

Circuit Court for Charles County  
Case No. C-08-CV-20-000656

UNREPORTED\*

IN THE APPELLATE COURT

OF MARYLAND

No. 2154

September Term, 2023

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DONNA KEENE, et al.

v.

DANIEL FISHMAN, et al.

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Nazarian,  
Tang,  
Kehoe, S.,

JJ.

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Opinion by Kehoe, J.

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Filed: September 22, 2025

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

Although this case has a somewhat convoluted history, the instant appeal arises from the interplay between a grant of a Motion to Intervene and the concurrent denial of a Motion to Alter or Amend Judgment issued by the Circuit Court for Charles County. The trial court granted the Complaint for Issuance of a Final Injunction and Declaratory Judgment filed by the Appellees, Daniel and Eleanor Fishman (collectively “the Fishmans” or “Appellees”) against Paul Wright, individually and as Trustee of the SPQR Revocable Trust (collectively “Wright”). The Court did not grant the relief sought by Wright in his Counter Complaint to Quiet Title. Wright moved to alter or amend the court’s judgment, and the Appellants, Donna and David Keene, Trustees of Tower Rock Trust (collectively the “Keenes”) and Louis C. Kovacs (“Kovacs”) (the Keenes and Kovacs collectively the “Intervenors” or “Appellants”), moved to intervene and asked to court to grant the Motion to Alter or Amend. The trial court granted the Appellants’ Motion to Intervene, but denied the Motion to Alter or Amend.

### **I. Procedural History**

On November 16, 2020, the Fishmans filed a Complaint for Issuance of a Final Injunction and Declaratory Decree against Wright. On January 18, 2021, Wright filed a Counter Complaint to Quiet Title, claiming easement by prescription (Count One) and easement by necessity (Count Two).

A bench trial was held on January 25, 2022, March 7, 2022, and March 15, 2022. On May 18, 2022, the court announced an oral opinion, which was reduced to a written judgment signed on May 27, 2022, but not filed with the clerk until June 22, 2022. In its

judgment, the circuit court granted a final injunction in favor of the Fishmans, enjoining Wright from trespassing and encroaching upon the Fishmans' property; denied the Fishmans' claim for damages; and denied Wright's counter complaint. The circuit court held a hearing on the Motion to Alter or Amend Judgment on October 17, 2022. On May 5, 2023, the Appellants filed a Motion to Intervene, which included a request for a new trial. On June 1, 2023, the Intervenors amended their motion to include a proposed answer to the Fishmans' Complaint and a proposed counterclaim against the Fishmans. On October 3, 2023, the circuit court held a hearing on the Motion to Intervene and further arguments on the Motion to Alter or Amend. The court granted the Motion to Intervene, but did not designate the Intervenors as a party nor direct them file their answer and counterclaim. The court denied the Motion to Alter or Amend. The Intervenors noted a timely appeal.

On December 5, 2023, the circuit court granted the Motion to Intervene, however, the court denied the motion to alter or amend. The Intervenors' Motion for new Trial was never expressly granted nor denied. No further proceedings were scheduled by the circuit court in this matter. The Intervenors filed a timely appeal, presenting the following questions for this Court's review:

1. Whether the circuit court erred in failing to join Kovacs and the Keenes as necessary parties to the case?
2. Whether the circuit court erred in granting the Motion to Intervene without granting the Intervenors' request for a new trial?
3. Whether the circuit court erred in dismissing Count One of Wright's Counter Compliant seeking a prescriptive easement?

4. Whether the circuit court erred in holding that an easement by necessity does not exist on Lot 16 for the benefit of Lots 17, 18, and 19?

For the reasons discussed *infra*, we vacate the judgment of the Circuit Court for Charles County and remand the case for further proceedings.

## **I. BACKGROUND**

The properties in question lie within the Poplar Hill subdivision in Accokeek, Charles County, Maryland. The land now known as Poplar Hill was conveyed to the Piscataway Company (“Piscataway”), by deed dated December 28, 1956, from Bernard W. Cook, and recorded among the land records of Charles County at Liber P.C.M. 127, folio 434, and by deed dated March 8, 1958, from Frances P. Bolton, and recorded among the land records of Charles County at Liber P.C.M. 172, folio 208. On November 3, 1959, Piscataway recorded a subdivision plat Poplar Hill, recorded among the plat records of Charles County at Liber P.C.M. 7, folio 99. On March 9, 1960, Piscataway recorded a resubdivision of Poplar Hill, recorded among the plat records of Charles County at Liber P.C.M. 7, folio 111 (the subdivision and resubdivision plats will be collectively referred to as the “Subdivision Plat”). The Poplar Hill subdivision was subject to a Declaration of Covenants dated November 10, 1959, and recorded among the land records of Charles County at Liber P.C.M. 145, folio 316.

Within the Poplar Hill subdivision, the Fishmans own Lot 16, the Kovacs own Lot 17, Wright owns Lot 18, and the Keenes own Lot 19. Lot 16 of Poplar Hill was conveyed to the Fishmans on October 16, 2019; Lot 17 to Kovacs on March 21, 1978; Lot 18 to Wright on March 18, 2020; and Lot 19 to the Keenes on May 12, 2017. The lots in Poplar

Hill are subject to a scenic easement and restrictive covenants due to their location across the Potomac River from historic Mount Vernon.

When Poplar Hill was subdivided in 1959, a fifty-foot right-of-way easement to access the nearest public roadway, “Old Landing Road,” was created for the benefit of Lots 16, 17, 18, and 19, which are otherwise landlocked. The express easement encumbers Lots 13, 14, 18 (Wright’s property), and 19 (the Keenes’ property) of the Poplar Hill subdivision.<sup>1</sup> The subdivision plat indicates that the fifty-foot wide easement is located along the southerly boundary of Lot 13, making a hairpin turn on the easterly boundary of Lot 13, then taking another hairpin turn and continuing across Lots 19 and 18. However, there is not a traversable road that follows this exact platted easement in its entirety. Appellants argue that “[t]his easement was commonly referred to as Ships Knee Drive throughout the 60 plus year history of the subdivision. The as-built road, however, did not precisely match the platted easement and as a result, a good portion of the road was built on Lot 16,” the Fishmans’ property.

Ships Knee Drive follows the express easement on Lots 13 and 14, but exits the platted easement before it reaches Lot 19 (the Keenes’ property), and enters onto Lot 16

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<sup>1</sup> The easement is depicted on the plat for Poplar Hill, dated September 10, 1959, and recorded in the Plat Records of Charles County, Maryland, in Book 7, Page 99. The deed for Lot 17, conveyed to Kovacs, also reflects the easement: “Together with a right of way for ingress and egress, over and across the area on said plat delineated as ‘50 foot easement’ and traversing lots numbered thirteen (13), fourteen (14), eighteen (18) and nineteen (19) on said plat [. . .]” The easement begins at the corner of Old Landing Road and Lots 13 and 14.

(the Fishmans' property) where it eventually ends.<sup>2</sup> However, there is not an express easement on Lot 16 (the Fishmans' property), neither in the deed nor plat, for the benefit of Lots 17, 18, or 19. In order to access Lots 17, 18, and 19 by way of Ships Knee Drive, one must enter onto Lot 16.

Shortly after purchasing Lot 18 on March 18, 2020, Wright began using Ships Knee Drive, including the portion located on Lot 16 (the Fishmans' property), to access his property. Furthermore, Wright began to construct a driveway connecting Ships Knee Drive on Lot 16 to his property. On October 29, 2020, the Fishmans notified Wright via letter of his alleged trespass and damage to their property and requested that Wright cease such conduct, however, the alleged trespass and construction continued.

The Fishmans filed a Complaint for Issuance of a Final Injunction and Declaratory Judgment on November 16, 2020, requesting the court to enjoin Wright from trespassing and encroaching on their property, and to order Wright to pay damages. In response, Wright filed a Counter Complaint to Quiet Title on January 18, 2021, claiming that the portion of Ships Knee Drive located on the Fishmans' property is an easement by prescription and easement by necessity. In his counter-complaint, Wright claims that Ships Knee Drive has been the "sole means of ingress and egress to the Wright Property since 1964." Wright further argues,

That in light of the existence of protected wetlands in the area of the easement of record, the unreasonable cost and environmental impact of

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<sup>2</sup> The portion of Ships Knee Drive that is located within Lot 16 is referred to at trial as the "existing gravel road."

constructing a new roadway through the wetland, and the fact that the common grantor, Piscataway Corporation, placed the Subject Road over the Fishman Property more than fifty (50) years ago when it still owned the same, an easement by necessity should be established in favor of Counter-Plaintiffs over the Subject Road.

Pending a hearing on the merits, a preliminary injunction against Wright was granted on May 14, 2021. The preliminary injunction enjoined Wright from continuing construction that effected Ships Knee Drive but allowed Wright to access his property via Ships Knee Drive until litigation concluded.<sup>3</sup> Mr. Fishman testified at the final injunction hearing that Wright continued to use Ships Knee Drive for construction purposes even after the preliminary injunction.

A three-day trial took place in January and March of 2022. On May 27, 2022, the circuit court ruled in favor of the Fishmans, albeit denying the Fishmans' request for damages.<sup>4</sup> Wright failed to prove that an easement by prescription or necessity existed upon the Fishmans' property and Wright was enjoined from trespassing onto Lot 16 (the Fishmans' property) to access his property. The circuit court found, *inter alia*:

That the Fishman existing gravel road is on Lot 16 and is owned by Fishman as shown on Plaintiff's Exhibit 7 entered in these proceedings;

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<sup>3</sup> The motions judge advised in his ruling that "[w]e are going to grant the request for the restraining order to the extent that it will prohibit Mr. Wright from using [. . .] the road with any commercial vehicles, or for any sort of commercial or construction purposes. He can access the road [. . .] No construction or modification to the roadway, which is Ships Knee [Drive] [. . .] No gravel, no additions, no improvements, until all of this is over [. . .] No, to anything that affects Ships Knee."

<sup>4</sup> The court's ruling was issued verbally on May 18, 2022. The order was signed on May 27, 2022.

That a 50' Express Easement as shown and established on the Plat provides access to Wright Lot 18;

That the 50' Express Easement as shown and established on the Plat which provides access to Lot 18, (as well as Lot 17 and 19) is not located on Lot 16;

That an Easement by Prescription does not exist for the benefit of Lot 18 (Wright) over the lands of Lot 16 (Fishman);

That an Easement of Necessity does not exist for the benefit of Lot 18 (Wright) over the lands of Lot 16 (Fishman);

That Fishman is entitled to the entry of a Final Injunction prohibiting Defendant/Counter Plaintiff Paul T. Wright, Trustee and individually ("Wright") from enter upon the lands owned by Fishman (Lot 16)[.]

On May 31, 2022, Wright filed a Motion to Alter or Amend Judgment. A motions hearing was held on October 17, 2022, but the court did not issue any ruling on Wright's motion to alter or amend judgment.<sup>5</sup>

On May 5, 2023, the Appellants filed a Motion to Intervene, which included a request for a new trial. In their motion, Appellants claim that Ships Knee Drive was the "sole means of access to Lots 16, 17, 18 and 19." According to the Appellants,

The Intervenor[s'] rights could be substantially affected by the court order as their rights to access their properties would be greatly impaired by a final order allowing the Fishmans to block access to Ships Knee Drive. Because no alternative access to the Intervenor[s'] respective properties exists, Ships Knee Drive is necessary to access the properties. Use of the 50-foot easement in its originally platted location is wholly impractical and nearly impossible as it contains substantial wetlands, and the federal government has denied request to remove trees in order to build a road.

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<sup>5</sup> A transcript of this hearing was not provided in the record and the hearing sheet did not provide enough details for us to decipher what was said or concluded at this hearing.

Moreover, the Fishmans installed a gate, which prevented vehicular access to Lots 17, 18, and 19, impacting the Appellants' ability to access their properties. In response to the Appellants' motion, Wright filed a consent on May 12, 2023, while the Fishmans filed an opposition on May 17, 2023. Additionally, on May 22, 2023, Wright filed a Motion to Stay Final Injunction pending the resolution of his Motion to Alter or Amend Judgment or, if necessary, any appeal.

A hearing to address all pending motions was held on October 3, 2023. On December 5, 2023, the circuit court denied Wright's Motion to Alter or Amend Judgment, as well as Wright's Motion to Stay Final Injunction, but granted the Appellants' Motion to Intervene. No further proceedings in the matter were scheduled by the court. On December 29, 2023, the Intervenors filed this timely appeal.

Additional facts will be included in the discussion as they become relevant.

## **II. DISCUSSION**

### **a. Joinder of Necessary Parties**

On the first issue, the Appellants argue that the circuit court abused its discretion by failing to join Kovacs and the Keenes as necessary parties to the case, as required by Maryland Rule 2-211 and § 3-405 of the Courts and Judicial Proceedings Article of the Maryland Code ("CJP"), before the end of trial. According to the Appellants, their property interests were impaired by the lawsuit as "[t]he trial court's order [] explicitly named Lot 17 and Lot 19 and implicitly allowed Fishman to block Kovacs and the Keenes' access to their properties." The court relied on evidence and arguments that discussed the

Appellants' lots and property rights during trial. Furthermore, joining the Appellants to the case would prevent multiplicity of litigation and the possibility of inconsistent verdicts. As a result of the court's error, the Appellants request that this Court remand the case for a new trial.

The Fishmans argue that this issue is moot because the Appellants were joined as parties to the case pursuant to the Appellants' motion to intervene, which was granted on December 5, 2023. Furthermore, according to the Fishmans, even if the issue was not moot, the Appellants are not necessary parties to the case because complete relief could be and was accorded among the parties (the Fishmans and Wright) without the joinder of the Appellants. The Fishmans argue, "[t]he property rights of Appellees and Wright are completely independent of, and distinct from, the property rights of Intervenors, and Intervenors fail to even allege otherwise."

In reviewing a trial court's decision to join a necessary party, or its failure to do so, the law is unsettled whether the standard of review is abuse of discretion or de novo. *Service Transport, Inc. v. Hurricane Exp., Inc.*, 185 Md. App. 25, 36–37 (2009). "The federal circuits are divided on the appropriate standard of appellate review of necessary and indispensable party determinations," as such this Court has declined to adopt one standard over the other. *Id.* (also concluding "[t]his is not the appropriate case for us to enter into this thicket," because "whether analyzed under an abuse of discretion standard or a de novo consideration of a legal issue, we believe the result would be the same.")).

Maryland Rule 2-211 regarding joining necessary parties to a lawsuit reads, in relevant part:

(a) Persons to Be Joined. 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.

The court shall order that the person be made a party if not joined as required by this section. [. . .]

Md. Rule 2-211. CJP § 3-405 also requires joinder of necessary parties for cases where declaratory relief is sought, such as the case on review before this Court, and states, “[i]f declaratory relief is sought, a person who has or claims any interest which would be affected by the declaration, shall be made a party.” Md. Code Ann., Cts. & Jud. Proc. § 3-405(a)(1).

The purpose of these rules is to “assure that a person's rights are not adjudicated unless that person has had [their] ‘day in court.’” *Bender v. Sec’y, Maryland Dep’t of Pers.*, 290 Md. 345, 351 (1981); *see also Eyler v. Eyler*, 92 Md. App. 599, 604 (1992). These rules are also designed to prevent “multiplicity of litigation by assuring a determination of the entire controversy in a single proceeding.” *Id.* Moreover, “[f]ailure to join a necessary party constitutes a defect in the proceeding that cannot be waived by the parties, and may be raised at any time, including for the first time on appeal.” *Mahan v. Mahan*, 320 Md.

262, 577 (1990). Where there is a failure to join a necessary party in a declaratory relief case, “the declaratory judgment must be vacated and case remanded to the circuit court” for the necessary party to be joined. *Eyler*, 92 Md. App. at 604.

A necessary party is “all persons who have an interest in the declaration,” and “[a]ny person who, as a result of a declaration, may gain or be deprived of a legal right or other benefit has an interest that might be affected by the outcome of the action and is, therefore, a necessary party.” *Bender*, 290 Md. at 350; *see also Rounds v. Maryland-Nat. Capital Park and Planning Com’n*, 441 Md. 621, 648 (2015) (quoting *Williams v. Moore*, 215 Md. 181, 185 (1957)) (the “general rule [is] that ordinarily, in an action for a declaratory judgment, all persons interested in the declaration are necessary parties.”).

Appellants argue that they are necessary parties in this case because a declaratory judgment in relation to Ships Knee Drive affects the access to their properties. Despite Ships Knee Drive falling outside the expressly granted easement, the Appellants at least have an arguable claim to the use of the road as they have used it to access their properties since the purchase of their lots, as did their predecessors, and it is the only existing traversable road connecting their properties to a public road.

Likewise, in *Rounds v. Maryland Nat. Capital Park and Planning Com’n*, a group of homeowners sought a declaratory judgment to establish an easement for the use of a road, known as “Farm Road,” to access their properties. *Rounds*, 441 Md. at 629. The homeowners’ complaint included claims of Implied Easement by Necessity, Implied Easement by Grant, Implied Easement by Reservation, Implied Easement by Prescription,

Implied Easement by Subdivision, *inter alia*. *Rounds v. Maryland Nat. Cap. Park & Plan. Comm'n*, 214 Md. App. 90, 95 n.1 (2013), *aff'd in part, rev'd in part*, 441 Md. 621 (2015).

The action was brought against neighboring property owners and developers, who the homeowners allege were wrongfully attempting to prevent them from accessing and using their properties by slowly eliminating Farm Road through development of the land. *Rounds*, 441 Md. at 630–31. However, the homeowners failed to name everyone owning property adjacent to Farm Road to the action, asserting that the “other adjacent property owners have agreed not to contest the relief sought herein.” *Id.* at 647. The circuit court dismissed the easement claims without prejudice for failure to join necessary parties. *Id.* This Court affirmed the circuit court, concluding that the homeowners failed to name other interested property owners and attempted to waive their presence, which they cannot do. *Id.*

Our Supreme Court granted the homeowners’ writ of certiorari and in its opinion equated *Rounds* to *Williams v. Moore*:

Similar to this case, *Williams* involved a declaratory judgment action regarding an easement. In that case, at least two other property owners had an interest in the purported easement, because their properties abutted the easement, but were not named in the suit. This Court held that without all adjacent property owners (who could be affected by the declaratory judgment regarding the easement), the case had to be dismissed. In other words, the failure to join necessary parties was “fatal.”

*Id.* at 648 (citing *Williams*, 215 Md. at 186) (internal citations omitted). Although “[g]enerally, a trial court should dismiss a claim for declaratory judgment that the plaintiffs have an easement to use a road where the plaintiffs have not joined everyone who owns

property adjacent to the road,” *Rounds*, 214 Md. App. at 111, our Supreme Court previously held that “ordinarily dismissal is undesirable and that a preferable procedure is to permit an amendment joining the necessary parties,” *Bender*, 290 Md. at 350. Following this preference, the Supreme Court in *Rounds* remanded the easement counts for the homeowners to join the necessary adjacent landowners. *Id.* at 650.

In the instant case, the Fishmans argue that the issue as to whether the Appellants are necessary parties is moot because the court granted their motion to intervene. They also argue that the Keenes are not necessary parties because the issue between the Fishmans and Wright was injunctive relief and trespass, which do not affect the Appellants. However, these arguments ignore that the Fishmans’ Complaint prayed for “the issuance of a Declaratory Decree establishing the ownership of DANIEL FISHMAN and ELEANOR FISHMAN in the Fishman property.” (capitalization in original) This prayer for a declaratory judgment relates to the allegations that the existing gravel road on the Fishman property was being used by Wright as access to his property. Wright filed a counterclaim to quiet title in the existing gravel road either as a prescriptive easement or as an easement of necessity. Manifestly, under the allegations in the Complaint and Counterclaim, the Appellants have an interest in the court’s declaration as to who may use the existing gravel road. “[A] person who has a claim or interest which would be affected by the declaration shall be made a party.” Md. Code Ann., Cts. & Jud. Proc. § 3-401(a). The decree which the Fishmans sought to have a “final and tranquilizing effect” on the gravel road on their property required them to join all property owners who might benefit from the use of that

road. *See Williams*, 215 Md. at 185. They are, therefore, necessary parties because they have an interest in the purported easement. *Id.* at 185–86. In order to afford complete relief, it was necessary for the Fishmans and Wright to have named the Appellants as parties to their respective claims.

**b. Intervention & New Trial**

As for the second issue, the Appellants argue that while the circuit court properly granted their motion to intervene, the court erred by failing to also grant their request for a new trial. In granting the motion to intervene, the circuit court recognized the Appellants' interest in the matter that significantly alters their property rights, however, failed to provide "an avenue to protect their interests," by not granting the Appellants an opportunity to present evidence and arguments on their behalf. According to the Appellants, "[w]ithout granting the requested remedy, a new trial, the Intervention is mostly meaningless." The Appellants, as well as this Court, note that the Fishmans did not appeal the circuit court's decision to grant the Appellants' motion to intervene. Consequently, the Appellants request that we find an abuse of discretion and remand for a new trial.

In contrast, the Fishmans argue that the circuit court properly exercised its discretion in not ordering a new trial, as it would have been onerous for the Fishmans and Wright to relitigate the matter. They also argue that any new trial should be barred because the Appellants waited over a year from the time that circuit court issued its original judgment before intervening. The Fishmans highlight that the Appellants knew that the legal action was taking place, but did not intervene until the matter concluded. Furthermore, the

Fishmans note that at the October 3, 2023 motions hearing, the Appellants agreed with the circuit court that it could deny Wright's motion to alter or amend judgment and motion to stay final injunction, and grant the motion to intervene, "as it would give [the Appellants] the ability to have a voice in Wright[']s appeal of the circuit court's decision, and the Intervenor indicated their intent to file collateral litigation against Appellees."<sup>6</sup> It is unclear to the Fishmans why the Appellants have not sought collateral litigation instead. The Fishmans request that we affirm the circuit court and deny the Appellants a new trial.

When reviewing decisions on motions to intervene, "we employ an abuse of discretion standard when the circuit court denies the motion as untimely or when permissive intervention is rejected," while "[d]enials of a motion to intervene as a right are reviewed under a de novo standard." *In re Malichi W.*, 209 Md. App. 84, 89 n. 5 (2012) (citing *Md.-National Capital Park & Planning Comm'n v. Town of Washington Grove*, Md., 408 Md. 37, 65 n. 20 (2009)). Additionally, we review denials of motions for a new trial using an abuse of discretion standard. *Mason v. Lynch*, 151 Md. App. 17, 28 (2003).

Maryland Rule 2-214 governs the process and requirements to intervene in a civil lawsuit and, in relevant part, reads:

(a) Of Right. Upon timely motion, a person shall be permitted to intervene in an action: (1) when the person has an unconditional right to intervene as a matter of law; or (2) when the person claims an interest relating to the property or transaction that is the subject of the action, and the person is so situated that the disposition of the action may as a practical matter impair or impede the ability to protect that interest unless it is adequately represented by existing parties.

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<sup>6</sup> However, Wright never filed an appeal in this matter.

(b) Permissive.

(1) Generally. Upon timely motion a person may be permitted to intervene in an action when the person's claim or defense has a question of law or fact in common with the action.

[. . .]

(3) Considerations. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(c) Procedure. A person desiring to intervene shall file and serve a motion to intervene. The motion shall state the grounds therefor and shall be accompanied by a copy of the proposed pleading, motion, or response setting forth the claim or defense for which intervention is sought. An order granting intervention shall designate the intervenor as a plaintiff or a defendant. Thereupon, the intervenor shall promptly file the pleading, motion, or response and serve it upon all parties.

Md. Rule 2-214. In summary, there are four requirements for intervention as of right, which are:

(i) the application for intervention must be timely; (ii) the applicant must have an interest in the subject matter of the action; (iii) the disposition of the action must at least potentially impair the applicant's ability to protect its interest; and (iv) the applicant's interest must be inadequately represented by the existing parties.

*John B. Parsons Home, LLC v. John B. Parsons Found.*, 217 Md. App. 39, 65–66 (2014) (citing *Chapman v. Kamara*, 356 Md. 426, 443 (1999)). Failure to show any one of these requirements would merit denial of a request to intervene. *Id.*

However, the circuit court in the case *sub judice* granted the Appellants' motion to intervene and the Fishmans did not appeal that decision. As such, it is not necessary for this Court to assess whether the circuit court abused its discretion by finding that the

Appellants' interest in the matter was a claim to an interest in property, and, therefore, they were intervenors of right. For our purposes, Appellants complied with the requirements of Rule 2-214.

The pertinent issue is whether the circuit court erred by failing to order a new trial. The granting or denying of motion to intervene is the first step in a trial court's consideration. Md. Rule 2-214(a). Once a motion to intervene is granted, then the trial court must designate the intervenor as a plaintiff or defendant. Md. Rule 2-214(c). The trial court never took this step. There is a substantive defect in the trial court's failure to adhere to the procedure set forth in Rule 2-214(c). In reference to motions to intervene, this Court previously noted:

Generally, a motion to intervene coupled with a substantive motion should be treated as a two-step process, with the first step being determination of the threshold issue of whether the petitioner has the right to intervene. *See Office of People's Counsel v. Advance Mobilehome Corp.*, 75 Md.App. 39, 42 n. 2 [] (1988) (explaining that the motion to alter or amend the judgment was not officially filed until the court granted the motion to intervene). If the motion to intervene is granted, the court then addresses the substantive motion.

*City of Coll. Park v. Jenkins*, 150 Md. App. 254, 264 (2003), *vacated*, 379 Md. 142 (2003).

Here, the circuit court concluded the first step in the process by granting the motion to intervene without proceeding to the second step of addressing a substantive motion or pleading. The second step is inextricably tied to Appellants' status as necessary parties. There can be no adjudication as to the Fishmans' interest in the road without the joinder (or participation through intervention) of all necessary parties. Inclusion of necessary parties is a jurisdictional matter that allows for the full resolution of competing claims.

*Williams*, 215 Md. at 185. In its motion to intervene, the Appellants requested a new trial “where additional evidence may be heard from the Intervenors and existing parties,” however, the circuit court neither expressly granted nor denied this request in its order. Additionally, the circuit court failed to identify the Intervenors in its order as required by Rule 2-214, which indicates that “[a]n order granting intervention shall designate the intervenor as a plaintiff or a defendant.” Md. Rule 2-214(c).

When the circuit court permitted the Appellants to intervene in the case, it should have designated them as either a plaintiff or defendant, whereupon the Appellants would have been required to file their proposed pleading and serve it on all parties. Md. Rule 2-214(c).

The Fishmans’ argument that the Appellants waited too long to file their motion to intervene is misplaced. The purpose of the motion to intervene was to establish the Appellants’ participation as necessary parties. Failure to join necessary parties is a jurisdictional issue that can be fatal to a claim. *Williams*, 215 Md. at 185. “The failure to join necessary a party constitutes a defect in the proceedings that cannot be waived by the parties, and may be raised at any time, including for the first time on appeal.” *Mahan*, 320 Md. at 273. Full adjudication as to the status of the existing gravel road on Lot 16 requires that all potential stakeholders be parties. Therefore, the motion to intervene was not untimely.

To the extent that Appellants’ motion for new trial is a motion under Rule 2-535, the judgment can only be vacated in instances of fraud, mistake or irregularity. Md. Rule

2-535. A mistake is a jurisdictional error where the court has no power to enter the judgment. *Tandra S. v. Tyrone W.*, 336 Md. 303, 317 (1994). As noted, the failure to join necessary parties is a jurisdictional defect. *Williams*, 215 Md. at 185. The trial court could not properly declare whether there was an easement over the existing gravel road without the participation of all parties who might have been affected by the court's decision.

In granting the motion to intervene and denying the motion for new trial, the trial court, in essence, allowed for the Appellants to be nominal parties for the purpose of appeal but effectively denied them any relief. The means by which the Appellants can prosecute or defend their claims is through a new trial. Accordingly, the trial court erred in denying a new trial. Since the new trial is necessary for the Appellants claims, the issues as to whether there is a prescriptive easement or an easement by necessity on the existing gravel road on Lot 16 will once again be before the trial court.

### III. CONCLUSION

We conclude that the circuit court erred in granting the motion to intervene without addressing the Appellants' request for a new trial and without designating the Appellants as a party, as required by Maryland Rule 2-214. As such, we vacate the judgment of the Circuit Court for Charles County with instructions for the court to designate the Appellants as either plaintiffs or defendants, and to grant the motion for a new trial.

**JUDGMENT OF THE CIRCUIT COURT FOR  
CHARLES COUNTY IS VACATED.  
REMANDED TO THE CIRCUIT COURT FOR  
CHARLES COUNTY FOR FURTHER  
PROCEEDINGS CONSISTENT WITH THIS  
OPINION. APPELLEES TO PAY COSTS.**