Each parcel roughly resembled a parallelogram, with the western bounds of each abutting Powellville Road, then referred to as Mitchel Road, and extending eastward to some point unbounded by a road.

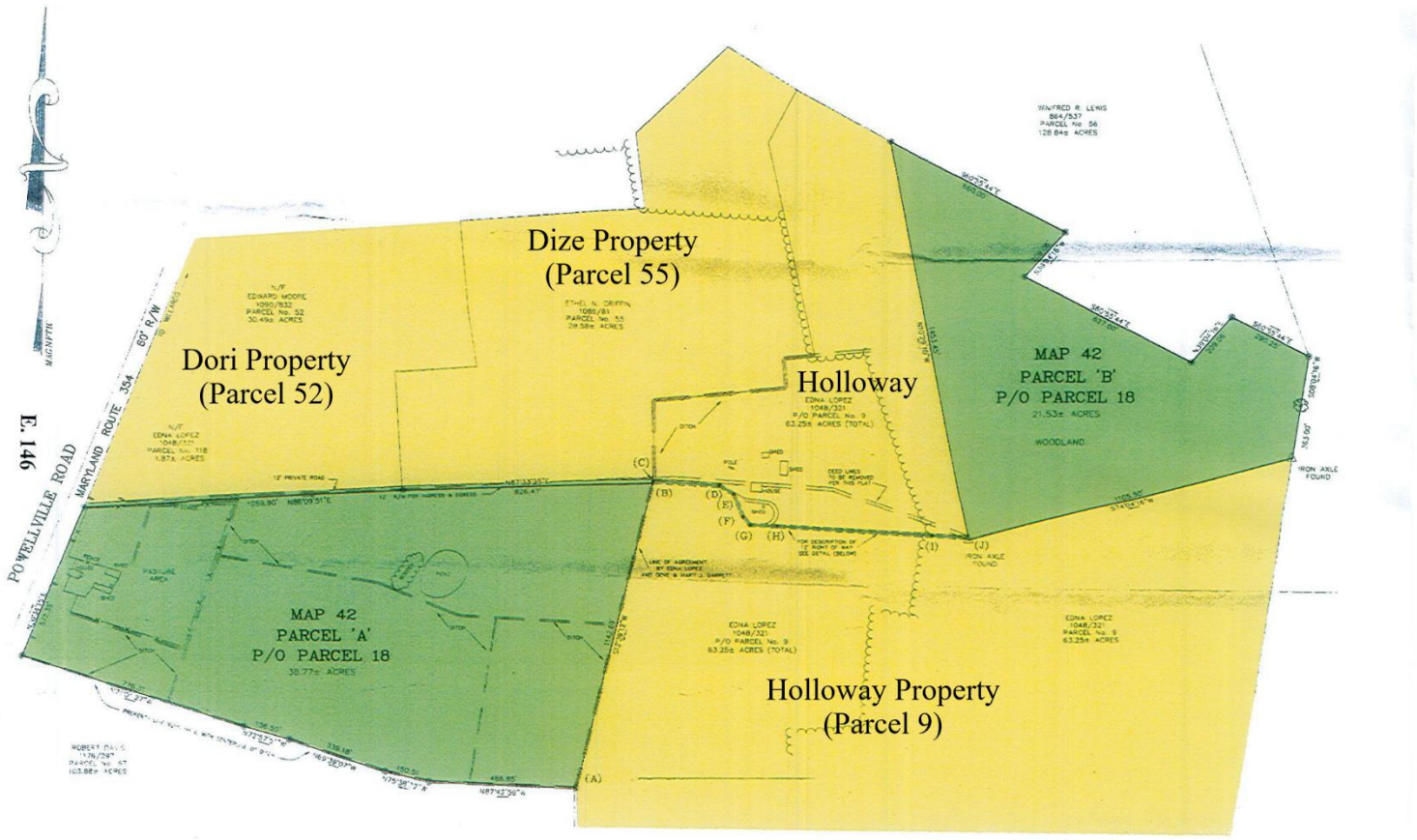
Layton Lane remains listed as a private road in the Wicomico County Roads System.

* * *

> According to a 1904 resubdivision survey, most of Samson E. Truitt's land became part of a larger parcel owned by William G. Dennis, who then sold that parcel along with another parcel (located to the east and connected by Layton Lane) to John E. Layton[, John J. Layton's son]. The darker-shaded sections in the map . . . illustrate the property that John E. Layton purchased.
>
> John E. Layton's property—the same property owned by the Garretts today—consists of two parcels connected by the eastern portion of Layton Lane, which serves as an isthmus between the two parcels such that the property is "like a barbell."
>
> The first parcel ("Parcel A") borders Powellville Road in the west and spreads eastward to a large ditch that forms its entire eastern border. The second parcel ("Parcel B") is located to the northeast and is surrounded on its southern and western borders by land now owned by Ms. Holloway. East Layton Lane connects the two parcels beginning at Parcel A's northeastern corner and terminating at Parcel B's southwestern corner. Appellants' land surveying expert stated that east Layton Lane was shown on the 1904 resubdivision survey as a 12-foot-wide strip owned in fee simple by John E. Layton. The 1904 resubdivision survey did not indicate whether or not the western portion of Layton Lane was similarly 12-feet wide.
>
> The 1904 resubdivision survey's metes and bounds descriptions have been referenced throughout subsequent deeds relating to the land. In 1917, John J. Layton, John E. Layton, and their respective spouses deeded the property (a/k/a Parcel A, Parcel B, and east Layton Lane) to Edward Dennis. This property remained in the Dennis Family for nearly 80 years before it was deeded to the Garretts on February 23, 1996.
>
> The metes and bounds descriptions noted in the 1996 deed repeated those found in the 1917 deed. As a result, the Garretts became—and remain—the owners of the barbell-shaped property.

Holloway I, slip op. at 3-6.

We also described the history of the Holloway Property and the Dize Property, depicted in the following map, with labels added for clarity.



> Compared to the Garretts' property, the chain of title to Ms. Holloway's and Ms. Dize's properties [now both owned by Ms. Holloway] is more nuanced. Both trace their ownership lineage largely back to the 1903 property division that created John J. Layton's property north of Layton Lane. The land that he received north of Layton Lane has since been divided into four main parcels, of which two—one owned by each Appellant—are involved in the underlying case. Apart from their access to Layton Lane, these two parcels are landlocked.
>
> Ms. Holloway is the current owner of a larger parcel of land, more particularly described as Tax Map 42, Parcel 9.
>
> * * *

> Ms. Dize own[ed] a parcel north of west Layton Lane measuring 28.58 acres, more or less, and more particularly described as Tax Map 42, Parcel 55. On August 13, 1933, eight years after John J. Layton transferred the easternmost parcel of his land north of Layton Lane to John E. Layton, he and his spouse created Parcel 55 via a deed to Wallace G. Nocks and his spouse, Ethel Mae Nocks, née Layton. Parcel 55 is bordered to its east by the easternmost parcel, described *supra* and now owned by Ms. Holloway. From its southeastern corner, Parcel 55's southern border extends approximately 858.4 feet westward—along west Layton Lane—with its southwestern corner ending 1,048.62 feet from Powellville Road. After Wallace G. Nocks died in 1973, Ethel Nocks became Parcel 55's sole owner, and on October 31, 1986, Ms. Nocks—whose name was then Ethel Nocks Griffin—deeded it to Ms. Dize (then known as Patricia Ann Mariner). [Ms. Dize has since conveyed Parcel 55—also referred to in this opinion as the "Dize Property"—to Ms. Holloway.]

Holloway I, slip op. at 6-7 (footnotes omitted).

B. The First Trial

The opening gambit in the underlying case may have been two speed bumps said to have been placed across Layton Lane by the Garretts sometime in 2013. After Ms. Holloway complained, the Garretts removed the speed bumps, but later posted several speed limit signs close to the edge of Layton Lane and erected stakes, signs, and fences on either side of Layton Lane, which increased the difficulty of getting farming equipment to the Holloway and Dize properties. Additionally, on a triangular sliver of land along Layton Lane which both Ms. Dize and the Garretts claimed they owned, the Garretts "planted trees—after removing . . . trees, bushes, and plants—at locations that strained the ability of Ms. Dize's farming tenant to access the fields." *Holloway I*, slip op. at 10. The parties exchanged a series of letters concerning the right-of-way and related issues but were unable to resolve their differences.

Ms. Dize and Ms. Holloway filed suit on July 13, 2015, stating claims for ejectment, trespass, and quiet title, including a request that the court issue an order stating that they had an easement by way of Layton Lane and enjoining the Garretts from restricting their use of the road. They also sought a declaratory judgment regarding the validity of the easement and "confirming that, based upon the nature and extent of past use and enjoyment of the right-of-way by [Ms. Holloway and Ms. Dize] and their invitees, the right-of-way is no longer limited to its original width of 12 feet (12') and should be declared to be a permanent and perpetual right-of-way at least thirty feet (30') in width[.]" Ms. Dize also asserted separate claims of ejectment, trespass, and natural resources violations regarding the triangular strip of land claimed by the Garretts, and sought monetary damages. She further asserted a claim to quiet title and requested judgment declaring her ownership over that piece of property.

From the beginning, the parties agreed that the Garretts' property was burdened by easements in favor of the Dize and Holloway Properties; the dispute concerned only the nature and scope of the easements. For instance, in the Garretts' answer, as to Layton Lane, the Garretts averred that the road was on their property; however, they admitted that Ms. Holloway and Ms. Dize had valid rights to a permanent and perpetual easement or right-of-way "to the extent that [they] claim usage of a right-of-way 12 feet in width."[4]

[4] Ms. Holloway and Ms. Dize claimed in paragraph 11 of their complaint that the right-of-way to use Layton Lane had been "used and enjoyed by [them] and their predecessors in title openly, continuously and without interruption for at least twenty (20) years prior hereto for vehicular and pedestrian access and access by [their] invitees [],

Throughout the initial proceedings, the Garretts never challenged the existence of an easement benefitting the Holloway and Dize Properties.

Over the course of the trial, the parties introduced evidence in the form of various documents relating to the size and nature of the Layton Lane right-of-way. First, a 1904 survey showed *east* Layton Lane as a 12-foot-wide strip. However, it did not indicate whether or not the western portion of Layton Lane was similarly 12-feet wide. Second, after Ms. Holloway and the Garretts agreed to relocate a portion of east Layton Lane southward, a 2009 plat described that eastern portion of Layton Lane as a "12' Fee Simple Road Bed for Ingress & Egress." The 2009 plat also depicted west Layton Lane, labeling it a "12' Private Road." Third, reciprocal deeds dated February 12, 2010 between Ms. Holloway and the Garretts affirmed *east* Layton Lane's relocation, and stated that Ms. Holloway was "RESERVING, NEVERTHELESS, unto Edna Faye Holloway, her heirs and assigns, a permanent and perpetual easement over said twelve foot (12') fee simple roadbed for the purpose of vehicular and pedestrian ingress, egress, and access." Fourth,

including farm tenants using the right-of-way for access to the interior fields by large pieces of farm equipment, trucks, trailers and other equipment." The Garretts denied this claim, but only "to the extent Plaintiffs claim usage of a right-of-way exceeding 12 feet in width." Additionally, in paragraph 12 of their complaint, Ms. Holloway and Ms. Dize claimed to have "valid rights to a permanent and perpetual easement or right-of-way over, across and through the within-described right-of-way, Layton Lane, which is appurtenant to the [their] aforesaid parcels of real estate, based on the legal title thereto as set forth in the Wicomico County Land Records, or by operation of law." The Garretts "admitted the allegations of fact set forth in paragraph 12 of the Complaint to the extent that [Ms. Holloway and Ms. Dize] claim usage of a right-of-way 12 feet in width." They also made similar claims in paragraphs 23 and 33 of their complaint, which the Garretts admitted "to the extent of a 12 foot right of way."

a 2011 plat commissioned by the Garretts (but not signed by any party) depicted the Garretts' property as extending north of west Layton Lane (by Powellville Road) into a thin triangular strip of the Dize Property, but it did not indicate west Layton Lane's width.

Notably, at trial, Ms. Garrett acknowledged that her family's ownership of Layton Lane was subject to the rights of others to use the road; that the Garretts had given verbal permission for farmers to exercise the right-of-way over an area exceeding 12 feet; and that the Garrets would move their temporary fence if the farmers needed the additional space.

On May 17, 2016, the circuit court issued its judgment, deciding three questions: (1) the easement's location; (2) its nature; and (3) its width. The court placed the boundary line between the Dize Property and the Garretts "at the northerly line of [Layton Lane] where it physically exists today, because that is what both sides have contended throughout these proceedings." Regarding the width and nature of the right-of-way, the court found, as we related in *Holloway I*:

> The easement's width, according to the [circuit] court, depended on how the easement arose. Although the court reviewed the requirements of an express easement, the court did not decide if one existed. Turning to implied easements, the court found that Appellants did not have an easement by prescription because "permissive use of another's land can never ripen into adverse use." Instead, the court found that the evidence satisfied the elements of an easement by necessity: (1) unity of title; (2) severance of that unity of title; and (3) the requirement of an easement to access a public road at the time of severance. Crediting testimony on the increasing size of farm equipment, the court declared the easement to be 24 feet in width. The court noted that the fact that the Garretts and Ms. Holloway agreed to a 12-foot fee simple road bed "<u>east of the big ditch</u>" for ingress and egress "is not controlling with respect to the nature and scope of the easement <u>west of the big ditch</u>."

> The court found in favor of Ms. Holloway for ejectment, quiet title, and trespass for the claims [Ms. Holloway and Ms. Dize] asserted together and for Ms. Dize for her claims of ejectment, quiet title, and trespass for the boundary dispute.

Holloway I, slip op. at 19-20 (emphasis in original).

The Garretts later moved to alter and amend or revise the judgment, arguing that the facts did not support a finding of an easement by necessity. The Garretts argued that when the land was first subdivided in 1917, "the 'dominant estate [a/k/a/ John J. Layton's lands north of Layton Lane] had access to a public road, i.e., Powellville Road, and there was no necessity to establish at that time an easement across the lands conveyed to [the Garretts'] predecessor in title[.]"

The circuit court revised its judgment, agreeing with the Garretts that there was no easement by necessity. The court concluded that Ms. Holloway and Ms. Dize had an express easement of "a uniform width of twelve feet," but did not indicate in what document an easement was expressed. The circuit court's opinion also stated that "the undersigned judge adopts his previous view that twenty-four feet is reasonable under modern conditions, but he feels constrained by existing Maryland case law that seemingly leaves him powerless to widen it[.]"

C. The First Appeal

Ms. Holloway and Ms. Dize noted their appeal of the circuit court's first decision on September 21, 2016.

In our written opinion, we explained that the record "evidence was insufficient . . . for the court to make a determination" as to whether Ms. Dize had a 12-foot express

easement giving her a right to use west Layton Lane. *Holloway I*, slip op. at 23. We also pointed out that the Garretts recognized the existence of some kind of easement in favor of the Dize Property, noting that "[t]he Garretts' new argument on appeal is that [a 12-foot] easement can be discerned from the boundary calls contained in the 1917 deed to Edward Dennis from John J. Layton, John E. Layton, and their respective spouses." *Id.* at 26. We determined, however, that this would be "a factual finding reserved for the trial court that will probably require the aid of expert testimony." *Id.* Accordingly, we remanded for "proceedings so that the court can consider additional testimony and evidence concerning the nature and scope of the easement over west Layton Lane, including whether the easement may be enlarged to accommodate modern farming equipment." *Id.*

We also vacated the trial court's decision that the Dize Property did not benefit from an easement by necessity:

> We first note that Layton Lane existed prior to the partition of [the] [l]and in 1917—even the earlier 1903 and 1904 surveys utilized Layton Lane in their metes and bounds descriptions. Although the court's finding that the boundary line between Ms. Dize and the Garretts is not directly challenged in this appeal, we recognize that, should evidence be introduced on remand that shows, for example, that the actual boundary lies at the center of west Layton Lane (rather than to the north), the court should have flexibility to reconsider whether, in 1933 John J. Layton, the grantor of Parcel 55 (Ms. Dize's parcel), intended to create an easement by necessity over west Layton Lane to Powellville Road.

Id. at 29.

Finally, we affirmed the trial court's decision that, based on the record, there was no prescriptive easement. *Id*. at 31. We noted that although Ms. Dize had owned her

property for 30 years, during which time she and her tenants openly and continuously used west Layton Lane, their use of west Layton Lane was not adverse.[5] *Id*. at 30-31.

D. Proceedings on Remand

1. Motion to Cancel Further Proceedings

After the mandate was issued in *Holloway I*, on October 23, 2018, the Garretts moved to cancel further proceedings, arguing that Ms. Dize's conveyance of the Dize Property to Ms. Holloway rendered the case moot. They contended that because this Court already determined that Ms. Holloway has a 12-foot express easement "running in an easterly direction from Powellville Road," when Ms. Holloway acquired the Dize Property, the express easement benefiting the Holloway Property also applied to the Dize Property, making the issues on remand moot. The Garretts further contended that an easement by necessity establishing the right to use Layton Lane cannot exist for the benefit of the Dize Property.

On November 9, 2018, the circuit court granted the Garretts' motion, ordering that the proceedings be cancelled as moot, and directing that judgments for nominal damages in the amount of $1.00 be entered in favor of Ms. Holloway and Ms. Dize against the Garretts. Ms. Holloway and Ms. Dize responded on November 19, 2018 with a motion to alter or amend the court's order. They argued that the pending easement claim was not

[5] We also agreed with Ms. Holloway and Ms. Dize's argument that the circuit court erred when it failed to award them monetary damages and directed the circuit court to award them nominal damages of at least one dollar. *Id.* at 34. The Garretts made further arguments about damages on remand in the circuit court, but we will not discuss the issue further because it is not relevant to the present appeal.

moot because the Dize Property was conveyed to Ms. Holloway with the "entire 'bundle of rights' that Ms. Dize had in connection with the property . . . including but not limited to the access easement at issue in this action." Accordingly, they contended, the court still needed to determine the nature and size of the easement benefiting the Dize Property.

On February 12, 2019, the court vacated its November 9 order and set a hearing for May 30, 2019 to address the issues that we directed the court to resolve on remand.

While the remand hearing was pending, on April 2, 2019, Ms. Holloway and Ms. Dize filed a petition for constructive civil contempt and other relief against the Garretts. The petition and subsequent hearing and order are discussed separately, *infra*.

2. Evidentiary Hearing

The circuit court held an evidentiary hearing on May 30, 2019. During that hearing, Appellees presented the testimony of three witnesses: Cynthia Todd, an independent title abstractor and expert in title searches; John Hilton, an expert in fire and rescue operations; and Ms. Holloway.

Ms. Todd testified that she constructed chains of title for the Dize Property, the Holloway Property, and the Garretts' property. She testified that, in the course of her searches, she found mentions of the private road going back to 1903. In particular, she testified that she found references to the private road in the 1903 conveyances from Thomas A. Jones to John J. Layton, and from Thomas A. Jones to Sampson E. Truitt.[6] She further

[6] These deeds were not part of the record in the original trial. *Holloway I*, slip op. at 3.

confirmed that the course stated in the deeds follows the current boundary line between the parcel now belonging to Mr. James Dori (bordering the western side of the Dize property) and one of the parcels belonging to the Garretts. She also confirmed that later deeds in the chains of title made mention of the private lane, and that all the deeds in the chain of title contained a "standard appurtenance type clause."[7] Despite finding numerous mentions of the private road in deeds from 1903 onward, Ms. Todd testified that she did not find any language in the deeds specifying the width of the right-of-way or restricting it to 12 feet.

On cross examination, Ms. Todd admitted that she never found anything expressly granting a right to use Layton Lane for the benefit of the Dize Property. She also confirmed that when John J. Layton conveyed the Dize Property in 1933, he did not own the property currently owned by the Garretts.

John Hilton, an expert in fire and rescue operations, testified next. Mr. Hilton is the president and chief engineer of the Powellville Volunteer Fire Department. He testified that, in its current state, the 12-foot right of way would limit fire and rescue capabilities. He claimed that for fire access, the right of way had to be a minimum of 18 feet wide: "As most right-of-ways [sic] now for fire access is 20-foot, we need a minimum of 18. Any one I have been on recently is 18 to 20-foot wide. It's not a 12-foot right-of-way." He also testified that because the Garretts have a fence "right on the edge of the [12-foot] right-of-

[7] Ms. Todd read the relevant clause from the 1903 deeds, which provides: "Together with the buildings and improvements therefrom erected, made or being and all and every the [sic] rights, alleys, ways, waters, privileges, appurtenances, and advantage to the same belonging or in any wise appertaining."

way," it would not be possible to drive a fire truck along west Layton Lane without the risk of the fence causing serious damage to the vehicle.

Finally, Ms. Holloway testified. During her testimony, in response to an objection made by the Garretts' counsel, the court asked whether the "only thing before the [c]ourt today is the width of the right-of-way as it pertains to the Dize . . . [P]roperty." In response, the Garretts' counsel explained:

> Almost, Your Honor. First – the first issue that you have to determine is, is there a right-of-way for that property across the land of the Garretts?
>
> Either – there's no – she doesn't have a prescriptive one. That's what the Court of [Special] Appeals said, so it's either implied or expressed. And as set forth in our trial memorandum, in our opinion based on the law, it couldn't be an implied easement across the Garrett property because John J. Layton didn't own it a[t] the time he off-conveyed that property in 1933.
>
> So it had to go across, if anything, [Mr. Dori's] property . . . that extended to Powellville Road.
>
> So before you even get into the width of the easement, you've got to determine whether there is an easement appurtenant to that Dize property. That's what the Court of Special Appeals said. We can't find anything in the record that would show us what kind of easement is appurtenant to this land.

After the testimony by the foregoing witnesses concluded, the court heard argument from the parties. The court questioned Appellees' counsel regarding the nature and scope of the easement benefitting the Dize Property. The court asked:

> THE COURT: What's – what changes? What has changed?
>
> [APPELLEES' COUNSEL]: The Court of Special Appeals says the right-of-way that attached to – that is appurtenant or attached to . . . the Dize property, has been remanded for this [c]ourt to determine the nature and the scope.
>
> THE COURT: Well, why would I do anything I – why would I change my opinion [that Ms. Dize has a 12-foot easement to use Layton Lane]?

* * *

> [APPELLEES' COUNSEL]: We know more now than we knew then. And I think it's unfortunate this case came in a posture originally where the pleadings admitted there's a right-of-way, but they have insisted all along it can't be wider than 12. And so the nature of the right-of-way really wasn't in the question, and we didn't prove – evidence was not produced of title searchers who could produce evidence as to the nature of the right-of-way. **It's now clear that it is not a right-of-way by necessity.** To that extent, I would agree with what the defense is saying. We didn't know that until Cindy Todd did her thing, and now that she has, it's true that John J. Layton ha[d] the [Dori] property when he conveyed the [Dize] [P]roperty. So we are back to the Court's finding of an expressed easement. I'm arguing that the Court should find an expressed easement.

Further, they argued that the court originally found an express easement that benefitted the Dize Property, and that this finding was not appealed, meaning that only the width, and not the existence, of the alleged express easement was in question. Because there is nothing in the record specifying a width, argued Appellees, the easement is a general one that can be enlarged. This Court, they argued, specifically noted in *Holloway I* that the circuit court could consider whether the easement could be widened.

The Garretts moved for summary judgment, arguing that the testimony and evidence showed that, as a matter of law, the Dize Property did not have the benefit of any easement at all. Appellees balked at this motion, contending that the Garretts previously admitted to a right-of-way and that "from the beginning they've said there's an easement."

E. The Order on Remand

On August 19, 2020, after an additional hearing on March 12, 2020, the circuit court entered its Order of the Court on Remand. In the order, the court found that Ms. Holloway has a "permanent and perpetual express easement twelve feet (12') in width appurtenant to

Parcel 55, formerly owned by Plaintiff Patsy Dize[.]" The court explained that the easement is "an express easement based on this [c]ourt's prior determination that express easements existed in favor of both the Dize parcel and Parcel 9, the farm owned by Plaintiff Faye Holloway at the time of trial, plats and other documents of record, and admissions by Defendants in pleadings and testimony."

Next, the court ordered that, "to enforce compliance with this [c]ourt's decrees, minimize the likelihood of future disputes, and provide the dominant tenement with a functional easement of the declared width," the Garretts would be

> enjoined from placing or locating fencing, stakes, poles, reflectors or other impediments or otherwise impeding or interfering with the use or maintenance of the right-of-way within a protective zone three feet (3') wide on both sides of the 12' wide right-of-way, and the three foot (3') wide protective zone may be used for the purposes of slope, drainage, and maintenance, overhanging farm equipment and emergency vehicle access.

The court explained that this protective measure was based on the court's "prior determinations that a 24' wide easement is necessary for the reasonable farming needs of Parcel 9 and Parcel 55," as well as "testimony at the original trial, at the contempt hearing, and upon the remand that the farm lane was caving into the ditch to the north, is inadequate or unsafe for access by emergency equipment, and cannot be drained, graded and maintained without sloped shoulders on both sides." The court's contempt order, discussed later in this opinion, also imposed a three-foot wide protective zone using similar language.

The court also awarded nominal damages of $1.00, plus court costs, in favor of the Appellees against the Garretts. The court concluded that, "[e]xcept as modified herein [in its August 18, 2020 order], the orders of this [c]ourt dated May 17, 2016, September 7,

2016 and September 16, 2016, including the injunctive relief granted, are confirmed and remain in full force and effect."

The Garretts noted this timely appeal on September 9, 2020.

DISCUSSION

I.

A. Mootness

The Garretts contend that the issue of whether an easement benefits the Dize Property is moot. They point out that Ms. Holloway is now the owner of the Dize Property, and that this Court confirmed that Ms. Holloway's property has an express easement of 12 feet in width. Via this easement, they argue, Ms. Holloway has access to the Dize Property. Accordingly, they conclude, there is no longer a case or controversy and the "the relief which [Ms.] Holloway seeks is merely an advisory opinion."

Generally, a "case is moot if no controversy exists between the parties or 'when the court can no longer fashion an effective remedy.'" *D.L. v. Sheppard Pratt Health Sys., Inc*., 465 Md. 339, 351-52 (2019) (citations omitted). Here, we do not agree that no controversy exists between the parties.

Our law is well "settled that 'an easement appurtenant to a lot cannot be used for the purpose and benefit of another lot to which no right is attached, even though such other lot be adjoining that to which the easement belongs.'" *Beins v. Oden*, 155 Md. App. 237, 245-46 (2004) (quoting *Buckler v. Davis Sand and Gravel Corp*., 221 Md. 532, 538 (1960)). As we noted, the deeds signed by the Garretts and Ms. Holloway did not bind the

Garretts to conveying an express 12-foot easement to use Layton Lane for the benefit of the Dize Property, and there is nothing in the record to establish that the Dize Property benefits from a right to use Ms. Holloway's easement. *Holloway I*, slip op. at 25. Accordingly, because the easement benefitting the Holloway Property cannot be used for the purpose and benefit of the Dize Property, a controversy still exists regarding what rights the Dize Property enjoys relating to the use of Layton Lane.

B. The Circuit Court's Finding of an Express Easement

Maryland Rule 8-131(c) provides that, "[w]hen an action has been tried without a jury, the appellate court will review the case on both the law and the evidence." We "will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses." Md. Rule 8-131(c). If "any competent material evidence exists in support of the trial court's factual findings," then "those findings cannot be held to be clearly erroneous." *Webb v. Nowak*, 433 Md. 666, 678 (2013) (quoting *Figgins v. Cochrane*, 403 Md. 392, 409 (2008)). Additionally, we "may affirm the [circuit] court's decision on any ground adequately shown by the record." *Norman v. Borison*, 192 Md. App. 405, 419 (2010).

The Garretts argue for the first time in this appeal that their land is "not burdened by any easement whatsoever for the benefit of the [Dize Property]." As the circuit court pointed out below, the Garretts waived this argument through their multiple admissions and stipulations that a 12-foot wide right of way exists, establishing a right to use west

Layton Lane for the benefit of the Dize Property.[8] Indeed, the attorney for the Garretts argued before the circuit court on remand:

> Judge, on the law, testimony was there is no expressed easement. There is no easement by necessity by agreement. The Court of Special Appeals said, there's definitely no prescriptive easement . . . . However, by stipulation and agreement, the Defendants will consent that the 12-foot-right-of way, expressed right-of-way, that this Court has found that benefits Holloway's property also benefits the Dize property as an expressed easement, as has been the position and contention from day one.

The Garretts have not explained why they should not be bound by their admissions and stipulations, nor have they offered an alternative to the circuit court's finding of an express easement that would be consistent with their concessions. *See Reyes v. State*, ___ Md. App. ___, No. 1092, September Term 2020, at slip op. 15 (filed Jan. 26, 2022) (holding that the State was bound by its concession at trial that it was not prejudiced by petitioner's delay in filing a coram nobis petition); *Castiglione v. Johns Hopkins Hosp.*, 69 Md. App.

[8] For instance, in paragraph 12 of their complaint, Ms. Holloway and Ms. Dize claimed to have "valid rights to a permanent and perpetual easement or right-of-way over, across and through the within-described right-of-way, Layton Lane, which is appurtenant to [their] aforesaid parcels of real estate, based on the legal title thereto as set forth in the Wicomico County Land Records, or by operation of law." Far from denying this allegation, the Garretts "admitted the allegations of fact set forth in paragraph 12 of the Complaint *to the extent that [Ms. Holloway and Ms. Dize] claim usage of a right-of-way 12 feet in width*." (Emphasis added). Ms. Holloway and Ms. Dize also made similar claims in paragraphs 23 and 33 of their complaint, which the Garretts admitted "to the extent of a 12 foot right of way."

Additionally, Ms. Garrett testified at the July 2019 contempt proceedings that the Dize Property "can use the 12 feet with no problem" because they are "entitled to that." Later in that hearing, the Garretts' counsel again stated that the Garretts were "willing to give the Dize property an express easement of 12 feet" and that they "acknowledged from the beginning that [Appellees] had a 12-feet [sic] easement, and that was in the pleadings on both sides."

325, 336 (1986) ("[P]arty admissions in pleadings . . . are considered to be substantive evidence of the facts admitted.").

Because the Garretts admitted and stipulated to the court on remand that "from day one" there is an easement of at least 12 feet in width burdening their property for the benefit of the Dize Property, they have waived their argument that the easement does not exist. The central issue in this case is now, and always has been, whether the easement is in fact wider than 12 feet.

C. The Three-Foot "Protective Zone"

1. Parties' Contentions

The Garretts argue that the court "improperly effected a *de facto* expansion of an express right[-]of[-]way of a determined width by enjoining them from the use and enjoyment of their land which abuts[,] but does not lie within[,] the express right[-]of[-]way." An easement restricted to a specific width, they contend, cannot be judicially enlarged. They argue that this fact was acknowledged by the trial court in both its 2016 Declaratory Judgment and Order and the trial on remand, where it noted that it did not have the authority to expand the easement.

The Garretts purport that Ms. Holloway's claim to the expanded right-of-way is "in the nature of a private eminent domain—the taking of Garretts' property for her personal benefit to enhance the value of her land." They also insist that this Court "conclusively found" that there was no support in the record for the circuit court's finding of an express 12-foot-wide easement to travel on west Layton Lane for the benefit of the Dize Property.

Appellees respond by arguing that the circuit court's order was in accord with this Court's remand order, which instructed the court to determine both the nature and the width of the right-of-way, including whether the easement may be enlarged to accommodate modern farming equipment. Accordingly, claim Appellees, "this Court's prior opinion left the door open for the circuit court to allow a reasonable expansion of the right-of-way upon the remand."

Further, Appellees argue that the trial court had ample evidence to justify imposing the protective zone. Appellees point to testimony at the original trial and on remand indicating that a 12-foot-wide right-of-way was too narrow for modern farming equipment; that the right-of-way is too narrow to accommodate emergency vehicles; and evidence regarding the deterioration of the right-of-way and the difficulty in maintaining it.

Finally, Appellees insist that an "express but general easement can be expanded to a reasonable width." Appellees contend that the disputed right-of-way is a general easement because its location is specified by the various deeds and plats, but its width is unspecified. Citing *Rodgers v. P-M Hunter's Ridge, LLC*, 407 Md. 712, 731 (2009), Appellees argue that a court can establish a reasonable width for a general easement by examining the surrounding circumstances, including the actions of the person using the easement. Appellees argue further that, in *Holloway I*, we stated that we found nothing in the record limiting west Layton Lane to 12 feet in width. Accordingly, Appellees contend, the trial court's imposition of a 3-foot-wide protective zone on either side of the right-of-way is consistent with Maryland law dealing with a "general easement." Therefore,

conclude Appellees, by imposing the 3-foot protective zone, the circuit court gave the easement a reasonable scope and accommodated the reasonable needs of the dominant tenement while minimizing the impact on the servient tenement.

2. Analysis

i. Types of Easements

The Court of Appeals has defined an easement at the "basic level" as "a 'nonpossessory interest in the real property of another.'" *USA Cartage Leasing, LLC v. Baer*, 429 Md. 199, 207 (2012) (quoting *Rogers v. P-M Hunter's Ridge, LLC*, 407 Md. 712, 729 (2009)). Easements generally provide "the owner of one property a right of way over the real property of another." *Lindsay v. Annapolis Roads Prop. Owners Ass'n*, 431 Md. 274, 290 (2013). When an easement is for the benefit of another property "the neighboring property is known as the dominant estate, while the property subject to the easement is known as the servient estate." *USA Cartage Leasing, LLC*, 429 Md. at 208. The owner of the dominant estate is "entitled to use the easement in a manner contemplated at the time of the conveyance," whereas the "servient tenant is entitled the use and enjoyment of his property consistent with the terms and conditions of the reservation." *Rogers*, 407 Md. at 731.

Easements may be created expressly or by implication, including implied easements created "by prescription, necessity, the filing of plats, estoppel, and implied grant or reservation where a quasi-easement has existed while the two tracts are one." *Lindsay*, 431 Md. at 291.

Specific or General

An easement may be expressly created by a deed or by another document. *USA Cartage Leasing*, 429 Md. at 208. Easements reserved in a deed can be "either general or specific." *Rogers*, 407 Md. at 731. An easement is reserved in specific terms "when its location is easily discernible, such as from a metes and bounds description, a plat map, or a call." *Id*. "If the easement is reserved in specific terms, we look no further than the plain meaning of the language in the deed" and "confine our analysis to the four corners of the instrument." *Id*. at 731-732. As a result, without consent of the servient estate, express easements defined with specificity cannot be expanded in ways inconsistent with their specific terms. *Burroughs v. Milligan*, 199 Md. 78, 89-90 (1952).

Alternatively, an "easement is reserved in general terms [] when it is clear from the intentions of the parties that an easement has been created, but without a precise location." *Rogers*, 407 Md. at 731; *USA Cartage Leasing*, 429 Md. at 211. If an express easement is reserved in general terms without any specified limits on its location or size, however, then the courts are entitled to "look to the surrounding circumstances, including subsequent agreements and conduct of parties, which may evidence the parties' intent." *Rogers*, 407 Md. at 732 (holding that an easement was reserved in general terms because it created an option to set the easement either by private or public roadway, did not specify the easement's location, and that the ambiguity in the deeds creating the easement could be resolved by reference to subsequent declarations and conduct of the parties showing their intent); *USA Cartage Leasing*, 429 Md. at 211. These principles "allow[] for the location

of a general easement without the specificity of description seemingly demanded by the recording statute and [cases dealing with specific easements.]" *USA Cartage Leasing*, 429 Md. at 211; *Sibbel v. Fitch*, 182 Md. 323, 327 (1943) ("[A]fter the location of the right of way which has been granted in general terms has been defined and fixed by the [parties] in a particular location over a long period of time, it becomes as definitely established as if the grant or reservation had so located it by metes and bounds[.]").

When we interpret an instrument that creates an express easement, "the basic principles of contract interpretation apply," and the "grant of an easement by deed is strictly construed." *Garfink v. Cloisters at Charles, Inc.*, 392 Md. 374, 392 (2006). The "primary rule" for the construction of an easement is that a court should "ascertain and give effect to the intention of the parties at the time the contract was made, if that be possible." *Id.* (quoting *Miller v. Kirkpatrick*, 377 Md. 335, 351 (2003)).

By implication

Easements may also be created by implication. One type of implied easement is a prescriptive easement. Similar to adverse possession, a prescriptive easement is created when a claimant shows "adverse, exclusive, and uninterrupted use of another's real property for twenty years." *Breeding v. Koste*, 443 Md. 15, 35 (2015) (quoting *Banks v. Pusey*, 393 Md. 688, 698 (2006)).

An easement by necessity is another form of easement created by implication in a conveyance of land. An easement by necessity is

> an easement which arises upon a conveyance of land, in favor of either the grantor or grantee of the land, by reason of a construction placed upon the

> language of the conveyance in accordance with what appears to be the necessity of the case, in order that the land conveyed, or sometimes, the land retained, may be properly available for use.

Stansbury v. MDR Dev., LLC, 161 Md. App. 594, 615 (2005) (quoting Herbert Thorndike Tiffany, *Real Property* § 792 (3d ed. 1939)). "Factors to be considered when analyzing an easement by necessity include common ownership, division creating land-locked property, and necessity. The necessity is to be 'determined from the conditions as they existed at the time of the conveyance." *Id.* (quoting *Hancock v. Henderson*, 236 Md. 98, 104 (1964)).

Even if a deed does not expressly create an easement, it may create an implied easement by reference to plats. "Implied easements by reference to a plat are created where [a] deed allegedly establishing the easement 'contains a reference to a plat that contains a right of way.'" *Lindsay*, 431 Md. at 291 (quoting *Boucher v. Boyer*, 301 Md. 679, 688-89 (1984)). Additionally, "a deed that is silent as to the right of way but refers to a plat that establishes such a right of way creates a rebuttable presumption that the parties intended to incorporate the right of way in the transaction." *Boucher*, 301 Md. at 689.

Finally, an easement may be created by implied grant or reservation where a quasi-easement existed before the transfer of property. "A 'quasi-easement' is a legal fiction developed to overcome the premise in law that one cannot have an easement over one's own land." *Johnson v. Robinson*, 26 Md. App. 568, 577 (1975). This legal fiction exists when an owner uses part of his or her own land for the benefit of another part. *Id.* If those parts of the land are then separated, then the quasi-easement may become a true easement by implication. *Id.*; *Lindsay*, 431 Md. at 291.

We also note that "an implied easement is based on the presumed intention of the parties at the time of the grant or reservation as disclosed from the surrounding circumstances rather than on the language of the deed. As a result, courts often refer to extraneous factors to ascertain the intention of the parties." *Boucher*, 301 Md. at 688.

By estoppel

An easement can be created by estoppel when the owner of the dominant estate detrimentally relies on the voluntary conduct or representations of the owner of the servient estate. *Olde Severna Park Improvement Ass'n, Inc. v. Barry*, 188 Md. App. 582, 595 (2009). Whether an easement by estoppel exists is a question of fact that depends on the equities of the case. *Id.*

ii. Application

On remand, neither party introduced evidence of a *specific* 12-foot-wide easement over west Layton Layne. *USA Cartage Leasing*, 429 Md. at 208 (stating that an easement is specific "when its location [and dimensions] [are] easily discernable, such as from a metes and bounds description, a plat map, or a call" (quoting *Rogers*, 407 Md. at 731)). Although the Appellees introduced testimony from an expert witness regarding the deeds in the Dize Property's chain of title, the expert testified that she found nothing in any of the land records that "specifies a width of [the] lane" or "limit[s] [the] private lane to a 12-foot width." Therefore, because the Garretts stipulated to the existence of an express easement, but no document in the record expressly defined the width of the easement, it is a general easement. *USA Cartage Leasing*, 429 Md. at 208 ("An easement is reserved in

general terms when it is clear from the intentions of the parties that an easement has been created, but without a precise location."). Thus, because the easement for the use of west Layton Lane is a general easement, the circuit court had the power to "look to the surrounding circumstances, including subsequent agreements and conduct of parties," to resolve the "ambiguity regarding the location of the easement." *Id.* at 211; *see also Taylor v. Solter*, 247 Md. 446, 452 (affirming a circuit court's determination that a general right-of-way was in a particular location because the dominant estate had been using that path for "many years").

In its order on remand, the circuit court stated that the "protective measure" of expanding the easement by three feet on each side was "based on [the circuit court's] prior determination that a 24' wide easement is necessary for the reasonable farming needs of Parcel 9 and Parcel 55, but also is based upon testimony at the original trial, at the contempt hearing, and upon remand that the farm lane was caving into the ditch to the north, is inadequate or unsafe for access by emergency equipment, and cannot be drained, graded and maintained without sloped shoulders on both sides." This appears to be a determination that the intent of the parties was to create a right-of-way that is usable as a road, including by emergency vehicles. Thus, the circuit court treated the "protective zone" as a means of making the easement wide enough to accommodate the intended use of Layton Lane as a roadway. We also note that the easement declared by the court is the width that the Mr. Hilton testified was required for a fire truck to safely navigate the road.

We find no clear error in the circuit court's factual determination, based on "evidence of subsequent conduct of the parties," *Rogers*, 407 Md. at 735, that the right-of-way was intended to be usable as a road, including for access by emergency vehicles. *See generally Webb v. Nowak*, 433 Md. 666, 675, 678 (2013) (describing the clear error standard of review for cases tried without a jury). Additionally, given Mr. Hilton's testimony that a minimum of 18 feet was required for emergency vehicles to safely navigate the road, we find no clear error in the circuit court's determination that an 18-foot-wide easement was the width that was necessary in order to effectuate the parties' intent. *Rogers*, 407 Md. at 735-36. Accordingly, we affirm the circuit court's finding that west Layton Lane is burdened by an 18-foot-wide easement, where the central 12 feet may be used as a roadway, and that the remaining 3 feet on each side may be maintained as necessary to ensure sufficient clearance for emergency vehicles.[9]

II.

Contempt

A. Background

On April 2, 2019, Ms. Holloway and Ms. Dize filed a petition for constructive civil contempt and other relief against the Garretts. In their petition, they cited the trial court's

[9] We do not agree with the circuit court's reliance on its prior decision, which we vacated in *Holloway I*. That decision, vacated by this Court as unsupported by the record, has no value in the present analysis. However, despite the circuit court's improper reliance on its vacated opinion, we still conclude that the court's finding of an 18-foot easement has sufficient support in the record, and we affirm it on other grounds. *Norman v. Borison*, 192 Md. App. 405, 419 (2010) (stating that we "may affirm the [circuit] court's decision on any ground adequately shown by the record").

determination in its 2016 declaratory judgment that the boundary line between the Dize Property and the Garrett property sat at the "northerly line of the private road, now known as Layton Lane, where it physically existed at the time of the [c]ourt's judgment." They also pointed out that the judgment established the parties' liability for the ongoing maintenance of the land and enjoined the Garretts from interfering with the use of the easement or its maintenance.

Ms. Holloway and Ms. Dize argued that, despite the court's ruling, the Garretts had "endeavored to push the right[-]of[-]way to the north by continually moving their electric fence on the south side of the lane northward," which has "forced the traffic of the owners of the dominant tenement and their invitees to creep to the north over time, moving the physical line with it." The placement of the fence, they claimed, has narrowed the road to under 9 feet in certain places. Ms. Holloway and Ms. Dize also asserted that the Garretts misinformed one of their farm tenants about where they could plant and demanded that the farmer access the fields without using the entire right-of-way, even though the farmer had paid for access greater than 12 feet. Ms. Holloway and Ms. Dize further claimed that the Garretts continued to trespass on the triangle-shaped strip of land belonging to the Dize Property by spraying weed killer and killing the grass and bushes. Finally, they accused the Garretts of setting invisible tripwires, placing animal carcasses in the right-of-way, and other such activities.

Ms. Holloway and Ms. Dize asked the court to "find [the Garretts] in constructive civil contempt and impose appropriate measures to compel obedience to this [c]ourts'

orders, including establishing previsions [sic] under which [the Garretts] might purge themselves of such contempt of court."

On May 15, 2019, the court entered a Show Cause Order requiring the Garretts to show cause why they should not be held in contempt of court for constructive civil contempt.

The Garretts answered on June 5, 2019, generally denying that they had "engaged in any activity in derogation of the Orders of th[e] [c]ourt entered in the[] proceedings" and insisting that they were not in contempt of court. The Garretts claimed that they did not restrict farmers' access to the fields; that they sprayed for weeds with the permission of the farm tenant; that they did not interfere with the maintenance of the private road; that they placed twine, rather than a tripwire, around a ditch as a safety measure; that the animal carcasses were the result of Mr. Garrett's lawful wildlife damage control operation; and that they at all times have "endeavored to comply fully with the judgment of th[e] [c]ourt." They asked that the petition for contempt be dismissed.

On July 18, 2019, a contempt proceeding was conducted before the circuit court. Ms. Holloway testified that, since the 2016 declaratory judgment, the Garretts had moved and added fences and added posts alongside the roadway, forcing the "center of the lane over" and narrowing the lane. She explained that, after the court's order,

> the fence began moving to the north. And then when he says 12 foot, I don't understand why they had to put barriers up on the north side. You know, they put them on the south side. But they put barriers on the north and the south side.
>
> But then the barriers on the south side began moving, like the step fence and the reflectors, began moving to the north. And as people – as you

> drove in and out, you couldn't drive real close to that fence – it's an electric fence – so the center of the road would move over some.
>
> * * *
>
> And then it was so narrow, you know, you were just basically driving in the ditch.

She claimed that she could not maintain a drainage area to keep the roadway stable. Additionally, she said that the Garretts had sprayed and killed vegetation on the Dize Property, which she now owns. Her counsel argued that, while this activity did not affect the location of the right-of-way, it was a "contempt of the [c]ourt's order returning the property to its rightful owner."

According to Mr. Holloway, in 2017 the road was in "a lot better condition that it is now" and that, at that time, the "crown," or the "little hump in the middle [of the road]" that allowed water to drain on both sides, was still in place. He testified that, after the Garretts started moving their fences, water flow was impeded, and the road became difficult to stabilize. On a few occasions, he had filled potholes in the road only to later find them unfilled.

Two former farming tenants also testified: Keith White, a previous tenant farmer on the Dize Property, and Beth Gibbons, a previous tenant on the Holloway property. Ms. Gibbons said that she used the lane regularly, but that, after the 2016 court order, the quality of the road declined. Although the road was "really, really nice" when her family first moved to the Holloway property, she claimed that, over time, the "fence line was getting closer and closer, so it was really difficult to maneuver through" and that her car drove

"cock-eyed" over the lane. She explained that they had to try to dodge potholes and that the road was "just a mess."

Ms. Garrett testified that, within a few days of the court's 2016 judgment, she "went out and measured 6 foot from the center of the road" in order to determine the correct location for her fencing. She claimed that, after putting it in, she had never moved the fencing. Ms. Garrett also admitted to spraying for weeds but asserted that Mr. White had given her permission to do so, and that she never trespassed on the Dize Property. Ms. Garrett further testified regarding difficulties maintaining the lane and explained that the Holloways had failed to help them pay for repairs to the lane. After a time, she testified, she and Mr. Garrett "were like, fine, why should we keep maintaining the road if they're not going to obey the Court Order." She later testified, however, that Mr. Garrett did try to fix Mr. Holloway's attempts to fill potholes in the road by "scraping" the road to pack down the filling and "make sure it stayed." And, while she admitted that the road has now sloped, she blamed a farming tenant for failing to ask her for wider access, driving into a ditch, and collapsing the road.

She insisted that neither she nor her husband had done anything to interfere with the use of the right-of-way by Dize and Holloway. She testified that she would still be willing to grant a 12-foot right-of-way to use Layton Lane for the benefit of the Dize Property. On cross-examination, however, she testified that she and Mr. Garrett had decided not to allow any tenants wider access to the lane that year, even for a fee.

Mr. Garrett testified about maintaining the private road. He denied purposely or inadvertently removing fill material from potholes filled by Mr. Holloway. He repeated Ms. Garretts' claim that he maintained the road at first, but stopped when he was not reimbursed. He also confirmed Ms. Garretts' account of marking the right-of-way and her assertion that a combine collapsed part of the road.

At the conclusion of the hearing, the circuit court stated that the Garretts' actions were "spiteful," and the court found the Garretts to be in contempt of court. The court determined that, while the "Holloways are not without fault," the "greater fault has been with the Garretts in this fracas."

On August 19, 2020, the same day that it issued its order in the trial on remand, the circuit court entered its Order of the Court on Petition for Constructive Civil Contempt. The court found that the Garretts

> placed stakes, fences and metal reflectors on or so close to the right-of-way as to narrow the way to less than twelve (12) feet in some places, forcing traffic to the north and causing the travelled portion of the right-of-way to tilt and cave in toward the ditch on the north side[.]

It also found that, in doing so, the Garretts pushed the right-of-way north of its location as determined in the court's 2016 judgment, which "effectively also pushed the boundary line to the north, undermining [the] [c]ourt's judgment which declared the southerly line of the [Dize Property] and the northerly line of the [Garretts'] property to be the northerly edge of the right-of-way." Further, the court found that the Garretts entered onto the Holloway property to kill vegetation and interfered with the use and maintenance of the right of way by removing fill material from potholes.

Accordingly, the court ordered that, pursuant to Maryland Rule 15-207(d)(2), the Garretts could purge themselves of the contempt citation in three ways. First, the court ordered that Garretts "shall pay for an independent survey . . . to delineate and permanently mark by appropriate monumentation, the 12-foot-wide right-of-way declared by orders of this Court dated May 17, 2016, September 7, 2016 and September 16, 2016; said survey costs not to exceed $3,950[.]" Second, the court required that the Garretts "pay $3,950 for the court-ordered survey into the registry of the court within 30 days of this Order[.]" Finally, to "enforce compliance" with the court's orders, "minimize the likelihood of future disputes, and provide the [Appellees] with a functional easement of the declared width," the court enjoined the Garretts from

> placing or locating fencing, stakes, poles, reflectors or other impediments or otherwise impeding or interfering with the [] use or maintenance of the right-of-way within a protective zone of three (3) feet on both sides of the 12 foot wide right-of-way, and the three (3) foot wide protective zone may be used for the purposes of slope, drainage, and maintenance, overhanging farm equipment and emergency vehicle access.

The Garretts appealed this order on September 9, 2020.

B. Sufficiency of Evidence for Contempt Order

1. Parties' Contentions

The Garretts argue that the court abused its discretion when it found their behavior contemptuous, because "there was insufficient evidence from which the court could find that [they] willfully violated the revised declaratory judgment and order[.]" A finding of civil contempt for failure to comply with the court order, they aver, is justified only when noncompliance with the order is willful. Here, the Garretts contend that they tried to follow

the court's instructions when marking the right-of-way across their land and setting up fences south of the right-of-way in order to clearly mark the boundaries. They also argue that putting up fencing in an area of their land unburdened by the right-of-way was not a violation of the order of the lower court. Further, they argue that Ms. Garrett's entry onto the Dize Property to spray for weeds in the vicinity of the right-of-way was with permission of the farm and was therefore not contemptuous. Finally, the Garretts claim that their alleged scraping of potholes filled by Mr. Holloway was merely done to prevent the filling material from being washed out.

Appellees contend that the court's findings that the Garretts willfully violated the court's revised declaratory judgment were neither clearly erroneous nor an abuse of discretion. They argue that the judge's determination that its declaratory judgment order had been violated was supported by ample evidence, such as testimony and photos, indicating that the Garretts narrowed the right-of-way to less than 12 feet wide; forced the right-of-way north of the location fixed by the court; entered onto the strip of the Dize Property determined to belong to Ms. Dize (now Ms. Holloway) to kill vegetation; and removed fill material from potholes in Layton Lane. Appellees also contend that the trial judge found that the Garretts acted willfully and out of spite. The trial court, note Appellees, only needs to find the facts by a preponderance standard and is entitled to deference in determining the credibility of the witnesses. Accordingly, Appellees contends that the trial court did not abuse its discretion in finding Garretts were in contempt and had willfully violated the terms of its prior judgment.

2. Analysis

It is "beyond cavil that the power to hold a person in contempt is inherent in all courts as a principal tool to protect the orderly administration of justice and the dignity of that branch of government that adjudicates the rights and interests of the people." *Usiak v. State*, 413 Md. 384, 395 (2010) (quoting *Smith v. State*, 382 Md. 329, 337 (2004)). A person subject to a court order can therefore be "held in contempt for willfully violating that order." *Gertz v. Md. Dep't of Env't*, 199 Md. App. 413, 423 (2011). Any violation must be intentional and cannot result from an alleged contemnor's negligence. *Id.* Whenever a court makes a finding of contempt, it must "issue a written order that specifies the sanction imposed for the contempt." Md. Rule 15-207(d)(2). Civil contempt may be proven by a preponderance of the evidence. *Gertz*, 199 Md. App. at 424.

Generally, we will not "disturb a contempt order absent an abuse of discretion or a clearly erroneous finding of fact upon which the contempt was imposed." *Kowalczyk v. Bresler*, 231 Md. App. 203, 209 (2016). Specifically, we review "factual findings upon which a contempt order is premised to determine if they are clearly erroneous." *Gertz*, 199 Md. App. at 430. "It is not our task to re-weigh the credibility of witnesses, resolve conflicts in the evidence, or second-guess reasonable inferences drawn by the court, sitting as fact-finder." *Id*. Rather, the "evidence and all inferences drawn therefrom must be viewed in the light most favorable to . . . the prevailing party," in this case, the Appellees. *Id*.

We hold that the circuit court did not err by finding the Garretts in contempt. In this case, the court found that the Garretts "willfully violat[ed]" its final revised declaratory judgment order. In contempt proceedings, "willful" conduct is "action that is '[v]oluntary and intentional, but not necessarily malicious.'" *Royal Inv. Grp., LLC v. Wang*, 183 Md. App. 406, 451 (2008) (citation omitted). Here, the court found that, although the "Holloways are not without fault," the "greater fault has been with the Garretts in this fracas." The judge further characterized Garretts' actions as "spiteful."

After hearing testimony from the Garretts and listening to their explanations for the actions they took, the court inferred willfulness from the Garretts' placement of stakes, fences and metal reflectors on or near the right-of-way, which caused the right-of-way to narrow to less than twelve feet in some places and caused part of the right-of-way to cave in toward a ditch. The court found that the Garretts' actions in pushing the right-of-way north, removing fill material from potholes, and entering onto the Holloway Property to kill vegetation all undermined the court's prior judgment.

There is sufficient evidence in the record to support the court's finding of willfulness. The declaratory judgment order determined that the boundary line between the Dize Property and the Garretts' property was "fixed at a point located in a general northerly direction from the center line of the road bed where it is physically found at a uniform width of six feet along its entire length." The record contains ample testimony and photographic evidence showing that the Garretts shifted the boundary line, moved their fences, and narrowed the private road between approximately 2016 and 2019.

Furthermore, the 2016 declaratory judgment declared all parties jointly and severally liable for the ongoing maintenance of the right-of-way. The Garretts in particular were responsible for 30% of road maintenance. The record, however, shows that the quality of the road declined after the 2016 judgment, and the Garretts admitted that they stopped maintaining the road when they were not compensated for some repairs they made. The evidence in the record, combined with the litigation history between the parties, entitled the circuit court to find that the Garretts willfully flouted its 2016 order. Therefore, its finding of contempt was not clearly erroneous. *See Gertz*, 199 Md. App. at 433-34.

C. Lawfulness of the Purge Provisions

1. Parties' Contentions

The Garretts argue that the sanctions and purge provisions imposed by the circuit court's contempt order were not lawful. They argue that the contempt order does not comply with Maryland Rule 15-207(d)(2) in that it fails to impose any sanction for the contempt, and only specifies how the contempt can be purged. Also, they argue that the 3-foot protective zone on either side of the right-of-way and the injunction prohibiting them from using their property is an improper sanction and/or purge provision. They contend that, if these measures are sanctions, they do not contain the requisite provision for avoiding, or purging, the sanction, because the order offers them no opportunity to avoid the confiscation of their property for the protective zone decreed by the contempt order. If this measure is not a sanction, argue the Garretts, the establishment of a protective zone was improper as a means of purging the contempt, because it made no provision "for any

action or inaction which [the] Garretts could take to purge themselves of the asserted contempt."

Appellees disagree and argue that the "purge provisions adopted by the circuit court were lawful and proper." They aver that the sanctions in a civil contempt order are remedial and are intended to coerce compliance with court orders for the benefit of private parties. Citing *Royal Investment Group, LLC v. Wang*, 183 Md. App. 406, 455 (2008), Appellees argue that the contempt order coerced compliance with the court's underlying declaratory judgment, which upheld Appellees' claim to a right-of-way, enjoined the Garretts from interfering with the right to use, enjoyment and maintenance thereof, and stripped the Garretts of the sliver of land on the Dize Property claimed by them.

Appellees acknowledge that purge provisions must be provided to allow a defendant to avoid a penalty by some specific conduct within the defendant's ability to perform but aver that the trial court may also issue ancillary orders for the purpose of facilitating compliance or encouraging a greater degree of compliance with court orders. Here, Appellees posit that the purge provisions chosen by the circuit court, including the requirement to pay for a survey to mark the right-of-way, the protective zone and the measure enjoining the Garretts from placing impediments in or near the right-of-way, were tailored to address the underlying contemptuous conduct and to foster compliance with the court's orders.

2. Analysis

In general, the purpose of a civil contempt order is to "coerce present or future compliance with a court order." *Royal Inv. Grp., LLC v. Wang*, 183 Md. App. 406, 452 (2008). Thus, a civil contempt order cannot impose a sanction on a contemnor for a past failure to comply with a court order. *Gertz v. Md. Dep't of Env't*, 199 Md. App. 413, 423 (2011). "Rather, a civil contempt order is 'remedial in nature' in the sense that it is 'intended to coerce future compliance' with court orders that 'preserve and enforce the rights of . . . parties to a suit [.]'" *Id*. (quoting *Dodson v. Dodson*, 380 Md. 438, 448 (2004)). Accordingly, any penalty in a civil contempt action must provide for purging. *See* Md. Rule 15-207(d)(2) (stating that, "In the case of a civil contempt, the order shall specify how the contempt may be purged."). The opportunity for purging ensures that a penalty for civil contempt "be coercive rather than punitive" by permitting a defendant to "avoid the penalty by some specific conduct that is within the defendant's ability to perform." *Kowalczyk v. Bresler*, 231 Md. App. 203, 209 (2016). A court, "in the exercise of its civil contempt power," is also entitled to make "'ancillary orders for the purpose of facilitating compliance or encouraging a greater degree of compliance with court orders.'" *Gertz*, 199 Md. App. at 424 (citation omitted).

In *Kowalczyk v. Bresler,* parties who shared legal custody of a child entered into a consent order in 2012. 231 Md. App. at 207. Eventually, the child's father filed a motion for and was granted an order awarding him primary physical custody of the child. *Id*. The court also ordered a temporary access order limiting the mother's access to the child and

providing, among other things, that the mother's visits with the child be supervised; that she be entitled to video calls with the child as long as she did not undermine the child's relationship with her father; and that the mother undergo a psychological evaluation. *Id.* at 207-208. A few weeks after this order was issued, the father filed an emergency petition for contempt, alleging that the mother had violated the order by engaging in unsupervised text messaging with her child. *Id.* at 208. The court found the mother in contempt of the visitation order and ordered that, to purge herself of contempt, she had to abide by modified visitation order provisions. *Id.* The modified visitation order provided that the mother "shall not have any visitation or access or contact, of any kind, with the minor child . . . until further order of the Court." *Id.*

The mother appealed the order and argued that the circuit court "improperly used constructive civil contempt as a basis to punish her for her alleged prior misconduct." *Id.* We agreed with the mother that the purge provision was "in fact punishment for her past failure to comply with the . . . visitation orders." *Id.* at 210. Judge Kathryn Graeff, writing for this Court, explained that "[a]ny order imposing a penalty in a civil contempt action must include a purging provision with which the contemnor has the present ability to comply." *Id.* In other words, "[a] lawful purge provision 'affords the defendant the opportunity to exonerate him or herself, that is, to rid him or herself of guilt and thus clear him or herself of the charge . . . [i]n this way, a civil contemnor is said to have the keys to the prison in his own pocket.'" *Id.* (quoting *Jones v. State*, 351 Md. 264, 281 (1998)). In *Kowalczyk*, the sanction was the suspension of visitation, but there was "no way for

appellant to perform some act and thereby avoid the sanction." *Id.* Accordingly, we concluded, the "purging provision was the sanction." *Id.* at 211. Because there usually cannot be a "finding of contempt unless the contemnor has the present ability to comply with a proper purging provision," we vacated the finding of contempt as well as the sanction. *Id.*; *see also Stevens v. Tokuda*, 216 Md. App. 155, 171-173 (2014) (holding that the circuit court's contempt order was not appropriate because a sanction must allow for purging and the law "requires a present ability to comply with the purge condition and a willful choice by appellant not to comply in spite of that ability").

Returning to our easement case, the circuit court's Order of Court on Petition for Constructive Civil Contempt is legally deficient. After setting out its findings, the court's order sets out no sanctions but instead states that: "Accordingly, IT IS ORDERED on the date shown below pursuant to Maryland Rule 15-207(d)(2), that [the Garretts] may purge themselves of the contempt citation as follows[.]" The court then lists three "purge" provisions: (1) the Garretts "shall pay for an independent survey . . . to delineate and permanently mark by appropriate monumentation, the 12 foot wide right-of-way declared by orders of this Court dated May 17, 2016, September 7,2016 and September 16, 2016; said survey costs not to exceed $3,950[;]" (2) the Garretts shall "pay $3,950 for the court-ordered survey into the registry of the court within 30 days of this Order[;]" and, finally, (3) to "enforce compliance" with the court's orders, "minimize the likelihood of future disputes, and provide the [Appellees] with a functional easement of the declared width," the Garretts are enjoined from

> placing or locating fencing, stakes, poles, reflectors or other impediments or otherwise impeding or interfering with the, use or maintenance of the right-of-way within a protective zone of three (3) feet on both sides of the 12 foot wide right-of-way, and the three (3) foot wide protective zone may be used for the purposes of slope, drainage, and maintenance, overhanging farm equipment and emergency vehicle access.

Seemingly, then, the order is mere punishment for the Garretts' failure to comply with the court's 2016 declaratory judgment. Like the modified visitation order in *Kowalczyk*, the order in this case lists no sanctions. Rather, the sanctions are the listed "purge" provisions. And like in *Kowalczyk*, the Garretts are offered no option to perform some act and avoid the sanctions. 231 Md. App. at 231. Therefore, because the Garretts have no ability to rid themselves of the contempt, the order does not perform its remedial function of "coerc[ing] present or future compliance with [the] court order." *Royal Inv. Grp., LLC*, 183 Md. App. at 452. Thus, while we do not disagree with the court's finding of contempt, we hold that the order is improper; therefore, we remand the case so that the court can modify its order to include proper purge provisions.

Conclusion

We affirm the circuit court's finding that the Dize Property is benefitted by an 18-foot-wide easement known as west Layton Lane, but conclude that the court's Order of Court on Petition for Constructive Civil Contempt failed to include proper purge provisions. Accordingly, on remand, the court may decide to impose the sanctions that it included in its original order, but it must include appropriate purge provisions enabling the Garretts to perform some act to avoid these sanctions.

JUDGMENT OF THE CIRCUIT COURT FOR WICOMICO COUNTY VACATED IN PART AND AFFIRMED IN PART; CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION; COSTS TO BE SPLIT EQUALLY BETWEEN THE PARTIES.