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

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1571

September Term, 2019

ASHER B. CAREY III, et al.

v.

KINGSPORT COMMUNITY ASSOCIATION INC.

Gould,
Zic,
Battaglia, Lynne, A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Battaglia, J.

Filed: May 11, 2021

In October of 2019 a declaratory judgment was entered in the present case, a driveway dispute between homeowners Asher and Cynthia Carey, Appellants and Cross-Appellees, and Kingsport Community Association Inc., Appellees and Cross-Appellants. The declaration provided:

> This matter came before the Court on September 4, 2019 through September 6, 2019 for a merit hearing on Declaratory Relief and Injunctive Relief. For the reasons set forth in the Memorandum Opinion filed with this Order,[1] it is this 8th day of October 2019, by the Circuit Court for Anne Arundel County, hereby:
>
> **ORDERED**, that judgment be entered in favor of Plaintiff Kingsport Community Association, Inc. ("Kingsport") and against Defendants Asher B. Carey, III and Cynthia M. Carey ("Defendants") as to all counts in the above captioned matter; and it is further,
>
> **ORDERED**, that by declaration of this Court, Defendants do not have an exclusive right to the Driveway Easement provided through the Easement Termination and Agreement dated August 1, 2001 and recorded in the land records for Anne Arundel County, Maryland at Liber 10634, folio 358 ("Easement Agreement"). Kingsport may use the property subject to the Driveway Easement in a manner not inconsistent with its fee simple property rights or established law; and it is further,
>
> **ORDERED**, Defendants are enjoined and restrained from interfering with Plaintiff or its residents' access or use of the Driveway Easement; and it is further,
>
> **ORDERED**, that by declaration of this Court, Defendants' construction of a fence exceeded the rights provided to them in the Easement Agreement and interfered with Kingsport's rights as fee simple owner of the property; and it is further,
>
> **ORDERED**, that Defendants shall remove at their expense the fence they built on Kingsport Property and/or the Driveway Easement on or before December 5, 2019.

[1] No Memorandum Opinion could be located in the record.

The Careys challenge various aspects of the Order, raising five questions in their appeal:

> (1) Whether it was error for the trial court to refuse to address the issue of ownership of the Driveway when the issue of ownership was not disputed by Kingsport and standing is an essential element to Kingsport's case as a matter of law?
>
> (2) Whether it was error for the trial court to issue [a] declaratory judgment when the rights of the fee simple owner of the Driveway were at stake and the fee simple owner of the Driveway was not a party to the case?
>
> (3) Whether the trial court erred when it failed to properly interpret the easement document as a matter of law?
>
> (4) Whether the trial court erred when it failed to consider extrinsic evidence when purporting to render a decision related to the rights and duties of Kingsport and the Careys as a matter of law?
>
> (5) Whether the trial court's order on declaratory relief must be reversed for failure to issue a separate declaration of rights of the parties as a matter of law?

Kingsport, raised six questions,[2] one of which constituted its cross-appeal:

[2] Five additional questions that appear to rephrase the Careys' questions were raised by Kingsport:

> 1. Whether the Confirmatory Deed renders Appellants' issues on appeal related to standing and necessary parties moot?
>
> 2. Whether Appellee's equitable interest in Appellee's Property provided sufficient standing?
>
> 3. Whether the signing of the Confirmatory Deed by the recipients of the mistaken deed satisfies the exception to the joinder requirement?
>
> 5. Whether the trial court was legally correct in determining that the Easement Agreement did not provide rights to Appell[ants] to obstruct the subject easement and Appellee's Property with a permanent fence?
>
> 6. Whether the trial court properly rendered a declaration related to the Parties in ordering that Appellants do not have an exclusive right to use the

(continued . . .)

> Whether the trial court abused its discretion in denying Appellee's oral motion for continuance after Appellants' presentation of evidence on the second day of trial contradicted Appellants' stipulation that Appellee owned Appellee's Property?

The Declaratory Judgment in the present case, although correctly articulating the rights and obligations of the Careys as the dominant tenants[3] 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." As a result, we remand the case to the trial 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.

In October of 2018, Kingsport filed suit against the Careys questioning whether the couple was correct in asserting, through their construction of a fence, that they were the only ones who could use a driveway to access their home, to the detriment of Kingsport itself and the Careys' neighbors in Kingsport; the complaint, in part, asserted:

1. The dispute subject to this complaint arose because the Defendants claim

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(. . . continued)

> subject easement and are enjoined from interfering with Appellee's reasonable use of its property?

[3] A dominant tenant owns "an estate that benefits from an easement." A servient tenant owns "an estate burdened by an easement." *See Estate*, Blacks Law Dictionary (11th ed. 2019) (defining "dominant estate" and "servient estate").

to have an exclusive right to use an easement over Kingsport real property ("Kingsport Property").

* * *

3. The easement serves as a driveway from the public road to Defendants' house. Defendants allege they alone have exclusive right to use this easement that is on Kingsport Property. To that end, Defendants constructed a fence on the easement that restricts Kingsport access to its property.

4. Plaintiff is a homeowner association and a Maryland corporation with a principal office located at 400 Serendipity Drive, Millersville, Maryland, all located in Anne Arundel County, Maryland.

5. Defendants, Asher and Cynthia Carey, reside at 821 Childs Point Road, Annapolis, Maryland ("Defendants' Property"). Defendants' Property is located in Anne Arundel County, Maryland.

* * *

10. The current dispute arose because Defendants contend that Paragraph 5 (above) deeded an "exclusive" use to the Current Easement and that no one else is permitted to walk, bicycle or drive on the Current Easement, including Plaintiff, Kingsport, and the Kingsport residents who own the land over which the easement is located.

11. Defendants further contend paragraph 10 of the Easement Agreement that requires them to maintain and repair the Current Easement (and two other easements) is evidence of their alleged right to exclusive use their alleged right to exclude all others from the easement.

* * *

17. On or around July 8, 2014, Defendants acquired their Property.

18. Defendants are bound by the Easement Agreement terms.

19. Three years after acquiring their property, Defendants began to assert fee simple ownership rights over the Current Easement which was never authorized in the Easement Agreement.

20. On or around July 21, 2017, Defendants, through an attorney, notified Plaintiff that Kingsport residents are not permitted to use the Current Easement.

21. On or around February 15, 2018, Defendants chased Plaintiffs' landscaper off the Current Easement. The landscaper was using the Current Easement to landscape/maintain the Kingsport Property as required by the Conservation Easement that burdens Plaintiff's property.

22. On or around July 24, 2018 and without notice to Plaintiff, Defendants applied to the City of Annapolis to construct a fence within the Current Easement. The initial application for the fence stated that the Defendants were "Property Owner[s]" of the Current Easement, an unquestionably incorrect representation.

23. On August 21, 2018, the fence permit was issued. Notably, Planning and Zoning stated that it reviewed the fence application for Title 21 only and did not review for Title 17. Title 17 includes a Section for "Fence Permits." Planning and Zoning did not review the title of the real property to see if Defendants were in fact "Property Owners."

24. The same day, on August 21, 2018, Plaintiff became aware of the application for the fence permit.

25. On or around August 23, 2018, the fence was constructed.

a. The installed fence restricts access to a conservation easement granted to the City of Annapolis.

b. The installed fence restricts Plaintiff's ability to landscape/maintain Kingsport Property as it desires and as required by agreement with the City of Annapolis by virtue of a Deed of Conservation Easement.

c. The installed fence restricts Plaintiff's resident's ability to utilize the community pier as it has since residents moved into the homeowner association.

* * *

31. Plaintiff requests a declaration of rights related to Defendants' ability to construct a permanent fence on Kingsport Property (which includes the Current Easement).

* * *

35. The installation of the fence prevents Plaintiff's residents, agents and guests and emergency personnel from accessing Kingsport Property by motor vehicles and lawnmowers.

36. Defendants' actions constitute an unreasonable restraint on Plaintiff's use and enjoyment of Kingsport Property.

* * *

Kingsport asked the Circuit Court for injunctive relief, as well as for a declaratory judgment, which would enable others in Kingsport and Kingsport itself to use the driveway easement, and also asked for reasonable attorneys' fees:

> (a) That declares Defendants are not permitted to install any permanent structure on the Current Easement, including but not limited to the fence;
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> (b) That declares that the Current Easement is not "exclusive;"
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> (c) That declares residents of Kingsport may access the Current Easement for any reason;
>
> (d) That prohibits Defendants from interfering with the Plaintiff's right to use the Current Easement;
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> (e) That awards reasonable attorneys' fees and expenses to Plaintiffs and enter judgment against Defendants in the amount of all such reasonable attorneys' fees and costs; and
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> (f) That grants such other and further relief as the Court deems just and proper.

In their Answer, the Careys only admitted to the parties' addresses, that they had acquired their property in 2014, and that Kingsport was seeking a declaration of rights, but otherwise put the rest of the Complaint at issue. A three-day bench trial ensued in September of 2019.

At the beginning of trial, counsel for Kingsport stated that the parties had stipulated that Kingsport owned the property on which the Careys' driveway is located, which was accepted by the judge, without objection.

The next day, during a recorded bench conference, the Careys' counsel brought to the attention of the judge and opposing counsel that late the night before he had received information that Kingsport's predecessor in interest, Basheer/Edgemoore-Kingsport,

L.L.C., "probably inadvertently," executed a deed by which one of the residents of the subdivision came to own all Kingsport's interests in "all the community property" in the subdivision. The deed pre-dated, by approximately a year, Basheer/Edgemoore-Kingsport, L.L.C.'s grant of that same community property to the Kingsport Community Association. The trial judge disavowed the importance of the proffer by saying, "It is just nonsense frankly" and "let's continue."

Thereafter, during the second day of trial, David Thompson, called by the Careys as an expert in real estate matters, succinctly articulated the "fundamental" issue in the case as having to do with the "rights of the fee simple owner of the bed of the roadway and the right of the easement holder who has the right to run up and down the bed of that road." In the midst of Mr. Thompson's testimony, after many discussions with the court and counsel on the record about standing, parties in interest, Kingsport's fee simple ownership, and the stipulation entered into by the parties about Kingsport's ownership, the Careys' attorney offered a deed, marked for identification and later admitted as Defendant's Exhibit L, about which Mr. Thompson opined that it established that the Kingsport Community Association has "no rights in the driveway easement property because they have conveyed it all away in 2007, the date of that deed. All their title and interests, whatever they have, they've given away." The trial judge, however, responded, "I have already said very clearly for the appellate court I am not considering that in the - - this is not a complicated case for me. I will be honest, it is not. I am asked to interpret something that is very understandable in my opinion."

Counsel for Kingsport, while not conceding that his client did not own the property, thereafter requested a continuance to put on a rebuttal to Mr. Thompson's testimony, because "there might be an argument for the appellate courts to consider this entire practice a waste of time." The trial judge, though, denied Kingsport's request.

The next day, the final day of the trial, Kingsport's counsel presented testimony from John Dowling, that the deed in issue, Defendants' Exhibit L, which apparently was one of many, had "through inadvertence or mistakes . . . contained a clause stating that the lot conveyed was conveyed together with, you know, all rights and title and interest[]" in the subdivision's community property. The trial court continued to refuse the importance of what both sides had come to recognize: that Kingsport did not own the servient estate in the driveway easement.

On the final day of the trial, the judge issued an oral opinion, in which he ruled that the Careys did not have exclusive use of the driveway and had to remove their fence. Despite having disclaimed the issue of Kingsport's ownership interest as "meaningless" to his interpretation of the parties' rights under the easement, the judge declared, as part of his oral opinion that, "[t]here is no question Kingsport owns the fee simple interest in that easement." As a result, he said the residents of Kingsport "have the right to use and access their property, their easement, to access the amenities that go along with living in Kingsport at all reasonable times[.]" The judge asked Kingsport's attorney to draft an order memorializing his ruling and to provide the Careys the opportunity to review the

draft order "as to form." The Order, in the form provided by Kingsport, was entered by the Circuit Court in October of 2019.

The purpose of the Declaratory Judgment Act, Sections 3-401 to 3-415 of the Courts and Judicial Proceedings Article, Maryland Code (1973, 2013 Repl. Vol.),[4] is "to settle and afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations." Section 3-402. The Act confers the power to courts to grant declaratory relief to "Any person interested under a deed, will, trust, land patent, written contract, or other writing constituting a contract, or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, administrative rule or regulation, contract, or franchise, ..." Section 3-406.[5]

[4] Unless otherwise noted, all statutory references are to Maryland's Declaratory Judgment Act, Sections 3-401 to 3-415 of the Courts and Judicial Proceedings Article, Maryland Code (1973, 2013 Repl. Vol.).

[5] Section 3-406 of the Courts and Judicial Proceedings Article, Maryland Code (1973, 2013 Repl. Vol.), in its entirety, provides:

> Any person interested under a deed, will, trust, land patent, written contract, or other writing constituting a contract, or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, administrative rule or regulation, contract, or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, administrative rule or regulation, land patent, contract, or franchise and obtain a declaration of rights, status, or other legal relations under it.

Section 3-409(a), which defines circumstances for which a circuit court may grant declaratory relief, provides:

> (a) *In general*. — Except as provided in subsection (d) of this section, a court may grant a declaratory judgment or decree in a civil case, if it will serve to terminate the uncertainty or controversy giving rise to the proceeding, and if:
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> (1) An actual controversy exists between contending parties;
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> (2) Antagonistic claims are present between the parties involved which indicate imminent and inevitable litigation; or
>
> (3) A party asserts a legal relation, status, right, or privilege and this is challenged or denied by an adversary party, who also has or asserts a concrete interest in it.

A declaratory judgment, therefore, "must pass upon and adjudicate the issues raised in the proceeding, to the end that the rights of the parties are clearly delineated and the controversy terminated." *Dart Drug Corp. v. Hechinger Co.*, 272 Md. 15, 29 (1974); *Reddick v. State*, 213 Md. 18, 31 (1957) ("It is not necessary that a declaratory judgment be in any particular form, as long as the Court, *by its decree*, actually passes upon or adjudges the issues raised by the pleadings." (emphasis in original)); *Beck v. Mangels*, 100 Md. App. 144, 157 (1994) (affirming a declaratory judgment in which "[t]he trial court made extensive findings . . . and made a declaration that passed upon and adjudicated the issues raised, thus declaring the rights of the parties."). A declaratory judgment, which is sufficient as to form and content, may, nonetheless, be remanded for further proceedings if the Circuit Court's findings are based on an "inadequate record." *County Comm'rs of Queen Anne's Cty. v. Days Cove Reclamation Co.*, 122 Md. App. 505 (1998). Such is the case here.

In the present case, the infirmities in the declaratory judgment entered by the trial court lie in the findings and legal conclusions that, "Kingsport may use the property subject to the Driveway Easement in a manner not inconsistent with *its fee simple property rights*, or established law; . . ." and "Defendant's construction of the fence exceeded the rights provided to them in the Easement Agreement and interfered with Kingsport's *rights as fee simple owner of the property*." (emphases added). There is, quite simply, no support in the record that Kingsport has a fee simple interest in the property underlying the driveway at issue.[6] The absence of evidence to support Kingsport's fee simple ownership requires remand to establish the ownership of the land

[6] At the beginning of trial, the parties orally entered into a stipulation, accepted by the trial court, that, "Kingsport owns the property between Childs Point Road and the Careys' property."

A stipulation is entered into between parties and accepted by a court in order to eliminate the need to decide an issue. *Mathis v. Hargrove*, 166 Md. App. 286, 309-10 (2005) (citing *Bloom v. Graff*, 191 Md. 733, 736 (1949).

As the second day of trial began, it became obvious that the stipulation was unraveling, and both parties subsequently litigated the issue of Kingsport's ownership of the land underlying the driveway. The Careys' expert, David Thompson, testified that Kingsport had no interest in the property underlying the driveway, based on his review of a 2007 deed. The Circuit Court eventually admitted the 2007 deed into evidence as Defendant's Exhibit L.

Kingsport, in response, elicited testimony on the last day of trial from its own expert, John Dowling, regarding its title and interest in the property. Mr. Dowling acknowledged, on direct examination, the validity of the 2007 deed, but referred to the conveyance as at most a "mistake." He testified that Kingsport had an equitable interest in the property, although, clearly, not a fee simple interest.

By litigating the issue of Kingsport's ownership of the property underlying the driveway easement the parties abrogated the stipulation. *Peddicord v. Franklin*, 270 Md. 164, 175 (1975) (citations omitted).

underlying the driveway easement.[7] Only then can the rights of the servient estate holder be declared.

[7] Kingsport requests, over the Careys' objection, that we take judicial notice of documents in the Appendix to its Appellee/Cross-Appellant's brief, which includes a Corrective and Confirmatory Deed, a Declaration of Annexation for Kingsport Community Constitution, and the Kingsport Community Constitution. Kingsport asserts that this Court may take judicial notice of those documents pursuant to Rule 5-201, which, in relevant part, provides:

> (a) **Scope of Rule.** This Rule governs only judicial notice of adjudicative facts. Sections (d), (e), and (g) of this Rule do not apply in the Court of Special Appeals or the Court of Appeals.
>
> (b) **Kinds of Facts.** A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

In support of its request that we take judicial notice of its Appendix, Kingsport also cites Rule 8-501(e), which provides:

> (e) **Appendix in appellee's brief.** If the record extract does not contain a part of the record that appellee believes is material, the appellee may reproduce that part of the record as an appendix to the appellee's brief together with a statement of the reasons for the additional part. The cost of producing the appendix may be withheld or divided under section (b) of Rule 8-607.

Kingsport also asserts that we may order that the record be corrected, pursuant to Rule 8-414(a), which provides:

> (a) **Authority of appellate court.** On motion or on its own initiative, the appellate court may order that a material error or omission in the record be corrected. The court ordinarily may not order an addition to the record of new facts, documents, information, or evidence that had not been submitted to the lower court.

We will not take judicial notice of the Confirmatory Deed. In *Cochran v. Griffith Energy Service, Inc.*, 191 Md. App. 625, 663 (2010), we stated that "an appellate court must confine its review to the evidence actually before the trial court when it reached its decision." In *Cochran*, the appellants, relying on Rule 8-501(f), included evidence in an

(continued . . .)

The absence of a record to support Kingsport's ownership of the property underlying the driveway implicates its standing to sue and whether all necessary parties have been joined in the suit, issues raised by the Careys with which Kingsport disagrees.

On remand, the trial court must determine whether Kingsport has standing to maintain the present case, which depends on whether it has an interest in the land underlying the driveway. Obviously, were Kingsport be determined to be the fee simple owner, standing would be satisfied, as the Careys acknowledge. Even absent fee simple ownership, however, equitable considerations may dictate that Kingsport be afforded standing, as this Court determined in a case which may be of relevance to the trial court's determinations. *Michael, L.L.C. v. 8204 Assocs. Ltd. Liab. Co.*, 207 Md. App. 666 (2012).

(. . . continued)
appendix to their reply brief, which "'was not in existence at the time the record was transmitted[.]'" *Id.* at 662. Appellees moved to strike the evidence, arguing, *inter alia*, that the evidence was not part of the record before the trial court. *Id.* We granted appellee's motion, based on the plain language of the rule, which specifies that an appendix to an appellant's reply brief may contain "any additional part *of the record*[.]" *Id.* (quoting Rule 8-501(f)) (emphasis in original).

The relevant language of Rules 8-501(e) and (f) is identical: "any additional part of the record." Kingsport's Appendix, by its own admission, contains documents that were not before the trial court. Were we to take judicial notice of the documents, we would not be "confin[ing our] review to the evidence actually before the trial court when it reached its decision." *Cochran*, 191 Md. App. at 663. Thus, Rule 8-501(e) is inapplicable to Kingsport's Appendix.

Most importantly, although the deed has been filed, according to Kingsport, its validity and application to the driveway easement are in dispute, as the Careys have asserted. As a result, the deed is subject to a "reasonable dispute" within the meaning of Rule 5-201(b) and cannot be subject to judicial notice.

With respect to the necessity of having joined necessary parties, it is clear, under Section 3-405(a)(1), that "If declaratory relief is sought, a person who has or claims any interest which would be affected by the declaration, *shall* be made a party." (emphasis added).[8]

The Court of Appeals has explained that the "'general rule [is] that ordinarily, in an action for a declaratory judgment, all persons interested in the declaration are necessary parties.'" *Rounds v. Maryland-Nat. Capital Park and Planning Comm'n*, 441 Md. 621, 655 (2015) (alteration in original) (quoting *Williams v. Moore*, 215 Md. 181, 185 (1957)). A corollary to the "general rule" is that "the failure to join necessary parties [is] 'fatal'" to the claim. *Id.*

[8] Rule 2-211, regarding joinder, also provides that:

> Except as otherwise provided by law, a person who is subject to service of process shall be joined as a party in the action if in the person's absence (1) complete relief cannot be accorded among those already parties, or (2) disposition of the action may impair or impede the person's ability to protect a claimed interest relating to the subject of the action or may leave persons already parties subject to a substantial risk of incurring multiple or inconsistent obligations by reason of the person's claimed interest.

An exception to the joinder rule provides that "'persons who are directly interested in a suit, and have knowledge of its pendency, and refuse or neglect to appear and avail themselves of their rights, are concluded by the proceedings as effectually as if they were named in the record.'" *City of Bowie v. MIE Properties, Inc.*, 398 Md. 657, 703 (2007) (quoting *Bodnar v. Brinsfield*, 60 Md. App. 524, 532 (1984)).

Obviously, the decision of the trial court regarding who owns the land underlying the driveway easement will dictate whether all necessary parties have been joined or whether their absence is fatal to the suit. If the trial judge does not accept the Confirmatory Deed as valid and applicable to the action, then the entire declaratory judgment proceeding may not be appropriate.

Although the judgment lacked foundation for its declaration regarding ownership by Kingsport of the servient estate, it did correctly define the rights and obligations of the Careys, as the holders of the dominant estate, under the Easement Agreement.

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 Rds. Prop. Owners Ass'n*, 431 Md. 274, 290 (2013) (internal citations and quotation marks omitted). The property which benefits from the easement is known as the "dominant estate," whereas the property burdened by the easement is known as the "servient estate." *USA Cartage Leasing, LLC v. Baer*, 429 Md. 199, 208 (2012) (citation omitted), so that here, the Careys are the dominant tenants by virtue of the Easement Agreement, which defined their "interest or estate intended to be granted." *Kobrine, L.L.C. v. Metzger*, 380 Md. 620, 636 (2004). The owner of a dominant estate, such as the Careys, "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); *accord Miller v. Kirkpatrick*, 377 Md. 335, 349-50 (2003) (quoting *Millson v. Laughlin*, 217 Md. 576, 585 (1958)). The owner of the servient estate must not unreasonably interfere with the rights of the holder of the dominant estate. *Bosley v. Susquehanna Canal*, 3 Bland 63, 67 (1829).

Easements are non-possessory property interests, which, as here, generally, do not entitle the dominant tenant to exclusive use. *Chevy Chase Land Co.*, 355 Md. at 153 (citing *Wagner v. Doehring*, 315 Md. 97, 104 (1989)). The owner of the servient estate,

in granting an express easement, conveys only those rights, which are defined in the instrument that creates the easement. *Miller v. Kirkpatrick*, 377 Md. at 349. As a result, the dominant tenant "cannot use the land for any purpose other than that contemplated in the grant." *Wagner v. Doehring*, 315 Md. at 104. Any restriction on the rights of the servient estate holder can only be made with its consent. *Miller v. Kirkpatrick*, 377 Md. 335, 349 (1989) (citing *Reid v. Washington Gas Light Co.*, 232 Md. 545, 548-49 (1963)).

The Circuit Court made findings of fact and conclusions of law regarding the Careys' rights under the Easement Agreement as follows:

- That the Careys "had a right to enter and leave their property under that easement."
- That "it is unreasonable for the [Careys] in this case to assume that anybody that used that easement is a trespasser."
- That "the [Careys] expand[ed] their authority to use that easement over and above their right to enter and leave their property. And they did that clearly by putting up a fence[.]"
- That "[t]he easement in question was described as a driveway easement. I made the point that driveway easement, driveway describes it so it is an adjective describing the easement. It very easily could have said exclusive driveway easement and the document did not."
- That the "15-foot-wide easement, roughly, . . . has been made narrower by the erection of the fence."
- That "the easement, as written in 2001, assured [the Careys'] right to get to and from th[eir] property."
- That as a result of the fence, "a vehicle would have to back out the entire length of the easement . . . because there was nowhere to turn around."
- That "the fence itself is on the easement so it is taking away valuable space on the easement itself."

The trial court's findings regarding the Careys' ownership of the dominant estate are supported by the record and with respect to its conclusions of law, it did not err. The Declaratory Judgment is without fault as to the Careys' interests.

In conclusion, we hold that the Circuit Court's Order did not comport, in its entirety, with the requirements of the Declaratory Judgment Act, because portions of the Order, which declare that Kingsport is the fee-simple owner of the property underlying the driveway easement and it has rights that accrue thereby, are without support in the record. We, therefore, remand the case to the Circuit Court for the purpose of determining Kingsport's interest in the property underlying the driveway easement, as well as the corollary issues of whether Kingsport has standing, as well as whether all interested parties are joined. We affirm those portions of the Order that declare that the Careys do not have exclusive access to the driveway easement such that the obstructive fence cannot be maintained.

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY VACATED IN PART AND AFFIRMED IN PART. CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLANT.