Circuit Court for Baltimore County
Case No. C-03-CV-21-000932

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1392

September Term, 2022

CASEY BROOKS, *ET AL.*

v.

LEWIS ROBINSON, *ET AL.*

Nazarian,
Arthur,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: October 26, 2023

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

This case is not about the Baltimore Orioles' recently deceased Hall of Fame third baseman, but rather the aftermath of a property dispute between neighbors. On March 29, 2021, Lewis and Keisha Robinson ("the Robinsons") filed suit against Erica and Casey Brooks ("the Brookses") for trespass and breach of easement. The Robinsons claimed that the Brookses violated an easement agreement that governs a driveway they share because a portion of the Brookses' garage allegedly encroaches on it. After a bench trial, the Circuit Court for Baltimore County entered judgment in favor of the Brookses on all counts.

The Brookses then filed a motion for attorneys' fees pursuant to a fee-shifting provision in the easement agreement. The court denied the motion after finding that the Brookses were defending against an action brought under the agreement rather than enforcing their rights under it. The Brookses appeal that ruling and we reverse and remand for further proceedings.

I. BACKGROUND

The Robinsons and Brookses own adjoining properties in Baltimore County. Both parcels once had been part of the same larger plot. In the course of dividing the single lot into three in July 2016, the original owner created a "Declaration of Rights and Obligations Regarding Private Ingress and Egress Easement" ("Agreement"). Among other things, the Agreement defined a common driveway and surrounding area running across what is now the Brookses' and Robinsons' properties (the "Easement Area") and granted to each "a non-exclusive easement for the use by the Owners of the Lots for purposes of ingress,

egress, and regress to and from Manor Road and for normal driveway purposes."[1]

A garage, constructed initially in 1996 and reconstructed in October 1999, sits on the portion of the property now owned by the Brookses. The garage serves only the Brookses' plot and is not used by or available to the Robinsons. The Agreement doesn't mention the garage; it does note that the driveway ran through the Easement Area at the time the Agreement was prepared and filed in the Baltimore County land records.

In 2019, the Robinsons discovered that about fifty square feet of the Brookses' garage encroaches on a portion of their property. On March 29, 2021, the Robinsons filed a complaint in the Circuit Court for Baltimore County. They alleged that the Brookses' garage trespassed on their property and breached the easement, resulting in an "impermissible use of the Ingress/Egress Easement" that "deprive[d] the Robinsons of the full use and enjoyment of their property."[2] The Robinsons sought money damages as well as an injunction requiring the Brookses to remove the encroaching portion of the garage. The Robinsons amended their complaint and the Brookses answered.

On February 1, 2022, the Brookses filed a motion for summary judgment. They argued that because the garage existed before the creation of the Agreement, it was "expressly permitted by the Easement itself." The court denied the motion because there

[1] The common driveway runs from the main road to separate driveways that serve each individual property. Those separate driveways are not subject to the Agreement.

[2] The complaint (and amended complaint) included a claim titled "injunction." But because an injunction is not a separate cause of action, the court treated the injunction claim as part of the relief the Robinsons sought in connection with the breach of the easement claim.

was "a dispute of fact regarding whether the [Robinsons] were on notice of the location of the garage on their property." On June 23, 2022, the Brookses filed a counterclaim that sought to "enforc[e] their rights under the Ingress/[Egress] Easement Agreement" and seeking "reasonable attorney fees and actual costs if successful."

After a one-day bench trial on July 25, 2022, the court entered judgment in favor of the Brookses on all counts. The circuit court disposed of the trespass claim quickly based on the undisputed fact that the garage had been constructed by the prior owner—there was no way, the court found, that the Brookses could have committed a trespass, an intentional tort, because a different party, the prior owner, built the garage. On the breach of easement claim, the court found in favor of the Brookses on two independent grounds: *first*, the Brookses "did not breach the specific provision of the easement" because they didn't place the garage on the property themselves, and, *second*, citing *Slear v. Jankiewicz*, 189 Md. 18 (1947), the Robinsons bought their lot with full knowledge that the garage was there, at the bend of the driveway, and thus the garage was encompassed in the easement itself:

> Now, I am going to also say a few other things. So I don't find that the [Robinsons] ha[ve] proven that [the Brookses] breached the agreement because they were not the people who placed them there. And they would have had to, under this specific language of the agreement.
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> But moreover, even if they had, which I do not find and the facts do not support, [Slear v. Jankiewicz] is directly on point. 189 Maryland 18.
>
> And that is that the [Robinsons] moved in knowing that the garage was there, even if they didn't have the boundary survey done in advance. And that's not, frankly, unusual that one would not necessarily have the boundary survey.
>
> But they were aware of the garage being there. It was at the

> bend of the driveway. They walked the property. It was open and notorious. I looked at the photographs.
>
> It's right where the bend is where their driveway is going off. So they were aware of its placement and its location. And under [Slear v. Jankiewicz,] in this Court's estimation, it is an easement by implication, at the very least, if not included in the easement itself because it's attached its location to the very easement that created it.
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> And, thus, in this Court's estimation, given the case law as to both easement by implication as well as what this Court finds as its inclusion, given the actual depiction in the easement itself.
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> Its inclusion in the easement, that is the garage at the end of the driveway that allows—that is the sort of function end to the aspect of the ingress and egress to the property.
>
> This Court finds that it's both included in the easement and, if not, an easement by implication.

Next, the Brookses filed a timely motion for attorneys' fees under § 4.1 of the Easement Agreement, which entitles "any party successfully enforcing its rights" to reimbursement of reasonable fees and costs:

> In addition to all other remedies at or in equity, *any* party successfully enforcing *its* rights hereunder in a court of competent jurisdiction *shall be entitled* to reimbursement of reasonable attorney fees and actual reasonable costs.

(Emphasis added.)

They attached to their motion a description of the work their attorneys performed and their hourly rates, and their fee request totaled $28,435.00. The Robinsons opposed the fee motion, arguing that because the garage was constructed before the property was divided and the Agreement was entered, the garage "does [not] serve the purpose of the Declaration" and is "not subject to" the Agreement. The Robinsons did not dispute the

quality or quantity of the information the Brookses provided in support of their fee request, nor did they argue in their opposition that the fees requested were unreasonable. The court denied the Brookses' motion on the grounds that the Brookses were not "'enforcing their rights under the Easement Agreement' but rather, defending against an action brought under the same."

The Brookses then moved for reconsideration. They argued that the Robinsons' complaint had been "filed 'under' the Easement Agreement" and that the Brookses had opposed the complaint by "expressly [seeking] to enforce their rights under the Easement Agreement, including the right to maintain their garage in its current location." The Brookses also contended that § 4.1 did limit the right to recover fees and costs to a plaintiff who successfully enforces its rights under the Agreement but referred instead to "any party," which "includes a party defending an action brought against it who seeks to enforce its rights under the Easement Agreement." The Robinsons countered that "there was no mention of 'the right to maintain the garage in its current location'" in the Agreement, so the Brookses weren't enforcing any rights under the Agreement and the attorneys' fees provision in the Agreement didn't apply; they also argued for the first time that the Brookses' fee request was unreasonable. The court denied the motion for reconsideration and the Brookses appealed. We'll discuss additional facts as appropriate below.

II. DISCUSSION

There's one issue before us:[3] whether § 4.1 of the Agreement, its fee-shifting provision, entitled the Brookses to the reasonable fees and costs they incurred in defending the Robinsons' claims successfully. This is a question of contract interpretation. *Miller v. Kirkpatrick*, 377 Md. 335, 351 (2003) (*citing Buckler v. Davis Sand & Gravel Corp.*, 221 Md. 532, 538 (1960)) (Maryland courts construe the grant of the easement under the same principles applicable to contract interpretation.). We review the circuit court's decision *de novo*. *Towson Univ. v. Conte*, 384 Md. 68, 78 (2004) ("The interpretation of a contract, including the determination of whether a contract is ambiguous, is a question of law, subject to *de novo* review.").

To determine the scope of the rights created by the Agreement, we apply conventional rules of contract interpretation. *Miller*, 377 Md. at 351. Maryland courts follow the objective theory of contract interpretation and give "effect to the clear terms of the contract regardless of what the parties to the contract may have believed those terms to mean." *Conte*, 384 Md. at 78. We are concerned only with determining how "'a reasonable person in the position of the parties'" would have interpreted the terms of the Agreement. *Sierra Club v. Dominion Cove Point LNG, L.P.*, 216 Md. App. 322, 332 (2014) (*quoting*

[3] The Brookses phrased the Question Presented as: "Did the Circuit err in failing to award Brooks their attorneys' fees as provided in the Easement Agreement?"

The Robinsons phrased the Question Presented as: "DID THE CIRCUIT COURT CORRECTLY RULE THAT THE APPELLANTS COULD NOT RECOVER ATTORNEY'S FEES UNDER THE INGRESS AND EGRESS EASEMENT DECLARATION?"

Myers v. Kayhoe, 391 Md. 188, 198 (2006)). We examine the "character of the contract, its purpose, and the facts and circumstances . . . at the time of execution" to determine how a reasonable person would have interpreted the language of the agreement. *Pacific Indem. Co. v. Interstate Fire & Cas. Co.,* 302 Md. 383, 388 (1985). We interpret the language of the contract in context and look at "the entire language of the agreement, not merely a portion thereof." *Jones v. Hubbard*, 356 Md. 513, 534 (1999). Moreover, attorneys' fees provisions like § 4.1 "'must be strictly construed to avoid inferring duties that the parties did not intend to create.'" *Nova Rsch., Inc. v. Penske Truck Leasing Co.*, 405 Md. 435, 455 (2008) (*quoting* Robert L. Rossi, *Attorneys' Fees* § 9:18 (3d ed. 2002, Cum. Supp. 2007)).

The Brookses argue primarily that § 4.1 doesn't distinguish between plaintiffs and defendants, that it entitles any party who enforces or defends their rights under the Agreement successfully to recover reasonable attorneys' fees and costs. The Robinsons respond that the Brookses' right to maintain the garage in its present location was not a right that arose under the Agreement, that the Brookses merely defended themselves by asserting a right that predated the Agreement rather than enforcing anything. But the language doesn't make this distinction, particularly given how the Robinsons pleaded this case and the way the circuit court decided it.

There can be no serious dispute that this lawsuit arises under the Agreement and that the rights and obligations created in the Agreement drove the outcome. The Robinsons invoked the Agreement in both counts of their complaint: their Trespass claim alleged that the Brookses' garage exceeded the "normal driveway purpose" authorized by the

Agreement, and their Breach of Easement claim alleged a violation of the Agreement in so many words. The Robinsons lost on both counts because, the court found, the Brookses didn't exceed their rights under the Agreement, as the Robinsons had alleged. Indeed, the court found as a matter of fact that the Brookses' garage was contained within the scope of the easement itself. And the Robinsons didn't appeal the merits ruling, so there is no dispute about the fact and terms of the Brookses' victory on the claims the Robinsons sought to enforce.

This leaves only the question whether the Brookses' successful defense of the Robinsons' claims qualified as them "successfully enforcing [their] rights [under the Agreement] in a court of competent jurisdiction." And it did. The Brookses defeated both of the Robinsons' claims by relying on the property rights defined in the Agreement, especially in connection with the breach of easement claim, in which the court found literally that the garage was part of the easement itself. The Brookses may not have been "enforcing" their rights under the Agreement in the sense of asserting them as plaintiffs, but their rights under the Agreement served as the legal basis for their successful defense. And although the language might have been clearer if it referred to prevailing parties rather than successful enforcement, "enforcement" isn't available only to plaintiffs. Fee-shifting clauses are meant to deter frivolous or borderline litigation by increasing the risk of pursuing unsuccessful positions, and to read this clause to allow only successful plaintiffs to recover costs removes the disincentive for plaintiffs to proceed with a close or even bad claim. In this case, the Brookses were entitled to recover their reasonable attorneys' fees

and costs, and their motion to recover fees and costs should have been granted.

Even so, § 4.1 entitles the Brookses to recover their *reasonable* fees and costs, and the circuit court has not yet had the opportunity to determine whether the Brookses' request for fees and costs was reasonable. We leave it to the court to decide in the first instance whether the Robinsons have in fact opposed the Brookses' request (they didn't contest the amounts sought or the documentation supporting it in their opposition to the fee motion, and offered only a passing objection in their opposition to the Brookses' motion to reconsider) and what, if any, further proceedings are required for the court to determine what fees and costs were reasonable under the circumstances.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY REVERSED AND CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. APPELLEE TO PAY COSTS.