Circuit Court for Wicomico County
Case No. 22-C-15-001032

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1528

September Term, 2016

EDNA FAYE HOLLOWAY, *et al.*,

v.

C. EUGENE GARRETT, *et ux.*

Graeff,
Leahy,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: August 22, 2018

The division of a parcel of land over a century ago, near Powellville Road between the towns of Powellville and Willards in Wicomico County, sowed the conditions for the breakdown in neighborly relations in the underlying case. A road—now known as Layton Lane—intersected the original property.

Ms. Patricia Ann Dize and Ms. Edna Faye Holloway (collectively, "Appellants") are the owners of two parcels that were conveyed out of that original property. They filed suit, asserting that Mr. C. Eugene and Ms. Mary Jane Garrett ("the Garretts" or "Appellees"), owners of other parcels from the original property, infringed on the scope of their use of the western part of Layton Lane. Appellants asserted claims of ejectment, quiet title, and trespass and sought a declaratory judgment as to the nature and width of their easement. Ms. Dize, in her individual capacity, also contended that the Garretts unlawfully seized a strip of her property abutting the road and sought a declaratory judgment as to the boundary line.

Following a two-day trial, the Circuit Court for Wicomico County initially determined that Appellants had an easement by necessity, 24-feet wide, via the western part of Layton Lane. In a revised opinion, however, the court instead concluded that Appellants had an express easement, only 12-feet wide. The court found in favor of Ms. Dize as to her separate claims of ejectment, quiet title, and trespass pertaining to the boundary dispute and declared the boundary line to be the center of Layton Lane. The court awarded zero monetary damages to either Appellant. Following the revised judgment, Appellants appealed, presenting four issues for our review:

1. "Was the circuit court empowered to establish a reasonable width for a right-

of-way, where an express easement did not prescribe any specific width?"

2. "In the alternative, did the lower court err by not finding an easement by necessity?"

3. "In the alternative, did the lower court err by not finding enlargement of the easement by prescription?

4. "Did the circuit court err in failing to award any monetary damages, where Appellants prevailed on counts for trespass and ejectment?"

As to Ms. Holloway, we hold that the circuit court found correctly that an express easement over Layton Lane that is 12-feet wide provides access to her property. As to Ms. Dize's property, however, we find no support in the record for the court's conclusion that an express 12-foot wide easement exists over west Layton Lane. That conclusion requires additional evidence and/or expert testimony. Accordingly, we must remand the case as to Ms. Dize for further proceedings on the issue of the scope of her right-of-way. Therefore, to provide the court as much remedial flexibility as possible, we remand on the issue of both the width and the nature of the easement, i.e. whether Ms. Dize has an express or implied easement. In conducting further proceedings, the court may receive new evidence that may alter its previous conclusions. As to damages, we affirm the court's overall decision to award nominal damages to Ms. Holloway and Ms. Dize as to their successful claims because the effect of the court's award was to vindicate their rights; however, as their fundamental right to private property was violated, we remand with instructions to enter judgment awarding nominal damages of at least one dollar.

BACKGROUND

A. Property Ownership

1. The Original Division

The parcels at issue here were once part of a larger property owned by Thomas A. Jones. As reflected in two surveys, each dated December 19, 1903, Thomas A. Jones's heirs conveyed two parcels from the greater property to John J. Layton and Samson E. Truitt.[1] The surveys utilized an existing private road—now known as Layton Lane—in their metes and bounds descriptions, but those descriptions do not contain any language creating an easement or right-of-way over Layton Lane. The resultant deeds established ownership on either side of Layton Lane. According to Appellants' land surveying expert at trial, this "created the J[ohn] J. Layton lands to the north, which [Ms. Holloway's and Ms. Dize's] propert[ies] are a part of as well as what the [Garretts'] property would have been to the south [of Layton Lane]." Each parcel roughly resembled a parallelogram, with the western bounds of each abutting Powellville Road, then referred to as Mitchel Road, and extending eastward to some point unbounded by a road.

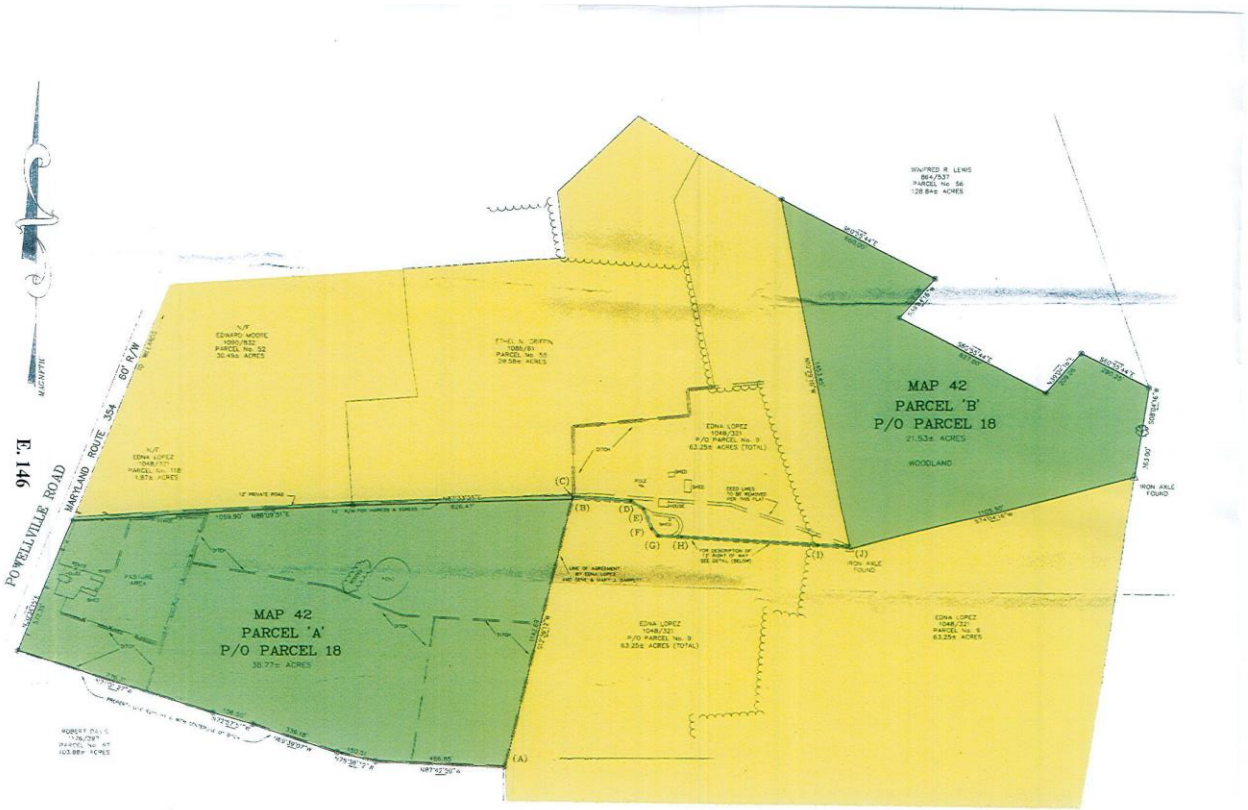
Layton Lane remains listed as a private road in the Wicomico County Roads System.

2. Historical Ownership of the Garretts' Property

According to a 1904 resubdivision survey, most of Samson E. Truitt's land became

[1] The land records reflect that deed conveying the parcel to Samson E. Truitt was recorded in the land records of Wicomico County on March 31, 1904 whereas the deed conveying the parcel to John J. Layton was recorded on April 29, 1904. Neither deed can be found in the record in this case.

part of a larger parcel owned by William G. Dennis, who then sold that parcel along with another parcel (located to the east and connected by Layton Lane) to John E. Layton.[2] The darker-shaded sections in the map below illustrate the property that John E. Layton purchased.[3]



[2] John J. Layton is the father of John E. Layton. John E. Layton is the Appellants' grandfather.

[3] We include a more recent map of the relevant properties. The 1904 survey map is largely illegible and not included here. As best as this Court can discern, the map shown above was not filed in the land records of Wicomico County; however, the trial court admitted it into evidence at the post-trial motions hearing on July 28, 2016. Although outdated in some respects, it is the clearest depiction of the parcels resulting from the division of property once owned by Thomas A. Jones.

John E. Layton's property—the same property owned by the Garretts today—consists of two parcels connected by the eastern portion of Layton Lane, which serves as an isthmus between the two parcels such that the property is "like a barbell."

The first parcel ("Parcel A") borders Powellville Road in the west and spreads eastward to a large ditch that forms its entire eastern border. The second parcel ("Parcel B") is located to the northeast and is surrounded on its southern and western borders by land now owned by Ms. Holloway. East Layton Lane connects the two parcels beginning at Parcel A's northeastern corner and terminating at Parcel B's southwestern corner. Appellants' land surveying expert stated that east Layton Lane was shown on the 1904 resubdivision survey as a 12-foot-wide strip owned in fee simple by John E. Layton. The 1904 resubdivision survey did not indicate whether or not the western portion of Layton Lane was similarly 12-feet wide.

The 1904 resubdivision survey's metes and bounds descriptions have been referenced throughout subsequent deeds relating to the land. In 1917, John J. Layton, John E. Layton,[4] and their respective spouses deeded the property (a/k/a Parcel A, Parcel B, and east Layton Lane) to Edward Dennis.[5] This property remained in the Dennis Family for

[4] According to a plat from February 11, 1916, John J. Layton owned a piece of property located within Parcel A. This piece of property measured "1 acre, 1 Rood, 12 Perches of land, more or less[]" and Powellville Road formed its western border while part of the Western Portion of Layton Road formed its northern border. This land is indicated as "Lot No. 2" in the 1917 Deed. The 1904 survey stated that John E. Layton's lands started "where the Private Road connects with [the] Public Road[;]" however, there is no indication as to when or how John J. Layton obtained Lot 2.

[5] The 1917 deed largely repeated the metes and bounds illustrated in the 1904 resubdivision survey.

nearly 80 years before it was deeded to the Garretts on February 23, 1996.

The metes and bounds descriptions noted in the 1996 deed repeated those found in the 1917 deed. As a result, the Garretts became—and remain—the owners of the barbell-shaped property.

3. Historical Ownership of Appellants' Properties

Compared to the Garretts' property, the chain of title to Ms. Holloway's and Ms. Dize's properties is more nuanced. Both trace their ownership lineage largely back to the 1903 property division that created John J. Layton's property north of Layton Lane. The land that he received north of Layton Lane has since been divided into four main parcels, of which two—one owned by each Appellant—are involved in the underlying case. Apart from their access to Layton Lane, these two parcels are landlocked.

Ms. Holloway is the current owner of a larger parcel of land, more particularly described as Tax Map 42, Parcel 9. Parcel 9 consists of 63.25 acres of land, more or less, and was created from the unification of two parcels. The first of those parcels emanates from the lands north of Layton Lane that John J. Layton purchased in 1903. It is the easternmost parcel carved from those lands and is 17.25 acres; its southwestern corner demarcates the beginning of east Layton Lane, which forms the parcel's southern boundary, and the Garretts' Parcel B forms its eastern boundary. Via a deed dated January 17, 1925, John J. Layton and his spouse created and transferred this easternmost parcel to John E. Layton and his spouse.[6] The record in this case contains a plat, recorded in the

[6] The deed itself is not in the record, but the 1946 plat demarcating the lands of John E. Layton refers to this deed.

land records of Wicomico County on July 29, 1946, which depicts John E. Layton owning this easternmost parcel in addition to a 46-acre parcel located south of both east Layton Lane and the Garretts' Parcel B. As such, John E. Layton and his spouse would have owned a property—dissected by a 12-foot-wide east Layton Lane—totaling 63.25 acres. On July 29, 1946, John E. Layton and his spouse conveyed the entire 63.25-acre property (a/k/a Parcel 9) to Clarence E. Layton and his spouse, and nearly 40 years later, in a deed dated October 14, 1985, Clarence E. Layton deeded Parcel 9 to Edna Faye Lopez, who is today known as Edna Faye Holloway.

Ms. Dize owns a parcel north of west Layton Lane measuring 28.58 acres, more or less, and more particularly described as Tax Map 42, Parcel 55. On August 13, 1933, eight years after John J. Layton transferred the easternmost parcel of his land north of Layton Lane to John E. Layton, he and his spouse created Parcel 55 via a deed to Wallace G. Nocks and his spouse, Ethel Mae Nocks, née Layton. Parcel 55 is bordered to its east by the easternmost parcel, described *supra* and now owned by Ms. Holloway. From its southeastern corner, Parcel 55's southern border extends approximately 858.4 feet westward—along west Layton Lane—with its southwestern corner ending 1,048.62 feet from Powellville Road. After Wallace G. Nocks died in 1973, Ethel Nocks became Parcel 55's sole owner, and on October 31, 1986, Ms. Nocks—whose name was then Ethel Nocks Griffin—deeded it to Ms. Dize (then known as Patricia Ann Mariner).[7]

[7] The most recent map contained in the record still lists Ethel N. Griffin as the current owner of the Central Parcel.

4. Recent Property Plats

After Ms. Holloway renovated the house on her property, she asked the Garretts, who have a fee simple interest in east Layton Lane (dating back to the 1904 resubdivision survey), to agree to move much of east Layton Lane southward. A plat completed on May 21, 2009 depicted the relocation of east Layton Lane and described that portion of the road as a "12' Fee Simple Road Bed for Ingress & Egress[.]" That plat, recorded in Wicomico County on August 30, 2010, also depicted west Layton Lane, labeling it a "12' Private Road[.]" The plat states that such a label was "described in 'Item 1' of Deed 1475/109, [the 1996 deed from Edward A. Dennis to the Garretts,] and originally described in a survey of the lands of John E. Layton by G.E. Jackson, dated 1904."[8]

The signature block on the plat states,

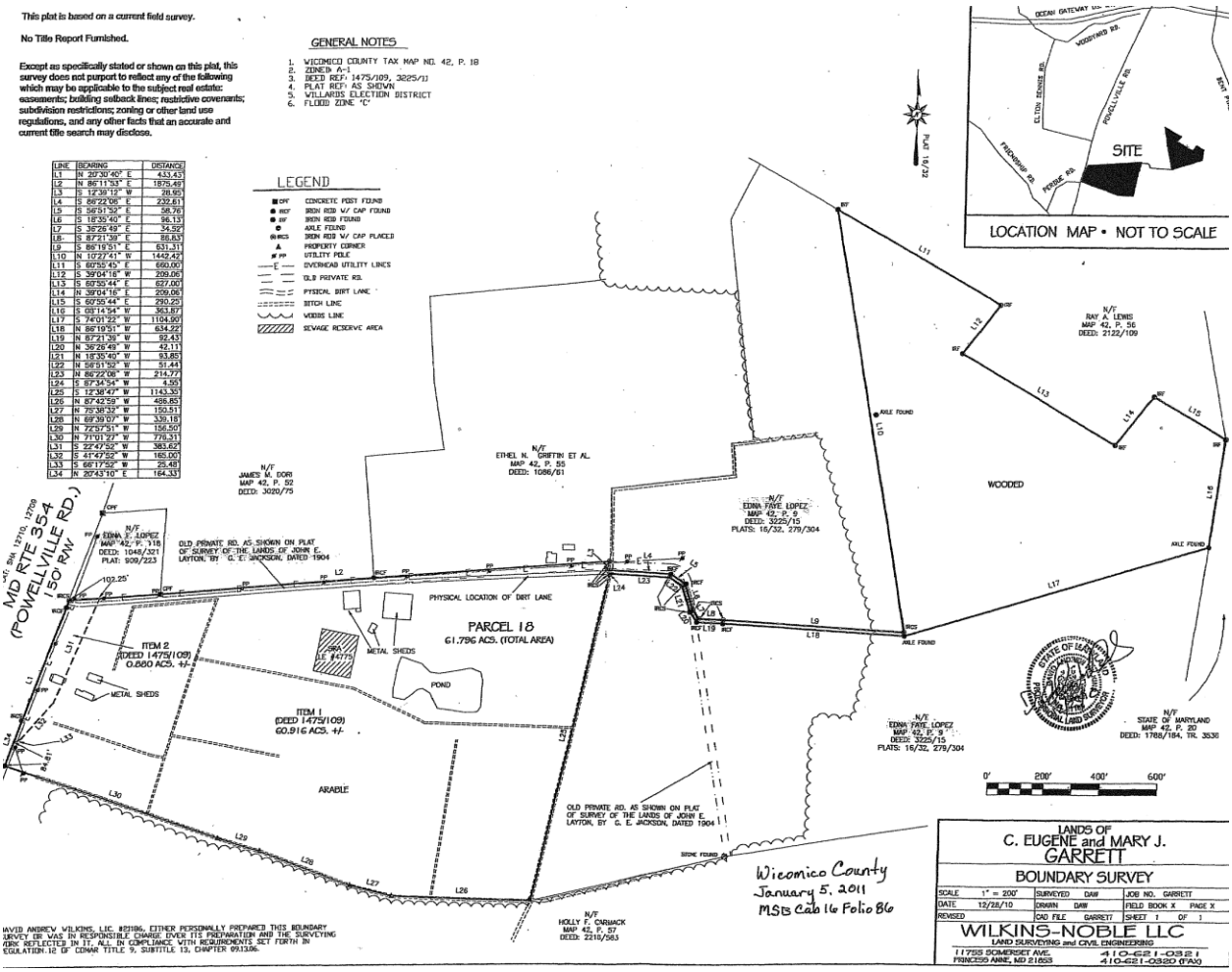
> We the property owners of the parcels shown on this plat, realizing the problems with the recorded deeds, wish to form lines of agreement, shown as the boundaries of *the 12' fee simple road bed*, to be now and forever the real property lines between the owners, their heirs and assigns, whose signatures are affixed hereto.

(Emphasis added). The Garretts and Ms. Holloway exchanged reciprocal deeds on February 12, 2010, affirming this relocation. In the deed from Ms. Holloway to the Garretts, Ms. Holloway reserved an easement over east Layton Lane: "RESERVING, NEVERTHELESS, unto Edna Faye Holloway, her heirs and assigns, a permanent and

[8] We note the discrepancy arising out of this assertion. The 1996 deed repeats the property description contained in the 1917 deed. As we describe *infra*, based on the Garretts' contentions before this Court, further evidence is necessary to determine whether the 1917 deed (and therefore, the 1996 deed) actually describes west Layton Lane as 12-feet wide.

perpetual easement over said twelve foot (12') fee simple roadbed for the purpose of vehicular and pedestrian ingress, egress, and access."

On December 28, 2010, at the behest of the Garretts, Wilkins-Noble LLC completed a plat (depicted below) surveying their land. This plat—not signed by any party—was recorded in the land records of Wicomico County on January 5, 2011. It showed that the Garretts' property extended north of west Layton Lane, extending northeast from the road to create a "kind of a long triangle that at its widest is 28.95 feet[]" (the hypotenuse of which follows the power lines on the property) into the land claimed by Ms. Dize. This plat does not indicate west Layton Lane's width.



B. Impediments affecting the Use of Layton Lane

On October 27, 2014, residential tenants living on Ms. Holloway's property complained about two speed bumps on Layton Lane that the Garretts had erected in 2013. The Garretts had recently situated traffic cones on the sides of each speed bump such that the renters could no longer drive around them as they had; instead, they had to drive across and risk scraping the undercarriage of their cars. After Ms. Holloway and her renters met with the Garretts about removing the speed bumps, the Garretts did so; however, roughly a week later, they posted several speed limit signs close to the edge of Layton Lane. The Garretts also erected stakes, signs, and fences on either side of Layton Lane, which increased the difficulty of getting farming equipment to Appellants' properties. Additionally, on the triangular sliver of Ms. Dize's property that the Garretts now claimed they owned, they planted trees—after removing Ms. Dize's trees, bushes, and plants—at locations that strained the ability of Ms. Dize's farming tenant to access the fields. Ms. Dize had to install a new culvert pipe to remediate part of the problem.

On November 17, 2014, less than a month after removing the speed bumps, the Garretts wrote a letter to Ms. Holloway, which stated, in part:

> [W]e do not need your permission to do what we want on OUR property as long as it does not impede your rights of ingress & egress on the ROW [right-of-way]. The ROW from Powellville Rd. to the ditch, to our knowledge, has never been recorded as[] such.

The letter also advised that "[i]f you are in question of the width please reference the relocation deed between us. The Private Road is the same of [sic] a 12' width." Furthermore, it announced that "written permission, from us, for those that are NOT

landowners [is] required" for use of west Layton Lane. Finally, in the letter, the Garretts warned that if Ms. Holloway's counsel contacted their lawyer, Ms. Holloway would be responsible for their lawyer's fees.

Ms. Holloway's counsel (who later also became Ms. Dize's lawyer) responded to the Garretts' letter on December 4, 2014, instructing the Garretts that they could not require their permission for Ms. Holloway's invitees to use Layton Lane, nor could the Garretts "make any obstruction or interference with [her] reasonable enjoyment[.]"[9] He further indicated that while Ms. Holloway's easement was valid and that nothing needed to be recorded in the land records, "we are not opposed to recording a new express deed of easement, assuming that there is mutual agreement on all issues[.]" The letter also explicitly denied any responsibility for the Garretts' attorney's fees.

C. Litigation and Trial

Appellants filed suit on July 13, 2015, contending that the impediments on Layton Lane interfered with their use and enjoyment of the road. More specifically, Appellants averred:

> In the last year or so immediately preceding the filing of this complaint, and continuing, [the Garretts] have interfered with [Appellants'] and their invitees' use and enjoyment of the private road or easement, now known as Layton Lane, by a series of unilateral actions. [The Garretts] have:
>
> - installed speed bumps and 5 MPH speed limit[] signs on the lane;
> - placed other impediments, such as 2 x 4 pieces of lumber, on the lane;
> - positioned stakes, signs and fencing on the lane in such a way that narrows the lane and makes it impassable by farm equipment, trucks and/or emergency vehicles;

[9] In the letter, counsel noted that his response regarded "the twelve foot wide private road[,]" a term that counsel utilized to "refer to the entire length of the private road[.]"

> - planted trees in strategic locations so as to deny access to [Appellants'] fields; and
> - filled ditches or choked off access to ditches along the lane so the right-of-way will not drain properly and cannot be maintained.
>
> These restrictions, carried out by [the Garretts] unilaterally and without the knowledge or consent of [Appellants], substantially interfere with [Appellants'] rights to the use and enjoyment of the right-of-way.

(Footnote omitted). Accordingly, the complaint stated the following claims: Count I for ejectment, seeking recovery on the use and enjoyment of their land and $25,000 in compensatory damages; Count II to quiet title and requesting a court order stating that they had an easement by way of Layton Lane and enjoining the Garretts from restricting their use of the road; and Count III for trespass, seeking compensatory damages in the amount of $25,000 and punitive damages in the amount of $75,000. Appellants also sought a declaratory judgment regarding the validity of the easement "and confirming that, based upon the nature and extent of past use and enjoyment of the right-of-way by [Appellants] and their invitees, the right-of-way is no longer limited to its original width of 12 feet (12') and should be declared to be a permanent and perpetual right-of-way at least thirty feet (30') in width[.]"

In the same complaint, Ms. Dize asserted separate claims of ejectment, trespass, and natural resources violation regarding the triangular strip of land recently claimed by the Garretts.[10] She petitioned for monetary damages and alleged that the Garretts' conduct

[10] As to the last count, Ms. Dize asserted a claim pursuant to Maryland Code (1973, 2012 Repl. Vol.), Natural Resources Article, § 5-409, which provides a right of action for a party aggrieved by another party's impermissible "cutting, burning, or injuring [of] merchantable trees or timber."

damaged her property by "killing hedges and valuable trees, some of ancient lineage[.]" Ms. Dize further asserted a claim to quiet title and requested judgment declaring her ownership over that piece of property.

The Garretts answered on August 13, 2015, generally denying liability. As to Layton Lane, the Garretts averred that the road was on their property; however, they admitted that Appellants had valid rights to a permanent and perpetual easement or right-of-way over Layton Lane "to the extent that [Appellants] claim usage of a right-of-way 12 feet in width."

The case proceeded to trial before the circuit court on February 24 and March 30, 2016. Appellants argued that there was no historical support for demarcating *west* Layton Lane as only 12-feet wide, contending that the 2009 survey was the first to erroneously delineate this width based on the agreed 12-foot width of *east* Layton Lane. They continued that the Garretts' actions infringed on Ms. Dize's use of her land, which affected her farming tenants' ability to access it. The Garretts, meanwhile, asserted that Appellants essentially sought a prescriptive easement, but that they had given permission for any use of the air rights on either side of west Layton Lane.

1. Appellants' Case

Focusing on the width of Layton Lane, Ms. Holloway testified that she was uncertain as to why the 2009 survey demarcated *west* Layton Lane as 12-feet in width. She claimed that she did not know of any deed listing it as such and said that use of Layton Lane did not change following that survey. Ms. Holloway specified that, in addition to the fact that farm equipment is larger than 12-feet wide, larger equipment is also required just

to maintain the grade of Layton Lane. On cross-examination, Ms. Holloway stated that, historically, the entirety of Layton Lane was likely 12-feet wide but that farmers "have brought equipment wider than 12 feet down that road for a lot, a lot of years." She also admitted that a right-of-way wider than 12 feet would allow her to sell the property as a farm.

Ms. Dize attested to her use of west Layton Lane and discussed the triangular slice of property, the longest edge of which follows the power line, now claimed by the Garretts. Ms. Dize testified that the boundary is the road—the location of which she claimed had not moved—and that the power lines were put "in the fields because when we had to grade the road we wouldn't be running into the poles." She stated that the house on her property is roughly 25 feet from the edge of Layton Lane. Additionally, Ms. Dize maintained that the Garretts' claim over this land prevents her farming tenant from accessing her fields.

Appellants then presented past and present farming tenants to testify as to the scope of their use of Layton Lane. Rev. Dennis Bradford stated that he farmed Appellants' land from "around 1975 or '76" to 1999. He frequently used various farming equipment that measured as wide as 18 feet, and for some of the equipment, disassembly and reassembly (to move the equipment down Layton Lane to the fields) would have been "a half day's job." Despite the width of his farming equipment, Rev. Bradford never had difficulty reaching Appellants' properties nor were there any impediments on the sides of Layton Lane. He admitted his farming equipment's wheels fit on the lane such that any interference would have been from an inability to use the "air space"—the air above the land directly next to the road; however, Edward A. Dennis (the Garretts' predecessor in

interest) had permitted his use of the air space.

Two subsequent tenants, Mr. Freddy Massey and Mr. Keith White, also testified. Mr. Massey farmed both properties for several years and currently farms Ms. Holloway's property; Mr. White currently farms Ms. Dize's property. They each testified that they used equipment that measured as wide as 21 feet,[11] and both received permission from the Garretts to use an area greater than 12-feet wide. Even still, because of the recent impediments on Layton Lane, neither tenant can safely drive the equipment measuring 21-feet wide down Layton Lane; they must bring it on a cart.

Appellants also offered testimony from Mr. Peter Richardson, an expert on farming equipment. Over an objection, he presented an opinion on the width of a right-of-way needed to move modern farming equipment. Mr. Peterson stated, "I want 40 feet, but these farmers can – they can make it with 25 or 30 feet. 25 feet is more difficult. . . . [W]ell, the next level they go to is when they [] fold up planters they are going to be 12 to 15 feet wide." But if a farmer was limited to using a 12-foot-wide road, Mr. Richardson said that it would be difficult to find someone to till the land and would adversely affect the property's value.

Focusing on land rights, Mr. Franklin Douglas Jones, Appellants' expert in land surveying, testified as to the accuracy of the 1903 surveys:

> These original ones were really close by our standards. You have to remember that the way they surveyed back then was more likely with a compass, a staff compass. So when you look at the bearings they are all

[11] Mr. Massey also testified that he owns a bean head that measures 30-feet wide; however, he must use a cart to drive that equipment safely on Powellville Road and thus continues to use the cart on Layton Lane.

> usually to the degree or to the half degree, sometimes they got fancy enough to get to the 20 minutes, but you would never seem them, you know, maybe less than 15 minutes[.] . . . Well, it was very open. Compasses are subject to attraction, declarations, they are subject to so many variable[s] that would pull a needle one way or the other that when you find a survey that closes within 25 feet and it describes 85 acres, as a surveyor we're pretty happy because a lot of times we're looking at it and it's 300 feet of error in closing.

Mr. Jones then opined that these surveys, which established John J. Layton's lands north of the road and the parcels to the south, closed within 25 feet.

Mr. Jones drew the descriptions of previous surveys of west Layton Lane, and according to him, his drawing of the 1903 surveys and 1904 resubdivision survey indicated that the Garretts' property line did not cross into west Layton Lane until well into the part of the road abutting Ms. Dize's parcel and also did not cross into her property. He believed that Wilkins-Noble's 2010 survey was incorrect but that the 2009 survey by Hampshire was largely correct—with one main flaw. Prior to the 2009 survey, no records stated that west Layton Lane was limited to a 12-foot width. Instead, he stated that the width between the property lines is "around 28 to 25 to 24 feet[]" and as to the road's physical width, he asserted that it is "probably around 14, 15 feet, 16 feet, somewhere in there." Further, Mr. Jones stated his belief that a 1978 survey—depicting a small corner lot north of Layton Lane and abutting Powellville Road—seemingly demarcated west Layton Lane's northern turning radius as 13 feet and showed the road's width "as being closer to the 25 foot, 28 foot[.]" Mr. Jones stated that use of "the road was reserved" by those parcels north of west Layton Lane.

On cross-examination, Mr. Jones noted that he could not locate the first point listed in early surveys—a stone supposedly in the middle of the entrance to Layton Lane. He

agreed that Ms. Holloway's 1985 deed bounded her property "by and with the northerly line of the private road[.]" Counsel pointed to several deeds and surveys listing that northern bound as the property line; however, Mr. Jones believed that these materials were the incorrect and that the ensuing gap between the power lines and Layton Lane would have created "use of a road for the two other properties back there and it guaranteed that that was their road. . . . It did not establish the southern line as being one and the same with this edge of the road." Appellants rested their case, and upon motion by the Garretts' counsel, the court granted judgment in the Garretts' favor on Ms. Dize's natural resources claim because the Garretts' purported conduct was not within the purview of the asserted statute.

2. Appellees' Case

Presenting their case, the Garretts first called their surveying expert, Mr. David Andrew Wilkins from Wilkins-Noble. In mapping the descriptions tracing back to the 1917 deed, Mr. Wilkins used, as a property line, "a private road by and with said private road and line of John J. Layton land[.]" Mr. Wilkins opined that the deed indicated that the property line bordered the road and that Mr. Layton would not have owned any land south of Layton Lane. According to Mr. Wilkins's own survey, however, the property line coincidentally follows the power lines—though he stated the power lines were irrelevant to his survey—and he disagreed with Mr. Jones's assertion that a gap between property lines existed. Therefore, he believed that the Garretts' property encompassed Layton Lane and the triangular sliver of the parcel claimed by Ms. Dize. As to why his survey created that sliver, he noted, "The deed calls for a long straight line. It's a matter of opinion, I

guess, as to whether the deed is right or whether the road is still in the same spot." Mr. Wilkins, later in his testimony, also stated that "the recorded right-of-way is nonexistent."

On the second day of trial, Ms. Garrett testified, stating that when the Garretts purchased their property, she understood the northern boundary as the power lines. She acknowledged that their ownership in Layton Lane was subject to others' right to use the road; that they had given verbal permission for farmers to exceed 12 feet; and that they would move their temporary fence if the farmers needed the additional space. According to Ms. Garrett, on cross-examination, the width between the poles and the stakes and speed limit signs is 20 feet. Additionally, Ms. Garrett iterated that Wilkins-Noble's 2010 survey, indicating that their property extended into that claimed by Ms. Dize, conformed with what Mr. Dennis had told them when they purchased their property. Mr. Garrett agreed with her testimony.

3. Recall of Appellants' Expert Land Surveyor

Mr. Jones was recalled as an expert witness and stated that no surveys, apart from the 2010 survey, delineated the power lines as the entire property line; instead, he reiterated that the 1978 survey—platting solely the first 312.41 feet of west Layton Lane—was the only portion where the property line ran with the power lines. He stated that the Garretts acknowledged the southern edge of Layton Lane as the property line by signing the 2009 survey and reiterated that there was no evidence that west Layton Lane was historically 12 feet. Instead, he opined that it would either be 12 feet or 24 feet. During cross-examination, when Mr. Jones was asked about Layton Lane's width as indicated in the 1904 resubdivision survey, the court noted that west Layton Lane had dotted lines, "[s]o

we don't know the width[,]" but east Layton Lane's lines had no breaks.

D. Judgment, Post-Trial Motion, and Revisions to Judgment

On May 17, 2016, the circuit court issued its judgment, deciding three questions: (1) the easement's location; (2) its nature; and (3) its width. First, in resolving what it asserted was the "relatively minor issue when compared to the scope of the easement[,]" the court placed the boundary line between Ms. Dize and the Garretts "at the northerly line of [Layton Lane] where it physically exists today, because that is what both sides have contended throughout these proceedings." In other words, the court described the boundary in the declaratory judgment as "fixed at a point . . . from the center line of the road bed where it is physically found at a uniform distance of six feet along its entire length[.]"

The easement's width, according to the court, depended on how the easement arose. Although the court reviewed the requirements of an express easement, the court did not decide if one existed. Turning to implied easements, the court found that Appellants did not have an easement by prescription because "permissive use of another's land can never ripen into adverse use." Instead, the court found that the evidence satisfied the elements of an easement by necessity: (1) unity of title; (2) severance of that unity of title; and (3) the requirement of an easement to access a public road at the time of severance. Crediting testimony on the increasing size of farm equipment, the court declared the easement to be 24 feet in width. The court noted that the fact that the Garretts and Ms. Holloway agreed to a 12-foot fee simple road bed "east of the big ditch" for ingress and egress "is not controlling with respect to the nature and scope of the easement west of the big ditch."

The court found in favor of Ms. Holloway for ejectment, quiet title, and trespass for the claims Appellants asserted together and for Ms. Dize for her claims of ejectment, quiet title, and trespass for the boundary dispute. The court, however, awarded "zero monetary damages[.]" The court declared that:

> A way by necessity in favor of [Ms.] Holloway be located over and across [the] Garretts' land to Powellville Road;
>
> Away by necessity in favor of [Ms.] Dize be located over and across [the] Garretts' land to Powellville Road;
>
> Said way by necessity be exercised by [Appellants] at a maximum width of twenty-four (24) feet which shall be measured in a generally southerly direction from the aforesaid boundary line between the lands of [Ms.] Dize and [the] Garretts[.]

One week later, the Garretts moved to revise the judgment. They argued that at the time of 1917 deed, "the 'dominant' estate [a/k/a John J. Layton's lands north of Layton Lane] had access to a public road, i.e., Powellville Road, and there was no necessity to establish at that time an easement across the lands conveyed to [the Garretts'] predecessor in title[.]" They relied on the 1917 deed and Ms. Dize's deed in addition to several plats showing the land ownership of John J. Layton and John E. Layton and their access to Powellville Road:

> [] Because Layton clearly retained access to a public road after he severed the estates in 1917, an easement by necessity across the [Garretts'] land to Powellville road did not arise. When he or his successors in interest severed the residue of his estate long after 1917 and thereby eliminated his access to Powellville Road[.] . . . [H]owever, there was no necessity that existed in 1917 to warrant [] imposition of an easement across [the Garretts'] land to Powellville Road.

(Footnote omitted). Thus, the Garretts contended that Appellants did not meet their burden

of proving an easement by necessity. They further iterated that even if Appellants were entitled to a prescriptive easement, the court could not increase its width.

Appellants opposed on June 3, 2016, and in their memorandum, pointed out the Garretts' longstanding recognition of the validity of the right-of-way. They continued that it is irrelevant whether there is an easement by prescription or by necessity because its width was not expressed. Appellants further argued that unity of title did not exist because in 1917, only John J. Layton owned the lands north of the road, as opposed to the land south of the road—the land that the Garretts now own—which he and three others owned.

The circuit court revised its judgment on September 7, 2016. The court concluded that the Garretts were correct regarding unity of title, stating, "When John J. Layton severed the unity of title, he and his grantees still retained land fronting on the public road. There was [no] need for other access to it, and therefore no easement by necessity exists[.]" The court concluded that there was also no easement by prescription but instead found that Appellants had an express easement of "a uniform width of twelve feet[;]" however, the court did not indicate in what document an easement was expressed. The court reiterated the boundary line as "at a point located in a generally northerly direction from the center line of the road bed . . . at a uniform width of six feet[.]" Near its conclusion, the decision stated, "the undersigned judge adopts his previous view that twenty-four feet is reasonable under modern conditions, but he feels constrained by existing Maryland case law that seemingly leaves him powerless to widen it[.]"

Appellants timely noted their appeal on September 21, 2016.

DISCUSSION

I.

EXPRESS EASEMENT

a. Parties' Contentions on Appeal

Appellants first contend that a court can increase the width of an express easement, except when that easement has a prescribed width. They aver that their easement has no specific width, contending that it is thus an express, general easement. Appellants maintain that until the 2009 survey, which relocated east Layton Lane, no record demarcated west Layton Lane as 12 feet in width. As a result, Appellants contend that they have a general easement, created by plat, because several deeds and surveys demarcate a private road without fixing the road's width. Finally, they argue that the court's power to define the easement's width is consistent with affording "the owner of the dominant estate [] the right to [] reasonable use and enjoyment of [an] easement."

The Garretts respond that sufficient evidence exists to support the trial court's finding that the easement is 12-feet wide, emphasizing language used in the parties' filings, counsels' correspondence, witness testimony, and prior land surveys and deeds. They argue that the 2009 survey and the reciprocal 2010 deeds, which relocated east Layton Lane, designate the entire road as 12 feet in width. The Garretts then aver, for the first time, that even if there is no prescribed width, the court should construe the easement from the parties' intent at the time of the 1917 deed because they believe that to be when the easement was created. During oral argument before this Court, counsel said the calls in that deed contain the description delineating the easement as 12-feet wide and that it is

expressed via incorporation of the plats into the 1917 deed description.

As we explain next, the evidence presented at trial demonstrated satisfactorily that Ms. Holloway has an express easement of a uniform 12-foot width; the evidence was insufficient, however, for the court to make that determination as to west Layton Lane and Ms. Dize's easement.

b. Express Easement

Maryland 8-131(c) dictates our review of this case tried without a jury. Pursuant to that rule, we defer to the circuit court's factual determinations and will not disturb them unless clearly erroneous. We review legal conclusions de novo. *Garfink v. Cloisters at Charles, Inc.*, 392 Md. 374, 383 (2006).

An easement is defined as "a non-possessory interest in the real property of another," as it "provides generally the owner of one property a right of way over the real property of another." *Lindsay v. Annapolis Roads Prop. Owners Ass'n*, 431 Md. 274, 290 (2013) (internal citations and quotation marks omitted). In an easement not enjoyed by the public, two types of tenements exist: the property with the non-possessory interest is the "dominant estate," whereas the property burdened is the "servient estate." *USA Cartage Leasing, LLC v. Baer*, 429 Md. 199, 208 (2012) (citation omitted). The rights of the owner of the servient estate are restricted, *Reid v. Washington Gas Light Co.*, 232 Md. 545, 548-49 (1963), as the owner of the dominant estate "is entitled to use the easement in a manner contemplated at the time of the conveyance[.]" *Rogers v. P-M Hunter's Ridge, LLC*, 407 Md. 712, 731 (2009) (citation omitted).

Several categories of easements exist, as they "may be created by express grant, by

reservation in a conveyance of land, or by implication." *USA Cartage Leasing*, 429 Md. at 208 (citation omitted). Generally, "an easement by express grant or reservation may be created only in the mode and manner prescribed by the recording statutes." *Kobrine, LLC v. Metzger*, 380 Md. 620, 636 (2004) (internal quotations omitted). Thus, we normally look for a deed "containing the names of the grantor and grantee, a description of the property sufficient to identify it with reasonable certainty, and the interest or estate intended to be granted, [which] is sufficient, if executed, acknowledged, and, where required, recorded." Maryland Code (1974, 2015 Repl. Vol.), Real Property Article ("RP"), § 4-101(a)(1). As a result, when interpreting an instrument that purportedly creates an express easement, we apply "the basic principles of contract interpretation[.]" *White v. Pines Cmty. Improvement Ass'n*, 403 Md. 13, 31-32 (2008) (citation and quotation marks omitted). In doing so, a court attempts to "ascertain and give effect to the intention of the parties at the time the contract was made, if that be possible." *Id.* (citation and quotation marks omitted). If the instrument's language is unambiguous, we interpret it according to its plain meaning. *Id.* (citation and quotation marks omitted).

1. Ms. Holloway has an express easement 12-feet wide over east Layton Lane

Ms. Holloway does not hold any property that fronts west Layton Lane; instead, her property is dissected by east Layton Lane, which the Garretts own in fee simple. In 2009, Ms. Holloway and the Garretts signed a plat, commissioned by Ms. Holloway, which settled the relocation of east Layton Lane and reiterated the width of the roadbed as 12 feet (for east Layton Lane only). The 2010 reciprocal deeds that the Garretts and Ms. Holloway exchanged effectuate this understanding and provide Ms. Holloway an easement over east

Layton Lane. Given that Ms. Holloway owns the land on either side of the 12-foot wide roadbed, she does not need a right-of-way to use the land abutting the road. However, the plat that accompanied the deed she signed also showed west Layton Lane as 12-feet wide. If Ms. Holloway sought use of west Layton Lane wider than 12 feet, she should have negotiated with the Garretts at that time. With no other evidence in the record, we affirm the circuit court's finding that Ms. Holloway has only a 12-foot wide easement over Layton Lane.

2. It is unclear whether Ms. Dize has a 12-foot express easement over west Layton Lane

The documents signed between the Garretts and Ms. Holloway cannot bind Ms. Dize to a 12-foot-wide express easement over west Layton Lane. To find that Ms. Dize has an express easement, a deed or some other satisfactory instrument that adequately defines the rights of the parties pursuant to statute or other accepted method is therefore required. Based on our review of the record below, we cannot discern from the plain language of any document how wide west Layton Lane is or whether Ms. Dize has an express easement limited to a specific 12-foot width over west Layton Lane. Further, we did not find any expert testimony in the record that interpreted an instrument applicable to Ms. Dize and specifically limited her (or her predecessor in title's) rights over west Layton Lane. In rendering the revised opinion and order in this case, the court did not identify a document or any other source that expresses a 12-foot easement over west Layton Lane. We therefore conclude that—as the record currently stands—the circuit court did not have the necessary evidence before it to find that Ms. Dize is limited to an express 12-foot easement over Layton Lane.

The Garretts' new argument on appeal is that such an easement can be discerned from the boundary calls contained in the 1917 deed to Edward Dennis from John J. Layton, John E. Layton, and their respective spouses. However, this is a factual finding reserved for the trial court that will probably require the aid of expert testimony. As Appellants' land surveying expert witness, Mr. Doug Jones, explained during trial, surveyors at that time used staff compasses, which "are subject to attraction, declarations [and] so many variable[s] that would pull a needle one way or the other[.]" Given antiquated technology at issue, and the potential shifts in the magnetic poles over the years, an expert is required in a case such as this to interpret the metes and bounds description in the deed. We cannot conclude, as a matter of law, that the 1917 deed contains an express easement, let alone an easement of a prescribed 12-foot width. We remand for proceedings so that the court can consider additional testimony and evidence concerning the nature and scope of the easement over west Layton Lane, including whether the easement may be enlarged to accommodate modern farming equipment.

II.

IMPLIED EASEMENTS

A. Easement by Necessity

In the alternative, Ms. Dize argues that the circuit court incorrectly reversed its opinion that no easement by necessity existed. She asserts, "Legally, there had to be unity of title between the grantors['] southerly parcel . . . and the northerly parcel that retained access to Powellville Road." Harkening back to the 1917 deed, she alternatively argues that "[u]nity of title between the north and south properties is . . . lacking" because what is

now the Garretts' land was owned by four owners, including John J. Layton, while the land north of the road was owned solely by John J. Layton. Ms. Dize maintains that the circuit court's initial finding of an easement by necessity was correct and contends that such necessity requires access via Layton Lane.

Conversely, the Garretts allege that an easement by necessity did not occur "because no *grantee* is claiming an easement by necessity over the lands of a *grantor*." The Garretts contend that Ms. Dize had the burden of proving the required necessity but failed to do so. Further, they contend that in the 1917 deed, when the four owners, including John J. Layton, deeded what is now the Garretts' land, the remaining land was owned by John J. Layton and that the parcel he owned with John E. Layton had access to Powellville Road.

An easement by implication occurs "'by prescription, necessity, the filing of plats, estoppel, and implied grant or reservation where a quasi-easement existed while the two tracts are one.'" *Annapolis Roads Prop. Owners Ass'n*, 431 Md. at 291 (quoting *Boucher v. Boyer*, 301 Md. 679, 688 (1984)). Easements by necessity result from "a presumption that the parties intended that the party needing the easement should have access over the land." *Calvert Joint Venture #140 v. Snider*, 373 Md. 18, 39-40 (2003) (citation omitted). Often, these easements will arise when a landowner grants a parcel of land, which lacks access to a public road except over land kept by the landowner or by a third party, to another individual. *USA Cartage*, 429 Md. at 208 (citation omitted). Easements by necessity satisfy core public policy principles of full utilization of land and a presumption that parties intend for land to be suitable for occupancy. *Stansbury v. MDR Development, LLC*, 390 Md. 476, 488 (2006) (citation omitted). "Maryland has accepted the general rule that where

there is a grant of land without any express reservation of an easement, a reservation is implied if the easement is reasonably necessary for the fair enjoyment of the property." *Id.* (quoting *Greenwalt v. McCardell*, 178 Md. 132, 138 (1940) (additional citations omitted)).

Our courts have distilled three prerequisites for an easement by necessity:

> (1) initial unity of title of the parcels of real property in question; (2) severance of the unity of title by conveyance of one of the parcels; and (3) the easement must be necessary in order for the grantor or grantee of the property in question to be able to access his or her land, with the necessity existing both at the time of the severance of title and at the time of the exercise of the easement.

Id. at 489 (citation omitted).

To establish unity of title, the party asserting an easement by necessity must demonstrate that, at one point, the estates—dominant and servient—were owned by the same individual. *Rau v. Collins*, 167 Md. App. 176, 186 (2006). Further, that party must also show how title was severed. *Stansbury*, 390 Md. at 489. And finally, the party asserting existence of the easement must demonstrate a necessity existing *at the time of* the grant; necessity that arises at some point after the conveyance is irrelevant. *Id.* (citing *Hancock v. Henderson*, 236 Md. 98, 104-05 (1964)).

The Court of Appeals has also recognized that, "'when a property owner subdivides property and makes or adopts a plat designating lots as bordering streets, and then sells any of those lots with reference to the plat, an implied easement of way passes . . . over the street contiguous to the property sold.'" *Lindsay*, 431 Md. at 299-300 (quoting *Kobrine*, 380 Md. at 639). Therefore, for such a property, an "implied easement extends [] to the abutting roadway and permits use of that roadway only until it reaches some other street or

public way." *Kobrine*, 280 Md. at 639 (citations omitted).

We first note that Layton Lane existed prior to the partition of Land in 1917—even the earlier 1903 and 1904 surveys utilized Layton Lane in their metes and bounds descriptions. Although the court's finding that the boundary line between Ms. Dize and the Garretts is not directly challenged in this appeal, we recognize that, should evidence be introduced on remand that shows, for example, that the actual boundary lies at the center of west Layton Lane (rather than to the north), the court should have flexibility to reconsider whether, in 1933 John J. Layton, the grantor of Parcel 55 (Ms. Dize's parcel), intended to create an easement by necessity over west Layton Lane to Powellville Road.[12] Therefore, we vacate the court's decision as to Ms. Dize that there is no easement by necessity.

B. Easement by Prescription

Ms. Dize next contends that the circuit court erred by not finding that an easement by prescription exists because she, and her farming tenants, have continuously used an area much wider than 12 feet for at least the last 20 years. She reiterates her expert land surveyor's testimony that a 1978 plat showed a width of 25 to 28 feet and that the width of west Layton Lane is physically 14 to 16 feet. Ms. Dize avers that an express easement can be enlarged by prescription when the easement holder satisfies the requisite elements and

[12] *See also* RP § 2-114. The Court of Appeals in *Callahan v. Clemens* observed that this "statute merely extends a presumption that was recognized at common law[,]" and which provides "that any conveyance binding upon a highway carries to the grantee title to the center thereof, in the absence of an express provision to the contrary." 184 Md. 520, 526 (1945) (noting also that this presumption extends to both public and private roads); *see also Barchowsky v. Silver Farms, Inc.*, 105 Md. App. 228, 239 (1995).

believes such a result is warranted here given her use of the "air rights" on the sides of the road for over thirty years.

In response, the Garretts refer to the circuit court's finding that there was no easement by prescription because there was no adverse use of the land. The Garretts contend that the evidence demonstrates that use beyond the 12-foot wide physical roadbed of west Layton Lane was permissive, and such permission cannot evolve into adverse use.

Like an easement by necessity, an easement by prescription arises via implication. An easement by prescription, however, occurs "when 'a party makes an adverse, exclusive, and uninterrupted use of another's real property for twenty years.'" *Jurgensen v. New Phoenix Atl. Condo. Council of Unit Owners*, 380 Md. 106, 123 (2004) (quoting *Kirby v. Hook*, 347 Md. 380, 392 (1997)). To be adverse, the use must occur openly without the landowner's permission. *Kirby*, 347 Md. at 392. When the party can demonstrate such use, the landowner then has the burden "to show that the use was permissive." *Id.* (citation omitted). Conversely, "the burden[] will not shift if the use *appears to have been by permission*[.]" *Banks v. Pusey*, 393 Md. 688, 699 (2006) (citations omitted) (emphasis in original). That is because "[a]s a general rule, permissive use can never ripen into a prescriptive easement." *Kirby*, 347 Md. at 393 (citing *Phillips v. Phillips*, 215 Md. 28, 33 (1957)).

Here, as the record currently stands, Ms. Dize has owned her property for over 30 years, throughout which she and her invitees have used west Layton Lane. One of her farming tenants, Rev. Dennis Bradford, farmed both Ms. Dize's and Ms. Holloway's parcels for nearly 25 years and testified that he always had permission from the previous

owner of the Garretts' property to use the air rights on the side of Layton Lane. A subsequent tenant, Mr. Freddy Massey, who began using the lane in 1999, also stated that he received the Garretts' permission to get his farming equipment, which is wider than 12 feet, to Appellants' property. Finally, Mr. Keith White, Ms. Dize's current tenant, agreed that he too had received permission from the Garretts to use an area wider than 12 feet. Ms. Dize's and her invitees' use of west Layton Lane has been open and continuous for over 20 years. But we discern no evidence that the use was adverse, and based on the current record, we would agree with the court that, as a matter of law, there is no prescriptive easement.

III.

DAMAGES

Focusing on damages, Appellants argue that the circuit erred when it awarded "zero monetary damages," despite finding for Ms. Holloway on ejectment, quiet title, and trespass regarding the easement and for Ms. Dize on ejectment, quiet title, and trespass regarding the boundary dispute. Appellants contend that for trespass and ejectment, the circuit must award at least nominal damages. Appellants further assert that the circuit court should have awarded compensatory damages because the Garretts interfered with their use and enjoyment and effectively seized part of Ms. Dize's property by altering its landscaping. Regarding specific damages, Ms. Dize argues that due to the Garretts' actions, she had to install a new culvert pipe, have a land survey performed, and lost $200 worth of plants; Ms. Holloway asserts that she felt insecure using her property and that the Garretts' actions negatively affected the property value of her land.

The Garretts refer to the circuit court's finding that, while the Garretts had technically violated Appellants' rights, Appellants had not suffered compensatory damages as a result.[13] Likewise, regarding Ms. Dize's separate claim of trespass, the Garretts note that Ms. Dize simply guessed the value of her plants and that they planted trees on her property only after a survey indicated it was part of their property.

When making an award of actual damages, a factfinder looks to the "nature and extent of the injury" to determine "how that injury may translate into a dollar amount." *Brown v. Smith*, 173 Md. App. 459, 483 (2007) (citation omitted). For an award of nominal damages, however, the focus is on validation of the party's rights. *Id.* The factfinder's award, if any, will depend on what kind of damages it is remedying. *Id.* at 484. In the absence of proof of actual damages, nominal damages—usually less than a dollar—remain the remedy to vindicate an individual's rights. *Id.* at 479, 483 (citation omitted). In Maryland, unlike other states, the amount awarded as nominal damages is not fixed, *see id.* at 480 n.7, and appellate courts will not overturn the sum awarded for nominal damages unless it is "deemed excessive[.]" *Id.* at 482. As to damages caused by trespass, "affirmative proof" is not required because the owner "'at least sustains a legal injury'" even in the absence of actual injury, and thus is entitled to damages even if "'so small as

[13] The Garretts contend that Appellants did not raise the issue of nominal damages prior to judgment or file a post-trial motion to modify judgment and thus cannot do so on appeal. But Appellants, in their complaint, argued for compensatory damages together on Counts I, II, and III. Separately, Ms. Dize requested compensatory damages on Counts V, VI, and VII. The issue of damages was raised throughout trial, as both Appellants discussed the various instances in which they felt wronged and deserved damages. Therefore, we conclude that Appellants preserved this issue for our review. *See* Md. Rule 8–131(a).

to be merely nominal.'" *Id.* at 480 (quoting *B & O R.R. Co. v. Boyd*, 67 Md. 32, 40 (1887)).

Generally, "because of the inconsequential monetary value of nominal damages, an appellate court will not reverse a judgment merely for the purpose of permitting the recovery of nominal damages." *Zok v. State*, 903 P.2d 574, 579 (Alaska 1995) (surveying several cases from state courts across the nation as well as a secondary source for this proposition). But, "[t]he right to private property, and the protection of that right, is a bedrock principle of our constitutional republic." *Mayor & City Council of Balt. v. Valsamaki*, 397 Md. 222, 241 (2007) (discussing the extent of the State's power of eminent domain). As such, when a violation of a "sufficiently important and fundamental" right occurs, vindication requires "an award of at least nominal damages[]" such that the judgment must refelct a minimal amount. *Zok*, 903 P.2d at 579 (concluding that freedom from unlawful confinement is a fundament right).

First, we note that the court entered judgment for Ms. Holloway on Appellants' claims of ejectment, quiet title, and trespass regarding the easement; however, it essentially decided against Ms. Holloway on part of these claims. Appellants sought a determination that their easement was "no longer limited to its original width of 12 feet" and that damages arose from the Garretts' alleged interference with an expanded easement. In its revised decision, however, the court found that there was an easement with a width of only 12 feet. On several occasions, the Garretts interfered with Ms. Holloway's use and enjoyment of the easement, including the installation of speed bumps on the road. Yet, despite stating that it was awarding nominal damages, the court granted her "zero dollars monetary

damages."

As to Ms. Dize, the circuit court chose to vindicate her rights by finding in her favor on her separately asserted claims of ejectment, quiet title, and trespass. It heard testimony regarding the damages that Ms. Dize felt she suffered, including that the Garretts' possession of the triangular sliver disrupted her tenant's entry to her land, required installation of a culvert pipe, and caused a loss of flora. Based on this evidence, however, the circuit court decided to award "zero dollars monetary damages."

The circuit court, sitting without a jury, has the duty to determine an award based on the evidence and testimony presented. It can award nominal damages when it credits evidence demonstrating a violation but does not believe an award of actual damages will further remedy the situation. *See Brown*, 173 Md. App. at 480, 482-83. As such, we affirm the circuit court's decision to vindicate Appellants' rights, but as their fundamental rights to private property was violated, the circuit court on remand must award nominal damages of at least one dollar. *See Zok*, 903 P.2d at 579.

JUDGMENTS OF THE CIRCUIT COURT FOR WICOMICO COUNTY VACATED IN PART AND AFFIRMED IN PART. CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. APPELLANT HOLLOWAY TO PAY 50% OF THE COSTS; APPELLEES TO PAY 50% OF THE COSTS.