Circuit Court for St. Mary's County
Case No. 18-C-06-000566

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 701

September Term, 2017

JOHN W. RALEY

v.

BEVERLY B. ZINER

Nazarian,
Arthur,
Beachley,

JJ.

Opinion by Arthur, J.

Filed: July 25, 2018

In this case, a property owner appeals from an order of the Circuit Court for St. Mary's County denying his motion to alter or amend a judgment that the court had entered in his neighbor's favor 10 years earlier. For the reasons explained in this opinion, we conclude that in 2017 the court was not required to alter or amend its judgment from 2007. The judgment is affirmed.

BACKGROUND

A. The 20-Foot Wide Roadway Between the Ziner and Raley Properties

This case concerns two neighboring properties along Maryland Route 235 in St. Mary's County. The properties sit on two lots created during the 1950s as part of a subdivision. The lots are separated by a strip of land, approximately 20 feet wide, that extends from the highway to the rear of the lots.

Through deeds recorded in the land records for St. Mary's County, the owners of the two lots each received an express easement over the "20-foot roadway" between the lots.[1] For decades, the lot owners shared the roadway, using it as the primary means of access from the highway to the residences or other buildings on the lots. The developer, Capps & Dean, Inc., retained ownership of the roadway.

By the 1990s, Beverly Ziner owned the lot on one side of the roadway, while John Raley and his wife, Carol Raley, owned the lot on the other side of the roadway.

[1] The record includes copies of deeds that are practically illegible. Both parties tell us that the deeds show "an express easement for ingress and egress to their respective lots over the 20 foot wide roadway."

B. The 1998 Condemnation Action and the 2000 Quiet Title Action

In 1998 the State Roads Commission commenced a condemnation action in the Circuit Court for St. Mary's County, seeking to acquire land along Route 235 so that it could widen the highway. The Commission named the following persons and entities as defendants: the record owner of the roadway, Capps & Dean; Ms. Ziner; Mr. Raley; Ms. Raley; the County Commissioners of St. Mary's County; the Maryland Department of Business and Economic Development; and two out-of-state residents. The action was designated as case number 18-C-98-000965.

In 2000 Ms. Ziner and the Raleys, acting through a common attorney, commenced a separate action to quiet title as to the strip of land containing the roadway. They named the State Roads Commission and Capps & Dean as defendants. Their action was designated as case number 18-C-00-000249. At their request, the circuit court consolidated the quiet title action with the condemnation action.

The Raleys and Ms. Ziner asserted that Capps & Dean no longer existed and that no successor could be identified. They moved for a judgment quieting title in their favor as to the 20-foot wide roadway. The State Roads Commission did not object to their request. On September 18, 2000, the court granted "to both parties" title as to "one-half each to [the] center line of [the] property in question." The court directed their attorney to submit an order.

On an unknown date, apparently around the time that the court granted their request for title, the Raleys signed an affidavit expressing their "desire" regarding the "20

foot roadway" between the properties. The Raleys stated that they "want[ed] to own [their] 10 feet separately" and that Ms. Ziner "desire[d] to own her 10 feet separately." They added: "This fact has been declared by all parties and to attorneys constantly throughout the past several years."

C. The 2001 Order Quieting Title

The common attorney for Ms. Ziner and the Raleys drafted a document titled the "Order Quieting Title." The document included the captions from the condemnation action, in which Ms. Ziner and the Raleys were defendants, and from the quiet title action, in which they were plaintiffs. Most of the document treated them as plaintiffs.

First, the order provided that "title is quieted in favor of the Plaintiffs, [Ms. Ziner], [Mr. Raley], and [Ms. Raley], as to the property" described as the "20 foot roadway" running "from Route 235 to the back of" the lots owned by Ms. Ziner and the Raleys.

The next paragraph provided that the State would receive some of the land along the highway. It stated that "within this 20 foot roadway is 398 square feet of land . . . which is being taken in fee simple by the State of Maryland[.]" On the surrounding areas, the State also received a "revertible easement for supporting slopes and drainage ditches"; a "perpetual area utility easement"; and "a temporary easement for special purpose, i.e., for fine grading[.]" An attached plat identified these areas in detail. The order further provided "[t]hat all of this land as identified in [the] 20 foot roadway . . . as shown on the Plat . . . is a private right-of-way which exists between and butts up against the Raley property . . . and the Ziner property[.]"

The next series of paragraphs divided the ownership of the 20-foot wide roadway (except the portion acquired by the State) evenly between Ms. Ziner and the Raleys. The order declared that "the Plaintiff, [Ms. Ziner] is the owner, in fee simple absolute, of all of the aforesaid and described real property abutting her land to the middle of the land identified as the 20 foot roadway[.]" Similarly, it declared that "the Plaintiffs, [Mr. Raley] and [Ms. Raley], husband and wife, are the owner[s], in fee simple absolute, [of] all of the aforesaid and described real property abutting their land to the middle of the land identified as the 20 foot roadway[.]" It further provided that "no other person nor any individual, other than said Plaintiffs," (i.e., other than Ms. Ziner and the Raleys) "ha[s] any interest, whatsoever, to said real property[.]"

Although the preceding portions of the order consistently treated Ms. Ziner and the Raleys as plaintiffs in their quiet title action, the next paragraph concerned the defendants in the condemnation action. It provided "that all Defendants, excluding [Ms. Ziner] and [Mr. Raley] and [Ms. Raley], named in Case No.: 98-965, their heirs, assigns, and successors in interest, are hereby enjoined from asserting any claim at law or otherwise, relating to the use, occupancy, or possession of the aforesaid property, or any portion thereof[.]" As mentioned previously, the other defendants from the condemnation action (Case No. 18-C-98-000965) included Capps & Dean, as the owner of the land containing the roadway, as well as four other parties.

The final paragraph provided that the order and the attached plat would be recorded in the land records for St. Mary's County.

The order did not expressly state whether the Raleys retained an easement over the 10-foot wide strip of roadway that Ms. Ziner was to receive in fee simple absolute. Nor did the order expressly state whether Ms. Ziner retained an easement over the 10-foot wide strip of roadway that the Raleys were to receive in fee simple absolute.

The circuit court signed the Order Quieting Title on February 20, 2001, and docketed the order in both cases.

D. Ms. Ziner's 2006 Action for Trespass

Sometime after the entry of the order quieting title, a dispute arose as to whether the Raleys had the right to use the 10-foot wide strip of roadway that Ms. Ziner had obtained. Ms. Ziner installed a fence along her property line, part of which extended over the middle of the 20-foot wide roadway. According to Ms. Ziner, Mr. Raley responded by tearing down the fence and asserting that it blocked his access to the roadway.

In 2004, Ms. Ziner retained new counsel and brought suit against Mr. Raley in district court, seeking damages for an alleged trespass. Mr. Raley, through his new counsel, demanded a jury trial. After the case was transferred to the circuit court, Mr. Raley and his wife counterclaimed against Ms. Ziner, also alleging trespass.[2] In 2005, however, the parties filed a joint stipulation which purported to dismiss "with prejudice" their respective actions against one another.

This apparent compromise was short-lived. On May 30, 2006, Ms. Ziner filed a

[2] The Raleys also raised a claim against the fence company that Ms. Ziner had hired, but they voluntarily dismissed that claim a few months later.

complaint against the Raleys in circuit court, asserting a single count of "Trespass to Land." She alleged that Mr. Raley had repeatedly entered onto her 10-foot wide half of the roadway without her consent. She further alleged that he had caused damage to a fence and landscaping that she had installed on her half of the roadway. Ms. Ziner requested a declaratory judgment "that no easement exists for [Mr. Raley's] benefit on [Ms. Ziner's] property[,]" as well as monetary damages and injunctive relief.

Ms. Ziner moved for partial summary judgment, seeking a "declaration of her absolute ownership of the property in question free of any claim of easement." As the ground for judgment, she pointed to the language from the 2001 order stating that she owned her half of the 20-foot wide roadway "in fee simple absolute." Ms. Ziner asserted that, by granting her "a *fee simple absolute* interest in the 10 foot section of the property," the order had "granted [her] [an] unqualified interest" in that land. (Emphasis in original.) She quoted language from *State Roads Commission v. Johnson*, 222 Md. 493 (1960), in which the Court of Appeals described a fee simple estate as "an absolute and unqualified ownership of the interests involved" (*id*. at 498 (quoting *Gavit's Notes on Blackstone's Commentaries*, at 281)) and explained that "the word 'absolute'" ordinarily means "'unrestricted' or 'unconditional.'" *Id.* (quoting *Columbia Water Power Co. v. Columbia Elec. Street R.R. Light & Power Co*., 172 U.S. 475, 491 (1899)). Ms. Ziner argued: "Since 'fee simple absolute' means unencumbered, [the Raleys] cannot assert that their easement still exists, as an easement is an encumbrance."

The Raleys opposed the motion for summary judgment. Primarily, the Raleys

contended that Ms. Ziner's claim was barred by the preclusive effect of the voluntary dismissal "with prejudice" of her action two years earlier. The Raleys made a cross-motion for summary judgment based on the issue of res judicata.

In the alternative, the Raleys argued that, under the 2001 order, they and Ms. Ziner had each received half of the roadway "without either party giving up their respective easement for access." The Raleys did not challenge Ms. Ziner's assertion that the term "fee simple absolute" referred to "an unrestricted and unconditional ownership[.]" The Raleys, however, pointed to the second-to-last paragraph of the order, which, they said, "specifically stated" that they would retain the right to assert against Ms. Ziner "any claim at law or otherwise, relating to the use" of the property.

In supplemental briefing before the summary judgment hearing, Ms. Ziner submitted a copy of the undated affidavit in which the Raleys expressed their desire for "separate[]" ownership of the two halves of the roadway. Ms. Ziner characterized the affidavit as evidence of "the consent of the parties[,]" and argued that the Raleys had "disclaim[ed] any interest" in Ms. Ziner's half of the roadway.

At a hearing on February 20, 2007, the circuit court granted Ms. Ziner's motion for partial summary judgment and denied the Raleys' cross-motion. Although the record indicates that the court issued an oral opinion, no hearing transcript has been included in the record extract for this appeal. Nor does the transcript appear in the record on the court's electronic filing system.

At another hearing on August 6, 2007, the parties agreed, in lieu of trial, to

stipulate that $4,961.00 was the appropriate amount of damages. The court docketed a hearing sheet stating that it would entertain a motion for "[r]econsideration" if the Raleys could not obtain a permit to construct a new point of access to their property "after all attempts have been made to attempt access in a reasonable amount of time." The hearing sheet noted that the court had instructed the Raleys' counsel to keep Ms. Ziner's counsel advised periodically of their progress in obtaining a permit from the State.[3]

After the hearing, the circuit court signed an order granting judgment in favor of Ms. Ziner. The order recited that the court had determined "from the [b]ench" at the earlier summary judgment hearing that the 2001 order had "quieted title in favor of Plaintiff Ziner in fee simple absolute, and not subject to any encumbrance or easement, including any easement claimed by the Defendants John Raley and Carol Raley[.]" The order prohibited the Raleys "from entering on or using [Ms. Ziner's] property, in any way, without [her] express consent[.]" Likewise, the court determined that the 2001 order gave the Raleys ownership of their 10-foot wide area "in fee simple absolute, and not subject to any encumbrance or easement" for the benefit of Ms. Ziner, and prohibited Ms. Ziner from entering on or using the Raleys' property without their consent. Finally,

[3] It appears, from photographs in the record, that as of 2017 the State had installed a curb, sidewalk, and utility pole around where the Raleys' portion of the roadway enters the highway. In his brief, Mr. Raley asserts that there are "drainage pipes" in that part of the property. These structures appear to interfere with vehicular access to the Raleys' side of the roadway (particularly for vehicles turning right from Route 235), but they do not interfere with access to Ms. Ziner's side of the roadway. The record does not disclose whether these structures were in place in 2001 or in 2007, and the parties have not elaborated on that matter in their briefs. Presumably, the new point of access mentioned in the 2007 docket entry would be necessary for the Raleys to bypass these structures.

the order required Mr. Raley to pay $4,961.00 in damages to Ms. Ziner. The court entered the judgment onto the docket on August 6, 2007.

E. The Motion to Alter or Amend the 2007 Judgment

Within 10 days after the circuit court entered judgment, the Raleys filed a timely motion to alter or amend the judgment under Maryland Rule 2-534.

In their motion, the Raleys asserted that, before the summary judgment ruling, they had believed that they had an easement over Ms. Ziner's 10-foot wide half of the roadway. They asserted that the attorney who had jointly represented the parties in 2001 had "advised" them that the order "was intended to maintain the existence" of the 20-foot wide easements. They further asserted that the attorney who had represented the State Roads Commission in 2001 also understood that the order "was not intended to eradicate" those easements. Although the Raleys included no affidavits to support these assertions, they asked the court to hold another hearing so that they could present additional evidence.

As further relief, the Raleys asked the court to permit them to make "additional arguments" on a question of law. Specifically, they asked for an opportunity to argue "that fee simple ownership and fee simple absolute ownership are synonymous and such language only deals with the full right of alienation and inheritance and does not preclude easements or other encumbrances upon such property." As Ms. Ziner observed in her response, however, the Raleys did not cite any authority, "in Maryland or otherwise, to support such a proposition."

In what both parties characterize as an "inexplicable" development, the circuit court did not rule on the motion to alter or amend in a reasonable time.[4] Months and years passed, but neither party made any effort to ask the court to act on the pending motion.

F. Ziner's 2017 Petition for Contempt

Almost a full decade later, on January 25, 2017, Ms. Ziner moved to reopen the trespass action and filed a petition for contempt within that action. In her petition, she asserted that Mr. Raley should be held in contempt for violating the order of August 6, 2007, which had enjoined him from entering onto her property. She claimed that Mr. Raley was violating the order by driving vehicles over her half of the roadway. She asked for sanctions to compel his compliance with the 2007 order.

Mr. Raley, through new counsel, opposed the petition for contempt. He pointed out that the court had never ruled on his motion to alter or amend the order that he was accused of violating. He asserted that he had "valid grounds to seek the alteration or amendment" of that order because, in his view, the 2007 order rested on an erroneous interpretation of the 2001 order quieting title. He asked the court to dismiss the contempt petition and to schedule a hearing on his decade-old motion to alter or amend.

[4] It appears from the record that Mr. Raley may be related to Judge C. Clarke Raley, who served on the District Court of Maryland for St. Mary's County from 1983 until 1998 and on the Circuit Court for St. Mary's County from 1998 until 2011. Apparently because of potential conflicts of interest, the 2001 and 2007 proceedings were handled by retired judges from Prince George's County. The 2017 proceedings were handled by a retired judge from Baltimore City.

In his response, Mr. Raley also made a host of new, unsworn factual assertions about the properties. He claimed that Ms. Ziner had installed poles and chains along the middle of the roadway, which deprived him of "use of an asphalt apron constructed for the two properties by the State Highway Administration." He claimed that: "To use the present configuration for ingress and egress as demanded by Ms. Ziner, [he] must make a sharp turn from a very busy roadway, partially hop a curb and then make a sharp right onto his property to avoid colliding with the pole and chain." He submitted photographs showing the poles and chains as well as the curb, sidewalk, and utility pole that obstruct his entrance from the highway to the roadway. He claimed that the poles and chains prevented delivery vehicles and emergency vehicles from reaching the buildings on his property. He asked the court to declare that both parties retained the right to use the 20-foot wide roadway and to order Ms. Ziner to remove any obstacles in the roadway.

After a show-cause hearing, the court granted Mr. Raley's request to schedule a new hearing on the motion to alter or amend. The court directed the parties to submit additional briefing, apparently so that a new judge could gain familiarity with the case. Along with those submissions, Mr. Raley filed what he called a motion for summary judgment, asking the court to declare "that an express easement exists ten feet on each side of [the parties'] shared property boundary line for ingress and egress of the parties to their respective properties[.]"

The court heard arguments on May 18, 2017. At the hearing, Mr. Raley conceded that he had consented to the 2001 order quieting title, but he argued that the order could

not have extinguished the easements in the roadway without expressly saying so. He theorized that the "2001 agreement . . . created for Ms. Ziner and Mr. Raley" a new configuration of property rights, with "both of them owning dominant estates, and both of them having [a] subservient interest [sic] in the other's estate."[5] In response, Ms. Ziner argued that "it would have been very easy" to have drafted an order that would have reserved the parties' easement rights and that Mr. Raley was asking the court to "read an awful lot into the order that isn't there."

The court announced that it would deny the motion to alter or amend. The court commented that Mr. Raley had made a "very creative argument," but it rejected his interpretation of the 2001 order. The court stated that the 2001 order "does, in fact extinguish the easement when it refers to fee simple absolute." The court further stated that the 2001 order was "signed as a result of a consent agreement" and that it was "not subject to collateral attack" in a separate proceeding, even if it was somehow in error.

After the court announced its decision, Ms. Ziner voluntarily agreed to dismiss her petition for contempt. The court stated that she could refile another contempt petition to address any future violations.[6]

[5] "A dominant tenant is the owner of '[a]n estate that benefits from an easement'; a servient tenant is the owner of '[a]n estate burdened by an easement.'" *Rogers v. P-M Hunter's Ridge, LLC*, 407 Md. 712, 715 n.1 (2009) (quoting BLACK'S LAW DICTIONARY 589 (8th ed. 2004)).

[6] The circuit court appeared to agree with Mr. Raley's argument that he could not be held in contempt for violating the 2007 order based on acts that he had committed while his motion to alter or amend the 2007 order was pending. Ms. Ziner has not challenged that argument.

On May 18, 2017, the court entered a written order denying Mr. Raley's motion to alter or amend. On the same day, the court entered a separate order dismissing the contempt petition without prejudice. Within 30 days, Mr. Raley filed a notice of appeal.

DISCUSSION

It is unusual, to say the least, for a party to appeal from a judgment entered 10 years earlier. The circuit court entered judgment in the trespass action on August 6, 2007, when it docketed the order that declared the parties' rights, enjoined the Raleys from using Ms. Ziner's side of the roadway, and awarded damages to Ms. Ziner. Mr. Raley did not file his notice of appeal until nearly 10 years later, on June 13, 2017.

The default deadline for filing a notice of appeal is 30 days after the entry of judgment. Md. Rule 8-202(a). In an action decided by the court, however, a party may move to alter or amend the court's judgment by filing a motion within 10 days after the entry of judgment. Md. Rule 2-534. Where a party files a timely motion to alter or amend, the notice of appeal must be filed within 30 days after the entry of either a notice withdrawing the motion or an order disposing of the motion. Md. Rule 8-202(c). An otherwise final judgment is said to lose its finality for purposes of appeal until the resolution of the timely motion to alter or amend. *See, e.g.*, *Nina & Nareg, Inc. v. Movahed*, 369 Md. 187, 199 (2002); *Green v. Hutchinson*, 158 Md. App. 168, 171 (2004).

In this case, Mr. Raley filed a timely motion to alter or amend on August 15, 2007. He did not withdraw his motion. The circuit court entered the order denying his timely

motion to alter or amend on May 18, 2017. Under Rule 8-202(c), the notice of appeal filed on June 13, 2017, was timely as to the judgment entered 10 years earlier.

Normally, when a party notes a timely appeal after the denial of a motion to alter or amend, the appellate court will review the matter to the same extent as if the party had appealed from the underlying judgment. *See, e.g.*, *Green v. Brooks*, 125 Md. App. 349, 362-63 (1999). The first question presented in Mr. Raley's brief poses a direct challenge to the 2007 judgment. He asks:

> 1. Did the Court err when it held in its Order dated August 6, 2007 that the Court's Order dated February 20, 2001 *Quieting Title* extinguished an express easement shared by Appellant Raley and Appellee Ziner for their adjacent real properties?

Yet even though Mr. Raley's appeal was timely as to the 2007 judgment, he has not provided this Court with some of the materials necessary to answer this question. As the appellant, Mr. Raley was responsible for ordering transcripts of relevant proceedings. *See Joseph v. Bozzuto Mgmt. Co.*, 173 Md. App. 305, 347-48 (2007) (citing Md. Rule 8-411). Moreover, he was responsible for preparing and filing a record extract (Md. Rule 8-501(a)), containing "all parts of the record that are reasonably necessary for the determination of the questions presented by [his] appeal[.]" Md. Rule 8-501(c). Here, Mr. Raley failed to provide a transcript of the hearing from 2007 in which the court made the ruling that he asks us to review.

The order from August 6, 2007, which Mr. Raley seeks to challenge, resulted from a prior summary judgment ruling. The order makes an unmistakable reference to the hearing of February 20, 2007. It states that the "matter previously came before th[e]

[c]ourt on Cross Motions for Summary Judgment"; and "having given counsel the opportunity to present facts and arguments, the [c]ourt in that proceeding found that there were no disputes as to any material fact" and "determined from the [b]ench" that the 2001 order divided the ownership of the roadway "in fee simple absolute, and not subject to any encumbrance or easement[.]" As Mr. Raley himself stated in his motion to alter or amend, "the parties' respective motions came on for hearing . . . on February 20, 2007 and at that time the [c]ourt issued an oral opinion regarding the . . . easement and such ruling was memorialized in an Order" dated "August 6, 2007."

Generally, appellate review of the grant of summary judgment "is confined to the legal grounds relied upon by the trial court in granting summary judgment." *Aventis Pasteur, Inc. v. Skevofilax*, 396 Md. 405, 440-41 (2007). The circuit court here issued no written opinion in addition to the bench ruling from February 20, 2007. The hearing transcript, therefore, is essential for this Court to identify the grounds on which the trial court granted summary judgment. The transcript is also necessary to show whether Mr. Raley raised the arguments against summary judgment that he now advances in this appeal. *See Faith v. Keefer*, 127 Md. App. 706, 737 (1999) (holding that party on appeal could not raise contentions that the party had failed to raise in written opposition to summary judgment motion or in oral argument at hearing on motion for summary judgment).[7] It would be unfair for this Court to try to assess whether the judge erred in a

[7] When Mr. Raley moved to alter or amend the judgment several months later, he asked the court for a new hearing so that he could "present additional arguments" about

bench ruling from February 20, 2007, without a transcript showing the arguments Mr. Raley may have asked the judge to consider at that time.

This Court has repeatedly declined to consider an issue if the party raising the issue fails to include in the record extract or an appendix the materials necessary to decide the issue. *See Ak's Daks Communications, Inc. v. Md. Secs. Div.*, 138 Md. App. 314, 337 (2001); *Davis v. Davis*, 97 Md. App. 1, 23-24 (1993), *aff'd*, 335 Md. 699 (1994); *Lone v. Montgomery County*, 85 Md. App. 477, 506-07 (1991); *Grubb Contractors v. Abbott*, 84 Md. App. 384, 388-89 (1990). Where possible, "the 'preferred alternative' is always 'to reach a decision on the merits'" even if the party has failed to reproduce all necessary materials. *McAllister v. McAllister*, 218 Md. App. 386, 399 (2014) (quoting *Joseph v. Bozzuto Mgmt. Co.*, 173 Md. App. at 348). In this case, however, the hearing transcript does not appear in the record on the court's electronic filing system. Consequently, we lack any adequate substitute for the materials needed to decide the first question from Mr. Raley's brief.[8]

By contrast to his documentation of the 2007 ruling, Mr. Raley has compiled all of the materials needed to review the ruling made in 2017. The record extract includes: the

fee simple absolute ownership. This request implies that he did not make those arguments at the summary judgment hearing.

[8] It is possible that the audio recording from the 2007 hearing no longer exists and that no transcript could be produced at the time of Mr. Raley's appeal in 2017. Nevertheless, any inability to create a proper record of the 2007 ruling was a foreseeable consequence of waiting for many years without asking the court to act on the motion to alter or amend.

written submissions regarding the motion to alter or amend; the transcript of the motions hearing on May 18, 2017; and the order denying the motion. Thus, we face no obstacle against considering his second question presented:

> 2. Did the Court err when it denied by Order dated May 18, 2017 Appellant Raley's Motion to Alter or Amend the Court's Order dated August 6, 2007?

This question, however, significantly narrows the focus of our review. The issue before us is not whether the circuit court was correct in 2007 when it determined that Ms. Raley was entitled to summary judgment, an issue that would be subject to de novo review. *See, e.g.*, *Chateau Foghorn LP v. Hosford*, 455 Md. 462, 482 (2017). The issue before us is whether the court, having already granted summary judgment in Ms. Ziner's favor, was required to alter or amend its judgment at Mr. Raley's request in 2017.

An appellate challenge to the denial of a motion to alter or amend a judgment under Md. Rule 2-534 does not serve the normal functions of an appeal from the original judgment. *Cent. Truck Ctr., Inc. v. Cent. GMC, Inc.*, 194 Md. App. 375, 397 (2010). Instead, appellate review of the post-judgment ruling "is typically limited in scope." *Rose v. Rose*, 236 Md. App. 117, 129 (2018) (citing *Schlotzhauer v. Morton*, 224 Md. App. 72, 84 (2015), *aff'd*, 449 Md. 217 (2016)). Because a motion to alter or amend is directed to the sound discretion of the court, the appellate court will not disturb the ruling absent an abuse of discretion. *Cent. Truck Ctr., Inc. v. Cent. GMC, Inc.*, 194 Md. App. at 397-98.

A party appealing from the denial of a motion to alter or amend a judgment must

"carry a far heavier appellate burden on that issue than he [or she] would carry in challenging" a ruling made before the judgment. *Steinhoff v. Sommerfelt*, 144 Md. App. 463, 484 (2002). "Above and beyond arguing the intrinsic merits of an issue, [the appellant] must also make a strong case for why a judge, having once decided the merits, should in his [or her] broad discretion [have] deign[ed] to revisit them." *Id.* at 484-85. A "motion to alter or amend under Rule 2-534 is not an occasion for a party to make arguments that it neglected to make initially." *Morton v. Schlotzhauer*, 449 Md. 217, 232 n.10 (2016). When a party moves to alter or amend a judgment "solely because of new arguments that the party could have raised before the court ruled" on the underlying judgment, "the court has almost limitless discretion not to consider" those new arguments. *Schlotzhauer v. Morton*, 224 Md. App. at 85. The "circuit court does not abuse its discretion when it declines to entertain a legal argument made for the first time" in a motion to alter or amend "that could have, and should have, been made earlier[.]" *Morton v. Schlotzhauer*, 449 Md. at 232 n.10.

Under the circumstances of this case, it would have been appropriate for the circuit court to have denied Mr. Raley's motion to alter or amend at any time after he filed it. Mr. Raley had already enjoyed a full opportunity to challenge Ms. Ziner's asserted grounds for summary judgment in his written response to her motion and in the hearing that took place on February 20, 2007. When he moved to alter or amend the judgment many months later, he requested a new hearing to "present additional evidence" about the 2001 order and to "present additional arguments with respect to the law" concerning

issues raised by Ms. Ziner's original motion for summary judgment. His post-judgment motion suggested no reason why he could not have presented the evidence and arguments before the court had ruled on the summary judgment motions.

Even at that late stage, Mr. Raley's written motion failed to meet the requisites for demonstrating any entitlement to relief. His motion made many factual assertions outside the record, but it was not "supported by affidavit and accompanied by any papers on which it [was] based." Md. Rule 2-311(d). His motion failed to "state with particularity the grounds and the authorities in support of each ground" as required by Rule 2-311(c). Essentially, his motion rested on a mere promise to present new evidence and to make better legal arguments if given a second chance. He did not disclose to the court what those new legal arguments might be. Because these deficiencies were apparent on the face of his motion, it would have been proper for the court to have denied the motion without delay. *See Steinhoff v. Sommerfelt*, 144 Md. App. at 484 (explaining that a motion to alter or amend "is not a time machine in which . . . to try [a] case better with hindsight").

Through an apparent oversight of court personnel and the indifference or neglect of the parties, the motion to alter or amend remained pending in 2017 when Ms. Ziner petitioned to hold Mr. Raley in contempt. By that time, the equities weighed even more strongly towards declining to reopen questions that had been decided in 2007. Mr. Raley made no showing that he had tried to comply with the court's instructions to pursue a permit to build a new point of access on his half of the roadway. In the intervening 10

years, it seems that Mr. Raley relied on self-help, by continuing to use Ms. Ziner's portion of the roadway, without diligently pursuing a final resolution though the legal process. He notified the court of the pending post-judgment motion only after the court ordered him to show cause why he should not be held in contempt. Moreover, his new attorney advanced a legal argument that was noticeably more elaborate than the bare statements that his prior attorney had offered 10 years earlier in the original motion to alter or amend. Under the circumstances, it would have been appropriate for the circuit court to have declined to entertain new arguments that should have been made in 2007.

At the show-cause hearing, however, counsel for Mr. Raley convinced the court to grant him a hearing on the motion to alter or amend.[9] The court extended its generosity by directing the parties to submit additional briefing before the hearing. Ultimately, after affording those additional opportunities, the circuit court was unconvinced by Mr. Raley's new arguments. The issue before us now is whether the circuit court abused its discretion in denying the motion to alter or amend the judgment.

Ordinarily, before concluding that a court abused its discretion in deciding a motion to alter or amend, we would need to agree that the decision under consideration is well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable. *See*, *e.g.*, *Renbaum v. Custom Holding, Inc.*, 386 Md. 28, 43 (2005). An abuse of discretion in denying a motion to alter

[9] The circuit court is not required to hold a hearing when it denies a motion to alter or amend a judgment. *See In re Adoption/Guardianship of Joshua M.*, 166 Md. App. 341, 357-58 (2005); *Hill v. Hill*, 118 Md. App. 36, 44 (1997).

or amend should be found in only the extraordinary, exceptional, or most egregious case. *Cent. Truck Ctr., Inc. v. Cent. GMC, Inc.*, 194 Md. App. at 398. Because this standard makes generous allowances for the trial court's reasoning, we grant great deference to that court's conclusion and uphold it unless it is apparent that a serious error has occurred. *Id.*

Mr. Raley contends that the court should have granted his motion to alter or amend because, in his view, the 2007 judgment was based on an incorrect interpretation of the 2001 order quieting title. For our purposes, the "'relevance of [this] asserted legal error'" in the 2007 judgment "'lies in whether there has been . . . an abuse'" of discretion in declining to alter or amend that judgment. *Schlotzhauer v. Morton*, 224 Md. App. at 84 (quoting *Wilson-X v. Dep't of Human Res.*, 403 Md. 667, 676 (2008)).

As the initial premise of his argument, Mr. Raley asserts that an "express easement can only be extinguished by written agreement of the dominant and servient estate owners or by a [c]ourt finding of legal abandonment." He cites *Rogers v. P-M Hunter's Ridge, LLC*, 407 Md. 712 (2009), in which the Court of Appeals stated that an easement, once created, "may be extinguished or abandoned by subsequent written agreement, or by subsequent act." *Id.* at 732. Contrary to his suggestion, the Court did not say that those were the "only" two ways to extinguish an easement. Indeed, it would be incorrect to say that an easement can be extinguished in "only" two ways. *See generally* Restatement (Third) of Property: Servitudes, §§ 7.1 through 7.16 (2000) (describing various doctrines under which an easement may be modified or terminated).

For instance, the State may extinguish an easement by condemning the land burdened by the easement. *See Washington Suburban Sanitary Comm'n v. Frankel*, 57 Md. App. 419, 425 (1984), *vacated on other grounds*, 302 Md. 301 (1985); Restatement (Third) of Property: Servitudes § 7.8 (2000). In the circuit court, Mr. Raley suggested that the 2001 order quieting title had extinguished the parties' easements in the 398 square feet of the roadway that the State had acquired so that it could expand the highway. Mr. Raley wrote in his summary judgment memorandum that he "d[id] not dispute" that the order gave the State "an unrestricted and unconditional ownership" of the property acquired through condemnation without "reserv[ing] any easement of either party" in the condemned property. Similarly, at the hearing on the motion to alter or amend, he asserted that the parties had agreed in 2001 to extinguish "[a]ny easement rights that existed . . . along [Route] 235, running the whole length" of the properties when they agreed to allow the State to condemn that property. Thus it appears that, even under Mr. Raley's interpretation, the 2001 order did extinguish at least part of his easement by condemnation, even though the order did not expressly say so.

Furthermore, as Ms. Ziner points out, "[t]he record owner cannot also hold an easement over his or her own land." *Orfanos Contractors, Inc. v. Schaefer*, 85 Md. App. 123, 132-33 (1990). Thus, "'when the same person becomes the owner of the dominant and servient estates . . . the unity of the two estates in the one [person] necessarily extinguishes and merges the easement appurtenant to the dominant estate[.]'" *Lindsay v. Annapolis Roads Prop. Owners Ass'n*, 431 Md. 274, 293 (2013) (quoting *Kelly v. Nagle*,

150 Md. 125, 131 (1926)); *see also* Restatement (Third) of Property: Servitudes § 7.5 (2000). Under any interpretation of the 2001 order, therefore, the order necessarily extinguished half of Mr. Raley's easement (i.e., his easement in the 10-foot wide strip of land that he acquired), even without expressly saying so.

Mr. Raley contends, however, that the 2001 order was not an agreement to extinguish the other half of his easement, over the 10-foot wide strip of land that Ms. Ziner acquired. Ms. Ziner contends that Mr. Raley did, in fact, agree to extinguish the remainder of his easement. She argues that the 2001 order was a "consent decree" entered into by mutual agreement of the parties.[10] Mr. Raley has admitted that he consented to the entry of the 2001 order, but he argues that the document itself did not contain any language expressing his agreement to release the other half of the easement. Under his proposed interpretation, the 2001 order should result in only a partial extinguishment, preserving easements for the parties over each 10-foot wide half of the roadway. He theorizes: "For the Ziner 10 foot parcel, Raley is the dominant estate holder and Ziner the servient estate holder. For the Raley 10 foot parcel, the servient/dominant status is switched."

[10] A judgment by consent is, "at the same time, contractual and judicial in nature[.]" *Kent Island, LLC v. DiNapoli*, 430 Md. 348, 360 (2013). "'A consent judgment or consent order is an agreement of the parties with respect to the resolution of the issues in the case or in settlement of the case, that has been embodied in a court order and entered by the court, thus evidencing its acceptance by the court.'" *Id.* at 359 (quoting *Long v. State*, 356 Md. 72, 82 (2002)). This type of order "memorializes the parties' agreement to relinquish the right to litigate the controversy, 'and thus save themselves the time, expense, and inevitable risk of litigation.'" *Id.* at 360 (quoting *Long v. State*, 371 Md. at 82).

Mr. Raley stresses that the 2001 order did not explicitly mention the pre-existing easements. He argues that the 2001 order only expresses an intent to convey title to the property in fee simple. He contends that a "conveyance in fee simple does not extinguish an easement recorded in the land records." His argument, however, fails to address the ground on which Ms. Ziner prevailed in the circuit court. Ms. Ziner did not contend that a mere transfer of ownership would be sufficient to extinguish all easements. Consistently, she has relied on the language of the 2001 order stating that she was the owner "in fee simple absolute" of her half of the roadway. Citing *State Roads Commission v. Johnson*, 222 Md. 493, 497-98 (1960), Ms. Ziner argued that the order used the word "absolute" to express that the parties each received an "unqualified" interest, meaning ownership that is not subject to any easements or other encumbrances. Under her reading, the order would include a clear expression of the parties' intent to relinquish the pre-existing easement rights.

After the court ruled in Ms. Ziner's favor in 2007, Mr. Raley asserted for the first time in his motion to alter or amend that a "fee simple absolute" conveyance was no different from a fee simple conveyance. In response, Ms. Ziner pointed out that he had cited no authority to support his position, as required by Md. Rule 2-311(c).

During the eventual hearing on the motion to alter or amend, the court gave Mr. Raley's counsel an opportunity to address Ms. Ziner's argument that the conveyances in "fee simple absolute" had extinguished any easements. Still, Mr. Raley did not identify any authority to rebut Ms. Ziner's argument. Mr. Raley's counsel said that in his

"experience" there is "really not much difference between fee simple absolute and fee simple conveyance of property." Counsel said that he had a "distant memory" of "something" that "comes out of the Court of Special Appeals of the Court of Appeals that basically says it's a distinction without a difference." He asserted that parties commonly convey properties in fee simple with a "little catchall phrase" stating that the conveyance is "subject to whatever" interests might be recorded in the chain of title. He correctly conceded, however, that the 2001 order did not include such a phrase.

The circuit court, unconvinced by these assertions, concluded that the 2001 order "does, in fact, extinguish the easement when it refers to fee simple absolute." In his appellate brief, Mr. Raley fails to explain the alleged error in the circuit court's interpretation. In a single footnote of his brief, he writes: "Maryland cases have held that the use of fee simple absolute and fee simple is a distinction without a difference and having the same meaning." Yet again, he fails to cite any of the cases that he says support his assertion.

An appellate brief must include "[a]rgument in support of the party's position on each issue." Md. Rule 8-504(a)(6). "A necessary part of any argument are case, statutory, and/or constitutional authorities to support it." *HNS Dev., LLC v. People's Counsel for Balt. Cnty.*, 425 Md. 436, 458 (2012). This Court has no obligation to consider the potential merits of an assertion from a party's brief that lacks any supporting argument or citation to legal authority. *See id.* at 458-59 (declining to consider merits of position asserted by party through "sweeping accusations and conclusory statements"

without "any constitutional or common law authority"); *Poole v. State*, 207 Md. App. 614, 633 (2012) (declining to consider merits of appellant's assertion "made in one sentence, in a footnote, with no supporting argument").

In sum, Mr. Raley has given this Court no basis to conclude that the circuit court erred when it treated the clause conveying the property in "fee simple absolute" as an expression of the parties' intent to extinguish any easements in the property. It would be inappropriate for this Court to seek out law to sustain his assertions about the meaning of the term "fee simple absolute" where he has not done so. *See Rollins v. Capital Plaza Assocs., L.P.*, 181 Md. App. 188, 202 (2008); *Anderson v. Litzenberg*, 115 Md. App. 549, 578 (1997).

In another argument, Mr. Raley contends that the order "expressly preserved whatever rights of use existed on the roadway for both Ziner and Raley for ingress and egress to their properties[.]" He points to the second-to-last paragraph of the order, which states that it is:

> ORDERED, ADJUDGED, and DECREED that all Defendants, excluding BEVERLY B, ZINER and JOHN WAYNE RALEY and CAROL E. RALEY, named in Case No.: 98-965, their heirs, assigns, and successors in interest, are hereby enjoined from asserting any claim at law or otherwise, relating to the use, occupancy, or possession of the aforesaid property, or any portion thereof[.]"

As Ms. Ziner correctly notes, this paragraph specifically concerns the condemnation action, Case No. 18-C-98-000965, in which Ms. Ziner and the Raleys were named as defendants along with five other parties. The other "[d]efendants . . . named in" that case "excluding" Ms. Ziner and the Raleys were: Capps & Dean, the former

owner of the 20-foot wide roadway; the County Commissioners of St. Mary's County; the Maryland Department of Business and Economic Development; and two out-of-state residents. Consequently, the effect of the paragraph is to enjoin those five defendants named in the condemnation action from asserting future claims in roadway.

Relying on this paragraph, Mr. Raley asserts that the 2001 order "expressly" and "specifically reserve[d]" to Ms. Ziner and the Raleys the right to assert claims for use of the neighboring parcel. This reading is untenable. The order specifically enjoining five parties other than Ms. Ziner and the Raleys from asserting claims in the roadway is not logically equivalent to an order "specifically reserv[ing]" the right of Ms. Ziner and the Raleys to assert those claims against one another. A statement does not necessarily imply its logical inverse. Properly read, the second-to-last paragraph is directed at parties other than Ms. Ziner and the Raleys. It mentions Ms. Ziner and the Raleys as a convenient way of identifying those other parties. It does not affect the rights otherwise granted to Ms. Ziner and the Raleys by the other paragraphs of the order.

Overall, although Mr. Raley has suggested a plausible interpretation of the 2001 order and has established some general propositions about recorded easements, he has not identified factual or legal grounds on which to conclude that the circuit court made an error of law by not adopting his alternative interpretation. Based on the arguments he presented, we are not persuaded that the trial court's denial of the motion to alter or amend was far removed from any center mark imagined. *Cent. Truck Ctr., Inc. v. Cent.*

GMC, Inc., 194 Md. App. at 399. Accordingly, he has not demonstrated that the circuit court abused its discretion when it denied his motion to alter or amend the judgment.[11]

JUDGMENT OF THE CIRCUIT COURT FOR ST. MARY'S COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.

[11] Some portions of Mr. Raley's briefs suggest that he is not merely arguing about the interpretation of the 2001 order, but also about whether the 2001 order was based on an error. He cannot complain, however, about any alleged error in the 2001 order, because the order was entered by his consent. *See Franzen v. Dubinok*, 290 Md. 65, 68-69 (1981). Moreover, to the extent that he may be arguing that the 2001 order was based on an error, his argument would be an impermissible collateral attack on the 2001 order, which was entered in a separate case. *See Klein v. Whitehead*, 40 Md. App. 1, 20-21 (1978).