Circuit Court for St. Mary's County
Case No. 18-C-15-000889

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2383

September Term, 2016

ROBERT W. VAN DYKEN, ET UX.

v.

ANTOINETTE D. WILSON

Eyler, Deborah S.,
Arthur,
Shaw Geter,

JJ.

Opinion by Shaw Geter, J.

Filed: April 12, 2018

Appellee, Antoinette Wilson, purchased a parcel of waterfront property in Coltons Point, Maryland, in February 2002 and recorded her deed shortly thereafter. An initial boundary survey indicated that the property contained 0.334 acres, more or less. According to the survey, appellee's parcel bounded on the landward side of what is now Point Breeze Road. During this time, appellee permitted owners in the subdivision with interior lots, including appellants, Robert Van Dyken and his wife, Karen Van Dyken, to cross over her property to access the Potomac River.

Appellee had the property resurveyed in 2013. The second survey indicated that her property was approximately 0.45 acres and extends to the approximate mean high tide line of the Potomac River; appellee conveyed this property to herself in January 2015 via a confirmatory deed. Prior to recording the confirmatory deed and continuing through the present, appellants maintain that appellee has denied them access to the water. As a result, appellants filed a complaint in the Circuit Court for St. Mary's County alleging three causes of action: quiet title, declaratory judgment, and ouster. Appellee subsequently filed a motion for summary judgment, which the circuit court granted. Appellants timely appealed and raise the following issues that we have rephrased:

I. Did the circuit court err in ruling that appellants do not have an easement over appellee's property?

II. Did the circuit court err in granting appellee's motion for summary judgment?

III. Did the circuit court err in failing to declare the rights and obligations of the parties in its written order?

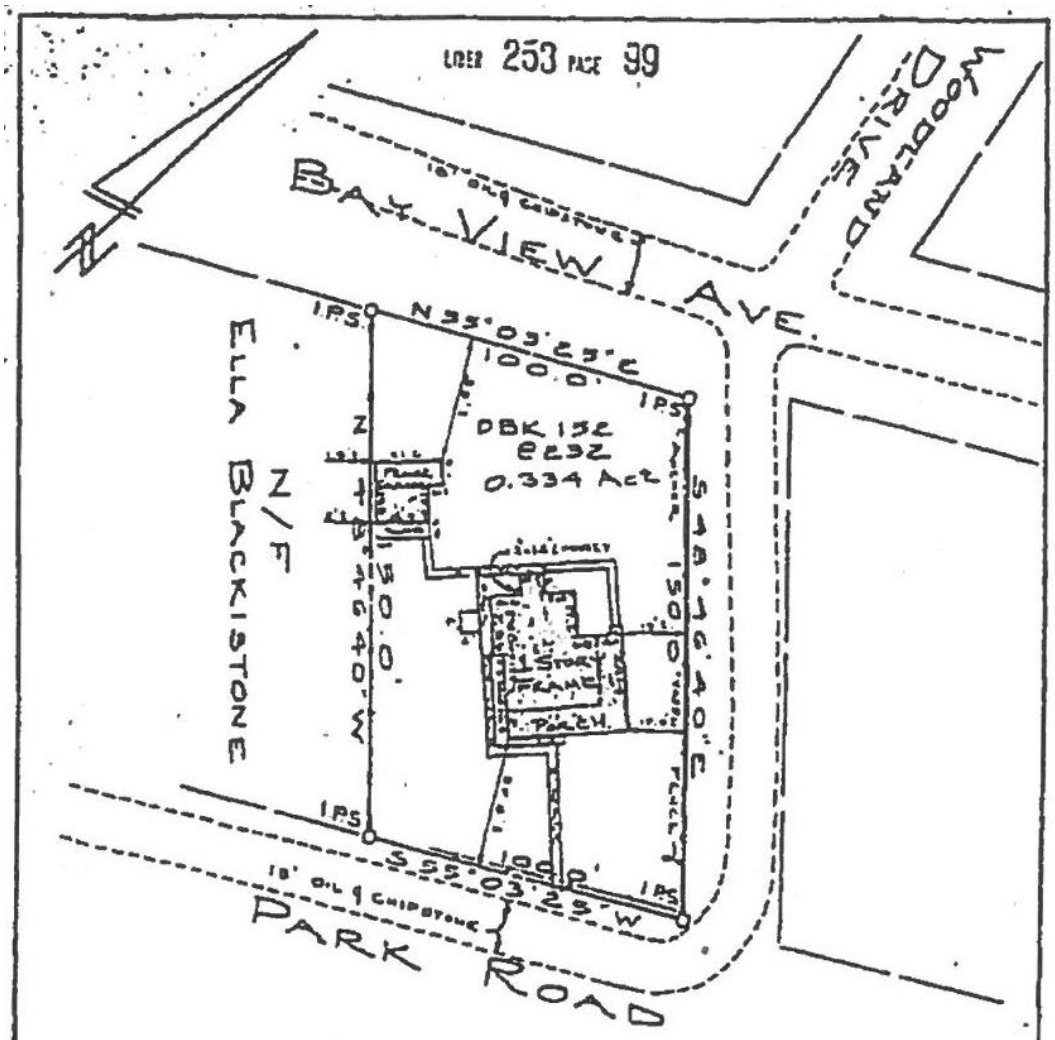
For the reasons to follow, we affirm.

BACKGROUND

Appellee is the fee simple owner of real property located at 38390 Point Breeze Road in Coltons Point, Maryland. Appellee's deed, which is recorded in the Land Records of St. Mary's County in Liber E.W.A. 1785, folio 629, provides that her parcel contains approximately 0.334 acres:

> BEGINNING of the same at the northwest corner of a lot conveyed to Ella Blackistone by deed of Ruth Farr and George H. Farr, her husband, dated June 14, 1920, and recorded among the Land Records of St. Mary's County, Maryland in Liber E.B.A. No. 19, folio 172, said point of beginning being above the shore of the Potomac River, and running with and in the extension of the northern boundary line of the lot as aforesaid conveyed to Ella Blackistone for a distance of 150 feet, and then at a right angle to the first line for a distance of 100 feet, then parallel to the said first line for a distance of 150 feet, and then by a straight line for a distance of 100 feet to the first beginning, containing one/third (1/3) of an acre of land, more or less, and as more recently surveyed by J.R. McCrone, Jr., Inc., Registered Land Surveyors, and shown to contain 0.334 acres, more or less.

The McCrone survey, which is referenced in the deed and we have reproduced below, indicates that appellee's parcel bounds on the landward side of Park Road (now Point Breeze Road):



I hereby certify that the positions of all the existing improvements shown on the above-described property have been carefully established by a transit-tape survey, and that unless otherwise shown, there are no encroachments.

Registered Land Surveyor — Date 5/21/76

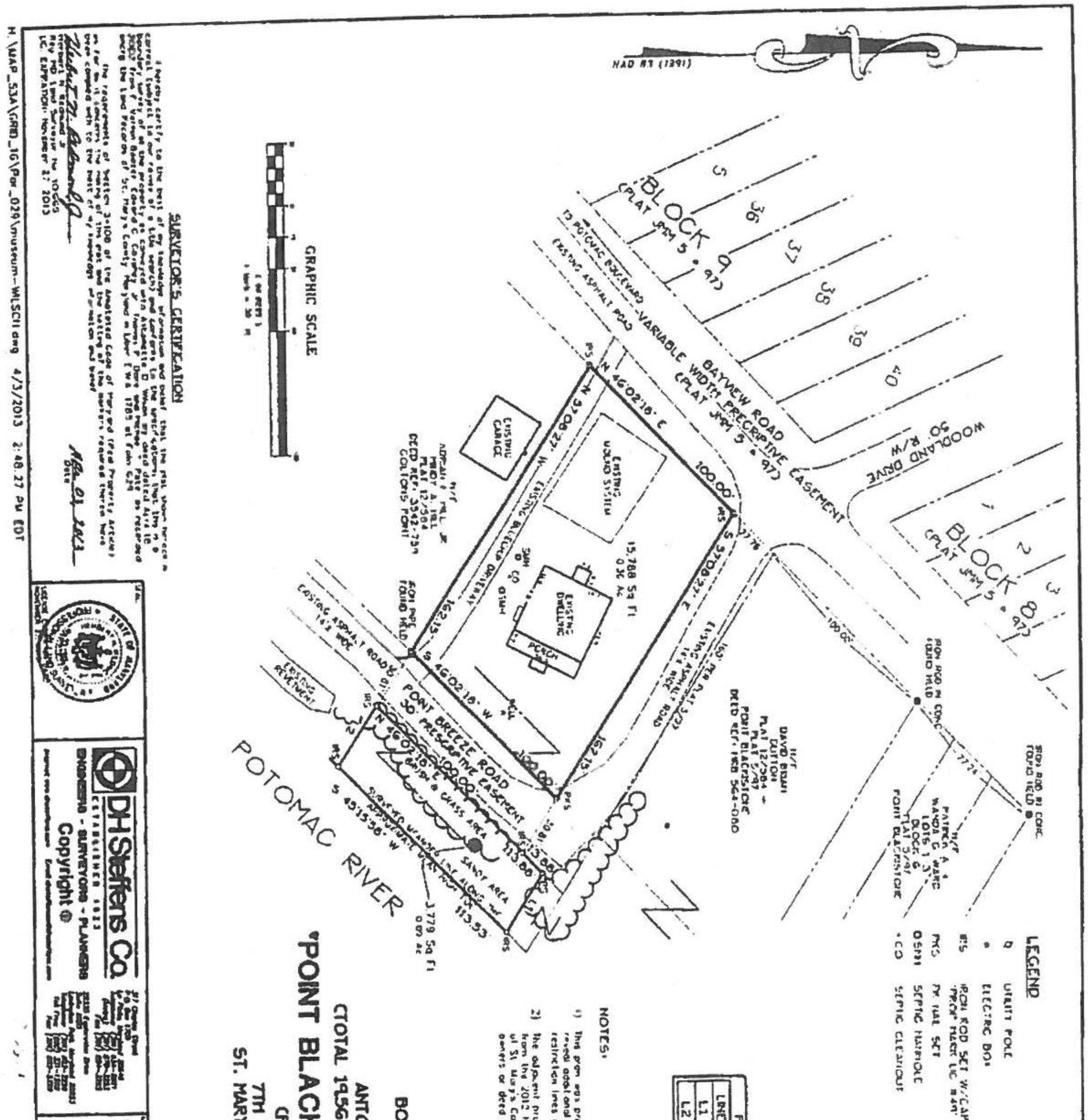
BB-18

A SURVEY OF 0.334 Ac.±	J. R. McCRONE, JR., INC.	DRAWN BY CO Hall
7TH ELECTION DISTRICT	REGISTERED PROFESSIONAL ENGINEERS AND SURVEYORS	SCALE 1" = 40'
ST. MARY'S COUNTY, MARYLAND	ANNAPOLIS, MARYLAND	DATE 5-20-76
FOR DR DONALD BUCY	PRINCE FREDERICK CHESTERTOWN TRAPPE LEONARDTOWN BOWIE	JOB NO L-3455
		FOLDER L-354

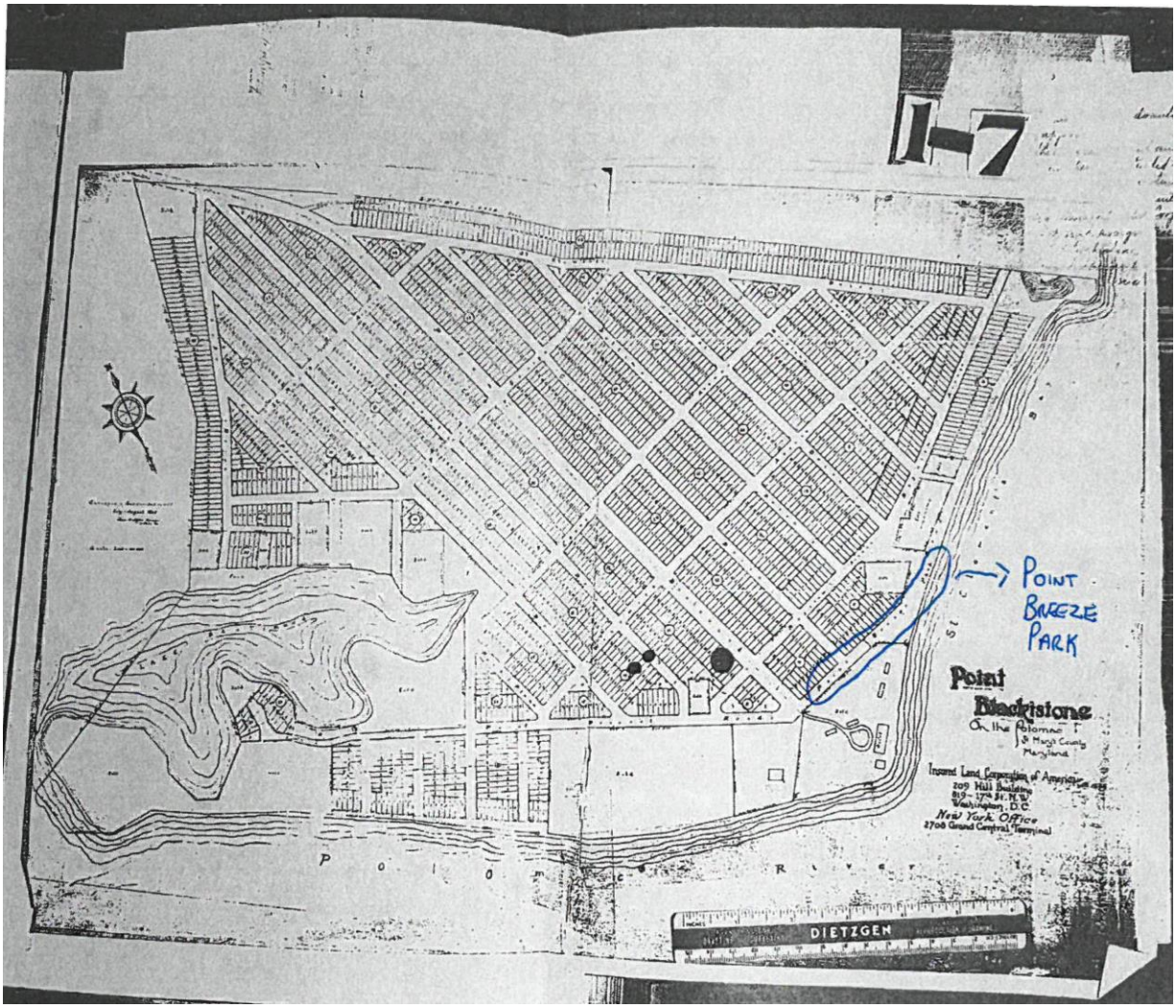
In 2013, appellee commissioned DH Steffens Co. to conduct a boundary survey of her property. Thereafter, in April 2013, appellee recorded a plat entitled "Boundary Survey Land of Antoinette D. Wilson (Total 19,567 sq. ft. or 0.45 Acres)," which was produced as a result of the Steffens' boundary survey. In January 2015, appellee recorded a confirmatory deed in the Land Records of St. Mary's County in Liber J.W.W. 4125, folio 485 that provides:

> NOW THEREFORE WITNESSETH, that without monetary consideration, but other good and valuable consideration, the receipt of which is hereby acknowledged, the said Grantor, Antoinette D. Wilson, does hereby grant and convey unto the said Grantee, Antoinette D. Wilson, her personal representatives, heirs and assigns, forever, in fee simple, all that lot, tract, piece or parcel of ground situate, laying and been in the Seventh Election District of St. Mary's County, State of Maryland, containing 19,567 square feet or 0.45 acres, more or less, which is shown and described on the aforesaid plat recorded among the Land records of St. Mary's County, Maryland at Plat Liber J.W.W. No. 71, Folio 32[.]

As shown on the Steffens survey, also reproduced below, appellee's parcel now contains approximately 0.45 acres and extends from the seaward side of Point Breeze Road to the approximate mean high tide line of the Potomac River:


"POINT BLACKISTONE SUBDIVISION"
BOUNDARY SURVEY
LAND OF
ANTONETTE D. WILSON
(TOTAL 19,567 SQ.FT. OR 0.45 ACRES±)
(PLAT JMM 5-97)
7TH ELECTION DISTRICT
ST. MARY'S COUNTY, MARYLAND
POTOMAC RIVER
POINT BREEZE ROAD
BAYVIEW ROAD
WOODLAND DRIVE
BLOCK 9
BLOCK 8
LEGEND
NOTES:
PROPERTY LINE LABEL CHART
LINE DIRECTION DISTANCE
L1 S 57°08'27" E 33.48'
L2 N 57°08'27" W 34.86'
GRAPHIC SCALE
SURVEYOR'S CERTIFICATION
DH Steffens Co.
LUGM #13-143-003

Prior to her recording of the confirmatory deed and continuing through the present, appellants allege that appellee has repeatedly denied them access to an area referred to as "Point Breeze Park" in the Point Blackistone Plat by, among other things, erecting seven pilings across the end of Point Breeze Road and calling law enforcement officers complaining that the Van Dykens and/or their guests were trespassing. The Blackistone Plat is reproduced below, with minor notations for clarity by us:



Appellants filed a complaint on June 30, 2015, in the Circuit Court for St. Mary's County. The complaint raised three causes of action: quiet title, declaratory judgment, and ouster. Appellee preliminarily filed a motion to dismiss, arguing that the complaint failed to name as defendants all of the other persons who either claim ownership of and have control over portions of the property at issue, or who claim the right to use the property. Following a hearing, the circuit court denied the motion. Appellee subsequently filed a motion for summary judgment. She argued that appellants neither pled nor proffered evidence of their legal title to the property, and that the Blackistone Plat does not convey any easement rights. The circuit court agreed and granted summary judgment as to all counts in appellants' complaint.[1] This appeal followed.

STANDARD OF REVIEW

Under Maryland Rule 2-501(f), a "court shall enter judgment in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law." When reviewing a grant of summary judgment, "[t]he standard of review is *de novo*, and whether the trial court was legally correct." *Livesay v. Baltimore County*, 384 Md. 1, 9 (2004). "We review the record in the light most favorable to the nonmoving party and construe any reasonable inferences that may be drawn from the facts against the moving party." *Myers v. Kayhoe*, 391 Md. 188, 203 (2006) (citation omitted).

[1] Following the circuit court's order, the parties entered into a stipulation of dismissal of appellee's counter complaint.

"Trial courts may resolve matters of law by summary judgment in declaratory judgment actions. In reviewing a declaratory judgment entered pursuant to a motion for summary judgment, we determine whether it was correct as a matter of law and accord no deference to the trial court's legal conclusions." *Emerald Hills Homeowners' Ass'n v. Peters*, 446 Md. 155, 161 (2016) (citation omitted). "The interpretation of plats, deeds, easements and covenants has been held to be a question of law. Additionally, the primary consideration in construing the scope of an express easement is the language of the grant." *Id.* at 162 (citations and quotations omitted). When construing the relevant documents in this case, "we must ascertain and give effect to the intention of the parties." *Id.* (citations and quotations omitted).

DISCUSSION

I. Easements

There are two types of easements: express and implied. In order to create an easement by express grant or reservation, "the instrument must contain the names of the grantor and grantee, a description of the property sufficient to identify it with reasonable certainty, and the interest or estate intended to be granted." *Kobrine, L.L.C. v. Metzger*, 380 Md. 620, 636 (2004) (citations and quotations omitted). As relevant here, the circuit court found that "[n]o document in this case accomplishes that, thereby eliminating the possibility that an express easement exists giving [appellants] the right to access the water through [appellee's] property." This finding is supported by the record and not challenged by appellants on appeal.

"Easements by implication may be created in a variety of ways . . . by prescription, the filing of plats, necessity, estoppel and implied grant or reservation." *Id.* They can "validly be created by a memorandum that complie[s] with the Statute of Frauds, *i.e.*, a writing signed by the party to be charged or that party's authorized agent." *Id.* "An implied easement is based on the presumed intention of the parties at the time of the grant or reservation as disclosed from the surrounding circumstances rather than on the language of the deed," and that, "[a]s a result, courts often refer to extraneous factors to ascertain the intention of the parties." *Id.* at 638 (citations and quotations omitted). "[G]rants of easements by implication are looked upon with jealousy and are construed with strictness by the courts." *Condry v. Laurie*, 184 Md. 317, 321 (1945).

Appellants argue the circuit court erred in ruling that the Van Dykens do not have an easement by implication. Relying primarily on *Klein v. Dove*, 205 Md. 285 (1954), appellants argue that the notation "Point Breeze Park" in the Plat for Point Blackistone and the fact that the strip of land in question was not made a part of any parcels in the subdivision is evidence that the owners of interior lots have a right of way to access the water. Appellee, conversely, argues that appellants failed to establish the existence of an implied easement over their land and that *Klein* is distinguishable because appellants' "alleged means of access to the waters of the Potomac River are not via a roadway appearing on the Plat of Point Blackistone serving no other purpose (such as would be analogous to *Klein v. Dove*), but rather across Appellees' lands and/or Point Breeze Road."

In *Klein v. Dove*, the issue was "whether or not, as against the defendants, the plaintiffs [had a] right of access to the water by way of the lake area, which for purposes

of clarifying the issue might be better described as the boating and bathing area." 205 Md. at 290–91. The location of the easement was central to the holding because "[w]ithout using someone else's property, access to the water [could] be had from the interior lots only at either of two piers-one on the east, the other on the west, side of the peninsula-or by the right of way between one of the waterfront lots and the defendants' lot, which abuts on the lake area, and thence across the lake area to the river." *Id.* at 288. Additionally, the plat governing the development included a legend that granted the "exclusive and mutual use and benefit" of the roads to the adjoining lot owners. *Id.* at 289. As a result, in finding the plaintiffs had an implied easement to access the water, the Court stated "[r]egardless of the absence of any such legend as 'community beach' on the lake area, there is no readily perceptible reason for the ten-foot right of way between what appears to be the main road of the development and the lake area except to give the owners or occupants of interior lots on [the] waterfront development access to boating, bathing, swimming and fishing." *Id.* at 291.

Klein has no application here. While the Plat at issue contains a general reference to "Point Breeze Park," it does not indicate a right of way across appellee's parcel. Additionally, unlike *Klein*, there is access to the water via Point Breeze Road and St. Clement's Island, which is accessible over existing subdivision streets. Because appellants have not pointed to any other evidence to establish they are entitled to a right of way over appellee's property, we agree with the circuit court that no such implied easement exists:

> [T]here needs to be some kind of document, whether a deed, contract, plat or other writing that shows an intention that one party is receiving an easement from another party and what that easement actually is. Unfortunately for

> [appellants], although such documents exist, none of them contain any language or other information to sustain their burden of showing that there was an intention to grant them an easement across [appellee's] property in order to access the water.

II. Declaratory Action and Alleged Dispute of Material Fact

As a general rule, "a controversy that will justify a court in entertaining a suit under the Uniform [Declaratory Judgments] Act must be something more than a mere difference of opinion or a theoretical question. It must present a state of facts involving persons adversely interested in matters in respect to which a declaration is sought." *Kirkwood v. Provident Sav. Bank of Balt.*, 205 Md. 48, 53–54 (1954). Section 3-406 of the Maryland Declaratory Judgments Act provides:

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

Md. Code Ann., Cts. & Jud. Proc. § 3-406 (West 2011). Section 3-409(a), cited by appellants, also provides that "a court *may* grant a declaratory judgment or decree in a civil case, if it will serve to terminate the uncertainty or controversy giving rise to the proceeding[.]" *Id.* § 3-409(a) (emphasis added). It follows, therefore, that "declaratory judgment generally is a discretionary type of relief." *Converge Servs. Grp., LLC v. Curran*, 383 Md. 462, 477 (2004) (citing Cts. & Jud. Proc. § 3-409)). "[W]hen a declaratory judgment action is brought and the controversy is not appropriate for resolution by

declaratory judgment, the trial court is neither compelled, nor expected, to enter a declaratory judgment." *Id.*

Appellants' last two arguments are that the circuit court failed to declare the rights and obligations of the parties in its written order, and the court erred in granting summary judgment because there exists a disputed material fact. Since the question of whether a party is an interested person under a deed, and thus has standing to challenge the deed, is dispositive of each issue, we shall analyze these issues together.

First, appellants argue that the Maryland Uniform Declaratory Judgments Act requires a trial court to declare in writing the rights and obligations of the parties. As the court's order did not do so, nor were there any oral declarations of the rights and obligations of the parties at the summary judgment hearing, the case should be reversed and remanded for further proceedings. Second, appellants note that appellee's deed and the McCrone survey state that her property is 0.334 acres, more or less, while the confirmatory deed and Steffens survey reflect that appellee's property now contains 0.45 acres, more or less. Appellants point to their expert who conducted a survey of appellee's property and proffer that the expert would testify that appellee does not own the approximate 0.1 acre of land at issue. Appellants maintain that because ownership of the property is a disputed material fact, the circuit court erred in granting summary judgment.

Appellee, by contrast, argues that the threshold question is not who owns the strip of beach in question but rather whether appellants are interested persons under the Declaratory Judgments Act. Appellee notes the circuit court's finding was that appellants

did not meet the threshold criteria of an interested person under any deed or instrument. As a result, there were no rights or obligations for the court to declare.

In its written order, the circuit court explained that summary judgment was appropriate for the following reasons:

> [T]here is no dispute of fact. The parties do not disagree that the parties' respective properties are depicted on a subdivision plat that is neither signed nor dated, and does not have any specific information or language concerning any rights being bestowed upon any property owners. They also do not disagree that the deeds by which each of the parties obtained title to their respective properties and all preceding deeds thereto do not contain any specific descriptions of beachfront or waterfront easements bestowed upon the property owners.

In this case, appellants do not claim to own the approximate 0.1 acre of land that appellee conveyed to herself after the Steffens' boundary survey. Additionally, as explained above, appellants do not have any easement—express or implied—that provides access over appellee's property. Although appellants allege that the circuit court should have declared the rights and obligations of the parties in its written order, they have failed to establish that they are interested persons under any deed or instrument. As a result, there is no basis to enter a declaratory judgment, no dispute of material fact, and we find no error in the circuit court's grant of summary judgment in favor of appellee.[2]

[2] Appellants do not challenge the dismissal of their claim for ouster. We note that their previous use of the property was not adverse because it was knowingly permitted by appellee. Further, we have defined ouster as a "notorious and unequivocal act by which one cotenant deprives another of the right to the common and equal possession and enjoyment of the property." *Spessard v. Spessard*, 64 Md. App. 83, 89 (1985) (citation omitted). As appellants do not claim to have an ownership interest in the property, no cotenancy exists, and the circuit court properly dismissed their ouster claim.

JUDGMENT OF THE CIRCUIT COURT FOR ST. MARY'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.

April 12, 2018