Circuit Court for Baltimore County
Case No.: 03-C-18-011510

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1303

September Term, 2019

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HASIB, LLC, *et al.*

v.

DOUGLAS EDWARD JONES, *et al.*

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Shaw Geter,
Gould,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Gould, J.

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Filed: July 15, 2021

This appeal involves an easement[1] dispute between the owners of two adjoining properties in Baltimore County, Maryland—known as the Quarry Property and the Farm Property—which many years ago had the same owners. Access to a main road from the Farm Property had been provided by a right-of-way that cut through the southwest portion of the Quarry Property.

Title to the Farm Property has remained in the family of the original owners. Title to the Quarry Property came into the hands of a limited liability company owned by a person with no family ties to the original owners. The deed to the LLC purportedly extinguished the right-of-way. After the LLC took title to the Quarry Property, it blocked the right-of-way benefitting the Farm Property, prompting the owners of the Farm Property to file suit in the Circuit Court of Baltimore County for injunctive relief and a declaratory judgment. The court found in favor of the Farm Property owners, and entered an injunction prohibiting the Quarry Property owner from blocking or impeding access to the right-of-way. The court also entered a declaratory judgment that the clause in the deed extinguishing the right-of-way was unlawful.

The LLC filed a timely notice of appeal, and for the following reasons, we affirm.

[1] Generally, "the terms 'easement' and 'right-of-way' are regarded as synonymous." *Garfink v. The Cloisters at Charles, Inc.*, 392 Md. 374, 388 (2006) (quoting *Miller v. Kirkpatrick*, 377 Md. 335, 349 (2003)). Both terms are used in this opinion to describe the pathway at issue.

## BACKGROUND

The two properties at issue were acquired by Joseph Jones and Lillian Jones in 1955. One of the properties—which we shall refer to as the "Quarry Property"—has an address of 11285 Marriottsville Road, Marriottsville, Maryland. The other property—which we shall refer to as the "Farm Property"—has an address of 3400 Hernwood Road, Woodstock, Maryland.

As noted above, the Farm Property has remained in the Jones family over the years. In 1982, it was conveyed to Edward E. Jones and his brother Donald E. Jones. Upon the death of Donald E. Jones, the half owned by him was inherited first by his widow, Artis Jones, and when she died, Edward E. Jones and his two sons, Douglas Jones and William Jones, acquired Artis's interest from her estate. As a result, at the time the facts giving rise to this action occurred, the Farm Property was owned by Edward, Douglas, and William (the "Farm Property owners").

Title to the Quarry Property took a different journey over time. Lillian Jones predeceased Joseph Jones, and the latter leased the Quarry Property to his nephew, Kirby Leitch, in 1980. The lease contained a metes and bounds description of the Quarry Property, and described the Quarry Property as "[b]eing subject to a twenty foot wide private right of way as now used along the southwestern portion of the herein above described parcel of land." The lease also included, as an attachment, an "Outline Survey" of the property that had been prepared by a registered land surveyor.

Pursuant to Joseph Jones's will, Mr. Leitch took title to the Quarry Property in November 1982 after Joseph Jones died. As was the case with the lease, the deed

conveying the Quarry Property to Mr. Leitch described the property as "[b]eing subject to a twenty foot wide private right of way as now used along the southwestern portion of the herein above described parcel of land."

On July 20, 2018, Mr. Leitch conveyed title to the Quarry Property to Hasib, LLC ("Hasib" or the "Quarry Property owner"). The deed of conveyance to Hasib contained, among other provisions, a clause purporting to extinguish the right-of-way referenced in the prior deed to Mr. Leitch. The extinguishment clause stated: "the Grantor does hereby EXTINGUISH by this deed the aforementioned 20 foot right of way (abandoned) and not used as it was intended for. Said easement does not encumber or land lock any surrounding land, nor harm or benefit the same."[2]

Approximately six weeks after taking title, and without the consent of the Farm Property owners, Hasib placed a truck and trailer across the entrance of the right-of-way, completely blocking access to it from the Farm Property. The Farm Property owners asked Hasib's member, Brian Hanrahan, to remove the obstruction, but he refused.

On September 17, 2018, the Farm Property owners sent a cease and desist letter, through counsel, to Mr. Hanrahan demanding that he remove the blockage of the right-of-way and allow them access. Mr. Hanrahan again refused, and instead placed more impediments at the entrance to the right-of-way, including racks, rods, vehicles, and a "No Trespassing" sign.

[2] Four days before the start of trial, Hasib and Mr. Leitch created a "corrective deed" to undo this extinguishment language. Nonetheless, the original deed containing the attempted extinguishment remains relevant to the appeal.

Twice rebuffed, the Farm Property owners filed a complaint for declaratory judgment and injunctive relief in the Circuit Court for Baltimore County. The complaint requested an injunction barring Hasib and Mr. Hanrahan from blocking or impeding access to the right-of-way. The complaint also requested a declaratory judgment that the Farm Property owners have "unfettered" access to the right-of-way, and that the clause in the deed to Hasib purporting to extinguish the right-of-way was "unlawful and of no legal effect."

On August 20-21, 2019, the court held a two-day bench trial, during which it heard testimony from the Farm Property owners, Mr. Leitch, and Mr. Hanrahan. The court also heard testimony from Mr. Hanrahan's real estate agent,[3] an attorney involved in the sale of the Quarry Property, as well as Hasib's expert witness[4] who had walked the right-of-way.

The court granted the Farm Property owners injunctive and declaratory relief. The court found that an easement was expressly created in the 1982 deed to Mr. Leitch, that it continued to remain in existence, and that "[a]ll title holders knew where the right-of-way was located, who benefitted from the right-of-way, and which was the servient estate." The court also found that the attempted extinguishment of the right-of-way in the deed "constitute[d] a wrongful taking of the right-of-way" from the Farm Property owners and was void *ab initio*. The court granted a permanent injunction restraining and enjoining the

[3] The agent was Mr. Hanrahan's mother.

[4] Regarding the expert's qualifications, the court found that he was "a personal friend of Hanrahan, has never held any professional licenses, holds no degrees, could not produce a CV of his work experience, and has been retired and has not worked in any professional capacity for the past eleven years."

Quarry Property owner and Mr. Hanrahan from "blocking and/or impeding [the Farm Property owners'] 20-foot wide right-of-way[.]"

The Quarry Property owner timely appealed and presents us with the following three questions:[5]

> 1. Given that the purported right-of-way went onto a neighboring property and that neighbor was not made a party to the case, did the trial court err in entering declaratory judgment for Appellees when all parties impacted by the purported right-of-way were not parties to the case?
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> 2. Given that the trial court found that "all title holders knew where the right-of-way was located," did the trial court err as a matter of law in failing to locate the purported right-of-way when the testimony showed that the parties disagreed as to the location and existence of the purported right-of-way?
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> 3. Did the trial court err as a matter of law when it entered a permanent injunction for Appellees when there was no evidence in the record that Appellees would suffer irreparable harm?

For the reasons that follow, we shall affirm the judgment of the circuit court.

## DISCUSSION

### I.

### JOINDER

Hasib argues, for the first time on appeal, that the judgment must be vacated because a necessary party was missing from the proceedings. Hasib contends that testimony from

[5] In its reply brief and at oral argument, the Quarry Property owner raised other arguments that it did not present in its initial brief. We decline to address those arguments. *See, e.g.*, *Campbell v. Lake Hallowell Homeowners Ass'n*, 157 Md. App. 504, 535 (2004) ("Having failed to raise those arguments or seek that relief in his initial brief, appellant may not raise them for the first time in his reply brief.").

Edward E. Jones and Mr. Leitch showed that at least part of the right-of-way went through a property adjacent to both the Quarry Property and the Farm Property. Hasib argues that the current owner of said adjacent property, Bluegrass Materials Company, LLC ("Bluegrass"), was therefore a necessary party because its interests were affected by the injunction and declaratory judgment.[6]

Hasib relies on subsection 3-405(a)(1) of the Courts & Judicial Proceedings Article ("CJP") of the Maryland Annotated Code (2006, 2020 Repl. Vol.), which states that "[i]f declaratory relief is sought, a person who has or claims any interest which would be affected by the declaration, shall be made a party." This issue also implicates Maryland Rule 2-211(a), which states in full:

> 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 court shall order that the person be made a party if not joined as required by this section. If the person should join as a plaintiff but refuses to do so, the person shall be made either a defendant or, in a proper case, an involuntary plaintiff.

[6] That Hasib did not raise the issue in the circuit court does not preclude our review. Although it is "preferable to have the question of the required joinder of [a party] squarely presented to the trial court at an earlier stage of the proceeding[,] [t]he failure to do so . . . is not fatal." *Mahan v. Mahan*, 320 Md. 262, 272-73 (1990). "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." *Id.* at 273.

The primary purposes of Rule 2-211 and CJP § 3-405(a) are: "(1) to assure that a person's rights are not adjudicated unless that person has had his or her 'day in court'; and (2) to prevent multiplicity of litigation by assuring a determination of the entire controversy in a single proceeding." *Rounds v. Maryland Nat'l Cap. Park & Planning Comm'n*, 214 Md. App. 90, 110 (2013) (cleaned up), *aff'd in part, rev'd in part on other grounds*, 441 Md. 621 (2015). However, if a non-party's rights are not at issue, then the non-party is not bound by the judgment, and its joinder is generally not required. *See Bodnar v. Brinsfield*, 60 Md. App. 524, 532 (1984).

In support of its argument, Hasib contends that the Outline Survey included in Mr. Leitch's original deed depicts the right-of-way extending onto Bluegrass's property. Hasib also claims support for its interpretation of the Outline Survey in testimony of certain witnesses.[7] We are not convinced.

*First*, the descriptions of the right-of-way in the lease and the subsequent deed to Mr. Leitch describe the right-of-way in terms that give no indication that a piece of it spills onto the Bluegrass property. More importantly, in its factual findings, the court stated that the "20-foot right-of-way, approximately 700 feet in length, was for the benefit of the Farm Property, to allow the owners and occupiers of the Farm Property to enter on and through the Quarry Property to gain access to Marriottsville Road." Notwithstanding the testimony

[7] Specifically, Hasib cites to: testimony from Edward E. Jones that "a little bit" of the plat of the easement appears to go onto another property; testimony from Mr. Leitch that a "very hard to read" and "very faded" drawing shows the right-of-way appearing to "come[] down on the [adjacent] property and then come[] back onto [the Quarry Property]"; and the Quarry Property owner's expert's testimony that when he walked the Quarry Property, he saw a pole line that appeared to have curved onto Bluegrass's property.

on which Hasib now relies, the court did not find that the right-of-way exists on any property other than the Quarry Property. In the absence of such a finding, we fail to see how the interests of the Bluegrass property owner are affected.

*Second*, the court's order granting the permanent injunction and declaratory judgment likewise made no mention of the Bluegrass property. The court's order stated that it is:

> **ORDERED**, that Plaintiffs are hereby granted a permanent injunction restraining and enjoining Defendants, Hasib, LLC and Brian Hanrahan, from blocking and/or impeding Plaintiffs' 20-foot wide right-of-way from the Farm Property *over the Quarry Property* out to Marriottsville Road; and it is further
>
> **ORDERED**, that declaratory judgment is hereby issued and entered determining that Plaintiffs have the right to unfettered access to the 20-foot wide right-of-way from the Farm Property *across the Quarry Property* to Marriottsville Road; and it is further
>
> **ORDERED**, that declaratory judgment is hereby issued and entered determining that the 20-foot wide right-of-way is an easement appurtenant *to the Quarry Property* (servient parcel) and the Farm Property (dominant parcel) . . .

(Emphasis added).

This order was squarely aimed at Hasib, Mr. Hanrahan, and the Quarry Property. The order did not adjudicate or implicate Bluegrass's rights, nor was Bluegrass bound in any way by the order. Thus, we reject Hasib's necessary party argument.

## II.

## LOCATION OF THE EASEMENT

Hasib contends that the circuit court erred in failing to specifically determine the location of the easement and in finding that all title holders were aware of its location. In that regard, Hasib contends that the "right-of-way was reserved in general terms only in the Deeds to the Quarry Property" and that an ambiguity exists as to its precise location. Hasib maintains that when an instrument creates an easement but fails to fix its location, and the location can't be fixed by other means (such as by reference to a road in existence at the time of the deed, unopposed long term use, or subsequent agreement of the parties), the court "may" establish the easement and the court's failure to do so was an error of law.

Hasib failed to preserve this claim of error. In its answer to the Farm Property owners' complaint, Hasib requested only that the complaint be dismissed with prejudice. In its opening statements, Hasib's counsel contended that no easement or right-of-way existed. And in closing argument, Hasib's counsel concluded with the following summary of Hasib's requested relief:

> So, we're asking that the Court find that the Plaintiffs do not have an easement in this case, and that if your Honor does find that there's an easement, that there was no bad faith here, that attorney's fees should not be awarded to Plaintiff, and that this case should be dismissed, and costs should be awarded to [Hasib].

Under Maryland Rule 8-131(a):

> Ordinarily, the appellate court will not decide any other issue *unless it plainly appears by the record to have been raised in or decided by the trial court*, but the Court may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal.

(Emphasis added).

Here, Hasib fails to direct us to any part of the record in which it asked the court, if it were to find that an easement existed, to fix the location of the easement. Nor have we found such a request from our own review of the record.[8] That being the case, we shall decline to address this issue.[9]

[8] Even if this issue had been raised, the location of the easement was identified with the requisite "reasonable certainty" required by subsection 4-101(a)(1) of the Real Property Article of the Maryland Annotated Code (1974, 2015 Repl. Vol.). To identify an easement with "reasonable certainty" where, as here, the easement is reserved in general terms and there is ambiguity regarding its location, we consider external evidence to determine the parties' intent. *USA Cartage Leasing, LLC v. Baer*, 202 Md. App. 138, 180 (2011), *aff'd*, 429 Md. 199 (2012). This evidence may include references to a road or right-of-way in existence at the time of the deed, unopposed long-term use, and subsequent agreements and conduct between parties. *See id.* at 195. Here, the parties' intent was evidenced by unopposed long-term use and subsequent agreements and conduct throughout the history of the properties.

[9] The other part to this claim of error—that the court erroneously determined that "all title holders knew where the right-of-way was located," is a moot issue because it was advanced only in support of Hasib's unpreserved contention that the court should have located the easement. Even if the issue were not moot, we would find no error. When Hasib took title to the Quarry Property, a description of the right-of-way was included in the deed, along with the language purporting to extinguish it. Mr. Hanrahan certainly had no problem locating the easement, as evidenced by the fact that he knew where to place the obstruction to block access to and from the Farm Property. Further, notes and emails introduced at trial demonstrate Hasib's knowledge of the right-of-way when taking title to the property.

The record also reflects that, prior to Hasib taking title, Mr. Leitch knew of the right-of-way through the lease and deed and that the right-of-way was used for 36 years, unopposed by Mr. Leitch. The trial court's finding that all title holders knew where the easement was located was amply supported by the evidence adduced at trial.

## III.

## PERMANENT INJUNCTION

Hasib's final argument is that the circuit court erred in entering a permanent injunction without evidentiary support that the Farm Property owners "would suffer irreparable harm without its issuance." Hasib argues that because the right-of-way was a "shortcut" and the damage from its blockage was a "minor inconvenience," the trial court's issuance of a permanent injunction was an abuse of discretion.

This argument was likewise not preserved. Again, Hasib fails to point to any part of the record showing that it asked the court to deny an injunction on the basis that the alleged injury was not irreparable. Even if Hasib had preserved the issue, we would not be persuaded, given the applicable abuse of discretion standard. *See Colandrea v. Wilde Lake Cmty. Ass'n, Inc.*, 361 Md. 371, 394 (2000); *cf. Columbia Hills Corp. v. Mercantile-Safe Deposit & Tr. Co.*, 231 Md. 379, 381 (1963) (where construction resulted in the destruction of an entrance to a right-of-way used as a means if ingress and egress, awarding injunctive relief was not an abuse of the trial court's discretion).

**JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.**