

Circuit Court for Frederick County
Case No. C-10-CV-23-000446

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1152

September Term, 2024

DEBORAH WESSELLS

v.

FREDERICK COUNTY

Arthur,
Kehoe, S.,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: October 28, 2025

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

Appellant Deborah Wessells filed suit in the Circuit Court for Frederick County, claiming that she had acquired the alley adjoining her property by adverse possession. She asked the court to quiet title to the alley and to declare that she had fee simple title to it. As the sole defendant, Wessells named Frederick County.

Wessells claims that her predecessor-in-title had enclosed the alley with a fence as long ago as 1983. She herself claims to have acquired her property in 2005.

In paragraph 3 of her amended complaint, Wessells alleged that in 2006 she conveyed an interest in her property to her husband, John Wessells, as a tenant by the entirety. Wessells did not allege that her husband has relinquished his interest in the property. Nonetheless, she did not join him as a party to this case. In her brief, she stated, without explanation, that her “husband is not a party to this case” and that he “is not pursuing an adverse possession claim on his behalf with respect to the real property at issue in this case.”¹

Wessells attached copies of several plats as exhibits to her complaint. The plats, which we have reproduced in the appendix to this opinion, show that four other lots—specifically Lots 13, 14, 15, and 16—abut the alley. The owners of those lots would

¹ Although Wessells is the only named plaintiff, paragraph 1 of her amended complaint alleged that “*Plaintiffs* own in fee simple real property located at 820 Triatpoe Drive, Knoxville, Maryland 21758[.]” (Emphasis added.) Similarly, paragraph 14 alleged that the alley “has been fenced and maintained by *Plaintiffs* and/or *their* predecessors in title since at least 1983.” (Emphasis added.) And paragraph 15 alleged that the alley “has been . . . under claim of title or ownership by *Plaintiffs* and *their* predecessors in title.”

presumably have a right of access over a public alley to the adjoining street. Wessells, however, did not join the owners of any of those lots.

Frederick County answered the amended complaint. The answer enumerated more than 20 defenses and affirmative defenses, but did not mention Wessells’s failure to join her co-owner or the owners of Lots 13, 14, 15, and 16.

The County moved for summary judgment. In support of its motion, the County argued, principally, that it had acquired the alley in its governmental capacity or that the alley was impressed with a public trust. Consequently, the County argued, the alley “cannot be acquired by adverse possession even if the government has abandoned it.” Wessells responded that the County had never formally accepted the plat in which a developer created the alley, that the plat itself does not indicate that the developer was dedicating the alley to the County, and that “the alley is simply delineated as an area outside of the platted lots.”

The County’s motion noted that Wessells had conveyed an interest in the property to her husband in 2006, but it did not mention Wessells’s failure to join her husband as a ground for a ruling in the County’s favor. Nor did the County’s motion mention Wessells’s failure to join the owners of Lots 13, 14, 15, and 16.²

² The County’s motion asked the court to take judicial notice of two zoning enforcement actions in which a court found that Wessells had violated the Frederick County Code by allowing people to reside in a shed in the alley and had ordered her to remove all “non-permitted structures” in the alley. The County did not argue that the judgments in those cases precluded Wessells from disputing that the County owned the alley.

At a hearing on the County’s motion for summary judgment, the court asked Wessells whether the owners of the abutting lots had been “notified of this lawsuit” and whether they must be joined. The court pointed out that the owners of those lots would “certainly” be affected “if what they believed is public land becomes private land.” “[S]houldn’t they be at least notified that this is happening[?],” the court asked. The court did not inquire about the absence of the co-owner of Wessells’s property, her husband.

Counsel for Wessells expressed her willingness “to take whatever curative action might be appropriate.” Nonetheless, the court took the matter under advisement. Days later, the court granted the County’s motion.

Wessells appealed. We shall vacate the judgment and remand the case to the Circuit Court for Frederick County because of Wessells’s failure to join her husband and the owners of Lots 13, 14, 15, and 16.

Count I of Wessells’s amended complaint asserts a quiet title action under section 14-108 of the Real Property (“RP”) Article of the Maryland Code (1974, 2023 Repl. Vol.). Section 14-108(b) expressly states that “[a]ny person who appears of record, or claims to have a hostile outstanding right, shall be made a defendant in the proceedings.” “The statute clearly mandates that, in pursuing an *in rem* proceeding to quiet title, a plaintiff *shall* name *all* persons identified by the land records as having an interest in the property or otherwise claiming an interest in the property in question.” *Jenkins v. City of College Park*, 379 Md. 142, 157 (2003) (emphasis in original). “This is obviously so

because any outstanding claims to a property, such as those that a record owner who is not a defendant may have, are clouds on the property’s title that would prevent a trial court from granting the relief that is afforded by RP § 14-108(b)—namely, ‘a decree that the plaintiff has absolute ownership and the right of disposition of the property[.]’”

Estate of Zimmerman v. Blatter, 458 Md. 698, 733 (2018).

It is unclear whether the owners of Lots 13, 14, 15, and 16 actively “claim[] to have a hostile outstanding right” to the alley, within the meaning of section 14-108(b). They may well have no idea that Wessells claims to have acquired the alley over which they would otherwise seem to have a right of access. Nonetheless, both they and Wessells’s husband are certainly persons who must be joined (i.e., “necessary parties”) under Maryland Rule 2-211.

Rule 2–211(a) requires, in pertinent part, as follows:

Except as otherwise provided by law, a person who is subject to service of process shall be joined as a party in the action if in the person’s absence

(1) complete relief cannot be accorded among those already parties,
or

(2) disposition of the action may impair or impede the person’s ability to protect a claimed interest relating to the subject of the action or may leave persons already parties subject to a substantial risk of incurring multiple or inconsistent obligations by reason of the person’s claimed interest.

“The primary purposes of the requirement that necessary parties be joined are ‘to assure that a person’s rights are not adjudicated unless that person has had his “day in court”’ and, to prevent ‘multiplicity of litigation by assuring a determination of the entire

controversy in a single proceeding.”” *Mahan v. Mahan*, 320 Md. 262, 272 (1990) (quoting *Bender v. Secretary, Dep’t of Personnel*, 290 Md. 345, 351 (1981)). “The failure to have the absent person joined usually means that it would be fundamentally unfair for the court to continue with the litigation.” Paul V. Niemeyer & Linda M. Schuett, *Maryland Rules Commentary* 278 (6th ed. 2024).

In an action to determine whether the owners of Wessells’s property have acquired the adjacent alley by adverse possession, the circuit court could not possibly grant complete relief in the absence of Wessells’s co-owner, her husband. *See Eyler v. Eyler*, 92 Md. App. 599, 604 (1992) (holding that the co-owner of real property must be joined in an action for a declaratory judgment as to whether she and her husband were the sole owners of the property or whether she and her husband owned only a fractional interest in the property); *see also Mahan v. Mahan*, 320 Md. at 273 (holding that a remainderman must be joined in an action to determine whether a will created a remainder interest). Wessells’s husband is a party who must be joined under Rule 2-111(a).³

Moreover, “[t]enants by the entireties are required to act as one where property rights are at issue.” *Burns v. Scottish Dev. Co. Inc.*, 141 Md. App. 679, 705 (2001). Thus, where two spouses own property as tenants by the entireties, they must act together to sell their property, to lease it, to subject it to any interest or encumbrance, or to sue for

³ In declaratory judgment actions, “a person who has or claims any interest which would be affected by the declaration, shall be made a party.” Maryland Code (1974, 2020 Repl. Vol.), § 3-405(a)(1) of the Courts and Judicial Proceedings Article. Wessells did not request a declaratory judgment in so many words, but her claim for adverse possession requests that the court “[d]eclare” that she “holds fee simple title” to the alley.

damages to the property. *Arbesman v. Winer*, 298 Md. 282, 288 (1983) (citing *Picking v. Yates*, 265 Md. 1, 2 (1972) (per curiam)). Under the circumstances of this case, where Wessells seeks a determination that involves an interest in property owned as tenants by the entirety, Wessells cannot maintain the action unless her husband joins as a plaintiff. *Cf. Burns v. Scottish Dev. Co. Inc.*, 141 Md. App. at 705.

Furthermore, in the absence of the owners of Lots 13, 14, 15, and 16, the disposition of this action may leave Wessells or the County “subject to a substantial risk of incurring multiple or inconsistent obligations.” Md. Rule 2-111(a). If the owners of Lots 13, 14, 15, and 16 are not parties to this action, they will not be bound by the judgment and will not be foreclosed from contesting Wessells’s claim of adverse possession. *See Bank of New York Mellon v. Georg*, 456 Md. 616, 625-26 (2017). Thus, if this Court rejected the County’s arguments and concluded that Wessells has acquired the alley by adverse possession, as she has urged us to do in her brief, then Wessells (and her husband and the County) might be subjected to additional litigation in which the owners of Lots 13, 14, 15, and 16 endeavor to establish that the County still owns the alley (and that they have a right of access over it). And in that litigation, the owners of Lots 13, 14, 15, and 16 might obtain an inconsistent judgment to the effect that Wessells has *not* acquired the alley by adverse possession. The owners of Lots 13, 14, 15, and 16, therefore, are also parties who must be joined under Rule 2-111(a).

“Failure to join a necessary party constitutes a defect in the proceedings that cannot be waived by the parties, and may be raised at any time, including for the first

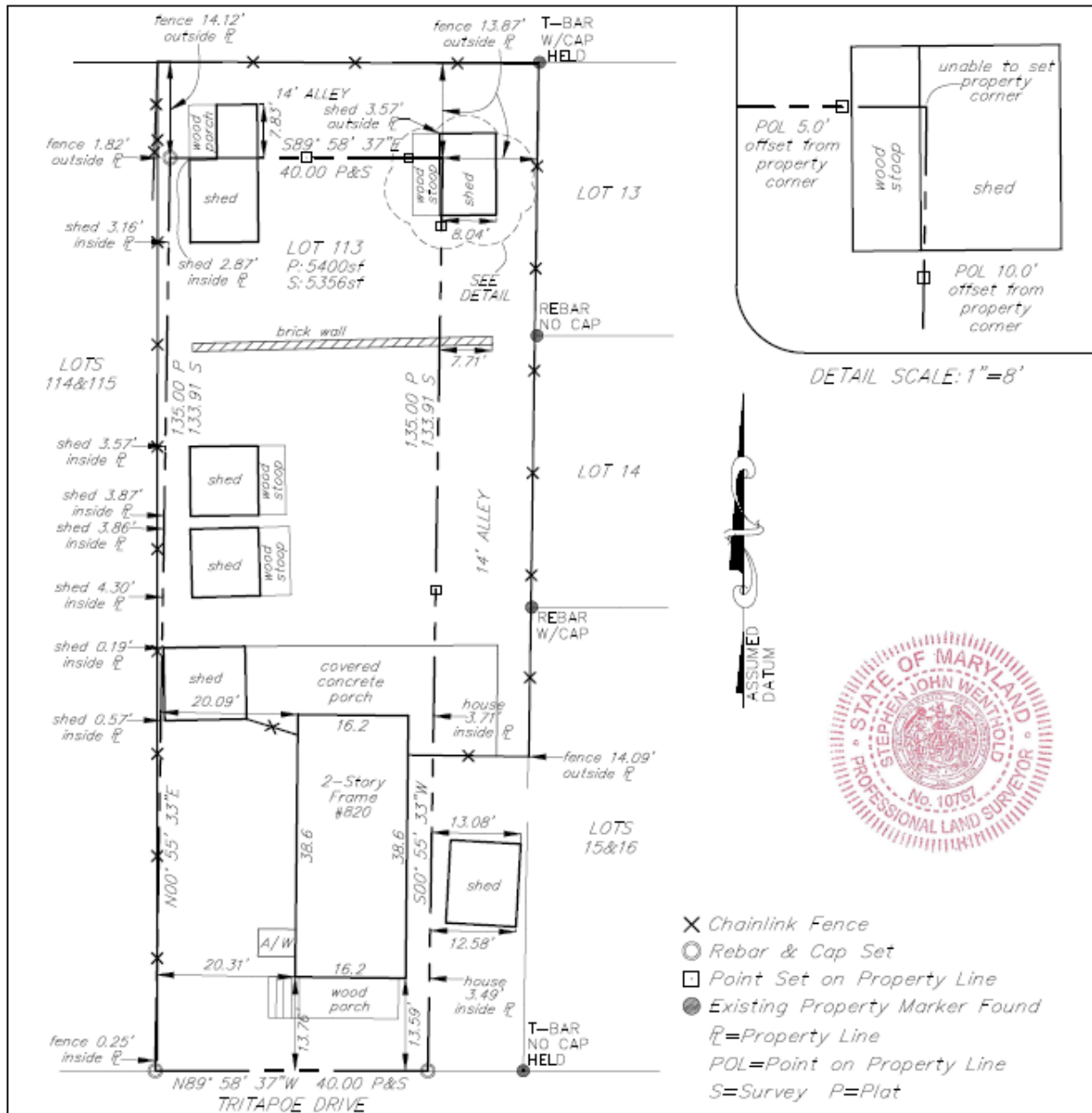
time on appeal.” *Mahan v. Mahan*, 320 Md. at 273; *see also Bodnar v. Brinsfield*, 60 Md. App. 524, 532 (1984) (stating that “the absence of necessary parties may be raised for the first time on appeal”). Consequently, we asked the parties to file letter briefs addressing whether Wessells’s husband or the owners of Lots 13, 14, 15, and 16 are necessary parties and, if any of them are, why this Court should not vacate the judgment. Wessells and the County both agreed that Wessells’s husband and the owners of Lots 13, 14, 15, and 16 are necessary parties.⁴

In the circumstances, the judgment cannot stand. Consequently, we shall vacate the judgment and remand the case to the Circuit Court for Frederick County with directions to permit Wessells to amend her pleadings, if she wishes to do so, and to join her husband as a plaintiff and the owners of Lots 13, 14, 15, and 16 as defendants.

**JUDGMENT OF THE CIRCUIT COURT
FOR FREDERICK COUNTY VACATED.
CASE REMANDED TO THAT COURT
FOR FURTHER PROCEEDINGS
CONSISTENT WITH THIS OPINION.
COSTS TO BE PAID BY APPELLANT.**

⁴ Incongruously, however, the County asked that we affirm the judgment. We cannot affirm a defective judgment that was entered in the absence of parties who must be joined. *Mahan v. Mahan*, 320 Md. at 273.

APPENDIX



Date: 6-29-23 Scale: 1"=20' Drawn by: msw
Plat Book: STH276
Plat No: 530-531 NO TITLE REPORT FURNISHED
Work Order: 23-1178
Address: 820 TRITAPOE DRIVE
District: 12
Jurisdiction: FREDERICK COUNTY, MARYLAND

BOUNDARY SURVEY
LOT 113
BRUNSWICK INDUSTRIAL COMPANY'S
ADDITION TO THE TOWN OF BRUNSWICK

Surveyor's Certificate
My License expires on February 10, 2024

I hereby certify that the survey shown hereon is correct and that the location of the improvements shown hereon is correct and that there are no visible encroachments unless noted otherwise. Building restriction lines shown as per available information.



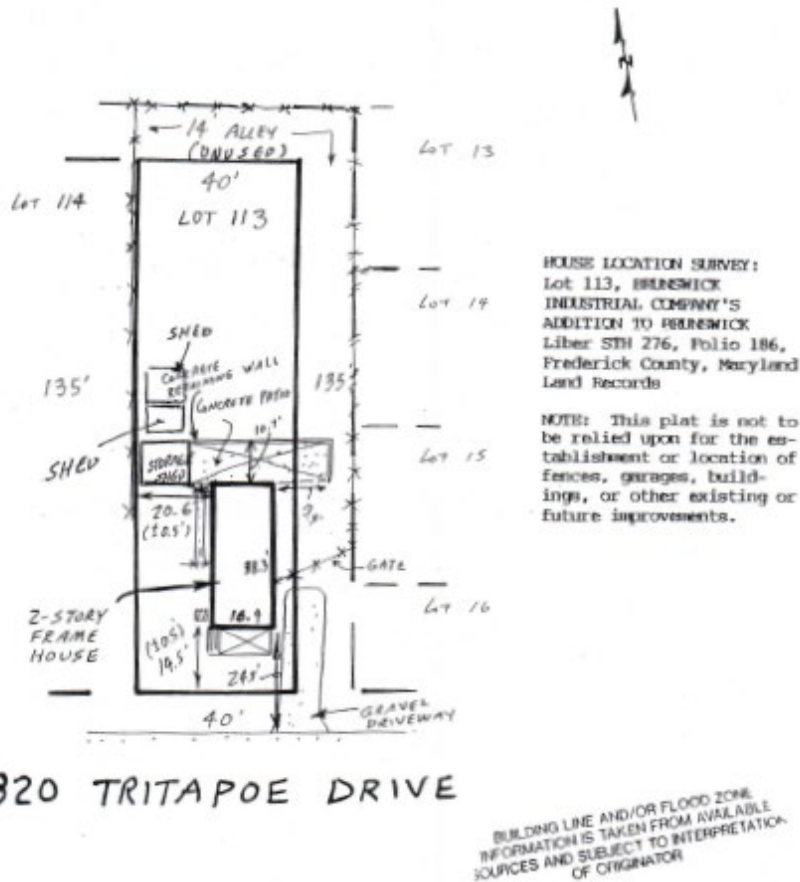
Stephen J. Wenthope

MERIDIAN SURVEYS, INC.
P.O. BOX 549
FREDERICK, MD 21705
(301)721-9400



SELLER: ROBERT L. MAYBUSH, and wife, THELMA M. MAYBUSH
LEGAL DESCRIPTION: Lot 113, BRUNSWICK INDUSTRIAL COMPANY'S ADDITION TO BRUNSWICK as recorded in Liber STN 276, Folio 186, one of the Land Records of Frederick County, Maryland, also locally known as 820 Tritapoe Drive, Brunswick, Maryland.

Complaint FILED: Frederick Circuit Court
Docket # 2642224-1067 PM Submission 5/24/2024 3:06 PM
Envelope: 16993698



NOTE: This location is for title purposes only and not to be used for determining property lines. Property corner markers are NOT guaranteed by this location.



220 N. Market Street
Frederick, Maryland 21701
(301) 698-9377

FILE # 7100-02
DATE January 22, 2002
SCALE 1" = 30'

NO. 016602

STATE OF MARYLAND
COUNTY OF FREDERICK

I certify the property herein is in accordance with the plat of subdivision and/or deed of record, that the improvements were located by accepted field practices and include permanent visible structures. Fences and/or walls shown are for picture purposes only. The exact location can only be determined by a boundary survey with the corners being set.

The above legally described property is not within a special flood hazard area as designated by the Federal Emergency Management Administration F.E.M.A. Map as Community Panel No. 2400206 dated January 7, 1977 for the Town of Brunswick, Frederick County, Maryland.



Ruben Sanchez, Property Line Surveyor No. 474

	DATE	BY
FIELD WORK	1.21.02	R/S
DRAFTING	1.22.02	RS
FINAL CHECK	1.22.02	RS
RECERTIFICATION		