

Circuit Court for Anne Arundel County
Case No. C-02-CV-18-003339

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 1412

September Term, 2021

ASHER B. CAREY, III, ET AL.

v.

KINGSPORT COMMUNITY
ASSOCIATION, INC.

Nazarian,
Zic,
Tang,

JJ.

Opinion by Zic, J.

Filed: December 19, 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 case, before us for the second time, involves a dispute over a driveway easement. Kingsport Community Association, Inc. (“Kingsport”), appellee, maintains that it is the owner of the estate burdened by the easement and that Asher and Cynthia Carey (the “Careys”), appellants, are the dominant tenants of the driveway easement. In the prior appeal, we remanded the case to the Circuit Court for Anne Arundel County “to determine whether Kingsport is, in fact, the ‘servient’ tenant, as the owner of the property underlying the driveway easement and as such, satisfies the standing requirement as well as the necessary party prescription.” *Carey v. Kingsport Cmty. Ass’n, Inc.*, No. 1571, Sept. Term 2019, 2021 WL 1885126, at *4 (Md. Ct. Spec. App. May 11, 2021) (“*Carey I*”) (footnote omitted). After a hearing on November 9, 2021, the circuit court granted summary judgment in favor of Kingsport. It determined, among other things, that a confirmatory deed conveyed and confirmed legal title in the subject property to Kingsport, that Kingsport had standing, and that all necessary parties had been joined. This timely appeal followed.

QUESTIONS PRESENTED

The Careys present the following four issues for our consideration:¹

¹ The Careys phrased the issues as follows:

1. Whether the trial court erred when it granted Appellee’s Motion for Summary Judgment without a hearing on remand.
2. Whether the trial court erred when it granted Appellee’s Motion for Summary Judgment when there were material facts in dispute and Appellee was not entitled to judgment as a matter of law.

1. Whether the trial court erred when it granted Kingsport’s motion for summary judgment without a hearing on remand;
2. Whether there were material facts in dispute and Kingsport was entitled to judgment as a matter of law such that the trial court’s grant of Kingsport’s motion for summary judgment was proper;
3. Whether the trial court erred when it found that Kingsport had standing, Kingsport owned the subject property underlying the driveway easement, and all necessary parties were joined at the time of trial; and
4. Whether the trial court erred because it did not determine the validity or effectiveness of the deed that was recorded after the trial was over.

For the reasons set forth below, we shall reverse the grant of summary judgment and remand the case to the circuit court for further proceedings consistent with this opinion.

BACKGROUND

Kingsport is a homeowner association and a Maryland corporation. *Carey I*, 2021 WL 1885126, at *5. On October 30, 2018, Kingsport filed in the Circuit Court for Anne Arundel County an action for declaratory judgment and injunctive relief against the Careys. The complaint involved the parties’ dispute over rights to a driveway easement that provided access from the public road to the Careys’ waterfront home. The Careys were the dominant tenants of the driveway easement and Kingsport alleged it was the

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3. Whether the trial court erred when it found that Appellee had standing, owned the subject property underlying the driveway easement, and all necessary parties were joined at the time of trial.
 4. Whether the trial court erred when failing to properly determine the validity and effectiveness of the deed that was recorded after the trial was over.

owner of the servient estate, the estate burdened by the easement. Kingsport claimed that the Careys' construction of a fence on the driveway, and their assertion that they had exclusive use of the driveway to access their home, exceeded their rights under the easement agreement and interfered with Kingsport's rights as the fee simple owner of the subject property.

At the start of the trial, the court accepted the parties' stipulation that Kingsport owned the property on which the driveway was located. The following day, however, counsel for the Careys advised the judge and counsel for Kingsport that he had received information that Kingsport's predecessor in interest had, "probably inadvertently," executed a deed by which one of the residents came to own all of Kingsport's interests in "all the community property" in the subdivision. That deed pre-dated by approximately one year the grant of the same property to Kingsport. The trial judge responded that the proffer by the Careys' attorney was "just nonsense frankly" and stated, "let's continue." The Careys' expert witness, David Thompson, testified on the second day of trial that, based on his review of a 2007 deed, Kingsport had no interest in the property underlying the driveway.

On the final day of trial, Kingsport presented testimony from its expert, John Dowling, that the deed executed by Kingsport's predecessor had "through inadvertence or mistakes," conveyed all rights, title, and interest in the subdivision's community property. He maintained that although Kingsport did not have a fee simple interest, it had

an equitable interest in the property.² The nature of the asserted equitable interest was never identified. Again, the trial court refused to acknowledge that Kingsport did not own the servient estate in the driveway easement and, ultimately, determined that the Careys did not have an exclusive right to use the driveway easement. The court ordered the Careys to remove the fence and enjoined them from interfering with Kingsport’s or its residents’ access to or use of the driveway easement.

The Careys noted an appeal to this Court challenging, among other things, the failure of the circuit court to determine whether Kingsport was, in fact, the servient tenant and fee simple owner of the estate burdened by the easement and whether it had standing to maintain its case. Kingsport requested that we take judicial notice of, among other things, a corrective and confirmatory deed but we declined to do so because that evidence was not before the trial court at the time it reached its decision.

In an unreported opinion, we held:

The Declaratory Judgment in the present case, although correctly articulating the rights and obligations of the Careys as the dominant tenants of the driveway easement, fails with respect to Kingsport’s rights and obligations, because the record is lacking for the findings and conclusions that Kingsport has fee simple property rights, that Kingsport has rights as “fee simple owner of the property,” or that the property is properly denoted as “Kingsport Property.”

² As we noted in our prior opinion, by litigating the issue of Kingsport’s ownership of the property underlying the driveway easement the parties abrogated the stipulation that Kingsport owned the property on which the driveway was located. *Peddicord v. Franklin*, 270 Md. 164, 175 (1973) (citations omitted).

Carey I, 2021 WL 1885126, at *4 (footnote omitted). We upheld the circuit court’s determination of the rights of the dominant tenant but remanded the case to the circuit court “to determine whether Kingsport is, in fact, the ‘servient’ tenant, as the owner of the property underlying the driveway easement and as such, satisfies the standing requirement as well as the necessary party prescription.” *Id.* The Careys filed a petition for writ of certiorari in the Supreme Court of Maryland,³ which was denied. *Carey v. Kingsport Cmty. Ass’n, Inc.*, 475 Md. 705 (2021).

On remand, the circuit court scheduled “a 1-hour status conference on November 9, 2021.” Thereafter, on September 14, 2021, Kingsport filed a motion for summary judgment and a request for a hearing. In its motion, Kingsport asserted that it had secured legal title to the servient estate by way of a corrective and confirmatory deed filed in the land records for Anne Arundel County on or about May 29, 2020. Kingsport argued that the deed confirmed it owned a fee simple interest in the disputed property, that it had standing to bring the lawsuit, and that the necessary parties to the dispute were the Careys and Kingsport.

The Careys filed a motion to strike Kingsport’s motion for summary judgment. They argued, in part, that the evidence had already been received at the trial on the merits, that the original June 5, 2019 deadline for dispositive motions, which was set in the original scheduling order, had passed, and that Kingsport had not obtained permission

³ On December 14, 2022, the name of the Court of Appeals was changed to Supreme Court of Maryland.

of the court to file its motion for summary judgment after that date. The court scheduled a hearing on the motion for summary judgment for the same date as the status conference.

On November 5, 2021, the Careys filed an opposition to Kingsport’s motion for summary judgment. They argued, among other things, that Kingsport was not entitled to summary judgment because it did not own the subject property at the time of trial and failed to join the actual property owner at the time of trial. They asserted that “[a]ny facts established after the trial in this case should be disregarded,” specifically the confirmatory deed. In addition, they argued that the confirmatory deed was “defective on its face” and that it did not include signatures from all of the “persons who have an interest in the property . . . including the mortgagee.” The Careys maintained that the parties were “aware that there were at least eleven deeds involved in this transfer of the Driveway and community property.” They further noted the following:

It is unclear if all “erroneous deeds” were corrected or if another third party actually owns the Driveway following the attempted transfer of the Driveway back to the Developer. All of these facts are unknown. All persons, including the eleven or more persons who were parties to the “erroneous deeds,” must receive proper notice and the opportunity to be heard on this issue in a separate proceeding to satisfy due process requirements.

After the hearing on November 9, 2021, the circuit court granted summary judgment in favor of Kingsport. It determined, among other things, that a confirmatory deed conveyed and confirmed legal title in the subject property to Kingsport, that Kingsport had standing, and that all necessary parties had been joined. This timely appeal followed.

STANDARD OF REVIEW

A motion for summary judgment should be granted if “there is no genuine dispute as to any material fact” and “the party in whose favor judgment is entered is entitled to judgment as a matter of law.” Md. Rule 2-501(f). We review the grant of a motion for summary judgment *de novo*. *Asmussen v. CSX Transp., Inc.*, 247 Md. App. 529, 558 (2020); *Dashiell v. Meeks*, 396 Md. 149, 163 (2006). When there is no genuine dispute of fact, “we review the trial court’s ruling on the law, considering the same material from the record and deciding the same legal issues as the circuit court.” *Messing v. Bank of Am., N.A.*, 373 Md. 672, 684 (2003) (citing *Green v. H & R Block, Inc.*, 355 Md. 488, 502 (1999)). When reviewing the trial court’s grant of summary judgment, “we ordinarily are limited to considering the grounds relied upon by the [trial] court.” *Asmussen*, 247 Md. App. at 558-59. We conduct our review without deference to the trial court and determine independently, based on the record before the trial court, “whether the moving party was entitled to judgment as a matter of law.” *Tyler v. City of College Park*, 415 Md. 475, 499 (2010). We review the entire record, “drawing all reasonable inferences in favor of the party against whom summary judgment is sought.” *Shastri Narayan Swaroop, Inc. v. Hart*, 158 Md. App. 63, 71 (2004).

DISCUSSION

The Careys contend that the circuit court was required to consider whether Kingsport had standing at the time of the 2019 trial. They maintain that it was inappropriate for the circuit court to consider the confirmatory deed at the hearing on

Kingsport’s motion for summary judgment two years later. According to the Careys, because Kingsport did not have standing prior to the time the confirmatory deed was recorded, the only logical result was dismissal of Kingsport’s complaint and, therefore, the circuit court erred in granting summary judgment in favor of Kingsport.

Kingsport argues that no material facts were in dispute, so judgment as a matter of law was appropriate. Kingsport also argues that the opinion from this Court in *Carey I* is the “law of the case” here. Kingsport asserts that, on remand, the circuit court “properly interpreted and accepted the instruction” from this Court. Finally, Kingsport contends that the Careys “failed to provide any supported facts that would create a dispute of material fact.”

Although we agree with the Careys that Kingsport did not have standing prior to the time the confirmatory deed was recorded, we are not persuaded that dismissal was the only logical result.

The record before us makes clear that Kingsport did not file any pleading in the circuit court asserting that it obtained title to the subject property as a result of the confirmatory deed. That issue was raised for the first time in the circuit court in Kingsport’s motion for summary judgment on remand after our decision in *Carey I*. There is no genuine dispute that at the time the underlying complaint was filed, Kingsport did not own the subject property. For that reason, Kingsport did not have standing to maintain the underlying action and, as a result, it was not entitled to judgment as a matter

of law. The defect in standing, however, may be cured through the filing of an amended complaint if, in the exercise of its discretion, the circuit court permits such a pleading.

Maryland Rule 2-341(a) provides that “[a] party may file an amendment to a pleading without leave of court by the date set forth in a scheduling order or, if there is no scheduling order, no later than 30 days before a scheduled trial date.” After the times set forth in subsection (a), a party may file an amendment to a pleading “only with leave of court.” Md. Rule 2-341(b). “If the amendment introduces new facts or varies the case in a material respect, the new facts or allegations shall be treated as having been denied by the adverse party.” *Id.* Amendments may include, among other things, “transactions or events that have occurred since the filing of the pleading sought to be amended.” Md. Rule 2-341(c).

Maryland courts have imposed a “liberal construction . . . on the allowance of amendments to pleadings.” *Ski Roundtop, Inc. v. Wagerman*, 79 Md. App. 357, 371 (1989). “Generally, amendments to pleadings ‘should be freely allowed in order to promote justice, so that cases will be tried on their merits rather than upon the niceties of pleading.’” *Bord v. Baltimore County*, 220 Md. App. 529, 566 (2014) (quoting *Crowe v. Houseworth*, 272 Md. 481, 485 (1974)). Although “[t]he determination to allow amendments to pleadings or to grant leave to amend pleadings is within the sound discretion of the trial judge,” *Schmerling v. Injured Workers’ Ins. Fund*, 368 Md. 434,

443-44 (2002), such amendments should be freely allowed in order to promote justice.⁴

See McMahon v. Piazze, 162 Md. App. 588, 599 (2005); *Crowe*, 272 Md. at 485.

The facts and procedural posture of the instant case are unique. After our first remand to the circuit court, Kingsport argued that the confirmatory deed was determinative of its fee simple ownership in the subject property and its standing to bring the lawsuit. It did not assert or provide any evidence to suggest that it had standing as a result of equitable considerations. Nor did it request leave to file an amended complaint to include transactions or events that occurred after the filing of its complaint and to correct the defect in standing. There is no dispute that at the time the complaint was filed, Kingsport did not own the property underlying the driveway easement. As a result, Kingsport lacked standing and, for that reason, the circuit court erred in granting summary judgment in favor of Kingsport. We shall remand the case once again. On remand, Kingsport may request leave to file an appropriate amended pleading asserting how and when it came to be the servient tenant, that is, the owner of the property underlying the driveway easement. If that request is granted, and an appropriate amended pleading is filed, the circuit court may determine the limited issues remaining in the case, which are whether Kingsport has an interest in the land underlying the driveway

⁴ We note that Maryland’s Declaratory Judgment Act is remedial in nature: “Its purpose is to settle and afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations. It shall be liberally construed and administered.” Md. Code, Cts. & Jud. Proc. Art. § 3-402.

easement and the corollary issues of whether Kingsport has standing to maintain its case and whether all interested parties are joined.⁵

**JUDGMENT OF THE CIRCUIT COURT
FOR ANNE ARUNDEL COUNTY
REVERSED; CASE REMANDED FOR
FURTHER PROCEEDINGS CONSISTENT
WITH THIS OPINION; COSTS TO BE
PAID BY APPELLEES.**

⁵ We have already determined, and it is the law of the case, that the Careys do not have exclusive access to the driveway such that the obstructive fence cannot be maintained. *Carey I*, 2021 WL 1885126, at *18.