Circuit Court for Anne Arundel County
Case No. C-02-CV-19-003841

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1064

September Term, 2021

CHARLES RILEY, JR. REVOCABLE TRUST, ET AL.

v.

VENICE BEACH CITIZENS ASSOCIATION, INC., ET AL.

Arthur,
Leahy,
Eyler, Deborah S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, J.

Filed: January 24, 2023

* At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This appeal stems from a dispute over ownership of a small piece of land ("the subject property") in the Anne Arundel County community of Venice Beach. The appellants are The Charles Riley, Jr. Revocable Trust ("Riley Trust") and Bay Pride, LLC ("Bay Pride"), both of which are controlled by Charles Riley, Jr. In the Circuit Court for Anne Arundel County, they sued the Venice Beach Citizens Association, Inc. ("Association"), and individuals identified in the complaint as the heirs of Benjamin H. Taylor ("Taylor Heirs"), the appellees, for adverse possession, quiet title, and sale in lieu of partition.[1] In a bench trial, the court granted judgment in favor of the appellees on all counts at the close of the appellants' case. After the court denied a motion to amend the judgment, the appellants noted this timely appeal.

The appellants raise five questions for review, which we have consolidated and rephrased as follows:[2]

[1] The defendants we call the Taylor Heirs are identified as follows: "the testate and intestate successors of Lavert (aka Lavirt) Taylor, deceased, the testate and intestate successors of Clyde Bouldin, deceased, the testate and intestate successors of Ellen Breedlove, deceased, the testate and intestate successors of William Hall, deceased, Piccola Hall Bell and/or the testate and intestate successors of Piccola Hall Bell, Lucille Hall Cannon and/or the testate and intestate successors of Lucille Hall Cannon, the testate and intestate successors of Charles Jeffress, deceased, Charles Jeffress and/or the testate and intestate successors of Charles Jeffress, and Eleanor Jubilee and/or the testate and intestate successors of Eleanor Jubilee[.]" None of these defendants appeared at trial or are participating in this appeal.

[2] As worded by the appellants, the questions presented are:

1. Did the Trial Court err and abuse its discretion when it entered judgment in favor of the Appellee on Counts I and III relating to the Riley Trust's Small

(continued…)

I. Did the trial court err or abuse its discretion by setting aside, implicitly, an interlocutory partial summary judgment order previously entered in favor of the Riley Trust and granting judgment, at the close of the appellants' case, in favor of the Association on all counts for adverse possession and quiet title?

II. Did the trial court abuse its discretion by vacating a default judgment and order of default previously entered against the Taylor Heirs and denying Bay Pride's amended motion for default judgment against the Taylor Heirs?

III. Did the trial court err or abuse its discretion by denying the appellants' request for sale in lieu of partition?

For the reasons set forth below, we shall affirm the judgment against the Riley Trust and Bay Pride on the four counts for adverse possession and quiet title; and we shall vacate the judgment against Bay Pride on the single count for sale in lieu of partition and remand for further proceedings on that count.

Parcel adverse possession claims which vacated Judge Alban's prior summary judgment?

2. Did the Trial Court err and abuse its discretion when it entered judgment with respect to the Riley Trust's Small Parcel adverse possession claims set forth in Counts I and III against the Taylor Heirs thereby vacating Judge Alban's Judgment of Default entered against said heirs in favor of the Riley Trust prior to trial?

3. Did the Trial Court err and abuse its discretion by failing to rule on Bay Pride's Amended Motion for Default Judgment with respect to its adverse possession claims against the Taylor Heirs set forth in Counts II and IV?

4. Did the Trial Court err and abuse its discretion when it dismissed all Counts of the Complaint with respect to the Taylor Heirs thereby vacating the Order of Default entered by Judge Trunnel in favor of the Riley Trust and Bay Pride with respect to Counts I through V?

5. Did the Trial Court err and abuse its discretion by refusing to rule on Count V whereby Bay Pride sought the sale in lieu of partition of the Large Parcel?

FACTS AND PROCEEDINGS

The subject property is 4,443 square feet of unimproved land at the corner of Chesapeake and Wayman Avenues in the community of Venice Beach, outside Annapolis. Wayman Avenue runs northeast and southwest, parallel to the Chesapeake Bay. At one time there was a usable beach next to the east side of Wayman Avenue but most of it has eroded away.

Mr. Riley lives in a house on property facing Wayman Avenue ("the Riley Property"). The Riley Property is adjacent to a 288 square foot portion of the subject property, at its northern end. Although the subject property is a single parcel, the appellants refer to the part of it that borders the Riley Property as the "small parcel" and the remaining 4,215 square feet of it as the "large parcel." The Riley Property presently is owned by the Riley Trust, of which Mr. Riley is the sole trustee.

Beginning in 1919, the subject property was owned by Osborn T. Taylor, the developer of Venice Beach. Through inheritance and a series of conveyances, Mr. Taylor's daughters, Irena T. Leak and Jennie T. Wilder, each came to hold title to 37.5% of the subject property, and his son, Benjamin H. Taylor, came to hold title to 25% of the subject property. As such, Ms. Leak, Ms. Wilder, and Mr. Taylor were cotenant owners of the subject property.

In 1977, Ms. Leak deeded her interest in the subject property to her son, John Clay Leak, Jr. Ten years later, Mr. Leak sold his interest in the subject property to Richard and Marcella Jones. In 1999, the Joneses created the Jones Family Trust and transferred their interest in the subject property to it. On June 20, 2019, the Jones Family Trust conveyed

its interest in the subject property to Bay Pride, by quitclaim deed, for $16,500. Bay Pride is an LLC and Mr. Riley is its sole member.

In 1987, Jennie Wilder's heirs executed a deed conveying their interest in the subject property to the Association. In a court proceeding in the 1990's, however, the deed was ruled to have been flawed technically and therefore ineffective. In 2017, the Association obtained and recorded a deed correcting the flaw.

There is some information about the successors to Benjamin H. Taylor's interest in the subject property, but precisely who the successors are is not known.

The appellants filed suit in this case in 2019, a few months after Bay Pride purchased the Jones Family Trust's interest in the subject property. The five-count amended complaint is the operative pleading. In Count I, the Riley Trust claimed fee simple title to the "small parcel" of the subject property by adverse possession. In Count III, it alleged that the Association's 2017 deed to the subject property was a cloud on its title to the "small parcel" portion of the subject property and sought an order confirming and declaring that it is the sole, fee simple owner of the "small parcel." In Count II, Bay Pride alleged that Mr. and Mrs. Jones and the Jones Family Trust, as Bay Pride's predecessors-in-title, obtained fee simple title to the "large parcel" by adverse possession, and therefore conveyed full title to the "large parcel" to it, in 2019. In Count IV, Bay Pride alleged that the Association's 2017 deed to the subject property was a cloud on Bay Pride's title to the "large parcel" and sought an order confirming and declaring that it is the sole, fee simple owner of the "large parcel" portion of the subject property. Finally, in Count V, Bay Pride sought a sale in lieu of partition of the entire subject property.

The Association filed an answer and, eventually, an amended counterclaim for quiet title, declaratory relief, injunctive relief, and a prescriptive easement over the subject property in the event it were to be sold.

Both appellants filed motions for partial summary judgment on their adverse possession and quiet title claims. The court granted the Riley Trust's motion but denied Bay Pride's motion. The appellants also filed summary judgment motions on the Association's counterclaim, which were granted.

In addition, both appellants filed motions for entry of default judgment on the claims against the Taylor Heirs, for failure to file a responsive pleading.[3] The court granted orders of default against the Taylor Heirs on Counts I through IV, but only granted a default judgment on Counts I and III, concerning the "small parcel." It denied a judgment of default against the Taylor Heirs on Counts II and IV, concerning the "large parcel."

The case was tried before a judge who had not ruled on any of the pretrial motions. The appellants called two witnesses: Mr. Riley and Ms. Stephany Grillo, daughter of Mr. and Mrs. Jones.

Mr. Riley testified as follows. He purchased the Riley Property in 1987. Its front lawn is next to the "small parcel" portion of the subject property and catty-corner to the "large parcel" part of it. The "small parcel" runs from directly in front of the Riley Property to Wayman Avenue. Viewed from Wayman Avenue, it appears to be part of the Riley Property's front lawn. When Mr. Riley bought his property, a concrete block wall ran

[3] The Taylor Heirs were served by substituted service, by posting on the subject property.

across the subject property, dividing the "large parcel" from the "small parcel." At that time, the "large parcel" was "a swamp" overgrown with weeds and phragmites. Grass and plantings on the "small parcel" had been maintained by Mr. Riley's predecessor-in-title. After the purchase, he continued to maintain the "small parcel." Photographs taken in 1994 showing landscaping installed and maintained by Mr. Riley on the "small parcel" side of the block wall were admitted into evidence. In 2003, the block wall sustained serious damage from Hurricane Isabel; ultimately, it was dismantled. A recent Google Earth photograph of the subject property, also introduced into evidence, shows that it is mostly grass with some landscaping in the "small parcel" area. There is no physical division between the "small parcel" and the "large parcel."

In 2011, Mr. Riley transferred title to the Riley Property to the Riley Trust. When Bay Pride purchased the Jones Family Trust's interest in the subject property in 2019, Mr. Riley began mowing the grass on the "large parcel" portion of the subject property as well as on the "small parcel" portion. According to Mr. Riley, before then, the Association and Mr. Riley's predecessor-in-title maintained and mowed the grass on the "large parcel" portion of the subject property.

For two years during the 1990s and again from 2017 to early 2019, Mr. Riley served on the Board of Directors of the Association. In his role on the board, he came to know of the flaw in the Association's 1987 deed from Ms. Wilder's heirs, the Association's efforts to have the deed corrected, and that it succeeded in obtaining a corrected deed in 2017. In 2018, the Association began a beach replenishment project. Mr. Riley expressed concern regarding the design plans and the impact the project would have on his property.

On July 24, 2019, about three months after the conveyance from the Jones Family Trust to Bay Pride, Mr. Riley, through counsel, wrote to the Association informing it about that conveyance and stating that "since more than 30 years had elapsed before the Association" obtained its "interest" in the subject property, Bay Pride "has acquired title to the entire [subject property] either by adverse possession or deed." The letter further stated that as the owner of the entire subject property, Bay Pride "will continue paying the real estate taxes and will bear the expense of landscaping maintenance." Mr. Riley directed the Association to stop cutting the grass on the subject property and not to conduct any activity on it without his permission. The letter was moved into evidence.

Ms. Grillo testified as follows, by videotaped deposition. She is one of the children of Richard and Marcella Jones, both of whom are deceased. In 1956, when she was 9 years old, her family began visiting Venice Beach in the summer months every year. In 1987, Venice Beach and nearby Highland Beach adopted a rule limiting beach use to property owners in the communities. The Joneses did not own property, so they purchased John Leak's interest in the subject property to qualify them to use the area beaches.

The subject property was "very small" and undevelopable. (It still is.) Even before the Joneses purchased Mr. Leak's interest, Mr. Jones and Mr. Leak planted succulents on the subject property to help absorb water on the lot. Later in 1987 or 1988, the Association cut down all the plants with a lawn mower. From then on, the Jones family used the subject property to park a car or a golf cart during the summer months. At some point in time, the Association placed a wooden fence around the subject property. Ms. Grillo's father

removed it. Also, the Association placed stones around the subject property to protect it from rising waters.

In 2009, Ms. Grillo and her mother attended an Association meeting at which the date of the upcoming annual Venice Beach fish fry was announced. In the past, the fish fry had been held on the subject property. Ms. Grillo raised her hand and said the Association should ask the owners of the property about holding the fish fry on it. After that, a lawyer on behalf of Ms. Grillo wrote to the Association directing it not to use the subject property for the annual fish fry. In later years, the Association wrote to Ms. Grillo asking permission to hold that event and others, and Ms. Grillo granted permission with caveats about liability.

In 2013, a landscaper Ms. Grillo had hired to mow the grass on the subject property told her that the grass already had been mowed. She learned then that the Association was maintaining the property. Soon thereafter, she advised the Association that she would be responsible for mowing the grass on the subject property.

From 1987, when the Joneses purchased their interest in the subject property, until 2019, when their family trust conveyed it to Bay Pride, the Joneses or their trust paid the real estate taxes on the subject property.

At the conclusion of the appellants' case, the Association moved for judgment on all counts, arguing that neither appellant had proven the elements of a claim for title by adverse possession. The court found that the appellants had not put forth "even a scintilla of evidence" of ouster of cotenants and actual and exclusive possession of the subject property. It explained that it had "listened carefully to the testimony, the deeds, and it's

just not there." After reviewing the evidence, the court determined that "[t]here's just no proof. Not even in a light most favorable to [the appellants] is there proof." Consequently, the court granted the Association's motion for judgment on the appellants' adverse possession and quiet title claims. The court entered judgment against Bay Pride on the count for sale in lieu of partition, concluding that it had not proceeded with "clean hands," and, as a matter of equity, was not entitled to sale in lieu of partition.

This appeal followed.

STANDARD OF REVIEW

In a case tried by the court without a jury, when a defendant moves for judgment at the close of the plaintiff's case, "the court may proceed, as the trier of fact, to determine the facts and to render judgment against the plaintiff or may decline to render judgment until the close of all the evidence." Md. Rule 2-519(b). The court need not consider all the evidence in the light most favorable to the non-moving party. *Id*.

On appeal from a judgment entered at a trial before the court, we review the court's decision "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). We defer "'to the trial court's role as fact-finder and will not set aside factual findings unless they are clearly erroneous.'" *Bottini v. Dep't. of Fin*., 450 Md. 177, 187 (2016) (quoting *Breeding v. Koste*, 443 Md. 15, 27 (2015)). The court's factual findings are not clearly erroneous "'[i]f any competent material evidence exists in support of the trial court's factual findings[.]'" *Webb v. Nowak*, 433 Md. 666, 678 (2013) (quoting *Figgins v.*

Cochrane, 403 Md. 392, 409 (2008)). We do "not sit as a second trial court, reviewing all the facts to determine whether an appellant has proven his case[,]" and it is not our function to weigh conflicting evidence. *Id.* at 680 (quotation marks and citations omitted). We consider the evidence produced at trial in the light most favorable to the prevailing party. *Bartlett v. Portfolio Recovery Assocs., LLC*, 438 Md. 255, 273 (2014). Our review of questions of law is de novo, however. *Friedman v. Hannan*, 412 Md. 328, 336 (2010).

DISCUSSION

I.

Adverse Possession and Quiet Title Claims Against the Association

The appellants' contentions respecting these claims are two-fold. First, the Riley Trust maintains the trial court abused its discretion by implicitly vacating the previously entered order granting partial summary judgment in its favor on its adverse possession and quiet title claims, both of which related to the "small parcel." Second, both appellants maintain the court's decision to grant the Association's motion for judgment on all the adverse possession and quiet title claims at the close of their case was clearly erroneous on the facts and legally incorrect.

Before delving into these contentions, we shall review the relevant law of adverse possession and quiet title. Adverse possession allows a person who does not hold title to a parcel of property to obtain valid title through the passage of time. *Yourik v. Mallonee*, 174 Md. App. 415, 422 (2007). One claiming title by adverse possession must show that possession is actual, open, notorious, exclusive, hostile, continuous, and uninterrupted for

the statutory period of 20 years.[4] *White v. Pines Cmty. Improvement Ass'n, Inc.*, 403 Md. 13, 36 (2008); *Breeding*, 443 Md. at 28. The statutory period for adverse possession "begins to run when all the elements coalesce." *Bratton v. Hitchens*, 43 Md. App. 348, 355 (1979). "Where … there is privity of estate between successive parties in possession, the possession of such parties may be tacked one to the other so as to get the required continuity for the prescribed period of time." *Wilt v. Wilt*, 242 Md. 129, 135 (1966) (holding that when land was held adversely by a party for over nine years and for over fourteen years by the party's predecessor in title, there was continuous adverse possession for over 20 years).

The test for evaluating a claim for adverse possession is objective: "'the pertinent inquiry is whether the claimant has proved the elements based on the claimant's 'objective manifestation' of adverse use, rather than on the claimant's subjective intent.'" *Hillsmere Shores Improvement Ass'n v. Singleton*, 182 Md. App. 667, 692 (2008) (further quotation marks omitted) (quoting *Porter v. Schaffer*, 126 Md. App. 237, 276 (1999)). The claimant bears the burden of proving title by adverse possession. *Id.* (citing *Costello v. Staubitz*, 300 Md. 60, 67 (1984)). "Every element of adverse possession must be shown and if it is not, the possession will not confer title." *Hungerford v. Hungerford*, 234 Md. 338, 340 (1964).

Whether a claimant's use of land constitutes actual possession is "a fact-intensive inquiry." *Senez v. Collins*, 182 Md. App. 300, 325 (2008). "'[M]ere occasional use of the

[4] The Maryland adverse possession statute provides that "[w]ithin 20 years from the date the cause of action accrues," one must "(1) [f]ile an action for recovery of possession of a corporeal freehold or leasehold estate in land; or (2) [e]nter on the land." Md. Code (1974, 2020 Repl. Vol.) § 5-103(a) of the Courts & Judicial Proceedings Article.

land'" will not suffice to establish actual possession. *Id*. at 326 (quoting *Porter*, 126 Md. App. at 277)). In determining whether there has been actual possession of the subject property, "'the court must consider the character and location of the land and the uses and purposes for which the land is naturally adapted.'" *Id*. (quoting *Orfanos Contractors v. Schaefer*, 85 Md. App. 123, 129 (1990)).

In addition, a claimant must prove that the possession was "exclusive," that is, "exclusive dominion over the land and an appropriation of it to [the claimant's] own use and benefit." *Bratton*, 43 Md. App. at 360 (quotation marks and citation omitted). Although the possession need not be "absolutely exclusive," the claimant must show the "type of possession which would characterize an owner's use." *Id*. (quotation marks and citation omitted). The "hostile possession" element of adverse possession means the claimant's possession was "'without license or permission' and [was] 'unaccompanied by any recognition of … the real owner's right to the land.'" *Senez*, 182 Md. App. at 339-40 (further quotation marks and citations omitted) (quoting *Yourik*, 174 Md. App. at 429).

When title to property is held by tenants in common, "the law presumes that possession by one cotenant is possession by the other and, therefore, in order to establish adverse possession by one cotenant against another it is necessary to rebut this presumption by proving an actual ouster." *Bratton*, 43 Md. App. at 356. "Ouster is the actual turning out or keeping excluded the party entitled to the possession of any real property." *Spessard v. Spessard*, 64 Md. App. 83, 88 (1985) (quotation marks and citation omitted); *see also Young v. Young*, 37 Md. App. 211, 221 (1977) (defining ouster as "a notorious and unequivocal act by which one cotenant deprives another of the right to the common and

equal possession and enjoyment of the property"). Ouster of a cotenant differs from any other ouster both in the degree and character of the evidence required. *White*, 403 Md. at 36 (citing *Potomac Lodge No. 31, I.O.O.F. v. Miller*, 118 Md. 405, 415-16 (1912)). Ouster of a cotenant requires "an overt act that is a hostile invasion of another's rights[,]" and although it may not "have been accompanied by positive force, it must have been actual, and be established by acts or declarations brought home to the knowledge of the cotenant." *White*, 403 Md. at 35 (quotation marks and citation omitted).

A quiet title action is governed by section 14-108 of the Real Property ("RP") Article of the Maryland Code (1974, 2015 Repl. Vol.). Subsection (a) provides:

> Any person in actual peaceable possession of property, or, if the property is vacant and unoccupied, in constructive and peaceable possession of it, either under color of title or claim of right by reason of the person or the person's predecessor's adverse possession for the statutory period, when the person's title to the property is denied or disputed, or when any other person claims, of record or otherwise to own the property, or any part of it … may maintain a suit … to quiet or remove any cloud from the title, or determine any adverse claim.

"[C]olor of title is that which in appearance is title, but which in reality is not good and sufficient title." *Hillsmere*, 182 Md. App. at 704 (quotation marks and citation omitted). For purposes of the hostility element of adverse possession, a "claim of right" means "that the occupancy rests on the claimant's demonstrated intention to appropriate and hold the land as owner, and to the exclusion, rightfully or wrongfully, of every one else." *Senez*, 182 Md. App. at 344 (quotation marks and citation omitted).

A. The Trial Court Did Not Abuse Its Discretion by Implicitly Vacating the Partial Summary Judgment in favor of The Riley Trust and Granting Judgment in favor of the Association on the Adverse Possession and Quiet Title Counts.

As noted, before trial, a judge other than the one who later presided at trial granted partial summary judgment to the Riley Trust on its claims for adverse possession and quiet title to the "small parcel" portion of the subject property (Counts I and III). On appeal, the Riley Trust concedes that the partial summary judgment order was interlocutory and agrees that as a case progresses to the complete resolution of all counts by and against all parties, the circuit court has discretion to vacate interlocutory orders. *See* Md. Rule 2-602(a)(3) (With an exception not applicable, "an order or other form of decision, however designated, that adjudicates fewer than all of the claims in an action … or that adjudicates less than an entire claim, or that adjudicates the rights and liabilities of fewer than all the parties to the action … is subject to revision at any time before the entry of a judgment that adjudicates all of the claims by and against all of the parties."). Until a final judgment is entered as to all claims and all parties, a circuit court retains the power to modify a prior summary judgment order. *Hiob v. Progressive Am. Ins. Co*., 440 Md. 466, 496 (2014).

The presiding judge at trial recognized this principle, stating that the order in question was interlocutory and therefore not binding. *See State v. Frazier*, 298 Md. 422, 449 (1984) ("[O]ne judge of a trial court ruling on a matter is not bound by the prior ruling in the same case by another judge of the court; the second judge, in his discretion, may ordinarily consider the matter de novo."). Relying on *Driver v. Parke-Davis Co*., 29 Md. App. 354, 363 (1975), the Riley Trust argues that the trial judge abused his discretion by

vacating the partial summary judgment order in its favor - implicitly - because he did so without explanation. We disagree.

In *Driver*, a wrongful death action was pending for two years without any activity. The clerk's office mailed a notice of contemplated dismissal pursuant to former Rule 530. The plaintiff filed a motion to suspend operation of the Rule. A judge signed an ex parte order granting the motion, which at that time the Rule permitted. Not knowing that the motion had been granted, the defendants filed oppositions. After a notice of trial date was mailed, the defendants requested a hearing on the motion to suspend operation of the Rule, still not knowing it had been granted. The hearing took place before a different judge, who rescinded the order suspending operation of the Rule and entered an order dismissing the case for failure to prosecute. The plaintiff appealed.

One of the issues raised on appeal was whether a circuit court judge presiding at trial has the authority to overrule a prior interlocutory order issued by another judge of the same court. We held that this Court '"has never … doubted that a judge presiding at a trial, unless specifically precluded, is free at any time during the trial to reconsider any prior ruling in the case, whether made by him or by another judge.'" 29 Md. App. at 362 (quoting *Layman v. State*, 14 Md. App. 215, 230 (1972)). We explained: "The authority of a judge to reverse the decision … of a fellow judge of the same court is clear. When that authority is exercised, the question becomes whether to do so was a proper exercise of discretion." *Id*. at 363. We observed that, at the hearing on the motion, the second judge "explained his exercise of discretion in that the ex parte order had been signed too precipitously, denying [the defendants] the right to answer … and the right to be heard." *Id*. We held

that the judge who vacated the order suspending operation of the Rule did not abuse his discretion in doing so.

The *Driver* Court did not hold that a judge who overrules a prior interlocutory order entered in the same case *must* explain his or her reasons for doing so. In that case, the judge *did* give an explanation, but that does not mean one is required. Indeed, in a similar circumstance, but where the judge exercised discretion to dismiss a case under former Rule 530 for lack of prosecution, the Court of Appeals (now the Supreme Court of Maryland)[5] made clear that it is up to the party challenging the ruling on appeal to make a proper record, and the court's failure to explain its ruling was not sufficient to show that the ruling was an abuse of its discretion. *Langrall, Muir & Noppinger v. Gladding*, 282 Md. 397, 401 (1978). Until the challenging party can show that a court's ruling was an abuse, the ruling is presumed to be correct. *Id*. *See also Lapides v. Lapides*, 50 Md. App. 248, 252 (1981) ("The exercise of a judge's discretion is presumed to be correct, he [or she] is presumed to know the law, and is presumed to have performed his [or her] duties properly." (citations omitted)).

In the case at bar, although it was not necessary for the trial judge to provide reasons to support his decision to vacate, implicitly, the prior partial summary judgment order in favor of the Riley Trust and against the Association, he gave reasons to support his decision to grant judgment in favor of the Association on the claims by both appellants. The appellants challenge those reasons on appeal, arguing that they are not supported by the

[5] On December 14, 2022, the name of the Court of Appeals was changed to the Supreme Court of Maryland.

facts and are legally incorrect. If we uphold the court's rulings on the merits, we are concluding, necessarily, that the trial judge did not abuse his discretion by rejecting the prior ruling granting partial summary judgment in the Riley Trust's favor. And if we do not uphold the court's ruling as to the Riley Trust, the judgment would be reversed in any event and the implicit vacation of the partial summary judgment order would be immaterial.

Nevertheless, we note that the partial summary judgment order did not address all the legal issues that were raised at trial and addressed only a part of the evidence about the various parties' alleged acts of possession. The trial judge was under no obligation to uphold the partial summary judgment order in favor of the Riley Trust when it determined that the evidence at trial did not support it. *See Langrall, Muir & Noppinger*, 282 Md. at 402 n.3 (noting the court's obligation to strike a previous order upon finding that decision to be erroneous). Accordingly, we perceive no abuse of discretion in the trial judge's decision to vacate, implicitly, the prior partial summary judgment order in favor of the Riley Trust.

B. The Trial Court Did Not Err in Granting Judgment to the Association on the Adverse Possession and Quiet Title Claims (Counts I through IV) at the Close of the Appellants' Case.

Bay Pride and the Riley Trust maintain that the evidence at trial established that between the two of them, they obtained a 100% interest in the subject property through adverse possession during a twenty-year period beginning in 1987, when the Joneses purchased their interest in the subject property and Mr. Riley purchased his adjacent property, until 2007 (and thereafter). To some extent their evidence overlaps.

With respect to the "large parcel," Bay Pride points out that from 1987 until 2019, the Joneses and then the Jones Family Trust paid the real estate taxes on the subject property; the Joneses used the "large parcel" to park a car and a golf cart; the Joneses maintained that parcel; and, beginning in 2013, the Jones Family Trust demanded that the Association seek permission to use the "large parcel" for events such as the annual fish fry, and the Association did so. According to Bay Pride, this evidence established that by 2007, the Joneses/Jones Family Trust had obtained title to the entire "large parcel" by adverse possession; therefore, when the Jones Family Trust conveyed its interest in the "large parcel" to Bay Pride in 2019, Bay Pride received 100% ownership of the "large parcel."[6] With respect to the "small parcel," the Riley Trust maintains that the evidence shows that from 1987 until 2007 (and forward), Mr. Riley and subsequently the Riley Trust obtained title by adverse possession to the entirety of the "small parcel" portion of the subject property by continuously maintaining and landscaping it.

Accordingly, the appellants posit that by 2007, Bay Pride had obtained 100% title to the "large parcel" of the subject property by adverse possession and the Riley Trust had obtained 100% title to the "small parcel" by adverse possession, and so together they

[6] Bay Pride also argues that the deed by which Irena Leak conveyed her interest in the subject property to John Leak, her son, created the appearance that she owned 100% of the subject property. Therefore, Mr. Leak, the Joneses, and the Jones Family Trust obtained adverse possession by color of title. This argument was not made below, by either Bay Pride or the Riley Trust, and the deed on which the argument is based was not moved into evidence at trial. Accordingly, it is not preserved for review, and we shall not address it. *See* Md. Rule 8-131(a). We note, moreover, that in the affidavit for Bay Pride submitted with that deed in support of the partial summary judgment motion, the affiant, counsel for Bay Pride, did not take the position that Mr. Leak took more than a 37.5% interest in the subject property by the deed from his mother.

owned 100% of the subject property. Therefore, the 2017 corrected deed purporting to convey the Jennie Wilder heirs' 37.5% interest in the subject property to the Association could not and did not convey anything.

In granting the Association's motion for judgment at the close of the appellants' case, the judge made clear that Bay Pride did not present a prima facie case of adverse possession because its proof was insufficient to show ouster of cotenants; and the Riley Trust did not present a prima facie case of adverse possession because its proof was insufficient to show hostile and exclusive possession. We see no error of fact or law in the court's decision.

Bay Pride

In *Sowers v. Keedy*, 135 Md. 448 (1919), the Court explained that when property is owned by cotenants, acts of ownership by one cotenant do not by themselves '"amount to the disseisin of the other co-tenants; indeed, they may be so explained as to show a consistency with the joint title.'" *Id.* at 451 (quoting 1 R.C.L., p. 742, par. 62). For example, although payment of taxes is *some* evidence of ownership, it is insufficient in and of itself to prove exclusive use and possession of the property. *See Bratton*, 43 Md. App. at 358 (explaining that payment of taxes and cutting of timber "are not sufficient in themselves to prove adverse possession").

For a cotenant to obtain adverse possession against another cotenant, an act of ouster must be shown, which means "a notorious and unequivocal act by which one cotenant deprives another of the right to the common and equal possession and enjoyment of the property." *Young*, 37 Md. App. at 221. In other words, ouster of a cotenant constitutes

‘“any act or conduct signifying [a cotenant’s] intention to hold, occupy and enjoy the premises exclusively, and of which the tenant out of possession has knowledge, or of which he has sufficient information to put him upon inquiry.’” *Sowers*, 135 Md. at 452 (quoting 1 R.C.L., p. 742, par. 62).

Bay Pride’s claim of adverse possession is based on tacking of title of the “large parcel” of the subject property by the Joneses/Jones Family Trust. In 1987, John Leak conveyed to the Joneses his mother’s 37.5% interest in the subject property. Therefore, the Joneses took title to a 37.5% interest in the subject property to which there were two cotenants: the Jennie Wilder heirs, with another 37.5% interest, and the Taylor Heirs, with a 25% interest. Because they were cotenants, the Joneses only could obtain title to the “large parcel” of the subject property by adverse possession upon proof that they had ousted their cotenants. The court concluded that evidence of ouster was woefully lacking. Ms. Grillo testified that her family used the “large parcel” in the summer to park a car and a golf cart. There was no evidence that they used it at any other time of the year; continuously; or for any other purpose. According to Ms. Grillo, the Association placed rocks around the subject property (or at least the “large parcel,” her testimony was not clear on this) to protect the property from rising water. There was no evidence that they removed them. In addition, although her father and Mr. Leak planted on the “large parcel” to prevent water from infiltrating the property, the Association removed those plants, and at some later point erected a fence, which the Joneses removed.

To be sure, after 2011, when the Joneses demanded that the Association request permission to use the large parcel for community events, such as the annual fish fry, it

started doing so. By implication, this happened after the Association had been using the large parcel for community events for years. Testimony by Ms. Grillo and Mr. Riley established that over the years, the Association maintained both parcels, even though it may not have done so exclusively.

None of this evidence was legally sufficient to show a notorious and unequivocal act by which the Joneses and subsequently their trust deprived the other cotenants of the "right to the common and equal possession and enjoyment of the property." *Young*, 37 Md. App. at 221. And the Joneses' payment of property taxes, which is not in and of itself sufficient to prove adverse possession, certainly did not evidence ouster because it was not inconsistent with the continuation of the co-tenancy. Given the legal deficiency in the evidence to show ouster, the trial court did not err by granting judgment in favor of the Association against Bay Pride at the close of Bay Pride's case.

Riley Trust

We also conclude that on the evidence presented, the trial court did not err in finding that the Riley Trust failed to show hostile, exclusive acts of possession of the "small parcel" necessary to obtain title by adverse possession. Although the evidence showed that there was a block wall separating the small parcel from the large parcel when Mr. Riley purchased his property, it also showed that the wall was badly damaged in 2003 and eventually was removed. Nor was there evidence of any other physical barrier dividing the property into distinct parcels to support his claim of exclusive ownership. As noted, Mr. Riley testified that both he and the Association had maintained the subject property at various times.

There was no evidence that during the period from 1987 to 2007, Mr. Riley notified the Association or the Taylor Heirs that they were not permitted on the "small parcel" portion of the subject property, or that measures were taken during that time to exclude them from it. (This is true for the Joneses/Jones Family Trust and the "large parcel" as well.) To the contrary, there was evidence of ongoing use and upkeep of the property by both the Jones family and the Association. Indeed, Mr. Riley did not advise the Association that Bay Pride was claiming "100 percent of the property" until 2019.

Moreover, the evidence was clear that from 1987 until 2019, the Association had an ownership interest in the subject property under color of title. Mr. Riley acknowledged that the Jennie Wilder heirs had attempted to convey their 37.5% interest in the subject property to the Association by a deed that later was found to be defective technically. Mr. Riley knew that that was the case, and that the Association was taking measures to have the deed corrected, which was accomplished in 2017. The Association acted consistently with having ownership under color of title, periodically maintaining the subject property by cutting the grass and placing stones to protect it from washing away. The evidence at trial was legally insufficient to establish exclusive and hostile possession by Mr. Riley and the Riley Trust of the "small parcel" portion of the subject property. Accordingly, the trial court did not err in granting judgment in favor of the Association on the Riley Trust's claims for adverse possession and quiet title.[7]

[7] The Association complains that the appellants reference numerous documents contained in the record extract that were submitted in support of their motions for summary judgment and default but were not introduced at trial. Specifically, the Association (continued…)

II.

Order of Default and Default Judgment Against the Taylor Heirs

The appellants contend the trial court erred or abused its discretion by entering a final judgment against them on all counts even though orders of default had been entered in their favor against the Taylor Heirs and a judgment of default was entered in favor of the Riley Trust against the Taylor Heirs. In support, they assert: 1) the Taylor Heirs failed to file a responsive pleading even though they properly were served; 2) the motion for judgment at the close of the appellants' case was made by counsel for the Association and not by the Taylor Heirs, and therefore should not have been granted in favor of the Taylor Heirs; 3) evidence in support of the motions for orders of default and judgment of default established the elements of adverse possession against the Taylor Heirs, as did the evidence at trial; and 4) therefore there was no basis for the court to effectively vacate the orders for default and judgment of default. We disagree.

Under Rule 2-613, when a defendant has been served and the time to plead has passed, the court, "on written request of the plaintiff, shall enter an order of default." *Id.*

identifies Record Extract pages 360-62, 265-66, 370-72, 887-89, 938-39 as documents submitted in support of appellants' motions for partial summary judgment and for default judgment that were not presented to the trial court. The Association also challenges the appellants' reference to the deposition of Jack Nelson, a witness not called at trial. The appellants' reliance on any documents submitted in support of pretrial motions, but not introduced at trial, is misplaced. Our review of the issues on appeal is limited to those exhibits presented to the trial court. We will not consider any material in the record that was not offered or admitted into evidence at trial. *See* Md. Rule 8-131(a); *see also Franklin Credit Mgmt. Corp. v. Nefflen*, 208 Md. App. 712, 724 (2012) (noting that '"an appellate court must confine its review to the evidence actually before the trial court when it reached its decision"' (quoting *Cochran v. Griffith Energy Serv., Inc.*, 191 Md. App. 625, 663 (2010))).

at (b). The defendant may move to vacate the order within 30 days, giving reasons for the failure to plead. *Id*. at (d). The court must vacate the order of default if the defendant files a motion to vacate giving a "substantial and sufficient basis for an actual controversy as to the merits of the action and that it is equitable to excuse the failure to plead[.]" *Id*. at (e). If no motion is filed or one is filed and denied, the court, "upon request, may enter a judgment by default that includes a determination as to the liability and all relief sought[.]" *Id*. at (f).

An order of default is not a judgment and does not have the effect of a judgment. To be sure, the entry of a default order *may* result in a judgment; it will not necessarily result in a judgment, however. In this case, default orders were entered in favor of both appellants against the Taylor Heirs and thereafter both appellants moved for entry of a judgment of default against the Taylor Heirs. The court granted a judgment of default in favor of the Riley Trust but denied a judgment of default in favor of Bay Pride. Thus, the order of default in favor of Bay Pride became inconsequential.

Moreover, the judgment of default entered against the Taylor Heirs in favor of the Riley Trust was not a final judgment. Under Rule 2-602, a default judgment against one defendant in a multi-defendant case remains subject to revision within the discretion of the court at any time prior to the entry of a final judgment on all claims against all parties to the action. *See Quartertime Video & Vending Corp. v. Hanna*, 321 Md. 59, 65 (1990) (holding that default judgment entered as to fewer than all the parties was not final, and subject to further revision until the final judgment adjudicating all claims against all parties); *accord Smith-Myers Corp. v. Sherill*, 209 Md. App. 494, 519 (2013); *Bethesda*

Title & Escrow, LLC v. Gochnour, 197 Md. App. 450, 459 (2011). The trial court had discretion to vacate that judgment prior to entering a final judgment on all counts as to all defendants.

We cannot say that the trial judge abused his discretion by effectively vacating the interlocutory default judgment in favor of the Riley Trust and against the Taylor Heirs because doing so was consistent with what is known as the common law *Frow* doctrine.

In *Frow v. de la Vega*, 82 U.S. (15 Wall.) 552 (1872), the plaintiff alleged that Frow and other defendants had conspired to defraud him of title to a tract of land. After Frow failed to file an answer to the complaint, the trial court entered a default decree against him. The remaining defendants prevailed at a trial on the merits. Ultimately, the Supreme Court reversed the default decree against Frow, holding that "where a bill makes a joint charge against several defendants … a final decree on the merits against the defaulting defendant alone" cannot stand. *Id*. at 554. The Court explained:

> [I]f the suit should be decided against the complainant on the merits, the bill will be dismissed as to all the defendants alike - the defaulter as well as the others. If it be decided in the complainant's favor, he will then be entitled to a final decree against all. But a final decree on the merits against the defaulting defendant alone, pending the continuance of the cause, would be incongruous and illegal.

Id. In *Curry v. Hillcrest Clinic, Inc*., 337 Md. 412, 430 (1995), the Court recognized the continued viability of the *Frow* doctrine, explaining:

> "*Frow* stands for the proposition that if at trial facts are proved that exonerate certain defendants and that as a matter of logic preclude the liability of another defendant, the plaintiff should be collaterally estopped from obtaining a judgment against the latter defendant, even though it failed to participate in the proceeding in which the exculpatory facts were proved."

Id. (quoting *Farzetta v. Turner & Newall, Ltd*., 797 F.2d 151, 154 (3rd Cir. 1986)). The *Curry* Court quoted extensively from *Lingan v. Henderson*, 1 Bland 236 (Md. Ct. Chanc. 1827), *rev'd*, 1 Bland 283 (Md. 1830), the first reported Maryland case addressing defaulting co-defendants in the context of a complete defense raised by a non-defaulting defendant, which, like the later *Frow* decision, emphasized the need for consistency in judgments:

> "[I]t is a well settled rule, in equity as well as at law, that any defence coming from any one of a plurality of defendants, which goes to the whole, and shows, that the plaintiff has no cause of suit, effectively precludes the Court from giving relief in any way whatever against any other defendant … because a plaintiff can only obtain relief upon the strength of his own title, and by shewing, that it is good against all the world as well as against each one of the then defendants; and also, because every Court of justice must act consistently, and cannot be allowed to contradict itself, by saying, in the same decree, in the same case, that the plaintiff has no cause of suit whatever; and also, that he has a just and well founded cause of complaint."

Curry, 337 Md. at 431-32 (quoting 1 Bland at 275). *See also Maryland Bd. of Physicians v. Geier*, 241 Md. App. 429, 542 (2019) (The *Frow* doctrine aims to "avoid the 'incongruity' or 'absurdity' of a judgment against a defaulting defendant which contradicts a judgment in favor of a non-defaulting defendant.").

In the case at bar, during the 20-year period from 1987 to 2007 in which the Riley Trust maintains it obtained title to the "small parcel" by adverse possession, the Taylor Heirs, the Association, and the Joneses all were similarly situated as cotenant owners of the subject property. The Riley Trust's failure to prove exclusive and hostile possession of the subject property during the statutory 20-year period applied to all three owners of the subject property. It would be inconsistent and fundamentally unfair for the Riley Trust

(or Bay Pride) to prevail against the Taylor Heirs by default judgment when their identical claims against the Association failed on the merits. Accordingly, we conclude that the trial court did not err in entering judgment against the appellants and in favor of the Association and the Taylor Heirs on the first four counts of the amended complaint.

III.

Request For Sale In Lieu of Partition

As noted, Bay Pride brought a count for sale of the subject property in lieu of partition. After the trial court ruled against it and the Riley Trust on their claims for adverse possession and quiet title, Bay Pride argued that nevertheless it was entitled to the sale of the subject property. The court denied the request on the ground that, because Bay Pride was seeking an equitable remedy, it was required to come to court with clean hands but did not do so. On appeal, Bay Pride contends the court erred by refusing to order the sale of the subject property, as there was no evidence of "fraud, illegality or misconduct" to support the application of the unclean hands doctrine.

A cotenant has the right to compel partition of land or a sale in lieu of partition. *Balderston v. Balderston*, 40 Md. App. 239, 241 (1978). At the time of trial in this case, a suit for sale in lieu of partition of property was governed by RP § 14-107(a), which stated:

> A circuit court may decree a partition of any property, either legal or equitable, on the bill or petition of any joint tenant, tenant in common, parcener, or concurrent owner, whether claiming by descent or purchase. If it appears that the property cannot be divided without loss or injury to the parties interested, the court may decree its sale and divide the money resulting from the sale among the parties according to their respective rights.

(Effective January 1, 2023, RP § 14-107 was repealed and RP §§ 14-701 through 14-713 were enacted in its place.)

Rule 14-302(a) further supports the court's authority to order a sale and appoint a trustee to conduct the sale "if satisfied that the jurisdictional requisites have been met and that the sale is appropriate." Whether property can be divided without loss or injury to the parties' rights is a matter for determination by the court and may be reversed on appeal if clearly erroneous. *Boyd v. Boyd*, 32 Md. App. 411, 420 (1976). This "action is equitable in nature so that the [court] is accorded broad discretionary authority." *Maas v. Lucas*, 29 Md. App. 521, 525 (1975).

"While every tenant in common, whether his title be legal or equitable, is entitled to the separate enjoyment of his interest, either by partition or sale and division of the proceeds, courts of equity do not hesitate to adapt their methods to the exigencies of justice or to protect the equitable rights of those concerned." *Meyers v. E. End Loan & Sav. Ass'n of Baltimore City*, 139 Md. 607, 612-13 (1922) (internal citations omitted). In balancing the equitable rights of the parties, the court may decide to preclude a sale or order a sale subject to certain conditions. In *Hogan v. McMahon*, 115 Md. 195 (1911), one cotenant filed a petition for partition or sale of property and the responding cotenant argued that she had expended far more in improvements and preservation of the property than the present value of the petitioner's interest in the property. The court refused to force a sale, reasoning that if a sale did not cover the amount that the responding cotenant had spent on the property it could result in the responding cotenant suffering a loss. The court conditioned

the sale on a showing that the amount owed by the petitioner was less than any potential profits, or that the petitioner would pay the amount owed prior to sale.

Among the equitable considerations a court may consider is the defense of "unclean hands." Under that doctrine, "courts of equity will not lend their aid to anyone seeking their active interposition, who has been guilty of fraudulent, illegal, or inequitable conduct in the matter with relation to which he seeks assistance." *Hlista v. Altevogt*, 239 Md. 43, 48 (1965). The doctrine is intended to prevent a party who is "guilty of inequitable conduct, relating to the matter in which relief is sought, from receiving equitable relief." *Fischer Org., Inc. v. Landry's Seafood Rests., Inc*., 143 Md. App. 65, 79 (2002) (citing *Hlista*, 239 Md. at 48). It applies when "the plaintiff's improper conduct is the *source, or part of the source*, of his equitable claim[.]" *Schneider v. Schneider*, 96 Md. App. 296, 306 (1993) (quotation marks and citation omitted), *rev'd on other grounds*, 335 Md. 500 (1994). The doctrine "'protects the integrity of the court and the judicial process by denying relief to those persons whose very presence before a court is the result of some fraud or inequity.'" *Turner v. Turner*, 147 Md. App. 350, 419 (2002) (further quotation marks and citation omitted) (quoting *Hicks v. Gilbert*, 135 Md. App. 394, 400 (2000)).

We will not disturb a trial court's decision to invoke the doctrine of unclean hands absent an abuse of discretion. *Hicks*, 135 Md. App. at 401. An abuse of discretion occurs when a trial court's decision is "well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *Nash v. State*, 439 Md. 53, 67 (2014) (quotation marks and citations omitted).

As explained above, Mr. Riley is the sole member of Bay Pride, an LLC, which purchased the Jones Family Trust's interest in the subject property in 2019. After the court ruled on the first four counts of the amended complaint, it treated the case as finished. Counsel for Bay Pride then stated that there still was the last count, for sale in lieu of partition, and asked for a ruling. The court stated, "This is equity in nature . . . [a]nd that's the problem. You have to have clean hands to come into a court of equity. And I--" At that point counsel said, "And we have clean hands." The court responded, "Okay. I'm not making any other rulings. Thank you."

The parties on appeal treat that exchange as a ruling by the court against Bay Pride on the count for sale in lieu of partition, on the ground that Bay Pride, through Mr. Riley, came to court with "unclean hands." Although the court's statement is not clear, it does appear that that was the court's ruling, and judgment was entered against Bay Pride on that count. We fail to see any basis for the ruling, however. Just prior to that ruling, the judge commented, in finalizing his ruling on the first four counts, that he had "very little sympathy" for Mr. Riley's position in the case generally, because as a member of the Association's Board he "knew the history behind this property" - - i.e., that the Association had been trying for years to correct its flawed deed and that the subject property had been used for community activities, such as the annual fish fry. None of this pointed to fraudulent, illegal, or inequitable conduct on the part of Mr. Riley, through Bay Pride, that would bar pursuit of a sale in lieu of partition, however. Accordingly, we conclude the court abused its discretion in denying that claim.

We shall vacate the judgment on the sale in lieu of partition count and remand for the court to fully consider that claim. The court may hear additional evidence on remand. We note that our ruling does not mean that the claim should be granted or denied, but only that it should be fully considered and adjudicated on remand.

As discussed above, before trial, partial summary judgment was granted to the appellants on the Association's amended counterclaim, which included a claim for a prescriptive easement over the subject property in the event it were to be sold. When counsel for Bay Pride asked whether the court was going to rule on Bay Pride's count for sale in lieu of partition, counsel for the Association asserted, "I would like [the subject property] sold if it's going to be sold subject to the rights of everybody in the community--" The judge interrupted, saying, "Well, that must be litigation for another day[,]" referring to division of proceeds. Counsel for the Association corrected the court, explaining that the issue was not proceeds, but the rights of community members to use the subject property. It was at that point that the court denied the claim for sale in lieu of partition, finding that Bay Pride had "unclean hands." That ruling rendered moot the Association's request to the court to consider anew its counterclaim for a prescriptive easement if the property were to be sold, just as it had done with all the other pretrial rulings. Because the claim for a prescriptive easement is tied to the claim for sale in lieu of partition, it should

be reconsidered and ruled upon on remand in the event the court grants the claim for sale in lieu of partition.

JUDGMENTS OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY ON COUNTS ONE THROUGH FOUR OF THE AMENDED COMPLAINT AFFIRMED; JUDGMENT ON COUNT FIVE OF THE AMENDED COMPLAINT VACATED AND REMANDED FOR FURTHER PROCEEDINGS NOT INCONSISTENT WITH THIS OPINION. COSTS TO BE PAID 4/5 BY THE APPELLANTS AND 1/5 BY THE APPELLEE.