Circuit Court for Montgomery County
Case No. 418365-V

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2483

September Term, 2018

STEPHEN A. POSS, ET UX.

v.

JONATHAN TOMARES, ET UX.

Nazarian,
Leahy,
Harrell, Glenn T.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: December 30, 2020

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

The central question in this appeal is whether the Circuit Court for Montgomery County erred in declaring that a segment of a rural roadway, located approximately 0.5 miles east of Dickerson (the "Blue Road"),[1] is a public road. Jonathan and Katherine Tomares ("Appellees" or "Plaintiffs") brought the underlying action for declaratory judgment to ensure access to property they own.

Appellants Stephen A. and Beth J. Poss own and reside at 19725 Mouth of Monocacy Road ("Poss Residence") and own an abutting 30-acre parcel that is unimproved ("Poss Parcel"). Appellees own and reside at 19300 Barnesville Road ("Tomares Residence"). In 2006, they purchased an unimproved 42.84-acre parcel ("Tomares Parcel"), that abuts the southwest edge of the Tomares Residence property, and the southeast corner of the Poss Residence property. The Appellees, and their predecessors in interest, used the entire rural roadway, including the Blue Road segment, to access the Tomares Parcel without permission from the Posses or the other owners of land along the rural roadway: Laura Van Etten; CSX Transportation, Inc. ("CSXT"); and Roy and Ann Liebrand ("Liebrands") (collectively, "Defendants").

[1] As explained in greater detail throughout this opinion, the rural roadway includes the road located north of the railroad tracks, sometimes referred to as the "1793 Road" or "Old Barnesville Road," as well as a segment highlighted in blue on the parties' Joint Exhibit 1. This appeal concerns only that part of the judgment entered below declaring: "the Road shown in blue on Joint Ex. 1 . . . running from the east bank of the Little Monocacy River, turning north, running underneath the railroad viaduct, and then turning east to join the 1793 Road . . . is a public road which the Plaintiffs are free to use and enjoy without interference[.]" Accordingly, our shorthand reference to the portion of the rural roadway at issue in this appeal is the "Blue Road."

On January 6, 2016, Mr. Poss notified the Appellees that the rural roadway was private and that Appellees could only use the road with permission from the Posses. The Appellees then filed a complaint for declaratory judgment in the Circuit Court for Montgomery County against the Defendants,[2] and asked the circuit court to declare that the "Roadway is a public road." On August 24, 2018, following a three-day bench trial conducted earlier in June, Judge Michael Mason issued a comprehensive 65-page opinion and a declaratory judgment in which he determined that the Blue Road "is a public road which the [Appellees] are free to use and enjoy without interference[.]" Only the Posses appealed. We consolidate and rephrase the questions presented as follows:[3]

I. Did the circuit court err in declaring that the Blue Road is a public road by dedication?

[2] Montgomery County was later added as a third-party defendant.

[3] In their opening brief, the Posses present their questions as follows:

"1. Whether the Circuit Court erred in determining whether a road was dedicated to the public in 1871 based on a deed between Baltimore & Ohio Railroad Company and Mr. and Mrs. White.

2. Whether the Circuit Court erred in determining whether a road was accepted by Montgomery County when there was no evidence to establish the public actually utilized the road in question.

3. Assuming that the Gravel Driveway was dedicated and accepted, whether the Circuit Court erred in determining that Montgomery County did not abandon the 'road' when it was no longer used by the public or maintained by Montgomery County for over 100 years.

4. Whether the Circuit Court erred in determining that an unrecorded easement is effective against Mr. and Mrs. Poss who did not have actual or constructive notice of an unrecorded easement to Montgomery County."

II. Did the circuit court err in determining that Montgomery County did not abandon the Blue Road?

III. Did the circuit court err in rejecting the Posses' bona fide purchaser defense?

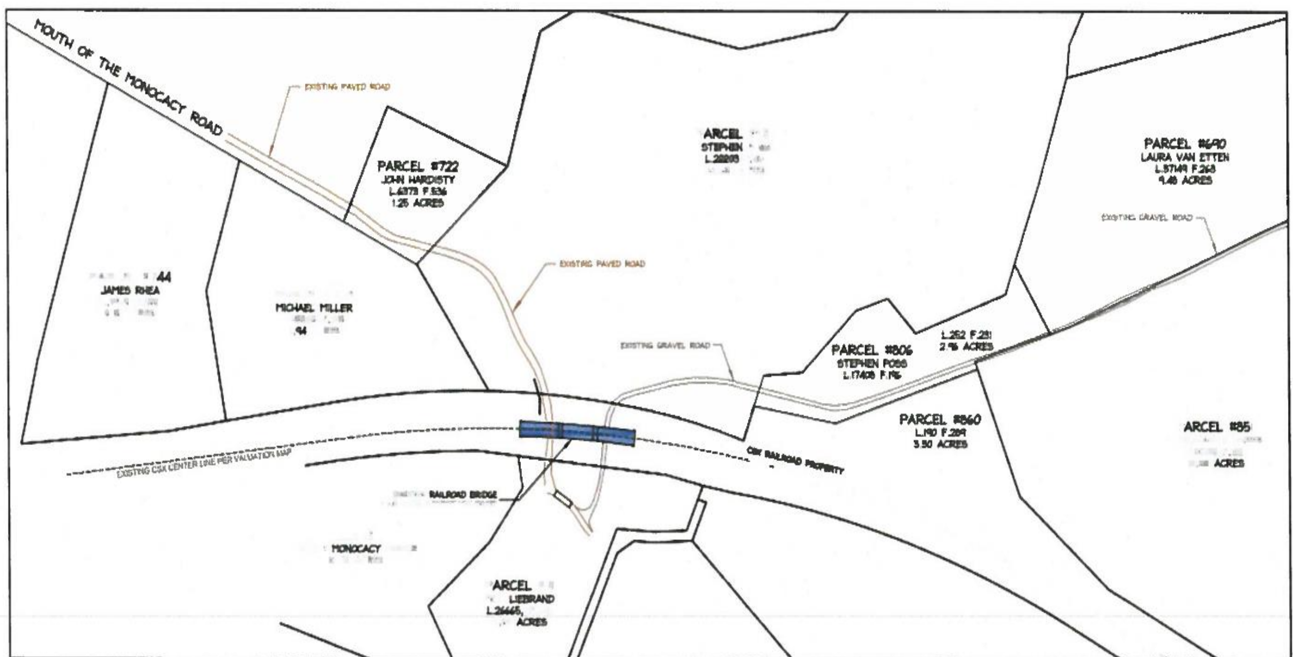
We affirm the judgment of the circuit court. First, we hold that substantial evidence supports the circuit court's determination that a common law dedication was established. Second, we also hold that court was not clearly erroneous in deciding that Montgomery County has not abandoned the Blue Road, or, in ruling that the County was not equitably estopped from taking the position that the Blue Road is a public road. Third, because the Blue Road is referenced as a public road in the Land Records of Montgomery County, the Posses had, at a minimum, constructive notice of the public nature of the road, and the circuit court did not err in rejecting the Posses' bona fide purchaser defense.

BACKGROUND

A. Orientation

The Tomares Parcel is depicted in the far lower-right (east) portion of the drawing below (Tomares' Ex. 2). The Parcel abuts the southeast portion of the Van Etten property. The Tomares Residence property, located northeast of the Tomares Parcel, is not depicted on this drawing. The Mouth of Monocacy Road (referred to throughout the trial as the "Existing Paved Road") enters on the upper-left side of the drawing. The Mouth of Monocacy Road turns south through the Poss Parcel (P656) (the large parcel in the center of the drawing) and continues south under the "Existing Railroad Bridge over Little Monocacy River." At the point where the roadway loops through the Liebrands' property (P941), it becomes a one-lane, gravel road, and on Joint Exhibit 1, is marked in blue at this

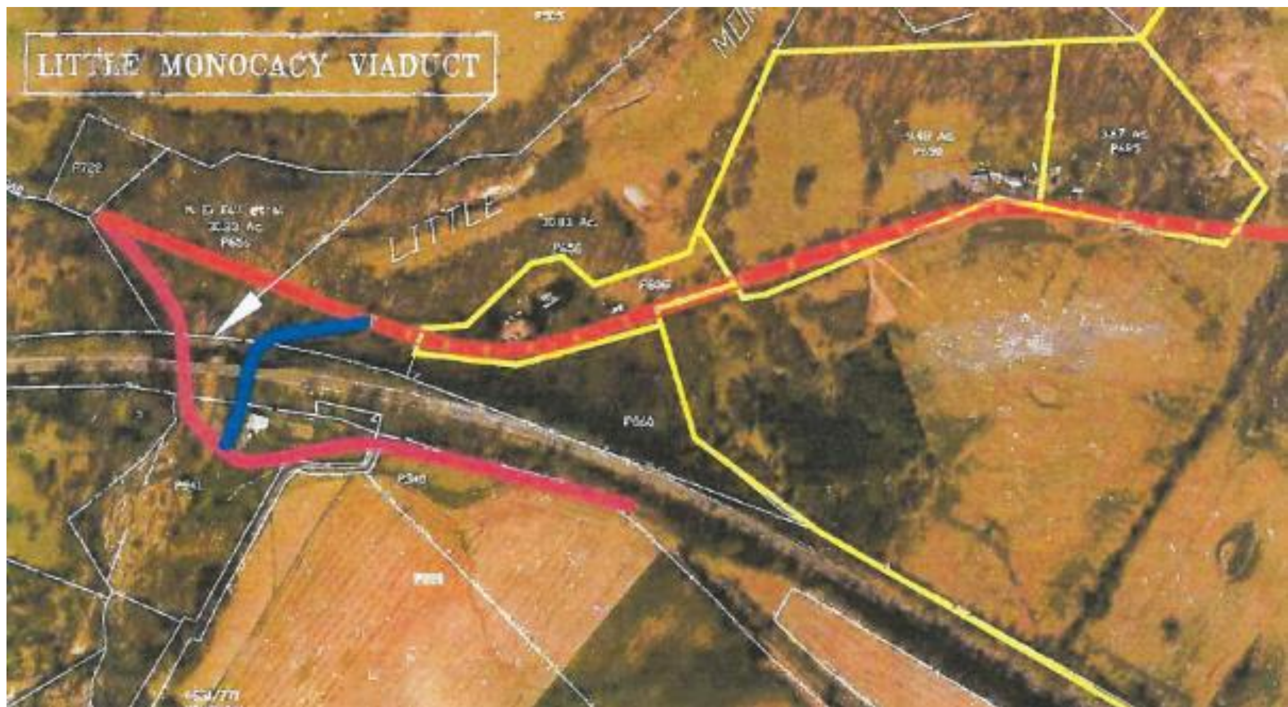
juncture. The Blue Road then traverses north through the CSXT right-of-way and under the same railroad bridge. The Blue Road then re-enters the Poss Parcel (P656) and turns right following the boundary line between that parcel and CSXT's parcel (P860). The parties do not dispute (now) that the road that continues onto the Poss Residence property (P806) is a public road (i.e., the Blue Road segment ends on the Poss Parcel). Thus, the rural roadway, which is also a gravel road, continues along the boundary line between Ms. Van Etten's parcel (P690) and the Tomares Parcel (P851).



Both the Mouth of Monocacy Road and the rural roadway were conceived as one road back in 1793, when commissioners appointed by the General Assembly surveyed the road and recorded its plat in the Land Records of Montgomery County. The road established in 1793 ("1793 Road") was originally known as "Old Barnesville Road." The parties agree that "[t]here is no dispute about the location of the original roadbed laid out

in 1793." Accordingly, the Mouth of Monocacy Road and the rural roadway that continues north of the railroad bridge follow the original alignment of the 1793 Road except for a U-shaped deviation near the Little Monocacy River. Today, the Mouth of Monocacy Road continues southeast of the railroad.

To illustrate the U-shaped deviation and its relation to the parcels owned by the parties along the rural roadway, the parties moved the admission of Joint Exhibit 1, depicted below.



In the exhibit, the original roadbed for the 1793 Road, running north of the railroad track, is shown in orange. The southeasterly continuation of the Mouth of Monocacy Road is shown in pink. The U-shaped deviation, which runs between the southeast portion of the Mouth of Monocacy Road and the rural roadway, is shown in blue. The present dispute

turns on whether the U-shaped portion of the Roadway, highlighted in blue and referenced throughout this opinion as the "Blue Road" is a public road.

B. The Underlying Action

Following the Posses' assertion that the rural roadway is private, the Plaintiffs filed a complaint for declaratory judgment in the Circuit Court for Montgomery County on April 1, 2016 against the Defendants. The Plaintiffs asked the circuit court to "determine and adjudicate the rights and liabilities of the parties with respect to the Roadway" and to "find and declare that the Roadway is a public road."[4] The Posses and Liebrands jointly answered the complaint on May 12, 2016, denying the Plaintiffs' claim that the rural roadway is public and asserting ten affirmative defenses. Ms. Van Etten also responded on May 12th and "took no position as to the merit" of the Plaintiffs' claim that the rural roadway is public, but requested that the County maintain the rural roadway and reimburse her for expenses if the roadway was determined to be public. CSXT filed an answer denying liability and denied any allegation that the rural roadway is a public road. In addition, CSXT asserted eleven affirmative defenses, including failure to state a claim and failure to join an indispensable party pursuant to Maryland Rule 2-211.

Motion to Dismiss

On October 13, 2016, the Posses filed a motion to dismiss for lack of jurisdiction or, in the alternative, for failure to join a necessary party. CSXT later joined in the Posses'

[4] The Plaintiffs also brought a claim for a prospective easement. After the circuit court dismissed the claim against CSXT, the Plaintiffs dismissed this count as to the remaining Defendants.

motion. The Posses averred, among other things, that the circuit court did not have "jurisdiction to determine the existence and location of a public road," because that determination was for Montgomery County to make. Alternatively, the Posses argued that, if the circuit court had jurisdiction, Montgomery County was a necessary party. Following a hearing on the motion to dismiss, on December 27, 2016, the circuit court ordered the Plaintiffs to submit "the issues concerning location of the subject roadway to the Montgomery County Department of Transportation" and stayed the proceedings pending "receipt of the County's report."

On January 24, 2017, the Plaintiffs submitted a line providing the results of the County's review of the rural roadway (including the Blue Road). The report from a traffic engineer with the Department stated, in pertinent part:

> MCDOT visited Mouth of Monocacy Road on January 9th. Our Division of Highways indicated that we do currently maintain the roadway between Mount Ephraim Road and the existing roadway bridge over the Little Monocacy Creek. East of that bridge, there does exist a gravel roadway, roughly 9 to 12 feet wide, that extends north, passing under the railroad bridge and then turning east for a distance of several hundred yards. This portion of the roadway provides access to several properties, and ends at a gate, constructed across the road.
>
> This portion of the gravel drive east of the roadway bridge appears to follow the same alignment as indicated on the plat by the B. & O. RR Co. dated April 27, 1920, and appears to end at the location so indicated on the plat.
>
> Based on this observation, I would say that the portion of the gravel roadway described above is a public road.

The circuit court lifted the stay on November 21, 2017 and, following a third-party claim against Montgomery County filed by CSXT, ordered the County to participate in the

litigation.[5]

The case was tried to the court over three days beginning on June 11, 2018 and continuing through June 13.

Summary of Evidence Presented at Trial

The Plaintiffs asserted that the rural roadway, including the Blue Road, is a public road.[6] In support, the Plaintiffs reviewed the history of the rural roadway from its founding in 1793. In regard to the Blue Road, Plaintiffs contended that Baltimore and Ohio Railroad Company ("B&O"), CSXT's predecessor in interest, dedicated it for public use as evidenced by reference to the entire rural roadway, including the Blue Road, as the "County Road," or "Barnesville Road" in its deeds, plats, and records. According to the Plaintiffs, B&O confirmed its public dedication of the Blue Road in an agreement that B&O entered into with Montgomery County in 1921.

[5] In response to Montgomery County's determination that the rural roadway is a public road, CSXT filed a third-party claim for declaratory relief against Montgomery County. CSXT asked the circuit court to declare, if it found that the rural roadway is a public road, that Montgomery County shall maintain the roadway and indemnify CSXT in accordance with the Montgomery County Code and a 1921 Agreement between CSXT and the County (discussed *infra*). Montgomery County filed a motion to dismiss the third-party claim. The circuit court deferred ruling on the motion but directed the County to participate in the trial.

[6] In the underlying declaratory judgment, the court also "DECLARED, ORDERED AND ADJUDGED, that the 1793 Road running from the east side of the Little Monocacy River to the eastern border of Parcel 685, owned by Laura Van Etten, as shown in orange on Joint Exhibit 1, is a public road, which the Plaintiffs are free to use and enjoy without interference from the Defendants herein or any other persons." As mentioned already, the Posses do not challenge this declaration on appeal.

The Defendants offered numerous arguments in opposition to the Plaintiffs' contentions. The most relevant to the Blue Road and this appeal are three primary postulations, which mirror the Posses' questions before this Court: first, there was neither a dedication of a public road nor an acceptance by the public; second, if there ever was an acceptance, then the County abandoned the Blue Road; and, third, even if the Blue Road was dedicated as a public road and never abandoned, because the Posses were bona fide purchasers without notice of its public character, the dedication is not enforceable against them.

Because the dispute concerned the "nature and location of a Montgomery County road dating to 1793," the case turned on records developed over the course of 225 years. Live testimony was very limited. Indeed, the Plaintiffs and the County did not present any live testimony and rested after submitting exhibits.[7] CSXT's only witness was Rebecca Snyder, a senior real estate supervisor in the Real Estate and Facilities Management Department of CSXT. The only other live testimony presented was from Stephen Poss and

[7] After Plaintiffs rested, CSXT, the Posses, and the Liebrands moved for judgment primarily on two bases: first, the rural roadway was not dedicated to the public, and, second, the Posses and Liebrands were bona fide purchasers for value without notice. The judge denied the motions, explaining that,

> there is sufficient evidence, at this stage of the proceeding, viewing the facts in the light most favorable to the [P]laintiffs, to find that there was a convergence, and, therefore, the road had to be moved of necessity back in the 1800s, and that, alternatively, thereafter, in the 1920s, pursuant to the 1921 agreement, that there was a dedication and that there was acceptance by the [C]ounty. . . . And with respect, then, to the status of the subsequent purchase for value, . . . there's no evidence they didn't have notice [that the road was public]."

Ann Liebrand. Accordingly, our summary largely focuses on the documentary evidence presented at trial.

The 1793 Road

The original right-of-way for the 1793 Road was obtained by condemnation. In 1791, the General Assembly appointed three commissioners to clear, survey, and establish a public road. 1791 Md. Laws, ch. LIII (1791). In 1793, the commissioners recorded the Plat and Certificate of a Road in the land records for Montgomery County at Liber E, folio 282. Holger O. Serrano, the former Deputy Chief of the Montgomery County Department of Public Works and Transportation, described the 1793 Road at a prior proceeding as follows:

> Originally, the [1793 Road] extended approximately 26 miles from the Dickerson area to the Patuxent River and was used to get farm produce to market. Portions of the "Old Road" are used today as parts of several other roads east of Barnesville to the Patuxent River and West to the Potomac and Monocacy Rivers.

As reflected in a tracing prepared by B&O in 1871 and recorded in the District of Columbia's Surveyor's Office ("1871 Tracing"), the 1793 Road, as it was originally established, likely crossed the Monocacy River at the Mill Pond Dam. According to the circuit court, "[b]ecause it was flat and level, the top of the dam proved an ideal way to cross the river." The court further noted that the dam's "exact location . . . can no longer be determined because it no longer exists[,] and no signs of it are currently visible."

1865 and 1871: Initial Railroad Development and Construction of the Blue Road

On March 21, 1865, the General Assembly passed "an act to authorize the Baltimore and Ohio Rail Road Company [CSXT's predecessor] to build a railroad from a point on the line of its road, within the State of Maryland, between Knoxville and the Monocacy Junction, through Frederick and [Montgomery] counties, to the boundary of the District of Columbia, so as to make a direct connection with the city of Washington." 1865 Md. Laws ch. 70 (1865).

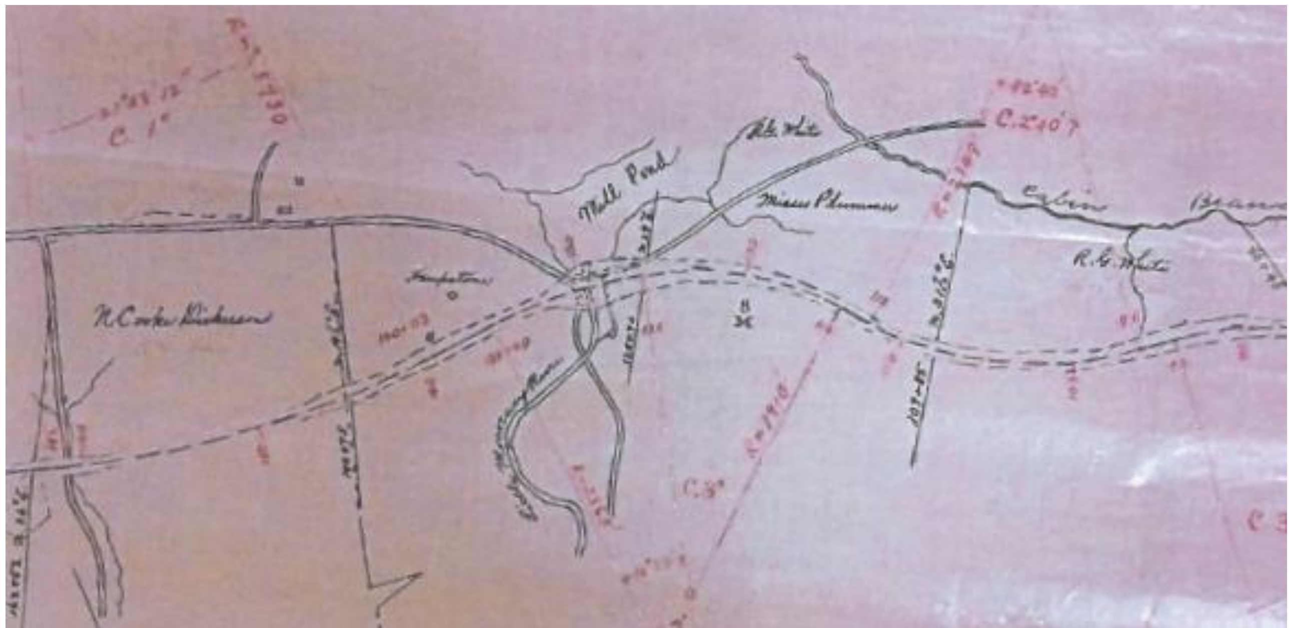
Ms. Snyder testified concerning records maintained by CSXT, notably the records acquired and previously kept by B&O. Ms. Snyder testified that construction of a single-track railroad line, known as the Metropolitan Branch, commissioned in 1865, was completed in 1873. The Metropolitan Branch was eventually improved to a two-track line in 1928. The trial court observed that "[t]he Metropolitan line has been in continuous service since 1873." The judge further noted that,

> [t]he Plaintiffs suggest that at the point where the rail line crossed the Little Monocacy River, it converged with the 1793 Road right-of-way or was so close that, to build the rail line, B&O was forced to divert the 1793 Road south of where it originally crossed the Little Monocacy. This new road crossed the river at a ford just south of the rail line, and then returned north to rejoin the 1793 Road east of the Little Monocacy. The new road created a "U" shaped detour that was intended to become part of the 1793 Road.

An 1871 deed reflects that B&O purchased three side-by-side parcels of land from Richard C. White and his wife "for the purpose of making a road thereon[.]" It is uncontested that these three parcels of land comprise the land where the Blue Road was constructed. At trial, the Defendants disputed any suggestion that the 1793 Road was too

close to the railway right-of-way and urged that B&O's acquisition of the three lots to build a new road had nothing to do with providing a new crossing for the 1793 Road.

In his opinion, the trial judge concluded that the 1871 Tracing (depicted below) supported Plaintiffs' argument. The 1871 Tracing depicts the 1793 Road, represented by two solid lines, with B&O's right of way, represented by three dashed lines, and shows the railroad's crossing over Little Monocacy River. The judge noted that "the tracing shows that the two rights-of-way converge and overlap where they cross the Little Monocacy[.]"[8]



[8] The judge also observed:

> The tracing also shows that by 1871 a new road has been opened, running south from the 1793 Road west of the original Little Monocacy crossing, to the east side of the river at a point south of the railroad right-of-way. The road then continues due south. This is undoubtedly the original path of what later becomes known as the Mouth of Monocacy Road.

Valuation Maps

Ms. Snyder testified about various valuation maps maintained in CSXT's records that were introduced into evidence. She explained that valuation maps serve as the "inventory of [CSXT's] real estate assets" and, since 1913, the federal government requires railroads to inventory their real estate holdings. In addition to depicting the rights-of-way, the valuation maps contain a schedule identifying the "grantor, grantee, dates, books, pages," and other relevant information for each real estate transaction.

As Ms. Snyder testified, the valuation maps that concern the Metropolitan Branch—and, by extension, the rural roadway—were originally created in 1918 but annotated and changed as necessary. Valuation Map 15 shows the location where the Metropolitan Branch line crosses the Little Monocacy River and references the schedule on Valuation Map 16. Under the heading "Land Schedule for Sheet No. 15" on Valuation Map 16, the Map references the three lots that B&O purchased from the Whites, upon which the Blue Road was constructed. The Schedule specifies that the three tracts total approximately 27,623 square feet and states: "Land acquired for County Road."

1878

In 1878, B&O purchased additional property from the Whites. Plaintiffs introduced into evidence a plat of the subject area that was found with the deed. As the circuit court summarized, "similar to the [1871 Tracing]," the plat "shows the Mouth of Monocacy Road running south off of the 1793 Road, crossing the Little Monocacy to the east, and then continuing south" and, "after crossing the Little Monocacy, the [plat] shows that road connects to another public road that runs north, where it appears to reconnect to the 1793

Road." While the plat was included in CSXT's records alongside the deed, it was not recorded in Land Records.

1882: "New" Barnesville Road

In 1881, in response to petitions by "John S. Gott and others" raising concerns about dangerous conditions on the 1793 Road near the Metropolitan Branch line, the County Commissioners for Montgomery County appointed three individuals to "ascertain and determine whether the public convenience requires the opening of a public road, beginning near the junction of the lands of . . . Mrs. R.G. White on the road from Barnesville to the Mouth of Monocacy . . . to the road from 'Mount Ephraim' to Dickerson's Station." After conducting their investigation, the three individuals recommended that the road be built. In reaching this determination, the panel "took into consideration the old road which is very hilly [and] its nearness to the Metropolitan Rail Road makes it very dangerous to persons travelling on said road, several accidents having already occurred." This "safer" road, currently known as the Barnesville Road, runs somewhat parallel to the rural roadway northeast of the Little Monocacy River.

Holger O. Serrano, the former Deputy Chief of the Montgomery County Department of Public Works and Transportation, testified at a 2005 abandonment proceeding that, following the opening of this "safer" road in 1882, public use of the rural roadway "appear[ed] to have ended somewhere between 1882 and 1906."[9] Bruce E. Johnson, Mr.

[9] In 2005, some of the parties in the underling case were involved in an earlier lawsuit brought by the owners of parcel 839 (located further northeast of Appellees' property) to obtain access to a tenant lot off of the rural roadway. After Montgomery (Continued)

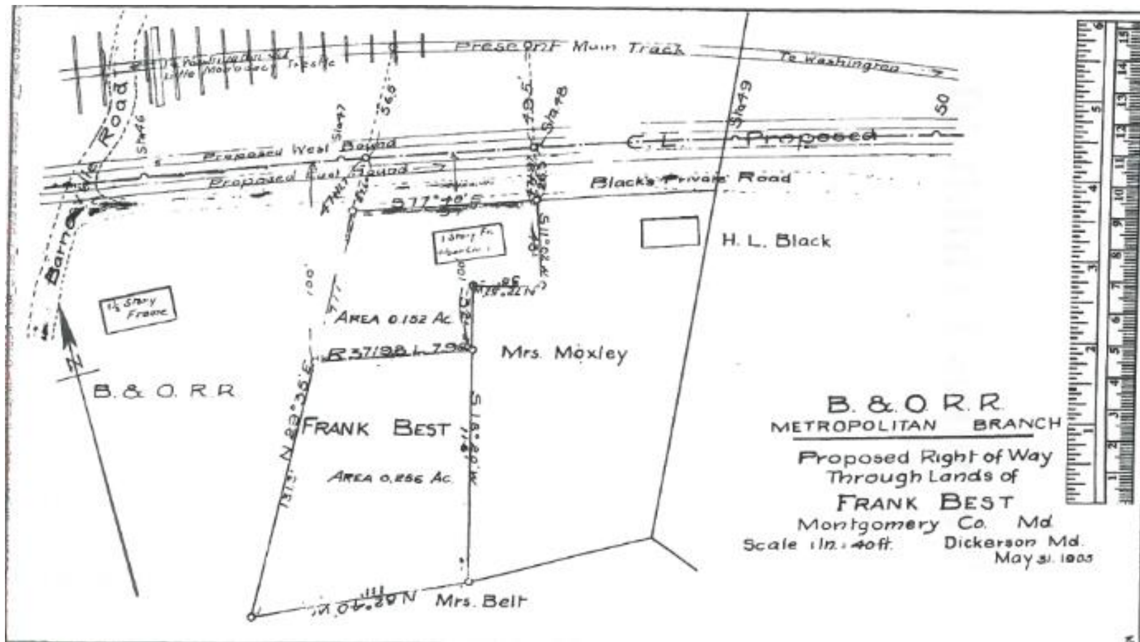
Serrano's former supervisor and Montgomery County's designee in this case, disputed Mr. Serrano's earlier testimony. Mr. Johnson testified that the 1921 Agreement between Montgomery County and B&O (discussed below) proves that the rural roadway was not abandoned and was still a public road in 1921, and observed that "there would have been residences along the old road that would have continued to need to use it."

1905: B&O's Situation Plan and Recorded Deeds and Plats

In 1905, B&O decided to build a two-way track to replace the single track and replace its trestle bridge over the Little Monocacy River with a stone viaduct. That same year, on August 28, 1905, B&O acquired land south of the railroad right of way from Mr. and Mrs. Best. A plat, which was "thereof herewith attached as part of th[e] deed," depicts the "Barnesville Road" running north and south through the railroad viaduct:

County was drawn into that lawsuit, the County responded by instituting formal abandonment proceedings to abandon approximately 1.6 miles of the 1793 Road, referred to throughout this opinion as the "rural roadway," on the east side of the Little Monocacy River. The proposed abandonment included the portion of the 1793 Road shown in Joint Exhibit 1, which runs north of the railroad track and is shown in orange. The abandonment proceeding did not concern the Blue Road at issue before us.

As the trial court noted, "for reasons unclear," the 2005 abandonment proceeding was abandoned before any resolution was reached, and the record does not reveal any further details about the lawsuit or whether it was settled or not.

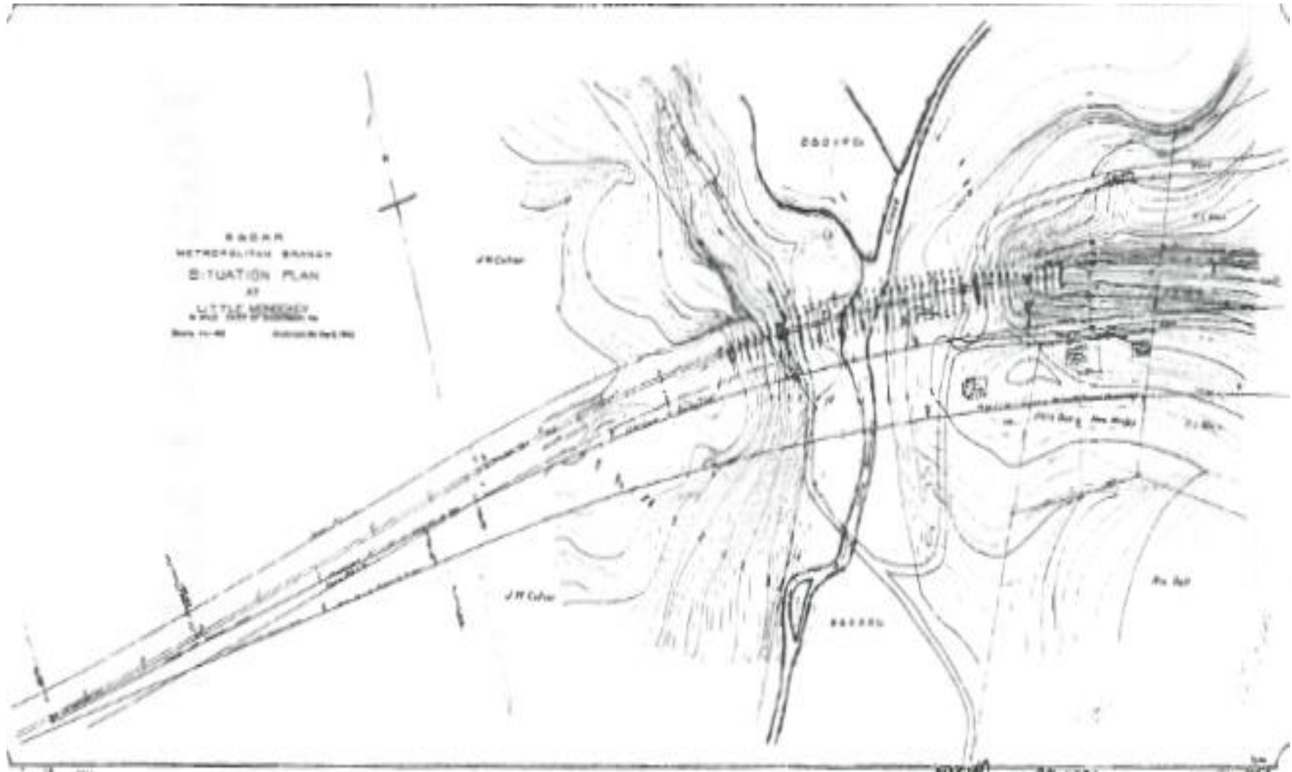


(Plaintiffs' Ex. 9). On some of the older plats, the rural roadway was referred to as the "Barnesville Road." The "Barnesville Road" depicted on the plat marked as Plaintiff's Ex. 9 corresponds to a portion of the Blue Road.

Also in 1905, B&O acquired several parcels from H.L. Black through a deed of conveyance, recorded at Liber 184, folio 239. The recorded plat, which was both recorded and incorporated by reference in the deed, depicts the "Barnesville Road" traversing north of the railroad right-of-way.

As part of the track expansion and viaduct project, B&O prepared a Situation Plan (Plaintiffs' Ex. 7, a portion reflected below), which depicts the railroad as it crossed the Little Monocacy River. The Situation Plan depicts a "County Road," running in a U-shape from the northwest. The "County Road" travels south through the railroad right of way and turns east where it crosses the Little Monocacy River. The County Road then forks,

and a portion of the road, also identified as a "County Road," continues north to again traverse the railroad and then continues east:

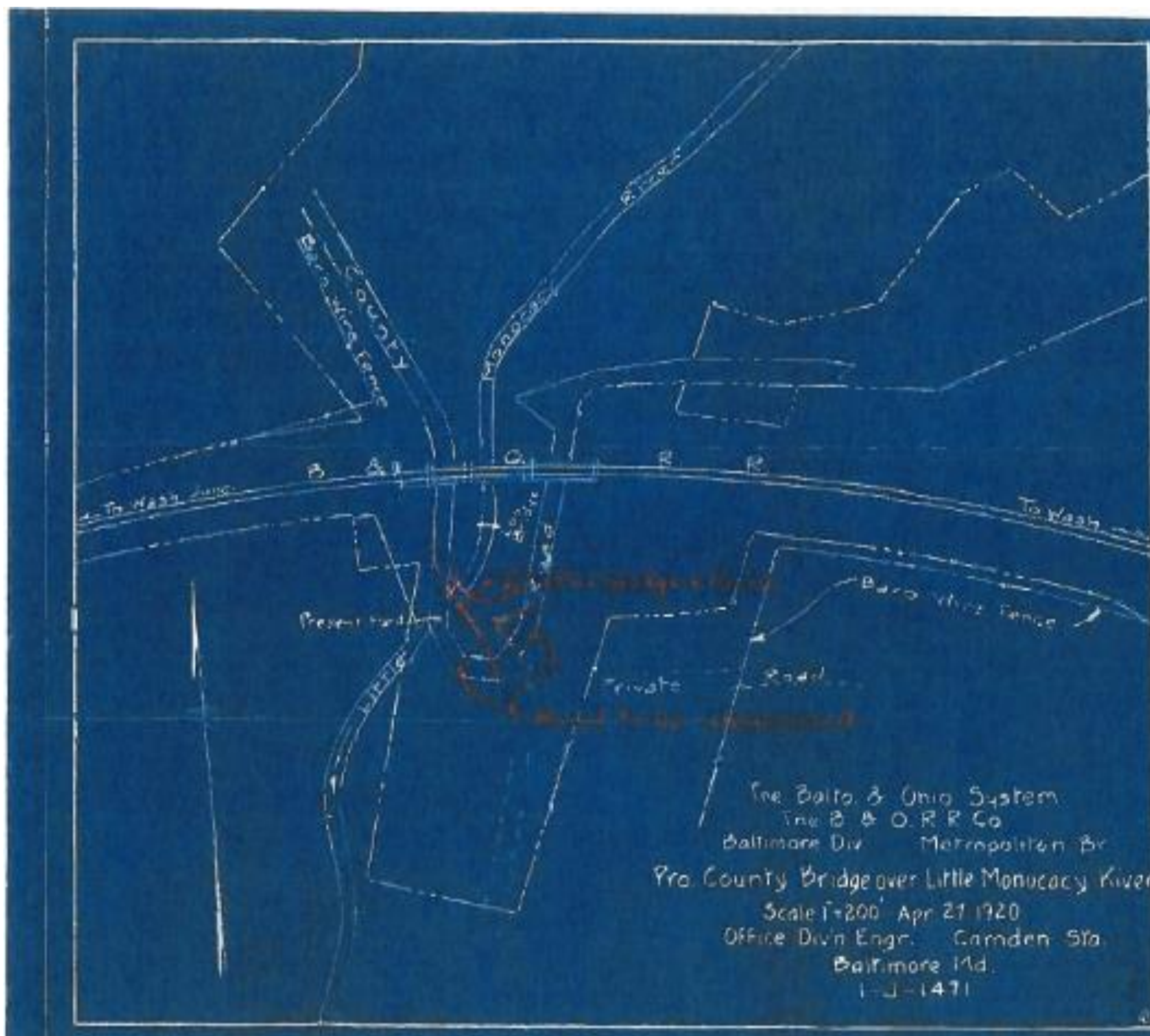


The course of the "County Road" in the Situation Plan conforms to the Blue Road.

1921: Agreement between B&O and Montgomery County

On or about October 7, 1921, B&O and the County Commissioners entered into an agreement ("1921 Agreement") for the purpose of permitting the County "to make a change in the County Road heretofore used upon the property of the Railroad and crossing the Little Monocacy River between Dickerson and Barnesville, Maryland[.]" As spelled out in the 1921 Agreement, the County sought to relocate the road and replace the Little Monocacy crossing, which was a ford, with a bridge. B&O agreed to allow the Commissioners to relocate the crossing and construct a bridge upon B&O's property, and the County agreed to abandon the roadway, which would no longer be needed after

construction of the bridge, to maintain the "approaches and roadway" in good condition, and "indemnify and save harmless" B&O from damage and loss resulting from the "construction, maintenance, use or removal of the relocated roadway, and bridge and approaches thereto." The 1921 Agreement attached and referenced a "blue print" plat (Plaintiffs' Ex. 15), which showed the rural roadway and the Blue Road as a "County Road":



Examiners appointed by the County Commissioners concluded that "public necessity and convenience require[d] the abandonment or closing of a part of the County road . . . and relocating [a] site for [a] new road-way." The examiners determined that "a bridge [wa]s necessary" due to "public traffic." In the "blue print" plat, the replacement road and bridge is labeled, in red, "Pro bridge + Road," whereas the abandoned portion of the road, which served the ford, is labeled "Road to be abandoned," also in red.

The 1921 Agreement was not recorded, although, on May 3, 1921, the Commissioners of Montgomery County approved the report and recommendation of the examiners, and, on November 1, 1921, the Commissioners "ratified and confirmed" the 1921 Agreement and appropriated funds for construction of the replacement road and bridge.

1963 Wade Deed and 1999 Poss Acquisitions

In 1963, B&O sold the 45 acres surrounding the railroad right of way at Little Monocacy River to Kevin R. Wade and Sara J. Wade ("Wades"), by deed recorded at Liber 3076, folio 317 in the Land Records of Montgomery County. Within the description of the property conveyed was a deed of conveyance "[f]rom Benjamin F. Best, et ux., by deed dated August 28, 1905, recorded among said records in Liber No. 182, folio 489." As explained above, the 1905 Best deed incorporated a plat, which identified the Blue Road segment of the rural roadway as the public "Barnesville Road."

In addition, B&O also granted an easement by quitclaim deed to the Wades:

> AND, for the same consideration, Grantor [B&O], in so far as it has the right to do so, hereby also quitclaims unto Grantees [the Wades] . . . an easement for roadway purposes, to provide means of ingress and egress to and from

> the [parcels conveyed to the Wades, on both sides of the railroad right of way].

On July 20, 1999, the Posses acquired two parcels of land: Parcel 656 and Parcel 806. Concerning Parcel 656, the recorded deed, Liber 17439, folio 735, described the property based on the 1963 Wade Deed:

> All that lot or parcel of ground and described as follow[s], that is to say: Part of the land and premises described in a certain deed from the Baltimore and Ohio Railroad Company to Kevin Wade and Sarah Wade, his wife, dated January 21, 1963, and recorded in Liber No. 3076 at folio 317, et seq.

In turn, the recorded deed for Parcel 806, in Land Records at Liber 17408, folio 196, defined that parcel as "[a]ll that tract of land described in a Deed from Claude O. Cooley and Laura J. Cooley to William W. Bussard dated August 2, 1912 and recorded October 4, 1915, Liber 252, Folio 231[.]" The deed from the Cooleys to Mr. Bussard defined the parcel pursuant to "the Public Road leading from The Railroad Bridge over Little Monocacy Creek, below Dickerson Station to Barnesville[.]" The parcel is further defined in that deed by "the aforesaid public road and at the Northwest corner of a conveyance from Henry L. Black & wife . . ., bearing date the 6th day of July 1906[.]"

Mr. Poss testified at trial that "[i]t was [his] understanding [when he purchased Parcel 656] that it was a private driveway." Despite reference to the public road in the chain of title for Parcel 656 in the Best deed, Mr. Poss explained that his realtor and the prior owner had represented to him that the road at issue was a private driveway. He also based his understanding on the size of the rural roadway and the fact that the rural roadway did not appear on a map. Mr. Poss further testified that he understood that the prior owner, Paul Cotter, and his father created the rural roadway. He further testified that the rural

roadway was only used by the Posses and Ms. Van Etten (and the prior owner of her property), and that he and Ms. Van Etten maintained the rural roadway without assistance from Montgomery County.

Ms. Liebrand also testified that the Blue Road was a private road and that her section of the Blue Road was not excluded from her property taxes.

C. The Circuit Court's Ruling

In a thorough 65-page opinion filed on August 24, 2018, the circuit court judge set forth detailed factual findings, based largely on the documentary evidence, and a lengthy legal analysis.

Factual Findings

The court determined that the three lots acquired from Richard C. White and his wife by B&O in 1871 were purchased to build a public road. Specifically, the court found:

> [T]he shape of the parcels provides compelling evidence that that lots were purchased to construct a road that would provide an alternate crossing for those traveling on the 1793 Road south of the original crossing point.
>
> * * *
>
> In the [1871] deed, both the first and third lots are described with reference to a public or county road. The only public roads in the area were the 1793 Road north of the railway right-of-way, and the Mouth of the Monocacy Road running south from the 1793 Road east of the Little Monocacy and then heading south to cross the river at a ford south of the right-of-way. Clearly, B&O intended to build a public road to connect the Mouth of the Monocacy Road running south from the 1793 Road west of the Little Monocacy River with the 1793 Road running north of the railroad right-of-way on the east side of Little Monocacy. The road was being built to connect two existing public roads for the benefit of the public. This intent is further confirmed by the "schedule" on B&O's val[uation] map 16 for this parcel, which states that the lots were acquired to construct a "County road."

The circuit court judge further found "subsequent events and documents created after 1871 provide[d] additional evidence of B&O's intent." The judge determined that, when B&O purchased additional land from the Whites in 1878, it prepared a plat in connection with the sale. The judge found that "this exhibit show[ed] the parties recognized the 1793 Road continued to exist in 1878 as a public road." Although the judge noted the Defendants' contention that the map showed that "there was no need to open a new road" to provide an alternative crossing, he found the Plaintiffs' theory more persuasive:

> [T]he 1878 map shows the Mouth of the Monocacy Road running south off of the 1793 Road, crossing the Little Monocacy to the east, and then continuing south. However, after crossing the Little Monocacy, the map shows that road connects to another public road that runs **north,** where it appears to reconnect to the 1793 Road. The 1878 map also shows the 1793 Road continuing to run east to Barnesville from the area where it crossed the Little Monocacy. Except for the fact [that] the map shows the original crossing for the 1793 Road continued to exist north of the railroad, the *map actually supports the Plaintiffs' theory that the "County road," built by B&O, was intended to connect two public roads: the Mouth of Monocacy and the 1793 Road*.

(Bolded emphasis in original; italicized emphasis added).

Next, the judge reviewed the evidence on which the Defendants relied to support their theory that the rural roadway was abandoned after construction of the new roadway in 1882. Regarding Mr. Serrano's 2005 testimony, the court noted that his opinion "appears to have been based on two facts": first, the new road was safer, and, second, Montgomery County had no records of maintaining the rural roadway since at least 1882. "Concerning this latter fact, there apparently are no records of the County *ever* maintaining the 1793 Road. The fact no records of maintenance existed following 1882, therefore,

seems of limited significance to the [c]ourt." (Emphasis added). Also, the judge noted that Mr. Serrano's supervisor rejected his testimony as mistaken, because, as Mr. Johnson opined, "the 1921 Agreement itself demonstrates conclusively that the old 1793 Road was not abandoned following the opening of the 1882 Barnesville Road." The court concluded:

> Based upon the evidence presented at trial, the [c]ourt finds that the opening of the 1882 Road no doubt resulted in fewer travelers taking the more difficult and more hazardous 1793 Road. However, the opening of the 1882 Road did not cause the public to immediately abandon all use of the 1793 Road. . . . While the [c]ourt finds the 1882 Road did divert traffic from the 1793 Road, the [c]ourt finds the process very gradual and the 1793 Road continued to be used well into the 1900's.

The court was persuaded that the maps created by B&O in relation to the deeds and related documents from 1905 reflected B&O's recognition that the rural roadway was a public road. For example, the Situation Plan, which designates a portion of a road as "County Road" is "unquestionably the old 1793 Road, incorporating part of the Mouth of the Monocacy Road, joined by the "U" shaped detour." The court found that the Situation Plan reflected that B&O considered the Blue Road to be a public road:

> [T]he designation of that roadway as a County road in those documents created by or for B&O is additional evidence B&O not only considered the 1793 Road to exist for the public benefit in 1905, but also intended the 'U' shaped portion of the roadway, including the [Blue Road], to benefit the public traveling on the 1793 road as it crossed the Little Monocacy River.

The judge concluded that the depiction of "Barnesville Road," shown on the record plat that was incorporated by reference in the Bests' deed, "corresponds to the section of the road shown in blue [the Blue Road]." The court found this depiction was "further evidence that, as of 1905, the road was being used by the public," and that "B&O, by or for whom this plat was prepared, as well as the Bests, recognized and considered the road

to be public." Likewise, the plat recorded alongside the deed evincing the property exchange between B&O and H.L. Black, shows a roadway running just north of the old railway right-of-way, in the same location as the 1793 Road labeled "Barnesville Road." The court noted that "further east is another road running south and then east through the right-of-way, which is labeled 'private road.'" The court concluded that this label indicates that the document's creator understood the distinction between public and private roads and sought to distinguish them on the map.

It was clear to the judge that, "[h]ad the [Blue Road] not already been dedicated to the public use, the 1921 Agreement alone would provide compelling evidence that B&O intended to dedicate that road to the public." "Of particular significance to the issues before the [c]ourt," the blueprint, which was prepared by or on behalf of B&O, "describes the entirety of the [rural roadway] as a 'County Road.'" It shows the "County Road" following the Mouth of Monocacy Road "heading south from the 1793 Road, crossing the Little Monocacy at a ford, to be replaced by a bridge, and then returning north to rejoin the original path of the 1793 Road." There is also a second road on the blueprint that is labeled "private road" showing again a distinction between public and private roads. The judge considered this "compelling evidence that B&O intended that portions of its land designated 'County Road' be used as a public road." According to the court, the 1921 Agreement "was clearly intended to link [the Mouth of Monocacy Road] to the portion for the 1793 Road [rural roadway] east of the river, that is, to link two public roads."

The judge summarized the evidence leading to the 1921 Agreement as follows:

> [A]t least as early as 1871, when B&O purchased three lots for purposes of building a road, B&O dedicated the newly opened road to the public. The purpose was to provide an alternate route across the Little Monocacy River at a ford for members of the public travelling on the 1793 Road. The road, including the portion shown in blue on Joint 1, had, therefore, been dedicated to the public long before the signing of the 1921 Agreement. The Agreement simply provided a new and better crossing for this public road north of the old crossing and abandoned a small portion of the road below the new crossing that was no longer needed.

Legal Analysis

After documenting its findings of fact, the circuit court addressed "three separate but related issues": (1) whether the Blue Road was "in 1871 or some time thereafter, dedicated to the public use and accepted by Montgomery County"; (2) whether Montgomery County abandoned its interest after dedication; and (3) "…whether the [dedication of the Blue Road would be] effective against the Defendants without actual or constructive notice[.]"

First, the court concluded that "[i]n 1871, B&O purchased three lots from the Whites for purposes of constructing a road" and "[c]learly, the purpose of opening the new road by acquiring these lots was to connect [] two existing sections of public road, that is, to dedicate this new road to public use." The court continued:

> . . . . The fact that B&O intended to dedicate the road to the public is further reinforced by the language in the "Remarks" section of the "Schedule," referring to the plat of this area on B&O's [Valuation Maps] 15 (CSX[T]'s Ex. 20) and 16 (Plaintiffs' Ex. 28). The remarks relating to the purchase of these parcels states the land was acquired to open a "County Road."
>
> Although the [c]ourt finds B&O's intent is already clear and unequivocal based on the 1871 deed and B&O's own val[uation] maps, should any additional evidence be required that B&O intended to create an easement for a public road, that evidence can be found in the 1921 Agreement and the other documents referenced earlier herein. In the 1921 Agreement,

> B&O agreed to permit the County to construct a new crossing – a bridge – north of the existing crossing by ford. The crossing was intended to be used by travelers going between the Mouth of the Monocacy Road to the west of the Little Monocacy River and the 1793 Road east of the river. The County agreed to construct a bridge to replace the ford and thereafter maintain it and the road. Further, the parties agreed the section of the "U" shaped road south of the new crossing would be abandoned by the County and returned to B&O. The blueprint created to show the transaction expressly referenced the entire "U" shaped portion of the road, which corresponds to the portion of the Mouth of Monocacy Road in pink [on Joint Ex. 1], running from the original 1793 Road south through the railroad right of way to the point where it meets the section in blue . . . as a "County Road."
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> * * *
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> The cumulative effect of all of the evidence is such that even assuming the Plaintiffs were required to prove by clear and convincing evidence that B&O intended to dedicate the section of the roadway shown in blue on Joint [Ex.] 1 for public use, the Plaintiffs have more than met that burden.

The circuit court then determined that "[t]here is no real dispute about whether the County accepted B&O's dedication":

> [I]t is clear from the evidence that travelers on the 1793 Road were using the alternate crossing at the ford south of the railroad right of way and then the [disputed section] of the road to rejoin the 1793 Road since at least 1871. The [c]ourt further has found that the usage continued well after the opening of the new Barnesville Road in 1882. While the opening of that road undoubtedly caused the volume of traffic on the 1793 Road, including the section of the "U" shaped detour shown in blue, to decrease, it continued to be used by the public for decades thereafter. Therefore, the Plaintiffs have established acceptance of the dedication by public use. Should there be any doubt about the sufficiency of that evidence, the 1921 Agreement proves beyond any doubt that the County formally ratified and accepted B&O's dedication. As well, following the adoption of the agreement, they built the bridge and abandoned the unused portion of the "U" shaped section south of the new bridge to B&O.

Second, the court rejected the Defendants' argument that the rural roadway, including the Blue Road, had been abandoned. After summarizing caselaw on abandonment, including *Baldwin v. Trimble*, 85 Md. 396 (1897); *Wagner v. James A.*

Bealmer & Sons Co., 135 Md. 690 (1920); *City of Baltimore v. Chesapeake Marine Railway Co.*, 233 Md. 559 (1964); and *Gregg Neck Yacht Club, Inc. v. County Commissioners of Kent County*, 137 Md. App. 732 (2001), the court narrowed the examination at the outset by ruling that only the Blue Road could even be subject to a claim of abandonment, because the portion of the 1793 Road acquired by condemnation is not subject to abandonment, assuming the former owners were paid for their interest.

The court then summarized the history of the maintenance of the Blue Road. As noted, "while the Mouth of the Monocacy Road, including the bridge crossing the river, was eventually paved, the section of road shown in blue was not." The court found "[s]ince at least 1963, certain of the Defendants or their predecessors in interest have taken actions inconsistent with public ownership of the road." These actions included road maintenance. The abutting landowners replaced the gravel, cleared trees, removed snow, filled potholes, put up a speed limit sign, and put up a sign indicating that the road was private. Additionally, someone erected a fence across a portion of the 1793 Road. The judge found that "[a]ll of these actions were open and notorious, and the County raised no objection." While "sufficient to prove adverse possession," in order to establish abandonment, the court expounded, relying on *City of Baltimore v. Chesapeake Marine Railway Co.*, 233 Md. 559, 572 (1964), "the [d]efendants must show that this is one of the 'exceptional cases' where 'right and justice demand' public property be restored to a private owner[.]" The judge determined that this was not one of those "exceptional cases":

> The road shown in blue here has at all times been and continues to be used as a road. While the Posses no doubt incurred some expense in maintaining the road, there is no evidence the expense was substantial.

> Further, their investment is not destroyed if their claim of abandonment fails. This is not a case where valuable buildings must be demolished if the [c]ourt denies the owners' claim. Instead, the Defendants here ask the [c]ourt to use its equitable powers to deny access to the road to another individual who has recently purchased a parcel of land abutting the 1793 Road opposite Ms. Van Etten. The Defendant landowners who currently enjoy access apparently fear the new owner will bring unwanted and increased traffic over the road. They are concerned that this will disturb the tranquility that they currently enjoy. Many of the Defendants testified that they purchased their properties having been assured that the road was private. Therefore, they could reasonably assume that the character of their enclave would not change for the foreseeable future.
>
> Their concerns notwithstanding, the [c]ourt finds this is not one of those "exceptional cases" where "right and justice demand" that a new neighbor be denied access to an existing road. There is scant evidence his use will harm the Defendants in any appreciable fashion. To the contrary, by recognizing the County's claim that the road is public and has not been abandoned, the Defendants will benefit from the fact the County will henceforth be required to maintain the road they have recognized as public.

The court concluded that "the County has not abandoned [the road] and is not equitably estopped from asserting that the road is public."

Third, the court determined that the "the owners of the property all had notice of the existence of an easement" and that Defendants "cannot deny access to this public property by declaring the [dedication]ineffective against them because it was not recorded." The rural roadway "has been and remains public" and "all the Defendants were aware at least of its existence[.]" In reaching this determination, the judge distinguished the two cases relied on by Defendants, *Mayor of Baltimore v. Brack*, 175 Md. 615 (1939) and *Nohowel v. Hall*, 218 Md. 160 (1958), each concluding, respectively, that an unrecorded grant for an easement must give way to the grant of a fee, *Brack*, 175 Md. at 622, and that "a common law dedication, accepted by a municipal corporation, is not effective as against a *bona fide* purchaser without notice, actual or constructive, *Nohowel*, 218 Md. at 167. Specifically,

the judge noted that "*Brack* involved the grant of an oral license to use land" and "no consideration was given," whereas the rural roadway dating to 1793 was acquired by condemnation, and for the Blue Road, "an easement was obtained by dedication." (Emphasis in original). In *Brack*, the "prior owner and City were negotiating the terms for the grant of an easement, but [the parties] never came to an agreement on those terms." The court further explained:

> [T]o extend the holding in *Brack* to easements created by dedication would be to ignore the many cases cited by the parties in their Memoranda following *Brack* that have held public interest in land can be created by dedication without any necessary formality, including recording a plat of the easement. For all these reasons, the case lends no support to the Defendants' argument.

The court then distinguished *Nohowel* on multiple bases. First, the court distinguished *Nohowel* because it did not involve a public entity. Thus, while the Court of Appeals concluded that "a common law dedication, accepted by a municipal corporation, is not effective as against a bona fide purchaser without notice actual or constructive[]", *Nohowel*, 218 Md. at 167-68, the judge quoted that portion of the Court's opinion expressly stating, "[w]e are not unmindful of the fact that the County is not a party to this proceeding, and therefore leave open any question as to the extent to which it may be bound by this ruling on demurrer, or its rights, if any, against the alleged dedicator." *Id.* at 168. The court concluded that *Nohowel* "by its express language does not apply when the County, such as here, is a party." Reasoning that it would be illogical for the Defendants to lose against the County yet succeed against the Defendants, the judge explained:

> It would be illogical for the [c]ourt to accept the County's position that the road is public, and therefore must maintain the road, while at the same time

> declaring that, insofar as the Plaintiffs are concerned, the road is private[,] and they cannot use it.

The court also decided that the Defendants were on notice of the easement. The judge observed that, even if "for the sake of argument neither the Posses nor the Liebrands had actual or constructive notice of the public nature of the easement, the relief they ask for would lead to an absurd result":

> . . . . They ask the Court to declare that the Plaintiffs, the Tomareses, who own property abutting the 1793 Road across from Ms. Van Etten, cannot use the section shown in blue. Obviously, they cannot restrict the Plaintiffs from using that portion of the 1793 Road obtained by condemnation. Also, CSX[T] could not restrict the Plaintiffs from using that portion of the roadway shown in blue that crosses the railway right-of-way. However, for the Tomareses to reach the Mouth of the Monocacy Road, they would have to also traverse those sections of the road in blue laying on the Poss property and the Liebrand property.
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> * * *
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> The County has determined the driveway in its entirety is a public road which serves the old 1793 Road. A decision which this Court has affirmed. Obviously, the County, having made that determination, will now have the obligation to maintain the road. Although the County will have the obligation to maintain it, if the Defendants are granted the relief they seek, citizens of the County, including the Plaintiffs, will not have the right to use the road. The outcome would be intolerable.
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> * * *
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> All the Defendants in this case were aware of the existence of the road when they purchased their property. CSX[T] was also aware, actually if not constructively, that the road was a public road. The County has now acknowledged it is a public road and will have to maintain it going forward. Since 1871, the blue section of the road has been and remains public. The section in orange has been public since 1793 and remains so today, although rarely used by the public. Given that fact, and given that all the Defendants were aware at least of its existence, they cannot deny access to this public property by declaring the easement is ineffective against them because it was not recorded. The Court declines to extend *Nohowel* to the facts of this case.

Consequently, the circuit court granted the Plaintiffs' claim for declaratory judgement and declared and adjudged that the rural roadway, including the portion

identified as the Blue Road, is a public road.[10] Of the Defendants, only the Posses noted a timely appeal to this Court.

STANDARD OF REVIEW

Pursuant to Maryland Rule 8-131(c), we apply the clearly erroneous standard of review to the court's factual findings and review the trial court's decision for legal error:

> 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.

Md. Rule 8-131(c). "The clearly erroneous standard requires an appellate court to 'consider the evidence in the light most favorable to the prevailing party.'" *Gregg Neck Yacht Club, Inc. v. Cnty. Comm'r of Kent Cnty.*, 137 Md. App. 732, 752 (2001) (citation omitted). "A trial court's findings are clearly erroneous when they are not supported by substantial evidence." *Id.* In reviewing pure conclusions of law, however, "our review is more expansive," and we do not accord any deference. *Id.*

[10] On the same date, August 24, 2018, the court issued a separate opinion and order dismissing CSXT's third party complaint. Among other reasons for his ruling, the judge explained: "[n]ow that Montgomery County has recognized and accepted that the Road in question is a public road, there is no reason to believe that Montgomery County will not maintain the Road as required by law."

DISCUSSION

I.

Public Road by Dedication

The Posses advance three primary challenges to the trial court's determination that the Blue Road is a public road by dedication. First, they claim that the trial court applied the incorrect burden of proof. Second, the Posses attack the trial court's conclusion that the documentary evidence establishes an intention by B&O to dedicate the Blue Road to the public. And finally, the Posses contend that the trial court erred in determining that the County accepted the Blue Road as a public road.[11] We address each of the Posses' challenges in turn.

A. Burden of Proof

The Posses contend that the burden to prove a common law dedication to the public "is a heavy one," and that an owner's intention to dedicate "cannot be implied, presumed, or assumed." Relying on *Washington Land Co. v. Potomac Ridge Development Corp.*, 137 Md. App. 33, 40-41 (2001) and *Canton Co. of Baltimore v. City of Baltimore*, 106 Md. 69 (1907), they assert that a common law dedication requires "clear and unequivocal"

[11] The Posses assert in their opening briefing that, because there is no recorded deed or easement transferring the Blue Road to Montgomery County, the land could not have been dedicated to the public. They also point out that Montgomery County did not follow the various statutory condemnation procedures under the Maryland and Montgomery County Codes. However, they later concede in their briefing that "a public road may also be created by a common law dedication." Given that the circuit court determined that the Blue Road was established by common law dedication, and no one claims that the Blue Road was obtained by another method, it is not necessary to address the Posses' argument that the County did not obtain the public road right-of-way by deed or by condemnation.

evidence as well as "decisive acts to establish the owner's intent to benefit the public at large." According to the Posses, the circuit court improperly brushed aside this heightened standard of review in favor of a preponderance of the evidence standard.

To the contrary, Appellees maintain that "the trial court did not 'brush aside' the burden of proof required under Maryland law[.]" Quoting *Washington Land Co.,* Appellees profess that there must be "proof of a clear and unequivocal manifestation of intent to dedicate." 137 Md. App. at 41. However, Appellees aver that while the expression of intent to dedicate must be clear, the burden remains the same. Relying on *Easter v. Overlea Land Co.*, they assert that the burden is not elevated beyond a preponderance standard; rather, the "burden [is] on the plaintiffs to establish by a clear preponderance of proof that it was a public highway." 129 Md. 627, 630 (1917).

We agree with the trial court's pronouncement in this case that "[w]hile different language is used by different courts, the burden remains the same: to prove by a preponderance of the evidence the landowner clearly intended to dedicate the land to public use." The "Court of Appeals has 'consistently applied the *preponderance of the evidence* standard in cases involving private property ownership.'" *Porter v. Schaffer*, 126 Md. App. 237, 261 n.15 (1999) (emphasis in original) (quoting *Urban Site Venture II Ltd. P'ship v. Levering Assocs. Ltd. P'ship*, 340 Md. 223, 229 (1995) (collecting cases)). In *Porter*, this Court affirmed the trial court's judgment that the appellee had superior record title to three unimproved parcels of land in Allegany County. *Id.* at 242-44, 278. Although we noted that, in pressing an action to quiet title, "the plaintiff has the burden of establishing both

possession and legal title by "clear proof," the burden remained preponderance of the evidence. *Id.* at 260-61.

Likewise, in *Easter v. Overlea Land Co. of Baltimore County*, the Court of Appeals analyzed whether a road, which was built by the plaintiffs for their use, had become a "public road" through adverse possession. 129 Md. 627, 628 (1917). The Court provided that the burden of proof was on the plaintiffs to "establish by a clear preponderance of proof that [the road in question] was a public highway." *Id.* at 630.

The cases that concern dedication of land to public use do not specify the burden of proof necessary. But, we agree with Appellees that the Posses' strained reading of *Washington Land Co. v. Potomac Ridge Development Corp.*, 137 Md. App. 33, 40-41 (2001) and *Canton Co. of Baltimore v. City of Baltimore*, 106 Md. 69 (1907), to require proof beyond a preponderance of the evidence does not correspond with the analysis and holdings reached in those cases. In *Washington Land Co.*, a land company sought an injunction to prevent a development corporation from using certain utility lines for its condominium project. 137 Md. at 36. The parties then proceeded to a jury trial. *Id.* At the conclusion of the land company's case, the development corporation moved for judgment, which the court granted. *Id.* On appeal, we summarized that, in the context of a dedication of land for public use, our precedence conveys that the expression of the landowner's intent must be "clear and unequivocal," and that "an owner may not be deprived of his interest by dedication unless there has been some clear and decisive act indicating a desire to dedicate land to public use." 137 Md. at 41.

We did not alter the burden of proof; rather, we highlighted the expression of intent that is required to establish a public dedication of land. In *Washington Land Co.*, we vacated the circuit court's judgment because the circuit court "seemed to ignore—or perhaps improperly weighed—considerable testimonial evidence that the requisite intent for offer and acceptance was not present" and improperly "strode firmly into the jury's province." *Id.* at 45. We did not state that the evidence was insufficient to establish a dedication upon a higher standard of review, rather we held that the circuit court "sought to substitute its own credibility assessment for that of the jury." *Id.* at 49.

In *Canton Co.*, the Court of Appeals affirmed, on a motion for re-argument, that the evidence was insufficient to establish that land was dedicated for public use as a square, despite certain plats created by the owner that identified the square as public. 106 Md. at 96. There, "the deeds themselves make no mention of or reference to the square, nor do they contain a description of or identify the plat to which they refer, nor does the record contain any direct testimony connecting the plats or any of them with the deeds." *Id.* No evidence was "offered to show that the company had published either of the plats, or recorded them in the public records, or exhibited them to the purchasers of the lots or to other persons." *Id.* at 97. In short, the Court determined there was "no such proof of an intention to dedicate the square in question." *Id.* at 99.

The Posses have not directed us to precedent that supports their contention that a higher standard than preponderance of the evidence is required to show the dedication of land by a private landowner to the public. While *Easter* and *Porter* concern other land use issues (adverse possession and an action to quiet title) and did not discuss a common-law

dedication, we see no reason—and the Posses have not offered one—why cases analyzed under claims of common law dedication should be analyzed under a different standard of proof. To be sure, we are aware that our case law instructs that an "intention to dedicate must be established by clear, satisfactory, and unequivocal testimony," *Toney Schloss Prop. Corp. v. Berenholtz*, 243 Md. 195, 204 (1966) and "the strongest, clearest, and most convincing proof," *S. Balt. Harbor & Imp. Co. v. Smith*, 85 Md. 537, 542 (1897). Still, comparable to the "clear proof" that is required in quiet title actions, these cases do not elevate the burden of proof from a preponderance standard. *Porter*, 126 Md. App. at 260.

As discussed in more detail below, in *Lonaconing, M. & F. Ry. Co. v. Consolidation Coal Co.*, a case that is factually very similar to the present case, the Court of Appeals determined that the evidence of intent to dedicate land to public use was "clear" where a coal company substituted a curved portion of road to a then existing road, referenced the road as a "County Road" in a lease to a third party, and assented to public use of the road. 95 Md. 630, 630, 634-35 (1902). The Court did not classify the burden of proof required but noted that the expression of the coal company's intent was clear. *Id.* at 634.

In accordance with foregoing precedent, we hold that a plaintiff must prove an intent to dedicate land to public use by a preponderance of the evidence, requiring "proof of a clear and unequivocal manifestation of intent to dedicate." *Washington Land Co.*, 137 Md. App. at 41. As we clarify next, the record in this case establishes that clear and substantial evidence supports the circuit court's determination that "B&O intended to dedicate the section of the road shown in blue on Joint [Ex.] 1 for public use[.]"

B. Dedication

1. Parties' Contentions

The Posses contend the circuit court erred in determining that the rural roadway was dedicated to the public in 1871 on several grounds. First, they contend that, because the County was not a party to the deed conveying the property for the Blue Road from Mr. and Mrs. White to B&O, and, because that deed did not specify an intent to build a public road, there was no "clear and unequivocal intent" to dedicate the road for public use. Second, they aver that the valuation maps created by B&O that label the road as a "County Road" are insufficient to show intent to dedicate. More specifically, because the valuation maps were created in 1918, they aver, the maps cannot evidence B&O's intent in 1871. Third, they contend that, if the intention was to create a public roadway, when Mr. and Mrs. White conveyed their property to Mr. and Mrs. Wade in 1963, there would have been no need to provide the Wades an easement over the exact same location. Finally, the Posses argue that the 1921 Agreement is of no probative value on the issue of dedication because it was merely a license agreement to allow Montgomery County construction access to B&O's land and does not grant the public any use rights.

The Appellees respond that, no matter the burden, B&O "had multiple manifestations of clear and unwavering intent" to dedicate the rural roadway to the public. They assert that the terms "County road," "public road" and "Barnesville Road," used in B&O's deeds, plats and valuation maps show that B&O intended to dedicate the rural roadway, including the Blue Road, to the public. "The Posses do not present any other explanation for why B&O [] would have used" these terms. The Appellees also refute the

Posses' argument concerning the Wade deed by noting that the easement conveyed by that instrument was much larger than the Blue Road, and that "substantial evidence supports the trial court's finding that the Wades' easement was intended to access [] previously unencumbered portions of B&O's property[.]" Finally, Appellees urge that the Posses' arguments concerning the 1921 Agreement between B&O and the County are defeated by the plain language of the Agreement acknowledging an existing county road, as well as the attached blueprint showing the county road continuing north onto the Posses' property in order to connect with the 1793 road.

2. Analysis

It is "settled doctrine" in Maryland that a public road may be established by one of three methods: (1) condemnation by a public authority; (2) dedication by a private property owner to the public; or (3) "by long use[] by the public, which though not strictly prescription, yet bears so close an analogy to it that it is not inappropriate to apply to the right thus acquired the term prescriptive." *Mt. Sinai Nursing Home, Inc. v. Pleasant Manor Corp.*, 254 Md. 1, 6 (1969) (quoting *Thomas v. Ford*, 63 Md. 346, 351-52 (1885)).

Here, the parties do not contest that the section of the rural roadway located north of the railroad, highlighted in orange on Joint Exhibit 1, was acquired by condemnation in 1793 and is a public road. Rather, the issue is whether substantial evidence supports the circuit court's determination that the Blue Road is a public road by dedication.

A common law dedication is a voluntary offer '"to dedicate land to public use, and the subsequent acceptance, in an appropriate fashion, by a public entity."' *Gregg Neck Yacht Club*, 137 Md. App. at 755 (quoting *City of Annapolis v. Waterman*, 357 Md. 484,

503 (2000)). "Ordinarily, the fee owner of land conveys an interest in the land 'to the public; usually to the local government having jurisdiction over the land[,]'" but the "owner retains a fee simple interest in the dedicated parcel, 'subject to an easement for the public.'" *Id.* (citations omitted).

We have instructed that, when a trial court "determines whether a landowner has dedicated his land at common law to public use, the court must perform a fact-intensive analysis. It must consider 'declarations of the landowner, his intentions as manifested by his acts, and all the other circumstances of the case.'" *Washington Land Co.*, 137 Md. App. at 40 (quoting *Smith v. Shiebeck*, 180 Md. 412, 420 (1942)). The Court of Appeals, in *Smith v. Shiebeck*, further clarified the evidence necessary to determine whether a public road has been dedicated to public use:

> In Maryland[,] no particular form or ceremony is necessary to dedicate land to public use. No deed is necessary to evidence a dedication, nor any grantee in esse to take the title. **As dedication is purely a question of intention, any act of a landowner clearly manifesting such an intention is sufficient. The intention to dedicate may be implied from the conduct of the landowner. If, for example, a person throws open a passage through his land, and makes no effort to prohibit persons from passing through it, and does not show by any visible sign that he wishes to preserve his right over it, his action is a manifestation of an intention to dedicate the highway to public use and he is presumed to have so dedicated it.** Thus the question of dedication rests largely upon the ground of estoppel. The right of the public to a road does not depend upon its continuous use for a period of twenty years or for any other definite length of time, but upon its use with the assent of the owner for such a period that the public accommodation and private rights might be materially affected by an interruption of such enjoyment.

Id. at 419-20 (cleaned up) (emphasis added).

In *Lonaconing, M. & F. Ry. Co. v. Consolidation Coal Co.*, the Court of Appeals addressed "whether a certain road has been so dedicated to public use and accepted by the public as to constitute a public highway." 95 Md. 630, 630 (1902). In 1882, the county commissioners of Allegany County constructed a public road on property obtained through condemnation. *Id.* at 631. A curved portion of the road ran through Consolidated Coal Company's land. *Id.* Approximately ten years later, the coal company leased a portion of its land to a driving park association, and a racetrack was constructed "on the bed of the curve in the road," which the driving park association "ever since then continued to hold [] as lessee." *Id.* at 632. "The old curved roadbed was then closed to travel," and a new cut-off across the coal company's land was "used in its stead as part of the continuous road." *Id.* The coal company filed suit, alleging that the cut-off was "intended only for the uses of the driving park association, and for the private use of such other persons as the appellee [coal company] might permit to enjoy it." *Id.*

The Court determined that "[t]he evidence of the intent of the appellee [coal company] to dedicate to public use the cut-off portion of the road in question is especially clear." *Id.* at 634. First, the coal company, after leasing a portion of a parcel, "whose boundaries included the bend or curve in what was an existing and much-traveled road," constructed a "substitute for the curved portion of the then existing road[.]" *Id.* Second, "in its lease of the driving park lot, which was a formal conveyance, signed by its president, the road now in question was mentioned as a landmark, and *was called the 'County Road,' thus recognizing its public character*." *Id.* at 634-35 (emphasis added). The coal company "voluntarily acquiesced in and assented to" the public to use the cut-off portion of the road.

Id. Consequently, referencing *Prouty v. Bell*, 44 Vt. 72 (1871), the Court held that "the substitution of a new piece of road for portion of an old one, and the enclosure and use of the abandoned portion of the old road by the owner of the soil, were [] unequivocal acts of dedication of the substituted road." *Id.* at 635.

Conversely, in *North Beach v. North Chesapeake Beach Land & Improvement Co. of Calvert County*, the owner of tracts of land near the Chesapeake Bay "removed all possible ambiguity" that the owner intended to dedicate land for public use for roads and a public beach "[b]efore any official acceptance of any form of dedication[.]" 172 Md. 101, 113 (1937). North Beach sought to prove a public dedication based on two plats that were recorded in the land records in 1900 and 1905 by the owners of the property, referred to as the "Land Company." *Id.* at 105-06. The Town North Beach "first became a municipal corporation . . . in 1910." *Id.* at 107. The Court of Appeals determined, that although the Land Company's initial plats indicated an intent to build public streets, before there was an "act of acceptance by public authority," the Land Company "revoked, so far as the public is concerned, the preceding offers of dedication, and, therefore, an acceptance by the public" by filing a final plat in 1908, which showed a different intent. *Id.* at 119. The Court explained that "all of the land [at issue] was not designed to be included for highway purpose, but was intended to be retained as the property of the owner as appears by this plain declaration printed on the plat . . . 'The Company Reserved All Rights to the Shore Front.'" *Id.* at 114. Further, the display of three low buildings on one of the plats and the "absence of any dedicatory expression of a public use as common, park, [or] public beach" were "indicative of a retention of the proprietary rights of the owner." *Id.* at 115. The

Court concluded that "[n]o one should be thus deprived of his property, on the ground of a dedication, unless there has been some clear and decisive act indicating an intention to dedicate to the public use." *Id.* (quoting *McCormick v. Baltimore*, 45 Md. 512, 527 (1877)).

Returning to the present case, we conclude that substantial evidence supports the circuit court's determination that B&O intended to dedicate the Blue Road for public use. Without repeating the trial court's extensive "Opinion and Order," we acknowledge our agreement with the court's careful and detailed findings and conclusions. Although the circuit court noted that the "1871 deed and B&O's own val[uation] maps" already evidenced "clear and unequivocal" intent, we agree that the 1921 Agreement further represents the "strongest, clearest, and most convincing proof" of intention. *S. Balt. Harbor & Imp. Co. v. Smith*, 85 Md. 537, 542 (1897). As the circuit court explained, B&O "agreed to permit the ***County*** to construct a new [bridge]" and, "thereafter maintain it and the road[.]" (Emphasis added). The "blue print" (created by the parties to illustrate the transaction) references the Blue Road as a "public road." The examiner's report, which accompanied the 1921 Agreement, provides that "public necessity and convenience require[d] the abandonment or closing of a part of the County road . . . and relocating site for new road-way" and expressly provides that the new "bridge [wa]s necessary" due to "public traffic." As in *Lonaconing, M. & F. Ry. Co. v. Consolidation Coal Co.*, the substitution of a new piece of roadway as part of a public road is further support for B&O's "unequivocal acts of dedication of the substituted road." 95 Md. at 635. In short, the evidence reviewed in the circuit court's "Opinion and Order" does not manifest one act but many "clear and decisive" acts indicating B&O's initial intent and confirmation over

decades that the rural roadway, including the Blue Road, is for public use. *North Beach*, 172 Md. at 115.

None of the Posses' contentions alters the outcome. First, the fact that Montgomery County was not a party to the 1871 deed between B&O and the Whites is clearly not dispositive. As the Court of Appeals instructed in *Smith*, "no deed is necessary to evidence a dedication"; rather, intent is determined by "considering the declarations of the landowner, his intentions as manifested by his acts, and all the other circumstances of the case." 180 Md. at 419-20. The circuit court set out all the relevant considerations within its 65-page "Opinion and Order."

Second, and relatedly, while the 1871 deed itself only specifies that the parcels were purchased "for the purposes of making a road thereon," the entire record evidence, including valuation maps, plats, and other documents in the files of CSXT (B&O's successor) and Montgomery County Land Records, support the trial court's conclusion. Most tellingly, numerous documents that were admitted into evidence utilize the terms "Barnesville Road," "County road," and "public road" to identify the rural roadway, including the Blue Road. The Posses do not present any alternative explanation for why B&O would utilize these terms had the Blue Road not been dedicated for public use.

Third, the valuation maps, although created almost fifty years after the 1871 deed, reflect an inventory of, first, B&O's, and, then, CSXT's real estate assets. As Ms. Snyder testified, the federal government has required all railroads to maintain an inventory of their real estate holdings since 1913, and the Posses have offered no reason why they would be unreliable or could not offer further evidentiary support of B&O's intent.

Fourth, the circuit court thoroughly felled the Posses' contention that the easement granted to the Wades in their 1963 deed indicated that the Blue Road was not public:

> The outer boundaries of Parcel C extend well beyond those that could be claimed as a public road. The testimony at trial was that the average width of a right-of-way for a public road is 30 feet. However, the section of road running through Parcel C, claimed as public by the Plaintiffs, at its widest is approximately 12 feet wide. Parcel C, where it abuts Parcel A south of the railroad tracks, is 30 feet plus or minus. Parcel C, where it abuts Parcel B to the north, is 83 feet wide. Even assuming a right-of-way dedicated by B&O to the public use was 30 feet in width, B&O still retained an unencumbered interest in the remaining area of Parcel C. It is entirely possible that is conveying an interest "in so far as it has the right to do so," B&O was referring to those portions of Parcel C not previously dedicated to the County for a public road. The road turned to the east once it crossed the railroad right-of-way to the north. The property acquired by the Wades extended both east and west at that point. To access the existing road, it is not unreasonable to conclude they would want or need to cross previously unencumbered portions of B&O's property, particularly at the northern end of Parcel C where it widened to 83 feet as it abutted Parcel B.

Substantial evidence, including the "numerous documents" showing the Blue Road as a public road and the 1963 deed, supports the circuit court's conclusion the easement was intended to access "previously unencumbered portions of B&O's property" and that B&O was conveying an interest to portions of Parcel C, which had not been dedicated for a public road.

Finally, as the circuit court found, the "blue print" plat illustrating the intent of the 1921 Agreement shows that the Blue Road "was clearly intended to link . . . two public roads." While the Posses assert that the Blue Road and bridge was intended solely to serve B&O,

> [W]hen asked at argument [at the circuit court], the Defendants were unable to provide any explanation for why the County would spend public monies to build a public road, including a section turning north after crossing the

> bridge, to serve B&O's private needs. Clearly, the County would not undertake such a task.

We hold that substantial evidence supports the circuit court's determination that B&O intended to dedicate the Blue Road to the public. Of course, a completed common law dedication also requires acceptance, *United Fin. Corp. v. Royal Realty Corp.*, 172 Md. 138, 148 (1937), which we review next.

C. Acceptance

1. Parties' Contentions

The Posses contend that, even if B&O intended to dedicate the land to public use, it was never accepted by the public and "there was absolutely no evidence of any public use of the [Roadway] at the trial in this matter." They argue that the County did not accept any such dedication because they did not take any of the four possible clear and decisive actions necessary to show intent to accept. First, no deed was executed. Second, Montgomery County did not accept the Blue Road "through any acts *in [pais]*," because "the absence of any County maintenance records defeats any allegation of acceptance." Third, relying on the testimony of Holger Serrano, former Deputy Chief of the Department of Public Works and Transportation, public use of the Roadway and County maintenance ended "sometimes between 1882 and 1906," and there was no evidence that the rural roadway "continued to be used by the public for decades thereafter." Fourth, no official act was taken.

To the contrary, Appellees assert that "the trial court correctly found that B&O Railroad's dedication was accepted by long public use since at least 1871[.]" Appellees point out that the court found that the 1921 Agreement proved, beyond a doubt, that the

County accepted the dedication by official action and through acts *in pais* by building a bridge on the road and relocating the road. Further, Mr. Serrano's prior statements were "confirmed to be mistaken and incorrect by the County."

2. Analysis

As mentioned above, generally, "an acceptance of an offer to dedicate is shown by one of four methods. These are: acceptance of a deed or other record; acts *in pais,* such as grading, at public expense; long use; or express statutory or other official action." *Gregg Neck Yacht Club.*, 137 Md. App. at 756 (citations omitted). The public must "show its intent to accept clearly and decisively," *Washington Land Co. v. Potomac Ridge Dev. Corp.*, 137 Md. App. 33, 41 (2001) (citation omitted), and must accept the offer within a reasonable time, *United Fin. Corp.*, 172 Md. at 148. However, "the owner cannot deny the dedication or object that it was not accepted within a reasonable time unless the municipality has shown affirmatively an intent not to accept, or has allowed the owner to make valuable improvements without objections so that he would be materially injured were the dedication insisted upon." *Hackerman v. Mayor of Balt.*, 212 Md. 618, 625 (1957). Accordingly, "[w]hat is a reasonable time depends upon the facts of particular cases, and is measured by no fixed rule." *Id.*

An offer need not solely be accepted by public authorities but

> …may be accepted by the general public. This acceptance may be shown by an entry upon the land and enjoying the privilege offered. . . . What is required is for the user to be continued for so long a time as will establish a clear intention on the part of the public to accept.

North Beach v. North Chesapeake Beach Land & Improvement Co. of Calvert County, 172 Md. 101, 116 (1937).

In *North Beach*, the Court of Appeals determined that the evidence was not sufficient to demonstrate any form of acceptance either by the government directly or through public use. *Id.* The facts showed that for 30 years the land was "divided, sold, conveyed, and occupied as exclusively private property," excepting the streets. *Id.* Further, in that case, a final plat that left a narrow strip of land between the waterfront and the street and reserved absolute title to the dedicator acted as a revocation of any "preceding offers of dedication." *Id.* at 119.

In *United Finance Corp.*, the Court of Appeals stated that even if an offer to dedicate could have been implied from the actions of the parties, "the failure of the municipality to act on it for over 50 years, coupled with the use by the owners of the land within the street lines, for purposes inconsistent with its character as a public highway, and the acceptance of taxes thereon, throughout that period, must be construed as a definite refusal to accept it." 172 Md. at 148.

Here, substantial evidence supports the circuit court's determination that B&O's dedication was accepted through *long* use. Multiple deeds and plats dating back to 1871 show that rural roadway, including the Blue Road segment, was regarded as a public road. *North Beach*, 172 Md. at 116. Further, the 1921 Agreement, to which Montgomery was a party, references the "County Road heretofore used upon the property of the Railroad," evidencing the road's character as a public road. The examiner's report further specified that the bridge contemplated under the 1921 Agreement was needed due to "public traffic."

We further note that substantial evidence supports two other methods of acceptance implied, but not expressed as such, by the trial court: official action and acts *in pais*. First, the County accepted the dedication through an official act when its Commissioners entered into the 1921 Agreement, "ratified and confirmed" the Agreement, and appropriated funds for construction of the replacement road and bridge. Second, the 1921 Agreement also presents substantial evidence of acceptance by acts *in pais;* namely, as the trial court observed, pursuant to that agreement the County "spent public monies to build a public road, including a section turning north after crossing the bridge." The Posses aver that "[t]he absence of any County maintenance defeats any allegation of acceptance," but this overlooks the work that the County agreed to perform pursuant to the 1921 Agreement. Moreover, because no evidence was submitted supporting maintenance of the Roadway before or after opening of the 1882 New Barnesville Road, the court found this argument "of limited significance."

The Posses disregard the 1921 Agreement and assert that the "only evidence of public use came from the testimony of Holger O. Serrrano." They credit his testimony that general use of the rural roadway stopped soon after the opening of the New Barnesville Road in 1882. Of course, as the finder of fact, the circuit court judge had the "discretion to decide which evidence to credit and which to reject." *Hollingsworth & Vose Co. v. Connor*, 136 Md. App. 91, 136, (2000). Given that the County's representative, Bruce E. Johnston, testified that Mr. Serrano's statements were incorrect, we will not find that the trial court abused its discretion in rejecting Mr. Serrano's statements concerning public use of the rural roadway.

Consequently, we hold that substantial evidence supports the circuit court's determination that the dedication was accepted, and a common law dedication was established.

II.

Abandonment

A. Parties' Contentions

The Posses next argue that, assuming the Blue Road was dedicated to the public and accepted by Montgomery County, the County abandoned its interest in the Blue Road. As an initial matter, the Posses contend that the applicable law is the law in effect at the time of abandonment, which the Posses claim occurred during the late 1880s and early 1900s. The law in effect, as stated in *Wagner v. James A. Bealmear & Son Co.*, 135 Md. 690, 694 (1920) provided for "abandonment of a right of way condemned for public use" through two methods: (1) "repeal of the ordinance under which the proceedings were instituted" and (2) "deduced from acts *in pais*." Concerning the first method, the Posses aver that the County effectuated an abandonment of the Blue Road when it opened Barnesville Road. In regard to the second method, they assert that the County abandoned the Blue Road through acts *in pais*, including: (1) not maintaining the Blue Road; (2) "deliberately cho[osing] not to pave the [Blue Road] when it paved other parts of Mouth of Monocacy Road"; and (3) not listing the Blue Road on its list of public roads or in the "Master Plan of Highways and Transitways Mapbook." Finally, the Posses contend that the Blue Portion "could cause stress" to the Little Monocacy Viaduct and "undoubtedly… require certain structures to be demolished" if it is public.

Appellees respond that the Posses "do not identify any change in the common law doctrine of abandonment" and, in any event, the applicable law would not emerge from late 1880s and early 1900s because "abandonment could not have occurred prior to the 1921 Agreement." Turning to the merits, the Appellees argue, "[a]s a matter of law, mere nonuse of the public road does not equate to an intent to abandon it" but, relying on *United Fin. Corp. v. Royal Realty Corp.*, 172 Md. 138, 145 (1937), there must be a use "inconsistent with the public use." In response to the Posses' first theory of abandonment, the Appellees insist that "[i]t would be nonsensical for the County to abandon the [Blue Road] in 1882, and then enter into the 1921 Agreement for the construction of a new bridge for 'public necessity' and continued public use of that roadway." Further, they contend that lack of maintenance cannot be dispositive of the abandonment issue because there was no evidence presented on what maintenance the County should have undertaken on the rural roadway or other comparable road.

B. Analysis

To prove that Montgomery County abandoned the Blue Road, the Posses must show "an intention to abandon, and an overt act, or an omission to act, by which such intention is carried into effect." *Montgomery Cnty. v. Bhatt*, 446 Md. 79, 96 (2016) (citation omitted).[12] The overt act, or omission, "carries the implication that the owner does not claim or retain any interest in the subject matter." *Catonsville Nursing Home, Inc. v.*

[12] We note that the Posses did not provide any authority for their proposition that the law at the time of the claimed abandonment must be applied. More importantly, for our purposes, they failed to identify any change in the common law of abandonment since the late 1800s, which would alter our analysis, and we have not discerned any.

Loveman, 349 Md. 560, 581 (1998). An affirmative act "is essential." *United Fin. Corp.*, 172 Md. at 145.

It is "well-established" that the '"common right of way' cannot be lost by the attempted adverse possession of a private individual." *Bhatt*, 446 Md. at 91 (quoting *Sieling v. Uhl*, 160 Md. 407, 418 (1931). However, the Court of Appeals has clarified:

> In exceptional cases, where the Court found that right and justice demanded it, there has been recognition in Maryland that private ownership has been acquired of property held by a municipality in a governmental capacity (and so in trust for the public) where there has been *actual and notorious abandonment* of the property by the municipality for at least as long as the legal period of prescription which has induced action by the person claiming ownership, the result of which it would be unjust and inequitable to disturb.

Gregg Neck Yacht Club, Inc. v. Cnty. Comm'rs of Kent Cnty., 137 Md. App. 732, 771 (2001) (quoting *City of Baltimore v. Chesapeake Marine Ry*., 223 Md 559 572 (1964))

Likewise, a municipal corporation may be estopped from asserting rights against a 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." *Id.* at 772 (quoting *Knill v. Knill*, 306 Md. 527, 534 (1986)). Equitable estoppel generally requires: "(1) voluntary conduct or representation; (2) reliance; and (3) detriment." *Id.* at 773. Equitable estoppel does not require any wrongful conduct on the part of the party being estopped, only that the conduct caused a prejudicial change in the conduct of the part of the claimant. *Id.*

The "burden of proving abandonment rests on the one who asserts or relies on it." *Chevy Chase Land Co. v. United States*, 355 Md. 110, 161 (1999) (citation omitted). Further, because abandonment concerns "a question of fact to be determined by the finder

of fact," we review abandonment under a clearly erroneous standard. *Maryland & P.R. Co. v. Mercantile-Safe Deposit & Tr. Co.*, 224 Md. 34, 41 (1960); *see also Wagner*, 135 Md. at 694 (holding that abandonment "is a question of fact for the jury, and not of law for the court"). Likewise, "'whether or not an estoppel exists is a question of fact to be determined in each case.'" *Gregg Neck Yacht Club*, 137 Md. App. at 773 (quoting *Travelers Indem. Co. v. Nationwide Constr. Corp.*, 224 Md. 401 (1966))

In *Gregg Neck Yacht Club*, this Court relied on *United Finance Corp.* to delineate how dedicated property may be abandoned:

> An abandonment does not result from mere nonuser, after a dedication is complete, unless a statute so provides, or from misuser, or delay in its improvement and use, or by a mere temporary abandonment of such use. . . . On the other hand, if the nonuser is accompanied by user by the dedicator or by third persons, **inconsistent with the public use**, the nonuser may show an abandonment. *And a municipality may relinquish its control over property dedicated to it for public use by an abandonment thereof, and this is so notwithstanding prescription does not run against a municipality as to land granted to it for the use of the public.*

Id. at 771-72 (italicized emphasis in original; bolded emphasis added) (quoting *United Fin. Corp.*, 172 Md. at 145). Our precedents further explain the two ways a governmental entity may relinquish control over dedicated property: (1) "an explicit renunciation of the purpose to give effect to the condemnation, which in the case of a municipality would be by a repeal of the ordinance under which the proceedings were instituted"; and (2) "deduced from acts *in pais*." *Wagner*, 135 Md. at 694. In either case, "those acts [must] constitute sufficient evidence of an intention on the part of the condemning corporation to abandon the proceeding." *Id.*

Our appellate courts have had occasion to analyze whether a use is "inconsistent with the public use." *Gregg Neck Yacht Club*, 137 Md. App. at 771. Well over a century ago, in *Baldwin v. Trimble*, the Court of Appeals determined that the owner of two parcels along a street in Baltimore, which were subject to an easement for public use and travel, had acquired the street free of the easement. 85 Md. 396, 404 (1897). The road had been abandoned, the Court determined, because it was clearly no longer needed for the public benefit given that structures had been built in the right-of-way and utilized for years without objection by the City. *Id.* at 405. The Court observed that "cases concerning public streets can arise of such a character, and be founded upon such actual and notorious abandonment of the [street] by the public, that justice requires that an equitable estoppel shall be asserted against even the public in favor of individuals." *Id.* at 403. Given the circumstances presented in *Baldwin*, the Court concluded that it would be extremely inequitable to force the property owners, "who had acted in good faith," to tear down their structures. *Id.* at 404; *see also Mayor of Balt. v. Canton Co. of Balt.*, 124 Md. 620, 634 (1915) (holding that the city abandoned property, initially dedicated for a street, because the property had never been publicly used, and was used instead as a private shipyard and the city did not attempt "to exercise control").

In *Gregg Neck Yacht Club*, the record established that Kent County maintained for over 40 years that it did not own the pier at issue. 137 Md. App. at 753. In 1999, however, the County shifted course, concluded that it did own the pier and presented evidence at trial that the right-of-way on which the pier was constructed was dedicated to the public before the pier was built. *Id.* at 740-42. The yacht club demonstrated that it had paid for the

construction and maintenance of the pier and had assigned slips to members for many years, collecting rents from their use. *Id.* at 742-43. After observing that a county could abandon its rights in certain property, *id.* at 770-71, we held that even if the County had at some point acquired an ownership interest in the pier, it had abandoned that interest because the yacht club built and maintained the pier while the County repeatedly disclaimed any interest in the pier over a period of many years. *Id.* at 776-77.

Alternatively, in *Chesapeake Marine Railway Co.*, the Court of Appeals reviewed whether a street created by an easement dedicating land for the public use had been abandoned by the City of Baltimore. 233 Md. at 563. There was evidence that the street was used privately by a railway company, but also that members of the public used the street for water access at times. *Id.* at 567. Additionally, there was evidence that an attorney for the railway company had previously approached the City in 1941 to ask that the road be closed to the public. *Id.* at 568-69. After the City refused, the attorney made an offer to purchase the roadbed. *Id.* at 569. In 1952, an assistant city solicitor determined that the road was private property; however, four years later, the same assistant city solicitor reversed course and took the opposite position, citing to a newly discovered plat. *Id.* at 570. The railway company argued that the City had abandoned any interest in the road. *Id*. at 571. The Court of Appeals held that the evidence did not show that the City intended to abandon the right-of-way and further, because the railway company was not asserting legal title to the land, it remained public. *Id.* at 577.

Applying the foregoing precepts to the instant case, we cannot say, based on the record before us, that the circuit court was clearly erroneous in deciding that the Blue Road

was never abandoned by Montgomery County. The Posses failed to establish either that Montgomery County disclaimed its interest in the roadway, s*ee Gregg Neck Yacht Club*, 137 Md. at 771, or that their use, or another's use, was inconsistent with its use as a public roadway. *United Fin. Corp.*, 172 Md. at 85.

First, the circuit court expressly addressed the Posses' contention and found that Montgomery County did not abandon the rural roadway with the construction of the new Barnesville Road in 1882. Substantial evidence in the record supports the circuit court's factual finding, including plats and deeds recorded in Land Records, the Situation Plan, and the 1921 Agreement. We agree with the circuit court that it defies logic that the County would abandon the rural roadway in 1882 and then enter into a new agreement to construct a bridge for "public necessity" less than forty years later.

Second, in regard to the Posses' contention that Montgomery County abandoned the Blue Road by failing to maintain it, the circuit court noted that there were no records of maintenance for the roadway. Furthermore, the court observed that there was no evidence concerning what maintenance was performed on other comparable roads, and the Posses failed to introduce evidence concerning the maintenance standards that the County was required to employ. Accordingly, we hold that the circuit court did not err in determining, under the circumstances, that the issue of maintenance was "of limited significance" and did not evince an intent to abandon the roadway.

Alternatively, to show abandonment through from acts *in pais*, the Posses needed to establish that their use of the Blue Road, or another's use, was inconsistent with use of the Blue Road as a public roadway. *United Fin. Corp.*, 172 Md. at 85. We observe that

the Blue Road was at all relevant times used as part of the rural roadway, and no one constructed any buildings on it, or made any inconsistent uses of it. Although, as the circuit court noted, the Posses incurred some expenses in maintaining the roadway, "there is no evidence the expense was substantial," and "their investment is not destroyed if their claim of abandonment fails." We also point out that none of the Defendants testified, or presented any evidence, that this maintenance was inconsistent or interfered with the Blue Road's use as a roadway. Indeed, the maintenance would have ensured that the road maintained this purpose.

Finally, concerning the Posses' claim that justice requires equitable estoppel be applied against Montgomery County, as noted above, the circuit court did not find an abandonment, much less an "actual and notorious abandonment" that is required under our decisional law for equitable estoppel to apply. *Gregg Neck Yacht Club*, 137 Md. App. at 771. Even if the Posses had established such conduct, the circuit court found that they had not relied on such conduct to their detriment. There is no support in the record for the Posses' contention that there will be unfathomable consequences for the Little Monocacy Viaduct if the Blue Road segment is utilized by the public. Without more, we cannot say that the circuit court was clearly erroneous in determining that this was not an "exceptional case . . . where right and justice demand[]" that Montgomery County be equitably estopped from claiming ownership of the disputed portion of the gravel driveway. Consequently, we hold that the court's determinations that (1) Montgomery County has not abandoned the Blue Road and (2) is not equitably estopped from asserting that the road is public are supported by substantial evidence and not legally erroneous.

III.

Bona Fide Purchaser

Finally, the Posses aver that, even if a common law dedication and acceptance occurred that was not subsequently abandoned, the public dedication could not be effective against the Posses because they lacked actual or constructive notice. Relying on *Mayor of Baltimore v. Brack*, 175 Md. 615 (1939) and *Nohowel v. Hall*, 218 Md. 160 (1958), the Posses argue that, because there was "no recorded easement, transfer, conveyance or right of way between B&O [] (on one side) and Montgomery County, Maryland (or its Commissioners)," there was no evidence of a recorded dedication. Although the Posses had notice of the existence of the Blue Road, this "simply put[] Mr. and Mrs. Poss on inquiry notice of whether that was any sort of easement granted to public or Montgomery County." Because, the Posses continue, "there was absolutely no evidence produced at trial from which Mr. and Mrs. Poss could have determined that the [Blue Road] was dedicated to the public," the dedication is not effective against them.

The Appellees counter that the "trial court rejected this argument, . . . because the Posses' chain of title, coupled with the other evidence in this case, established that they had knowledge" of the Blue Road. According to the Posses, however, there is no evidence that the Blue Road is within their chain of title, and the dedication is not effective against them.

Before analyzing whether the Posses may successfully assert a bona fide purchaser *defense*, we must examine whether the Posses qualify as bona fide purchasers *without notice*. In Maryland, '"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." *USA Cartage Leasing, LLC v. Baer*, 202 Md. App. 138, 177 n.12 (2011), *aff'd,* 429 Md. 199 (2012). "Harsh or not, the rule is well established in this State." *Steuart Transp. Co. v. Ashe*, 269 Md. 74, 96 (1973); *see also Beins v. Oden*, 155 Md. App. 237, 243-44 (2004).

Whether parties have actual and constructive notice are findings of fact that will not be overturned if there is substantial evidence in the record to support such findings. *McClure v. Montgomery Cnty. Planning Bd. Of Md.*, 220 Md. App. 369, 380 (2014) (noting that there was substantial evidence in the record to find that appellant received both actual and constructive notice of a forest conservation easement).

As the circuit court found, the Posses, alongside the other Defendants, "had notice of the existence of an easement." This is confirmed in the Posses' chain of title. Specifically, in both of the parcels acquired by the Posses, the rural roadway, including the Blue Road, is explicitly referenced as a "public road" or the "Barnesville Road."

The deed for the Poss Parcel (P656) described the property based on the 1963 Wade Deed. The Wade Deed, in turn, described the property conveyed pursuant to a deed of conveyance from Benjamin Best, which incorporated by reference a plat, shown above and admitted at trial as Plaintiffs' Ex. 9, which identified the Blue Road as the public "Barnesville Road" and showed this road running north and south under the railroad.

Similarly, the deed for the Poss Residence property (P806) defined the property pursuant to a deed from the Cooleys to Mr. Bussard, dated August 2, 1912. That deed defined the parcel based on "the ***Public Road*** leading from The Railroad Bridge over Little Monocacy Creek, below Dickerson Station to Barnesville." (Emphasis added). The

property is further defined in that deed by "the aforesaid ***public*** road and at the Northwest corner of a conveyance from Henry L. Black & wife . . ., bearing date the 6th day of July 1906[.]" (Emphasis added). The recorded plat for this conveyance from H.L. Black in 1906 referenced both the "Barnesville Road," which follows the Roadway and a separate "private road." Accordingly, we hold that, because the rural roadway, including the Blue Road, is referenced in Land Records, the Posses had, at a minimum, constructive notice of the public nature of the roadway, and the circuit court did not err in rejecting the Posses' bona fide purchaser defense.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANTS.