UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1386

September Term, 2015

MARK F. WOLCOTT, ET UX

v.

LEE R. DEMOSS, ET AL.

Leahy,
Friedman,
Kenney, James. A. III
(Senior Judge, Specially Assigned),
JJ.

Opinion by Kenney, J.

Filed: April 24, 2017

Appellants Mark F. Wolcott and Wendelyn L. Wolcott ("the Wolcotts"), appeal the Circuit Court for Carroll County's July 17, 2015, decision and declaration of rights regarding the validity and scope of an easement encumbering their property. The appellees are Lee R. DeMoss and Lori A. DeMoss, ("the DeMosses").

The Wolcotts presented four questions for our review which we have reformulated into three:

1. Did the circuit court err in declining to apply the doctrine of comparative hardship?
2. Did the circuit court err in denying the Wolcotts' equitable estoppel/abandonment/waiver claim?
3. Did the circuit court err in not accepting the Wolcotts' public policy argument that the expansion of the easement shown on the approved and recorded subdivision plat was invalid because it was recorded without approval of the Carroll County Zoning and Planning Commission and an amended subdivision plat?

For the reasons below, we shall affirm the circuit court.

FACTS AND LEGAL PROCEEDINGS

The property owned by the Wolcotts is Lot No. 6 in the "Stone-Warner Estates" subdivision in Eldersburg. It was developed and previously owned by Westminster Nurseries Incorporated ("Westminster"). The subdivision plat (the "Plat"), which was approved by the Carroll County Planning and Zoning Commission on February 20, 1990, and recorded among the Land Records of Carroll County on February 26, 1991, shows a forty-foot-wide easement for "ingress, egress and regress, drainage and utilities" crossing a portion of Lot No. 6 and extending from what is identified on the Plat as Sandstone Drive to where it meets (what is now) the DeMosses' property, but which was owned by

Westminster when the Wolcotts first looked at the lot.[1] Thirty feet of the forty-foot easement burdens Lot No. 6; the remaining ten feet burdens property that was retained by Westminster.

An Amendment to Declaration of Maintenance Obligations and Common Use Access Agreement (the "Amendment")[2] expanded the width of the easement burdening Lot No. 6 (the "Expanded Easement") from thirty feet to sixty feet:[3]

> WHEREAS, the aforesaid Plat establishes a 40 foot wide easement for common use and access and common use driveway entitled, "Sandstone Drive", which driveway has been improved by Westminster Nurseries, Inc. in accordance with Public Works Agreement No. F-89-059, all required improvements having heretofore been completed; and
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> * * *
>
> WHEREAS, the 40 foot wide easement for common use and access as set forth on the Plat for Lot Nos. 5 and 6 is intended to be expanded as herein set forth; and
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> * * *
>
> NOW, THEREFORE, in consideration of the mutual grants, covenants, agreements and provisions contained herein, and other good and valuable considerations, the receipt and adequacy of which are hereby acknowledged by all of the parties hereto, is hereby agreed as follows:
>
> 1. That a Common Use Access Area is declared to be all of that area shown on the plat and entitled, "40' Wide Easement for Ingress, Egress, Regress, Drainage & Utility" extending from the southernmost corner of Lot No. 6 to Klees Mill Road and the "Standard Turnaround", plus an expanded and additional width of 10' along, binding upon and for the length of Lot No. 5 (total of 50' wide along Lot No. 5) and an expanded additional width of 30' feet along, binding upon and for the length of Lot No. 6 (total of 70' wide). The Common Use Access Area shall be for the unlimited and unobstructed ingress, egress and regress to and from Klees

[1] Lot No. 6 was transferred from Westminster to L.A.N.D. Inc., a contractor recommended by a Westminster representative. L.A.N.D. Inc. transferred Lot No. 6 to the Wolcotts when the house was completed.
[2] The Amendment was dated September 16, 1991 and recorded on February 27, 1992.
[3] The easement area is referred to as the "Common Use Access Area."

> Mill Road including the right to install, maintain, replace and establish underground utilities, the right to keep and maintain the driveway known as "Sandstone Drive" and any necessary side ditches in a condition free of obstructions, erosion and in a clean and presentable manner for all of the Lots entitled to use of the Common Use Access Area.

The Wolcotts closed on Lot No. 6 on December 30, 1993. The deed, which was recorded on March 22, 1994, stated that the property was: "SUBJECT TO ALL those conditions of title as described on SCHEDULE 'A' attached hereto and intended to be made a part hereof." Paragraph 3 of Schedule A stated that Lot No. 6 was:

> [s]ubject to the right to use in common with others entitled thereto of an easement or right-of-way described as, "40' Wide Easement for Ingress, Egress, Regress, Drainage, and Utilities per PWA for Lots 5, 6, 7, 8 & Remaining Portion" as shown on the aforesaid Plat and the "Common Access Area" described in a Declaration of Maintenance Obligations dated January 25, 1991 and recorded among the Land Records of Carroll County . . . and the driveway known as "Sandstone Drive," Located within such Common Access Area and the aforesaid easement or right-of-way, including the turnaround area located on Lot Nos. 5 & 6 as shown on the aforesaid Plat, and as amended pursuant to the Amendment to Declaration of Maintenance Obligations and Common Use Access Agreement for "Stoner-Warner Estates" dated September 16, 1991 all for the purpose of ingress, egress and regress to and from Klees Mill Road.

Mrs. Wolcott acknowledged that she read the deed at settlement, and also saw that the Amendment was one of twenty-five "exceptions" in the Wolcotts' title policy,[4] but she did not understand that the Amendment referred to in the deed and the title policy had expanded the easement impacting Lot No. 6 an additional thirty feet. When the Wolcotts moved into the house, they were unaware that the well, the steps leading into and out of

[4] The Wolcotts paid for and received a location survey at settlement, but it did not identify the Expanded Easement.

their basement, and a portion of the residence itself were all within the Expanded Easement. In 1994, having receiving permission from Daniel Stoner, a principal of Westminster, they planted trees and shrubs within the original easement area.[5]

The Wolcotts became aware of the Expanded Easement in June 1997, in preparation for a meeting with Joseph Medved (who, in 1996, had purchased the Westminster property), his attorney, and a surveyor, on an unrelated matter. At that meeting, the Wolcotts raised the issue of the Expanded Easement to Mr. Medved. And, when the surveyor, at Mr. Medved's direction, measured, it was determined that certain improvements to the Wolcotts' property were within the Expanded Easement area.

According to Mrs. Wolcott, Mr. Medved was not upset by the encroachments, and he did not demand that the Wolcotts remove or relocate any structure or obstruction within the easement area.[6] In 2003, the Wolcotts submitted plans to add a garage to one side of their house[7] to Mr. Medved, the successor to Westminster. He reviewed and approved the plans without mentioning the encroachments. Therefore, the Wolcotts did not believe that any improvements to Lot No. 6, including the plantings, were in danger

[5] According to Mr. Stoner's testimony, he "told them they could plant trees anywhere on their lot that they bought, anywhere on their lot."

[6] Mr. Medved recalled that when the encroachment was discovered he asked Mrs. Wolcott to explain how the house was "misplaced into an Easement," to which she responded that she moved the stakes marking the proposed house location prior to construction.

[7] The garage was not in the Expanded Easement area.

of being removed until June 21, 2012,[8] when they received a letter from Mr. Medved's attorney that stated:

> My file reflects that on June 3, 1997 we met at your property. The discussion included the fact that your well and a small portion of your basement access encroached into the "Common Use Access Area" as established and defined in the title documents. Those improvements continue to be located within the Common Use Access Area with the permission of Mr. Medved as the current property owner of the Medved Property. In addition, I see that you have planted trees and shrubs over the years within the Common Use Access Area which also remain there with the permission of Mr. Medved.
>
> For a number of years now, the nursery operation has been accessed from Sandstone Drive by a driveway off of and outside the Common Use Access Area along your Lot No. 6 as an accommodation to you. So that no misunderstanding occurs, this is not a waiver of the owner of the Medved Property of the right to utilize the Common Use Access Area for the purposes for which it was created.
>
> This letter is to first confirm the permission of Mr. Medved as the owner of the Medved Property to your activities within the Common Use Access Area upon Lot No. 6 as set forth above. Secondly, I want to confirm that any improvements constructed within the portion of the Common Use Access Area located upon your Lot No. 6 are not done so by you with the intention of terminating, limiting or modifying the rights of the owner of the Medved Property in and to the Common Use Access Area. If this is not the case, please notify me immediately.
>
> Finally, it may be in the best interests of both you and my client that a formal agreement be executed and recorded to memorialize the agreement of the parties as to this matter. At this point, my client is satisfied to leave that up to you.

On June 25, 2012, Mr. Medved sold the property purchased from Westminster to the DeMosses. Shortly after the DeMosses purchased the property, Mr. DeMoss advised Mrs. Wolcott that she needed to see an attorney regarding the easement because she and

[8] We do not doubt that the letter was written in anticipation of the sale to the DeMosses and perhaps was necessary to the consummation of that sale. Mrs. Wolcott did not see the letter until after the DeMosses had acquired the property from Mr. Medved.

her husband would not be able to convey clear title to their property. In September 2012, Mr. DeMoss began landscaping within the Expanded Easement.[9] In June 2014, he placed a large amount of stone within the easement area, near the Wolcotts' well, and in July 2014, he cut down two trees which the Wolcotts had planted within the easement area.

The Wolcotts filed a complaint in the circuit court on July 11, 2014, requesting: (1) a temporary restraining order prohibiting the "remov[al] or touching [of] any trees, bushes, or other permanent obstructions presently located on the Wolcott Property . . . or from changing the grade or condition of the land within said area;" (2) a preliminary injunction and permanent injunction with the same prohibition; and (3) a declaratory judgment restricting the DeMosses to either the easement area depicted on the Plat or limiting use within the Expanded Easement to the establishment of utilities and to maintaining the twelve foot driveway on Sandstone Drive.

The DeMosses filed an answer, a supporting memorandum, and a motion to strike. The Wolcotts responded to that motion and filed an amended complaint, which included additional requests for relief based on the Amendment violating public policy, and, alternatively, if the court would find that the Expanded Easement is valid and enforceable, it declare that the encroachments were the result of an "innocent mistake" and, limit the DeMosses to their "legal remedy for damages."

[9] According to Mrs. Wolcott, Mr. DeMoss placed boulders, mulch, shrubbery, and a no trespassing sign on Lot No. 6.

On August, 14, 2014, the circuit court entered a Preliminary Injunction prohibiting the DeMosses from "removing or defacing any trees, bushes, or other permanent obstructions presently located on Lot 6 . . . including, but not limited to, the well on Lot 6, the house and basement stairwell on Lot 6, and the trees and bushes on Lot 6." On August 22, the DeMosses filed a motion to dismiss for failure to join other affected lot owners and to strike the Amended Complaint. On September 12, 2014, the court denied the motion to strike, but ordered the filing of an amended complaint, which the Wolcotts filed on October 14, 2014.[10] A bench trial began on June 15, 2015.

The Trial

The Wolcotts called Clayton Black, Chief of the Bureau of Development and Review for Carroll County. Mr. Black stated that he was familiar with the subdivision process in Carroll County and that the Public Works Agreement ("PWA") for the Stoner Warner Estates subdivision stated that the owner "shall within one year from the date of execution of this agreement [with the] County construct or cause to be constructed," within the forty foot easement area, a twelve foot wide use-in-common driveway to serve the several subdivision lots with a turnaround near the end of the common driveway. He acknowledged that "no plat was filed to amend the easement area" and there was "nothing in the [Bureau of Land Development and Review's] file to indicate that a

[10] More specifically, the order stated that "the matter may be dismissed unless the [Wolcotts] file a Second Amended Complaint." The Wolcotts Second Amended Complaint, filed on October 14, 2014, joined the necessary parties, and the matter proceeded to trial.

request was received or granted to modify the plat." On cross, when asked whether there was "some law" that it was necessary to do so, he stated that the Carroll County Zoning and Planning Commissions must approve "any change to a plan," but the amended Declaration of Maintenance Obligation did not "change any lot lines."

The Wolcotts called Jason Green, Code Official for the Carroll County Permits and Inspections Office, as their second witness. Mr. Green testified that the plot plan attached to the building permit application for Lot No. 6 showed a thirty foot easement and the proposed well being located outside the easement. He further stated that the use and occupancy permit for the building on Lot No. 6 was filed on May 2, 1993, and final approval was granted on December 29, 1993. When asked on cross, Mr. Green confirmed that the location of the house on the plot plan differed from the final location of the house, which was located farther from the boundary line than originally indicated on the plot plan.

The Wolcotts' third witness was Edwin Singer, Environmental Health Director for the Carroll County Health Department. Mr. Singer stated that the Department received an application to drill a well on Lot No. 6 from Westminster Nurseries on February 23, 1993. The application included a drawing that showed a proposed location for the well with a note stating "dirt drive to be relocated." He stated that the procedure for receiving well applications involves ensuring that the application is complete, and if someone wants to submit a revised drawing "the practice is, is that normally that they would line through what would have been the original drawing that came with the permit

application, the new application would be initialed and dated and that would be put with the application to be reviewed." He further stated that, according to county regulations, all wells must be located fifteen feet from a designated right-of-way for ingress and egress.

The Wolcotts called John Lemmerman, president of RTF Associates, Inc. and a professional land surveyor, as an expert "in the area of survey and land design." Mr. Lemmerman testified that he was hired by the Wolcotts to survey Lot No. 6 and field locate the improvements, which he did on July 19, 2014. He determined that a portion of the house, the basements steps, and the well were located within the Expanded Easement area. It was his opinion that it would be unlikely that a location survey would uncover the Expanded Easement described in the Amendment because the "location drawings are just a tool for settlement, [and] all that is expected of a surveyor is to review the title deed and the record plat." There would be "a chance," however, that a surveyor conducting a boundary survey would have discovered the Expanded Easement area. He stated that the DeMosses had several other access points to their property, apart from using the common driveway and the Expanded Easement area. He further stated, based on his experience, that the original easement area was wide enough "for a large combine." On cross examination, Mr. Lemmerman agreed that the Amendment would appear in the chain of title for the Lot No. 6, and if "someone was looking at the chain of title [for Lot No. 6] they would just have to run the Grantor/Grantee Indexes on [the prior owners] to find anything that they had granted that would affect the title of that property."

Mrs. Wolcott was the final witness to testify in the Wolcotts' case-in-chief. She stated that she met on Lot No. 6 with Mr. Stoner and a surveyor in the first half of February 1993.[11] During that meeting, her focus was on the location of the well because they "were looking to locate [their] home and [the] initial improvements as close to [the corner of Lot No. 6 where the well is now located] as reasonably feasible, so that [they] could preserve the area, the larger field area of the property for the future keeping of horses." And, "because [a small stable] is considered a source of septic that needs to have a certain separation from a residential [sic] or any well, any potable well, and . . . adjacent residential properties." According to Mrs. Wolcott, the well location that was initially shown on the Plat "was not going to work in proximity to where [they] would have to put a stall – stable." They requested Mr. Stoner to relocate the well "as far back to the southwest corner as possible."

According to Mrs. Wolcott, the Wolcotts had made clear that relocation of the gravel road was a condition of their interest in the property, and that Mr. Stoner had "no problem" with relocating the well and agreed to move the gravel road. The well was relocated to where Mr. Stoner had agreed to move it, and the road was also relocated. She further stated that Mr. Stoner had told her that the easement shown on the Plat would be used for access to the undeveloped portion of the property "for agricultural purposes." It had been reserved as "a very secondary type access point" in case they "ever needed to

[11] A copy of the Plat was available during that meeting.

have a more substantial . . . two-lane road to the remaining parcels" in the event of "future residential development."

Mrs. Wolcott testified that prior to the DeMosses' ownership, the easement area, apart from the relocated nursery road, had not been used by anyone other than the Wolcotts.[12] During a visit to the site that occurred after the signing of the contract to purchase but before the settlement, she and her husband noticed that the stakes marking the proposed location of the house "were generally closer to the side property line than [they] were expecting and she requested that they be moved a bit farther away." Regarding the Expanded Easement, Mrs. Wolcott stated she first became aware of its existence in "late summer of 1997."

On cross, Mrs. Wolcott stated that the agreement to relocate the well was the reason for "Item One"[13] in the purchase contract. She agreed that they requested that the stakes be moved so that the house would be farther from the property line, but she never moved a stake herself. She also acknowledged that a copy of the title insurance policy that she received at the time of settlement included information regarding the "Amendment of Declaration and Maintenance Obligations and Common Use Access Agreement for Stoner Warner Estates." Because Mr. Medved had told her that the

[12] Mrs. Wolcott testified that vehicles never drove over her property until the DeMosses purchased the property from Mr. Medved.

[13] Item One appears, from the record, to refer to the first section of a handwritten February 20, 1993 Addendum to Sales Contract, which states "(1) The buyer has until February 24, 1993 to determine that current Carroll County zoning law will allow at least 2 horses to be maintained on the aforesaid parcel. If current zoning law does not allow this use this contract shall become null and void at buyers option."

encroachments were "not a problem," she did not ask to have a document prepared allowing the improvements to remain. She confirmed that her initial concerns relating to the DeMosses property involved "actions they were taking on their property immediately adjacent," including planting of a privacy hedge that "ruined" a view they had from their property.

According to Mrs. Wolcott, no one told her about the Expanded Easement at settlement. They did not bring legal action against the builder, developer, or any other party related to the Expanded Easement because, when she first learned of the Expanded Easement, she believed it only extended over "a small portion of the basement steps" the well, and certain trees.

Following Mrs. Wolcott's testimony, counsel for the Wolcotts read into the record certain portions of Mr. DeMoss's deposition.[14] Mr. DeMoss stated that he purchased the Westminster property for "[a]gricultural use" and he used "nursery vehicles" including "commercial" vehicles or "farm trucks" to access the property. He is "entitled" to drive "wherever I want within the 70-foot use [in] common area," but he is "continually hindered by the obstructions, multiple obstructions within the 70-foot wide use [in] common area." In particular, he has "been unable to get the larger pieces of equipment [including combines and larger pieces of machinery] back to the farm that [he] would like to get back there." He placed stone within the Expanded Easement area because he was "entitled to." According to Mr. DeMoss, he "technically" has the right to remove any

[14] For reasons not stated in the record, Mr. DeMoss did not appear at trial.

improvements that encroach upon the Expanded Easement area, but it is his "last desire . . . to see the Wolcotts have to remove part of their house."

The DeMosses began their case by calling Mr. Stoner, with whom the Wolcotts had met prior to their purchase of Lot No. 6. He recalled that Mrs. Wolcott was "not pleased where the well was," and he told her that "if she didn't like where it was, she would have to go back to the engineers" and the Health Department to have it moved. He did not tell her she could relocate the well within a right of way.[15] He further stated that when he signed the application for the well on Lot No. 6, nothing concerning relocating the well or the gravel road had been included.[16] He did tell the Wolcotts they could plant trees "anywhere on their lot."

On cross examination, he stated that he did not recall using any portion of the Wolcotts' lot to get back to the remaining land owned by Westminster. He did not personally reroute the road away from Lot No. 6, but his partner "might have changed that a little bit." He did not participate in the settlement.

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[15] Mr. Stoner testified:

> Q: But you didn't care where it was on the lot as long as it was a well that met health regulations. Correct?
> A: That's correct, but I would never give someone permission to drill a well on a right-of-way, because everybody in this room knows that a right-of-way cannot be impeded.

[16] Mr. Stoner stated that a drawing of Lot No. 6 with notations indicating a "new proposed well location" and that the "dirt drive [was] to be rerouted" was not attached to the first page of the application when he signed.

The DeMosses called Mr. Medved as their second witness. He stated that when he, along with his attorney and a surveyor, met with Mrs. Wolcott in June of 1997, the surveyor informed him of "an Easement issue." According to Mr. Medved, he asked Mrs. Wolcott "how the house could be misplaced into an Easement, and she said that she moved the stakes." He told the Wolcotts that he was not using the easement at that particular time and would not make them move their basement access stairway or tear off the side of their house, but that the issue "needs to get resolved." That was the only conversation he had with the Wolcotts regarding the easement because he assumed that his lawyer "would resolve the matter."

On cross, he maintained that he told the Wolcotts that he reserved "the right to use the full width of that Easement at his whim in the future." When Mr. Medved sold the property to the DeMosses, he "did not tell [Mr. DeMoss] about the easement area." Following cross examination, counsel for the DeMosses rested.

Mrs. Wolcott was called in rebuttal. According to Mrs. Wolcott, she "never told Mr. Medved that [she] moved the stakes," but she may have told him that because "the house had originally been staked closer to the Easement [than] where it is currently constructed and we had requested that the builder move it farther away from it . . . [and she] may also have stated that [they] had requested Mr. Stoner to move the well closer to the corner."

The court issued a written opinion on July 15, 2015, which we quote extensively. Regarding the validity of the easement, the court stated:

The location of the original and expanded easement in this case is easily discernable, by reference to the Plat, the [Declaration of Maintenance Obligations "DMO"], Schedule A of the Wolcotts' deed, and the Amendment. As an initial matter, and though it seems patently obvious, there is no dispute as to the width of the original 40' easement. The Wolcotts' contention that the DMO, by referencing the Plat and the [Public Works Agreement], was intended only to apply to the paved portion of Sandstone Drive runs counter to the clear delineation of the easement on the Plat, which unambiguously describes the Common Use Access Area as running the entire length of Sandstone Drive, from Klees Mill Road, to the end of Lot No. 6. Similarly, the language of the Amendment is equally pellucid. Although titled "Amendment to Declaration of Maintenance Obligations and Common Use Access Agreement," the Court has already indicated that it is the verbiage contained within the instrument, not the title of the document that controls. After first referencing the 40' wide easement as shown on the Plat, and referencing the DMO, the Amendment states in clear and unambiguous language:

> "WHEREAS, the 40 foot wide easement for common use and access as set forth on the Plat for Lot Nos. 5 and 6 is intended to be expanded as herein set forth; . . .
>
> 1. The Common Use Access Area is declared to be all that area shown on the Plat and entitled "40' Wide Easement for Ingress, Egress, Regress, Drainage & Utility" extending from the southernmost corner of Lot No. 6 to Klees Mill Road and the "Standard Turnaround", . . . and an expanded and additional width of 30' along, binding upon and for the length of Lot No. 6 (total 70' wide). The Common Use Access Area shall be for the unlimited and unobstructed ingress, egress, and regress to and from Klees Mill Road . . . for all the Lots entitled to the use of the Common Use Access Area."

The Court finds no ambiguity in the aforementioned language, and finds that the clear intention of the instrument was to expand the width of the original 40' easement by 30', for a total width of 70' running along and binding on the entire length of Lot No. 6.

Regarding the Wolcotts' comparative hardship argument, the circuit court stated:

> The doctrine of comparative hardship is applicable where a defendant in an encroachment case seeks to <u>avoid</u> injunctive relief. The excerpt from [*Easter v. Dundalk Holding Co.*, 199 Md. 303 (1952)] quoted

above, on portions of which this Court placed emphasis, similarly makes the point that the doctrine of comparative hardship applies only to the situation where the encroaching party seeks to defend against a request for injunction. Such is not the case here. In this case, the Wolcotts do not seek to avoid an injunction. Rather, it is they who seek injunctive relief against the DeMosses. The DeMosses have not sought any affirmative relief. Accordingly, the Court holds that the doctrine of comparative hardship is not available to the Wolcotts under the facts and circumstances of this case. Additionally, the Court finds that the Wolcotts' encroachment in this case was not the result of an "innocent mistake." In so holding, the Court concurs with the admonition of the [*Griffin v. Red Run Lodge, Inc.*, 610 F.2d 1198 (4th Cir. 1979)] court which remanded the case back to the trial court for further findings. In doing so, the Fourth Circuit signaled to the trial court

> The constructive notice with which defendant was charged under the Maryland recordation statute may prove an insuperable obstacle to the establishment of innocence. A relevant question would be whether defendant, on purchasing the servient property, obtained a title search, and, if so, whether it disclosed the easement. Failure of a developer to pursue so commonplace and prudent a course would hardly be compatible with innocence. Even if a title report were obtained, and failed to disclose the easement, constructive notice of the deed would still exist, and the significance of the defective title report here might be small, though perhaps it might create rights of defendant over against the preparer of the title report.

In this case, the Court finds that the Wolcotts were on constructive notice of the expanded easement by virtue of the recordation of the Amendment a year prior to the date they purchased their property, and that such constructive notice in this case is incompatible with the definition of "innocence." Accordingly, the Court finds that the doctrine of comparative hardship, even if applicable here, cannot afford the Wolcotts the relief which they seek.[]

(Emphasis in original).

The court also discussed adverse possession:

> The Wolcotts' man-made improvements located within the expanded easement area, i.e. the basement steps, 9 inches of the house, and the well were built or installed before December 30, 1993, which is to say more than

20 years before any owner of the [Westminster property] objected, or took any action to remove the obstacles or otherwise divest the Wolcotts of their rights in their property. There are also a number of trees located within the original 40' wide easement, which the evidence does not establish have been there for more than 20 years before the DeMosses or any predecessor in title sought to remove them or objected to their placement. Mrs. Wolcott testified that the Plaintiffs began planting trees in 1994, and planted more trees over the years thereafter, including after they learned of the encroachment in 1997. A photograph taken shortly after the June 1997 meeting shows some small trees located within the 40' wide easement area.

The Court finds that the Wolcotts have proven all of the elements necessary to establish adverse possession with respect to the man-made improvements located within the easement. There is no question that the improvements have been in the same location for more than 20 years as noted above. Further, the Court finds that such possession on the part of the Wolcotts was actual, open, notorious, exclusive, hostile, under claim of title or ownership, and continuous or uninterrupted. Throughout the entire time that the man-made improvements have existed, the Wolcotts evidenced unequivocal, continuous, uninterrupted acts of ownership of so much of their property upon which said improvements have been located. While clearly the Wolcotts[] "possessed" a portion of their Lot subject to the easement by locating their house and well within it, they did so for more than 20 years, unaccompanied by any recognition, express or inferable from the circumstances, of any other person['s] right to that portion of the easement. Furthermore, the record is devoid of any evidence that any predecessor in interest of the [Westminster property], going back to Mr. Stoner, took any action to require the Wolcotts to remove or relocate any of the improvements, or to use the easement in a way which would interfere with the Wolcotts' dwelling or well.

Further, the Court finds that the claim of permissive use by the DeMosses' immediate predecessor in interest, Mr. Medved, does not defeat the Wolcotts' entitlement to adverse possession. While it is true that Mr. Medved claims that he told the Wolcotts that he would not require them to relocate or remove their house or well at that time, the Court has difficulty believing that Mr. Medved could remember details of a conversation that took place in 1997, when there was no evidence presented to the Court that the conversation as Mr. Medved recalled it, was memorialized in writing. The Court finds support for its conclusion in the fact that (1) Mr. Medved did not raise the issue with the Wolcotts directly ever again after June, 1997, (2) Mr. Medved never took any action to enforce his rights in the easement area, and (3) the only purported corroboration of the claim of permissive use came in the form of a letter from Mr. Medved's attorney to

> the Wolcotts in June 2012, which was, perhaps not coincidentally, 13 days before he sold the [Westminster property] to the DeMosses. The Court concludes that it is more likely that Mr. Medved told the Wolcotts that he did not object to their home and well being located in the easement at all, and would not require them to relocate the improvements, just as Mrs. Wolcott testified. For the above-stated reasons, the Court finds that the Wolcotts have established adverse possession with regard to the man-made improvements.
>
> Such is not the case with respect to the trees and other natural obstacles planted within the easement area. As noted above, the Court finds that the evidence does not establish that these natural obstacles were planted for the requisite 20 years, and that, therefore, the Wolcotts have not proven adverse possession with respect to the trees, shrubs, and other natural obstacles.

Regarding the Wolcotts' abandonment and estoppel arguments, the circuit court explained:

> The Court finds that Mr. Medved did not abandon his rights to the easement area. Notwithstanding the Court's finding that Mr. Medved did not give the Wolcotts permission to allow the obstacles to remain in the easement area, [Mr. Medved's attorney] was careful to point out to the Wolcotts in June 2012, that "any improvements constructed within the portion of the Common Use Access Area located upon Lot No. 6 are not done so by you with the intention of terminating, limiting or modifying the rights of the owner of the Medved Property in and to the Common Use Access Area." The Court agrees that Mr. Medved did not evidence an intention to abandon the easement, and any reliance that the Wolcotts may have placed on Mr. Medved's acts or omission was not justified as to estop the DeMosses from asserting their rights in the Common Use Access Area, which, as the Court has noted repeatedly, included the original 40' wide easement and the additional 30' expansion.

The circuit court concluded:

> [T]he easement as depicted on the Plat and as expanded by the Amendment is valid. The Court further finds that the Wolcotts have established by adverse possession the right to allow their house, well, and basement stairs as presently situated to remain as presently situated, without interference. Accordingly, the Court will, by separate Order issued in connection with this Opinion, direct that notwithstanding the rights and

> duties of any and all property owners subject to the easement, no person shall be entitled to use the Common Use Access Area so as to interfere with the man-made improvements to Lot No. 6, including but not limited to the dwelling, basement stairs thereon, and well.

The court entered an accompanying Declaratory Judgment stating that Lot No. 6 was subject to the Expanded Easement for "Ingress, Egress, Regress, Drainage, and Utilities." The Declaratory Judgment further:

> ORDERED, ADJUDGED AND DECLARED, that notwithstanding the preceding paragraph, the Plaintiffs, Mark F. Wolcott and Wendelyn L. Wolcott, owners of Lot No. 6 as aforesaid, have, for themselves, and their successors and assigns, acquired by adverse possession, the right to reasonably use, access, retain, improve, maintain, and repair, including the right to replace and maintain the house, basement steps, and well, that are presently located within the aforementioned easement or right-of-way; and it is further
>
> ORDERED, ADJUDGED AND DECLARED, that no person shall be permitted to use any part of the aforesaid easement or right of way, in a manner so as to unreasonably interfere with the aforementioned house, basement steps, or well; and it is further[17]
>
> ORDERED, ADJUDGED AND DECLARED, that a copy of this Order shall be recorded among the Land Records of Carroll County by the Plaintiffs within thirty (30) days of the enrollment of this Declaratory Judgment.

On August 31, 2015, the Wolcotts filed this timely appeal.

DISCUSSION

STANDARD OF REVIEW

[17] The circuit court's adverse possession finding on behalf of the Wolcotts has not been appealed by either party, and we do not address it in any way in this opinion. To the extent it is mentioned at all, the Wolcotts contend that the circuit court's adverse possession finding is inconsistent with its finding that Mr. Medved had never evidenced "an intent not to 'abandon' his easement rights."

Our review of the circuit court's judgment in this case is governed by Maryland Rule 8-131(c). *Agency Ins. Co. v. State Farm Mut. Auto. Ins. Co.*, 193 Md. App. 666, 671 (2010). The Rule provides:

> **(c) Action tried without a jury.** When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.

"A factual finding is clearly erroneous if there is no competent and material evidence in the record to support it." *Anderson v. Joseph*, 200 Md. App. 240, 249 (2011) (quoting *Hillsmere Shores Improvement Ass'n, Inc. v. Singleton*, 182 Md. App. 667, 690 (2008)). A trial court's legal conclusions, however, are subject to the de novo standard of review, *Jackson v. 2109 Brandywine, LLC*, 180 Md. App. 535, 567 (2008), and afforded little deference, *see Karsenty v. Schoukroun*, 406 Md. 469, 502 (2008).

ANALYSIS

On appeal, the Wolcotts seek to limit the legal rights of the dominant users in the easement area burdening Lot No. 6 to, at most, a small area within the original forty-foot easement area where an existing gravel road connects with the paved portion of Sandstone Drive. They assert, citing Md. Code (1973, 2013 Repl. Vol.) section 3-401, et seq., of the Courts and Judicial Proceedings Article, that the declaratory judgment statute should be liberally construed and advance several theories in support of their position that the circuit court erred. We will address each individually.

Comparative Hardship

The Wolcotts argue that the doctrine of comparative hardship supports their requests for declaratory and injunctive relief. More specifically, they argue that the circuit court incorrectly found that comparative hardship applies only when an innocent encroaching party, without actual or constructive notice of the easement, seeks to defend against an injunction. In their view, the "fashioning of a sufficient equitable remedy," rather than "the precise procedural posture of a case" should control. To "rule otherwise would be to allow DeMoss to avoid the well-established equitable doctrine of comparative hardship merely because he chose to aggressively exercise 'self-help.'"

As to constructive knowledge of the recorded Amendment, and the Expanded Easement, the Wolcotts contend, citing *Urban Site Venture II Ltd. P'ship v. Levering Assocs. Ltd. P'ship*, 240 Md. 223, 233, (1995), that "constructive notice does not, per se, defeat innocence." Rather, "notice is one of the factors considered in deciding whether or not to apply the doctrine" of comparative hardship, but the paramount consideration is whether the "failure to obtain a title report or otherwise further investigate the easement status of the property prior to contract" occurred in good faith.

In response, the DeMosses, citing *Easter*, 199 Md. 303, contend that comparative hardship "is applicable only where a prerequisite showing of 'innocent mistake' ha[s] first been shown." Therefore, a trial court has to find innocent mistake before balancing the equities in an injunction request. And, according to the DeMosses, the record in this case provided "ample support for the trial court's conclusion" that the Wolcotts' constructive notice of the Expanded Easement is incompatible with the definition of

innocence. Any reliance by the Wolcotts on *Urban Site Venture*, 340 Md. at 223 "is misplaced because the facts in that matter—particularly as to innocence—bear little resemblance to those in the present case."

Moreover, the DeMosses argue that "comparative hardship is available only as a defense where, in lieu of an injunction, damages can be awarded." It has never been applied "offensively" because "[n]o court of equity has the authority to compel any landowner to surrender his property to another person in exchange for a sum of money, [because] taking one person's property for the private use of another, is a deprivation . . . without due process of law." *Easter*, 199 Md. at 307. And, even if the comparative hardship doctrine applied in this case, its application would "compel the same result ordered by the trial court." In other words, rather than invalidate the entirety of either the Expanded Easement or the original easement, it would simply permit the encroaching improvements to remain within the Expanded Easement.

The Wolcotts have not cited any Maryland case, and we have not found one, in which an encroaching party has requested an injunction to preserve an encroachment based on the doctrine of comparative hardship. But assuming, without deciding, that the doctrine of comparative hardship could permit an encroaching party to request an injunction to preserve its encroachment, the equities do not weigh in favor of the Wolcotts.

In *Easter*, 199 Md. at 305, Maryland's seminal case on the doctrine of comparative hardship, the Court of Appeals explained:

> where a landowner, *by innocent mistake*, erects a building which encroaches on adjoining land, and an injunction is sought . . . , the court will balance the benefit of an injunction to the complainant against the inconvenience and damage to the defendant, and where the occupation does no damage to the complainant except the mere occupancy of a comparatively insignificant part of his lot, or the building does not interfere with the value or use of the rest of his lot, the court may decline to order the removal of the building and leave the adjoining landowner to his remedy at law.

(Emphasis added).

The court must "first find that the encroachment resulted from an innocent mistake before balancing the equities." *Urban Site Venture*, 340 Md. at 231. To establish "innocence" an encroaching party must demonstrate that it reasonably had no notice of the other party's property rights, or that with knowledge of those rights, it made a good faith effort to avoid any encroachment. *See Urban Site Venture*, 340 Md. at 234 ("[W]here an encroachment results from reasonable, good faith reliance on the mistaken work of competent surveyors, the encroachment is innocent."); *see also Griffin*, 610 F.2d at 1202–03.

A document subjecting land to restrictions that is recorded in the land records affords those dealing with the property with constructive notice of the restriction. *McKenrick v. Savings Bank of Baltimore*, 174 Md. 118, 128 (1938). "An easement binds any person who acquires title to land with actual or constructive notice of that easement." *McClure v. Montgomery Cty. Planning Bd. of Maryland-Nat. Capital Park & Planning Comm'n*, 220 Md. App. 369, 383 (2014). There is constructive notice when a party could have discovered an encumbrance on his property "in the [land] records, even if it [was]

not in the direct chain of title." *McClure*, 220 Md. App. at 384 (quoting *USA Cartage Leasing, LLC v. Baer*, 202 Md. App. 138, 177 n.12, (2011), *aff'd*, 429 Md. 199 (2012)). The *Griffin* court, applying Maryland law, observed that "[t]he constructive notice with which defendant [is] charged under the Maryland [law] may prove an insuperable obstacle to the establishment of innocence." *Griffin*, 610 F.2d at 1203.

The Amendment in this case was recorded on February 27, 1992, over ten months before the Wolcotts closed on Lot No. 6 on December 30, 1993. The title deed, recorded on March 22, 1994, stated that Lot No. 6 was subject to the conditions of title described on SCHEDULE "A." Paragraph 3 of Schedule A referenced the original forty-foot-wide easement as shown on the Plat, and further stated that Lot No. 6 was:

> [s]ubject to the right to use in common with others entitled thereto of an easement or right-of-way described as, "40' Wide Easement for Ingress, Egress, Regress, Drainage, and Utilities per PWA for Lots 5, 6, 7, 8 & Remaining Portion" as shown on the aforesaid Plat and the "Common Access Area" described in a Declaration of Maintenance Obligations dated January 25, 1991 and recorded among the Land Records of Carroll County . . . and the driveway known as "Sandstone Drive," located within such Common Access Area and the aforesaid easement or right-of-way, including the turnaround area located on Lot Nos. 5 & 6 as shown on the aforesaid Plat, and *as amended pursuant to the Amendment to Declaration of Maintenance Obligations and Common Use Access Agreement for "Stoner-Warner Estates"* dated September 16, 1991 all for the purpose of ingress, egress and regress to and from Klees Mill Road, . . . said Common Access Area extending from the said Klees Mill Road in the southeasterly direction across the entire Lot No. 6 to a point designated on such Plat as No. "17."

(Emphasis added). In addition, the Wolcotts' title policy listed the Amendment as one of twenty-five "exceptions" noted on the property. To be sure, Mrs. Wolcott stated that she did not understand that the Amendment expanded the original easement, but that does not

mean that she was without reasonable notice of the Expanded Easement. The circuit court was not clearly erroneous in rejecting the application of the comparative hardship doctrine in this case.[18]

Equitable Estoppel

The Wolcotts contend that the circuit court, by finding "that Medved did not abandon his easement rights," converted equitable estoppel into a remedy that relies "solely on the doctrine of abandonment." The Wolcotts cite *USA Cartage Leasing*, 202 Md. App. at 198, for the proposition that abandonment requires non-use and "a positive action on the part of the owner of the dominant estate," but estoppel is based on "the dominant owner's acquiescence to actions by the servient owner, performed in reliance on the dominant owner's non-use."

According to the Wolcotts, the estoppel arose from Mr. Stoner's conduct, and not Mr. Medved's. It "took place when Stoner told Wolcott, prior to contract, that he would not use the easement area for ingress and egress and then followed up that statement by actually moving the existing driveway completely out of the easement area." In reliance on Mr. Stoner's representations and overtures, the Wolcotts "signed a contract to buy the lot and to have a house and well constructed on it." They contend that the notion that estoppel "could somehow be reserved or erased 'because Medved did not evidence an intention to abandon the easement' is incorrect," and that it would be inequitable to allow

[18] Nor is it certain that the application of comparative hardship in this case would have achieved more than was achieved in the circuit court's unappealed adverse possession finding.

the DeMosses to use the easement under these circumstances. The Wolcotts further assert, citing *Eareckson v. Rogers*, 112 Md. 160 (1910) and *Johnson v. Long*, 174 Md. 478 (1938), that "the doctrine of equitable estoppel . . . is available against a party and a privy," and therefore, in this case, it is available against the DeMosses.

The DeMosses respond, citing *Jurgensen v. New Phoenix Atl. Condo Council of Unit Owners*, 380 Md. 106, 126 (2004), that equitable estoppel can only succeed when "the party claiming to have been influenced by the conduct or declaration of another to his injury was himself not only destitute of knowledge of the true state of the title, but also of any convenient and available means of acquiring such knowledge." They find support in *USA Cartage Leasing*, 202 Md. App. at 177 n.17, for the related proposition that "'one is bound by every express encumbrance on his property which he could have found in the records' even if it is not in the direct chain of title." In the DeMosses' view, the "facts in this appeal amply demonstrate that [the Wolcotts] were not 'destitute of knowledge'" because the Easement and the Expanded Easement were disclosed in the deed and title insurance documents available at settlement.

The DeMosses further contend that the Wolcotts' assertion that equitable estoppel may be "claimed by a party or a privy to a party" is not applicable in this case. They argue that there is no privity of estate because the Wolcotts purchased Lot No. 6 from the construction company and not Mr. Stoner or Westminster, and the "mere fact that [Mr.] Stoner and his company are in the direct chain of title does not create either privity of estate or privity of contract" with the Wolcotts. At best, they assert, any "alleged verbal

'agreement' with [Mr.] Stoner amounted to [a] grant of a permissive license to use a portion of the property," that was implicitly revoked by the transfer of the dominant estate to Mr. Medved in January 1996.

The DeMosses agree with the trial court's conclusion that Mr. Medved did not intend to abandon the easement or actually abandon the easement. In support, they again cite *USA Cartage Leasing*, 202 Md. App. at 197, which states that "[f]or abandonment, there must also be a positive action on the part of the owner of the dominant estate," and contend that there was no "positive action" by Mr. Medved in this case.

With or without privity of estate, the Wolcotts' estoppel argument fails. It is well settled that an easement may be terminated, without the execution of any legal instrument, through estoppel or abandonment. There are, as the circuit court clearly recognized in its analysis, similarities between the two doctrines. The Court of Appeals has describe those similarities:

> To the extent that the two doctrines differ, the distinction between ordinary abandonment and abandonment by estoppel rests on whose actions are at issue. Non-use is an essential, but by itself insufficient, ingredient for termination under either theory. For abandonment, there must also be a positive action on the part of the owner of the dominant estate. *See, e.g., Knotts v. Summit Park Co.*, 146 Md. 234, 240, 126 A. 280 (1924) (an easement "cannot be lost by mere non-user" alone);

USA Cartage Leasing, 202 Md. App. at 197–98. In a case where the claim is the termination of an easement by abandonment, "there is rarely direct evidence of an intent to abandon." *Chevy Chase Land Company v. United States*, 355 Md. 110, 159 (1999).

Therefore, "the question of abandonment hinges upon the manifestations (or lack thereof) of an intent to abandon." *Id.* Most cases turn on the consideration of factors that justify an inference of an intent to abandon. *Id.* "'The burden of proving abandonment rests on the one who asserts or relies on it.'" *Id.* at 161 (quoting *Ma. & Pa. RR. Co.*, 224 Md. 34, 40 (1960)).

Importantly, the act (or acts) relied upon,

> must be of a decisive character; and while a mere declaration of an intention to abandon will not alone be sufficient, the question, whether the act of the party entitled to the easement amounts to an abandonment or not, depends upon the intention with which it was done . . . . A cesser of the use, coupled with any act clearly indicative of an intention to abandon the right, would have the same effect as an express release of the easement, without any reference whatever to time.

Chevy Chase Land Co., 355 Md. at 159 (quoting *Vogler v. Geiss*, 51 Md. 407, 410 (1879)).

Termination of an easement by estoppel "consists of the creation of a reasonable belief that in the future the dominant owner intends not to make the use of the servient tenement authorized by the easement." *USA Cartage Leasing*, 202 Md. App. at 196. In addition, there must be "conduct on the part of the servient owner in reliance upon the above-described appearances, under such circumstances that a continuance of the easement would be seriously harmful to the servient owner." *Id.* (quoting 4 Powell on Real Property, § § 34.22[2] (Michael Allan Wolf, ed., 2000, 2010 Supp.)). In other words,

> [e]quitable estoppel is the effect of the voluntary conduct of a party whereby he is absolutely precluded both at law and in equity, from

> asserting rights which might perhaps have otherwise existed, either of property, of contract, or of remedy, as against another person, who has in good faith relied upon such conduct, and has been led thereby to change his position for the worse and who on his part acquires some corresponding right, either of property, of contract, or of remedy.

Jurgensen, 380 Md. 106, 125 (2004) (quoting *Cunninghame v. Cunninghame*, 364 Md. 266, 289 (2001)).

"Although wrongful or unconscionable conduct is generally an element of estoppel, an estoppel may arise even where there is no intent to mislead, if the actions of one party cause a prejudicial change in the conduct of the other." *Knill v. Knill*, 306 Md. 527, 534 (1986). The Court of Appeals has repeatedly stated that "whether or not an estoppel exists is a question of fact to be determined in each case." *Markov v. Markov*, 360 Md. 296, 307 (2000) (quoting *Travelers v. Nationwide*, 244 Md. 401, 414 (1966)). And, as with abandonment, the party seeking the estoppel "has the burden of proving the facts that create it." *Cunninghame*, 364 Md. at 289.

In cases involving real property, that party must also prove that it was

> not only destitute of knowledge of the true state of the title, but also of any convenient and available means of acquiring such knowledge. *Where the condition of the title is known to both parties or both have the same means of ascertaining the truth, there can be no estoppel*.

Jurgensen, 380 Md. at 126 (emphasis in original) (quoting *Mountain Lake Park Ass'n v. Shartzer*, 83 Md. 10, 13–14 (1896).

It is not seriously disputed that Westminster and Mr. Medved made little to no use of the Expanded Easement. We address first the Wolcotts' interactions with Mr. Stoner, who first discussed the sale of the property to the Wolcotts. The Wolcotts contend that,

during a February 1993 site meeting, Mr. Stoner agreed to the relocation of both the proposed well site and the existing gravel road on Lot No. 6. Mr. Stoner, however, denied any such agreement. He testified that he recalled telling the Wolcotts they would "have to go and see the engineer and the Health Department" if they wanted the well moved. Mr. Stoner did, however, tell "them they could plant trees anywhere on their lot that they bought, anywhere on their lot."

When the Wolcotts agreed to purchase Lot No. 6, their contract did not include an express provision that would have allowed them to renege on the purchase if either the well or gravel driveway had not been rerouted, notwithstanding their contention that "they would not have entered into the contract" if Mr. Stoner had not agreed to relocate the well or allowed them full use of the easement area. Further confusing matters, Mr. Stoner testified to signing an application for a well permit for Lot No. 6 on February 23, 1993, which he contends was only one page at the time of signing. But, the Carroll County Health Department's copy of the application includes a drawing with two hand-written notations, which read, "new proposed well location" and "drive to be rerouted," and subsequently, the well was relocated one foot outside of the original thirty-foot easement area and the gravel road was rerouted away from Lot No. 6.

In its thorough discussion of the testimony and the law in this case, the circuit court did not make any express credibility findings, as it did in discussing Mr. Medved's testimony, or expressly address the interactions between the Wolcotts and Mr. Stoner in terms of abandonment or estoppel. But, the court did comment extensively on the

differences between the accounts of what was said and noted the fact that the contract to purchase was not contingent on the road or well being relocated. The court also commented on the Wolcotts having been made aware at settlement that Lot No. 6 was subject to the Amendment.[19]

Clearly, the circuit court was aware of the applicable law and did not conflate estoppel with abandonment. Its decision represents an implied finding that neither was generated by Mr. Stoner's interactions with the Wolcotts. Even assuming the accuracy of the Wolcotts' representations, it appears that the circuit court was not persuaded that Mr. Stoner's actions were of such a "decisive character" to constitute either a clear intention to abandon Westminster's (or its successors') right to the easement over Lot No. 6, or, in terms of estoppel, sufficient to create a reasonable belief that Westminster or its successors would not make future use of the Common Use Access Area as expanded by the Amendment.

Viewing Mr. Medved's interactions with the Wolcotts in the light most favorable to them, the record reflects that when Mr. Medved first became aware of the Wolcotts encroachment onto the Expanded Easement area in 1997, he informed the Wolcotts that he would not require removal of the improvements. But, the fact that he did nothing

[19] We note that Mrs. Wolcott stated that Mr. Stoner told them that the easement shown on the Plat was used to access the undeveloped portion of the property "for agricultural purposes" and had been reserved in case it was "ever needed" for "future residential development."

regarding the improvements did not indicate an intention to make no future use of the rest of the Expanded Easement area, should the need arise.

In its analysis, the circuit court found that "Mr. Medved did not evidence an intention to abandon the easement, and any reliance that the Wolcotts may have placed on Mr. Medved's acts or omission was not justified as to estop the DeMosses from asserting their rights in the Common Use Access Area." That finding was not clearly erroneous.

Public Policy

In addition, the Wolcotts note that the circuit court did not expressly address their public policy argument. They assert that "the expanded easement created by the amendment should be ruled invalid, ineffective or void as against public policy" because the Amendment "creates an easement over a lot shown on a recorded subdivision plat without any governmental review or approval and without recordation of an Amended Plat." In particular, the Wolcotts assert that the Expanded Easement violates "Maryland's laws, principles and policies regulating the subdivision of land" contained in the

Maryland Code (2012), §§ 5-101,[20] 5-202,[21] 5-301,[22] of the Land Use Article ("LU §§ 5-101, 5-202, 5-301") and Carroll County Code § 155.020. The Wolcotts also contend that the Amendment failed to meet the requirement contained in Note 3 of the Plat that "[a]ny modification or plat reassembly shall be subject to approval by the Carroll County Planning and Zoning Commission." They assert that it "can be inferred" that an amended plat needed to be filed to reflect the Expanded Easement.

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[20] That provision provides:

> **Land located in local jurisdiction**
>
> (a) Except as provided in subsection (b) of this section, the territorial jurisdiction of a planning commission over a subdivision is limited to land located in the local jurisdiction.
>
> **Land beyond limits of municipal corporation**
>
> (b) In a local jurisdiction where a county has not adopted subdivision regulations, the territorial jurisdiction of a planning commission of a municipal corporation may include all land located up to 1 mile beyond the corporate limits of the municipal corporation that is not located in any other municipal corporation.

[21] That provision provides, in relevant part, "(b) A plat of a subdivision within the territory or part may not be filed or recorded until: (1) the planning commission approves the plat; and (2) the chair or secretary of the planning commission indicates an approval in writing on the plat."

[22] That provision provides:

> **Civil penalty for use of unapproved plat**
>
> (a)(1) Except as otherwise provided in §§ 9-603, 9-806, 9-1004, 9-1605, and 9-1606 of this article, an owner or agent of an owner of land located within a subdivision may not transfer, sell, or agree to sell land by reference to, exhibition of, or other use of a plat of a subdivision before the plat has been:
>
> (i) approved by the planning commission; and
>
> (ii) recorded or filed in the office of the appropriate county clerk.
>
> (2) A person who violates this subsection is subject to a civil penalty of not less than $200 and not exceeding $1,000 for each violation.
>
> (3) Each lot or parcel transferred or sold or agreed to be sold in violation of this subsection is a separate violation.

The DeMosses respond that the Amendment "is not void as against public policy because there is no statutory requirement mandating recordation of an amended plat upon recordation of an amended common access easement." They further point out that the Wolcotts were unable to "point to any . . . specific regulation" that imposes such a requirement and that the "statutory provisions relied upon by [the Wolcotts] offer no support for their public policy claims." More specifically, LU § 5-101 confers subdivision authority to the counties; LU § 5-202 requires subdivision plats to be approved by a local planning commission before recordation; and the Carroll County subdivision regulations cited by the Wolcotts were the current regulations rather than the 1992 regulations. The DeMosses note the absence of a public policy argument in *McClure*, 220 Md. App. 369, 376, a case involving a forest conservation easement that was not shown on the original subdivision plat.

The Wolcotts asserted their public policy positions at trial, but the circuit court did not address that argument in its written opinion. Under Maryland Rule 8-131(a), we may decide any issue that "plainly appears by the record to have been raised in or decided by the trial court."

First of all, we recognize that the "General Assembly, not the Court, is the appropriate body" to decide matters of public policy. *Stearman v. State Farm Mut. Auto. Ins. Co.*, 381 Md. 436, 453 (2004). In our review, "[w]e neither add nor delete language so as to reflect an intent not evidenced in the plain and unambiguous language of the statute, and we do not construe a statute with forced or subtle interpretations that limit or

extend its application." *CashCall, Inc. v. Maryland Comm'r of Fin. Regulation*, 448 Md. 412, 431 (2016). "We review local laws and ordinances under the same principles that govern our construction of State statutes." *F.D.R. Srour P'ship v. Montgomery Cty.*, 179 Md. App. 109, 122 (2008), *aff'd*, 407 Md. 233 (2009).

Section 1 of the Subdivision Regulations for Carroll County, Maryland (1989), the regulations in effect at the time of the recordation of the original subdivision Plat and the Amendment, provides in relevant part:

> 1.6 "Subdivision Plat" shall be a drawing of the subdivision showing lots, streets, and other information which may be required in these regulations.
>
> 1.7 A "Preliminary Subdivision Plan" shall be a master drawing of a subdivision prepared for the overall planning of a property desired to be subdivided and which is in accordance with these regulations.
>
> 1.8 A "Final Subdivision Plat" shall be a drawing of any portion of the subdivision which is desired to be made of official record in the Office of the Clerk of the Circuit Court, and which may be all or a portion of a Preliminary Subdivision Plan.

Section 6, titled Final Subdivision Plat states, in relevant part:

> 6.1. The Final Subdivision Plat shall consist of a drawing intended for record incorporating those changes or additions lawfully ordered by the Commission in its approval of the Preliminary Subdivision Plan. The Final Subdivision Plat may include all or any portion of the area concerned by the Preliminary Subdivision Plan.
>
> 6.2. Title and graphic information to be shown on the Final Subdivision Plat shall be as required on the approved Preliminary Subdivision Plan except contour lines and shall clearly show all items required by Section 3-108 of the Real Property Article of the Annotated Code

of Maryland (1974)[23] as amended pertaining to the preparation of record plats.

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[23] Section 3-108 of the 1974 version of the Real Property Article of the Maryland Code provides, in relevant part:

> (a) Applicability. – The provisions of this section are in addition to any other provision of the Code pertaining to recordation of subdivision plats.
> (b) In general. – If the owner of land in the state subdivides his land for commercial, industrial, or residential use to be comprised of streets, avenues, lanes, or alleys, and lots, and desires, for the purpose of description and identification, to record a plat of the subdivision among the land records of the county where the land lies, the clerk of the court shall accept and record the plat as prescribed in this section. The clerk may not accept the plat for record until the owner of the land complies with the requirements prescribed in this section.
> (c) Description of plats. – (1) In this subsection, "coordinate" means a number which determines the position of any point in a north or south and an east or west direction in the relation to any other point in the same coordinate system.(2) The plat shall be legible, drawn accurately and to scale and shall be submitted on linen sheets for recordation. (3) The plat shall contain the courses and distances of all lines drawn on the plat. (4) With respect to all curved lines, the plat shall show the length of all radii, arcs, and tangents and the courses and distances of all chords. (5) The plat shall contain a north arrow which represents and designates either true or magnetic meridian as of a date specified on the plat or shall be referenced to a recognized coordinate system within the county. (6) All courses shown on the plat shall be calculated from the plat meridian. (7) No distance on the plat may be marked, "more or less," except on lines which begin, terminate, or bind on a marsh, stream, or any body of water. (8) The plat shall show the position by coordinates of not less than four markers set in convenient places within the subdivision in a manner so that the position of one marker is visible from the position of one other marker. From these markers, commonly called "traverse points," every corner and line can be readily calculated and marked on the ground. These markers shall be made of hard durable stone or concrete and shall be planted at least three feet into the ground. (9) If the subdivision lies in an area where a recognized coordinate system already is established and traverse points of the system can be found and used, the coordinate values shall be marked in the same datum as those on the points found and identified by datum on the plat. In this case no markers are required, but the owner of the land shall comply with all other requirements. (10) A certificate stating that the requirement of this subsection, as far as it concerns the making of the plat and setting of the markers, shall be put on the plat and signed by the owner of the land shown on the plat to the best of his knowledge and by the surveyor preparing it.

In this case, the subdivision Plat for Lot No. 6 showing a forty-foot right of way to a public road, thirty feet of which impacted Lot No. 6, was approved by the Carroll County Planning and Zoning Commission on February 20, 1990 and recorded among the Land Records of Carroll County on February 26, 1991. The forty-foot easement was later expanded by the recordation of an Amendment to Declaration of Maintenance Obligations and Common Use Access Agreement on February 27, 1992, but there was no redirection or relocation of the right of way shown on the Plat and no modification of the lot lines or reassembly of the lots shown on the Plat.

We are not persuaded that the statute or regulations in this case support an inference that approval and recordation of a new plat was required. The Amendment did not alter the metes and bounds of the lots depicted on the Plat, or, in any way, interfere with or reduce the approved access to a public street. Nor, in terms of Note 3 on the Plat, did the possible need for an expanded easement area sometime in the future represent a "modification or plat reassembly" requiring planning commission approval.

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