Circuit Court for Montgomery County
Case No. 350954-V

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2501

September Term, 2016

WILLIAM ROUNDS, *et al.*

v.

MONTGOMERY COUNTY, MARYLAND
et al.

Nazarian,
Beachley,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kenney, J.

Filed: August 24, 2018

This case concerns disputed access to and from a public road over a farm road ("Farm Road") that came into being more than a century ago. Appellants[1] allege that the denial of recognition of Farm Road's existence has deprived them of both access and enjoyment of their properties. As the Court of Appeals observed in its earlier review of this case, *Rounds v. Maryland-Nat. Capital Park and Planning Comm'n*, 441 Md. 621, 629 (2015), Farm Road has been the subject of much attention and lawsuits for over a decade now.[2]

The case began in 2011 when appellants filed suit against the Maryland-National Capital Park and Planning Commission (the "Commission") and other landowners in the community, claiming, among other relief, easements to and over Farm Road under multiple theories. Appellees[3] filed a motion to dismiss without prejudice for failure to

[1] In their Second Amended Complaint, appellants identified the following plaintiffs and their respective land parcels:

1. William Rounds (Parcels 10a and 10b a.k.a. P250 and P237);
2. Marvin Gaither (Parcel 10c a.k.a. P291);
3. Clifton Lee (Parcel 11 a.k.a. P195);
4. James Bell (Parcels 12 and 13 a.k.a. P141 and P305);
5. Bernice Martin (Parcel P456);
6. Robert Awkard, who has since passed away is now represented by Hugh Awkard, his son (Parcels P512 and P563); and
7. Michelle Awkard Carter (a.k.a. Michelle Awkard) (Parcel P566).

We refer to them collectively as "appellants."

[2] *See Awkard v. Md.-Nat'l Capital Park & Planning Comm'n*, RWT–08–1562, 2011 WL 2896005 (D. Md. July 15, 2011); *Bacon v. Arey*, 203 Md. App. 606, 40 A.3d 435 (2012); *Nouvet v. Arey*, case no. 255120V, 2006 WL 6041009 (Md. Cir. Ct. Dec. 9, 2006), *aff'd*, No. 1832, September Term, 2007 (Md. Ct. Spec. App. July 16, 2009).

[3] Appellants brought suit in the Circuit Court for Montgomery County, and named in their Second Amended Complaint the following defendants:

join all necessary parties and for other deficiencies. The circuit court granted the motion to dismiss, and this Court affirmed the decision in *Rounds v. Maryland Nat. Capital Park and Planning Comm'n*, 214 Md. App. 90 (2013). On appeal, the Court of Appeals affirmed in part, reversed in part, and remanded the case with instructions to appellants to properly join the necessary parties. *Rounds*, 441 Md. at 663-664. Appellants filed a Second Amended Complaint, joining several new parties, and appellees filed a motion to dismiss with prejudice for failure to join all necessary parties. The circuit court subsequently dismissed with prejudice all but one of appellants' claims.[4] On appeal, appellants present the following two questions:

1. Did the Circuit Court err in finding that a failure to join two property owners, whose land did not abut the alleged easements at issue, was fatal to all Landowners' easement claims?

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1. Maryland-National Capital Park and Planning Commission ("the Commission");
2. Macris, Hendricks and Glascock, P.A. ("MHG");
3. Douglass Riggs ("Riggs");
4. Paul and Sara Arey ("the Areys") (Parcel 1 a.k.a. Plat 21707);
5. Audrey D. Hill (Parcel 8 a.k.a. P900);
6. Milton Johnson (Parcel 9 a.k.a. P35);
7. Charles and Marilyn E. Mess ("the Messes"), Charles Mess, Jr., Mary Ellen Mess, Frances Marie Stilwell, and Sarah Ann Mess (Parcel 2 a.k.a. P200);
8. Kenneth Prather and Dowayne Prather (Parcel 4b a.k.a. N288);
9. Karen Clark (Parcel 4a a.k.a. P200);
10. Laurana McCants, Leonard McCants, and Henry McCants (Parcel 3 a.k.a. P123);
11. Eric B. Layne and Kristi R. Layne (Lot 32);
12. Amir A. Sohrab and Charlene M. Sohrab (Lot 31);
13. Steven W. Johnson and Karen E. Johnson (Lot 33);
14. Dellabrooke Home Owners Association, Inc.; and
15. The Sandy Spring Slave Museum and African Art Gallery (Parcel N413).

We refer to them collectively as "appellees."

[4] This last claim has since been adjudicated, and appellants do not appeal that decision.

2. Alternatively, did the Circuit Court commit reversible error by disallowing Landowners leave to amend their complaint to add such necessary parties to the remaining counts where the interests of justice favor adjudication on the merits?

We affirm the judgment of the circuit court for the following reasons.

BACKGROUND

Factual Background

Appellants' properties lie between Goldmine Road to the North, Chandlee Mill Road to the East, and Brooke Road to the south.[5] According to appellants, their properties are located along either Farm Road or a "10 Foot Right-of-Way," referred to by appellants as "Awkard Lane," that connects them to Farm Road. Farm Road travels generally north and south from Goldmine Road at the top and Brooke Road at the bottom of the attached deed mosaic.[6] Appellants aver that Awkard Lane diverges from Farm

[5] Appellants included a 2007 "deed mosaic" in their Second Amended Complaint to which they refer frequently. We include this mosaic as three pictures at the end of the opinion. We will refer to these images from time to time as the "Full Mosaic," a "Close-up Farm Road," and a "Close-up Awkard Lane," respectively. The images have been partially edited to show Farm Road and Awkard Lane more clearly in light of gradual image quality deterioration from copying the Full Mosaic. All lines that depict appellants' sought easements were originally shown in red but have been recolored black to show them more clearly when printed in black and white.

[6] As shown on the Full Mosaic, Farm Road is represented by the solid black line that begins at Brooke Road and continues up until halfway through the map. The black dotted line shows the continuance of Farm Road as it was "depicted on [a] tax map prior to the Dellabrooke Subdivision."

Road approximately halfway through the area, and then travels east, then north, and then east again; it does not appear to connect appellants' properties to Chandlee Mill Road.[7]

In 1892, Albert Gilpin acquired several hundred acres of land in this area, including the area owned by appellants and the majority of the land over which appellants claim easements. Over the years, Gilpin's property was divided and conveyed to numerous grantees by deeds referencing Farm Road as a boundary or granting access to Farm Road. Appellants aver that Awkard Lane is shown to exist on maps and land surveys, and has been used continually by the owners of several different properties.

Appellants further claim that Warren Brown, a real estate developer and former defendant[8], along with the Areys, Riggs, and MHG, began developing land in the vicinity of Farm Road into a subdivision of single-family homes around 1994.[9] This development, known as "Dellabrooke," was completed in 2003. Nearly half of what appellants claim is Farm Road is within Dellabrooke, including its northern access to Goldmine Road.[10] Appellants view the development of Dellabrooke as an effort to

[7] As shown on the Full Mosaic, Awkard Lane is represented as the black dashed line that diverges from Farm Road halfway through the map.

[8] Brown was named in appellants' first complaint, but has since been dismissed from this case.

[9] Appellants' Second Amended Complaint characterizes this plan as a "scheme to develop additional lots at [appellants'] expense."

[10] *See* Full Mosaic.

eliminate Farm Road. Appellants also assert that a "fictional conservation easement,"[11] created by the developers of Dellabrooke and shown as the "conservation easement" on the deed mosaic, had the effect of deleting Farm Road from the Commission's records, which, in turn, erased their addresses and rendered their properties ineligible for building permits, and, in some cases, unmarketable. In addition, and particularly relevant in this case, they were denied access to Farm Road by the Commission. Appellants stated that they filed this action after efforts to convince the Commission to issue new addresses[12] and recognize the existence of Farm Road did not succeed.[13]

Procedural Background

The Court of Appeals summarized the prior procedural history in its 2015 opinion:

> Petitioners filed the instant suit in the Circuit Court for Montgomery County on August 11, 2011. The Amended Complaint, filed on October 17, 2011, includes the following claims as to the Commission: Count I (substantive due process violation), Count II (procedural due process violation), Count III (regulatory taking violation), and Count IV (declaratory judgment that the Commission exceeded its authority) (collectively the "state constitutional counts").
>
> As to all Respondents, Petitioners assert Counts V–XI (declaratory judgment that Petitioners have an easement to use Farm Road) (collectively

[11] Appellants refer to the easement as "fictional" based on their claim that it did not properly adhere to the requirements for creating a conservation easement, and that its purpose was to increase the allowable number of subdivision lots in Dellabrooke.

[12] Appellants' First Amended Complaint states that all seven current appellants lacked addresses recognized by the Commission, although Clifton Lee (P195), Bernice Martin (P456), and Michelle Awkard (P566) had been issued addresses by the State for tax purposes.

[13] Appellants state they first learned of the erasure of their addresses in 2007. They were not issued new addresses by the Commission until July 18, 2013.

> the "easement claims"). With respect to the Commission, MHG, Riggs, Brown, and the Areys, the Amended Complaint contains Count XII (wrongful interference), and Count XIII (slander of title). The Respondents moved separately to dismiss the Amended Complaint. The Circuit Court granted the motions to dismiss as follows:
>
> > (1) Counts I–IV (the state constitutional counts), with prejudice, against the Commission for failure to give proper notice under the LGTCA;
> >
> > (2) Counts V–XI (the easement claims), without prejudice, as to the Commission, the Areys, the Messes, Hill, and Johnson, for failure to join necessary parties;
> >
> > (3) Counts V–XI (the easement claims), with prejudice, as to MHG, Riggs, and Brown, as none owned property adjacent to Farm Road and were, therefore, not interested parties; and
> >
> > (4) Counts XII and XIII, with prejudice, as to the Commission, MHG, Riggs, Brown, and the Areys, as time-barred, or alternatively, with respects to MHG and Riggs, because no duty was owed to Petitioners.
>
> On appeal, the Court of Special Appeals upheld the Circuit Court's dismissal of the action. [The Court of Appeals] subsequently granted Petitioners' *certiorari* request . . . .

Rounds, 441 Md. at 633-35. The Court of Appeals affirmed the dismissal without prejudice of appellants' easement claims for failure to join all necessary parties, and reversed the dismissal of Count XIII (Slander of Title) as "premature at [that] stage of the litigation." *Id.* at 649-50. Because the easement claims were dismissed without prejudice, "a remand . . . to allow [appellants] to join the necessary adjacent landowners [was] proper." *Id.* at 650.

On remand to the circuit court, appellants, on November 21, 2015, filed a Second Amended Complaint joining several new defendants,[14] and requested declaratory judgments related to the easement and other claims, which were relisted in new counts, as follows:

- Count I – Public Roads Declaratory Judgment
- Count II – Farm Road Express Easement by Reservation[15]
- Count III – Farm Road Implied Easement by Necessity[16]
- Count IV – Farm Road Easement by Prescription[17]
- Count V – Farm Road Implied Easement by Subdivision[18]
- Count VI – Awkard Lane Easement by Reservation
- Count VII – Awkard lane Implied Easement by Necessity
- Count VIII – Awkard Lane Easement by Prescription

[14] The circuit court noted in its Order and Opinion that Appellants had "provided inconsistent numbers of newly added Defendants at various stages of this litigation."

[15] "No words of inheritance are necessary to create . . . an easement . . . by reservation. Unless a contrary intention appears by express terms or is necessarily implied . . . every . . . reservation of an easement passes or reserves an easement in perpetuity." Md. Code Ann. (1974, 2015 Repl. Vol.), § 4-105 of the Real Property Article.

[16] "Where a grantor conveys a tract of land which has no outlet to a public highway except over his remaining land or over that of a stranger, a way of necessity over the grantor's remaining property will be implied." *Rau v. Collin*, 167 Md. App. 176, 186 (2006).

[17] "A prescriptive easement arises when a party makes an adverse, exclusive, and uninterrupted use of another's real property for twenty years. . . . When a person has used a right of way openly, continuously, and without explanation for twenty years, it is presumed that the use has been adverse under a claim of right. The burden then shifts to the landowner to show that the use was permissive." *Kirby v. Hook*, 347 Md. 380, 392 (1997).

[18] Appellants appear to be referring to the doctrine that "where a street or other way is called for as a boundary and the grantor owns the fee in the street, the grantee gets a right of way by implication to the nearest public road." *Layman v. Gnegy*, 26 Md. App. 114, 117 (1975). Appellants' deed mosaic identifies certain properties as "referenc[ing] Farm Road as boundary or a right of way." *See* Close-up Farm Road.

- Count IX – Awkard Lane Implied Easement by Subdivision
- Count X – Slander of Title

The Commission and the Areys each filed motions to dismiss for failure to join necessary parties pursuant to Maryland Rules 2-211 and 2-322.[19] Their motions alleged that appellants had still failed to join all necessary parties, including owners of several properties adjacent to Farm Road or Awkard Lane as shown in the deed mosaic. On December 10, 2015, appellants filed their "Omnibus Opposition to [Appellees'] Motion to Dismiss for Failure to Join Necessary Parties" that included a signed affidavit from Joel M. Leininger[20], which introduced new information about the property lines. Appellants contended that several parcels referred to by the Commission and the Areys did not adjoin Farm Road, and thus were not necessary parties, that the owners of some of the parcels were already named in the action, and that one property owner had "relinquished any claim or interest" they may have had. In addition, appellants stated that they would voluntarily dismiss with prejudice three claims relating to the Awkard Lane properties, and proceed with only Count VIII (Awkard Lane Easement by Prescription).

The Commission entered its Reply in Support of Motion to Dismiss, which included excerpts from hearings that took place before the case was first dismissed and

[19] The Commission filed their Motion on October 23, 2015. The Areys filed their answer to the Second Amended Complaint and their Motion to Dismiss on November 2, 2015.

[20] The affidavit identifies Mr. Leininger as a registered property surveyor who had "conducted surveys in the area of the disputed property for both [appellants] and for [appellee], Montgomery County, Maryland."

appealed to this Court in 2012. A hearing on the motions was held on February 19, 2016, and, on March 14, 2016, the Commission filed a Motion to Supplement the Record in order to identify several other necessary parties that had not been joined. This motion was granted on March 24, 2016, and added a letter from an attorney, Samuel Hamilton ("the Hamilton Letter")[21], to provide notice of injuries suffered by Hamilton's clients, which included appellants in this case, from the denial of Farm Road's existence by actions of the Commission, the Montgomery County Planning Board, and the Montgomery County Government. On April 19, 2016, the circuit court entered an Order and Opinion denying appellants' request for voluntary dismissal of Counts VI, VII, and IX, and granting appellees motions for dismissal with prejudice as to Counts II-IX.[22] Appellants timely appealed this decision.[23]

[21] Mr. Hamilton's letter is addressed to the following individuals:

1. Casey Anderson (Chair of the Montgomery County Planning Board);
2. Patricia Barney (Executive Director of the Commission);
3. Isiah Leggett (Montgomery County Executive); and
4. Nancy K. Kopp (Maryland State Treasurer).

[22] Count I (Declaratory Judgment: Public Roads) was dismissed with prejudice as a matter of law on March 11, 2016 based on the doctrine of separation of powers. Count X (Slander of Title) proceeded to discovery for MHG and Riggs before being dismissed with prejudice on January 6, 2017. These dismissals are not contested by appellants on appeal.

[23] Appellants do not contest the dismissals of Counts VI, VII, and IX.

DISCUSSION

Standard of Review

As the Court of Appeals observed in its earlier review of this case:

> On appeal from a dismissal for failure to state a claim, we must assume the truth of, and view in a light most favorable to the non-moving party, all well-pleaded facts and allegations contained in the complaint, as well as all inferences that may reasonably be drawn from them, and order dismissal only if the allegations and permissible inferences, if true, would not afford relief to the plaintiff, *i.e.*, the allegations do not state a cause of action for which relief may be granted. We must confine our review of the universe of facts pertinent to the court's analysis of the motion to the four corners of the complaint and its incorporated supporting exhibits, if any.

Rounds, 441 Md. at 636 (quoting *Shailendra Kumar, P.A. v. Dhanda*, 426 Md. 185, 193 (2012) (internal quotations omitted).

While all facts stated in the complaint are assumed to be true, "[a]ny ambiguity or uncertainty in the allegations must be construed against the pleader." *Shenker v. Laureate Educ., Inc.*, 411 Md. 317, 335 (2009). In other words, "[t]he well-pleaded facts setting forth the cause of action must be pleaded with sufficient specificity; bald assertions and conclusory statements by the pleader will not suffice." *Parks v. Alpharma, Inc.*, 421 Md. 59, 72 (2011) (internal citations omitted). The "determination to allow amendments to pleadings or to grant leave to amend pleadings is within the sound discretion of the trial judge," to which we give "great deference." *Schmerling v. Injured Workers' Ins. Fund*, 368 Md. 434, 443-44 (2002). In addition, whether to grant a motion for voluntary dismissal is "within the [trial] court's discretion, after weighing the equities and giving due regard to all pertinent factors," and "will not be overturned absent a

showing of an abuse of that discretion." *Owens-Corning Fiberglas Corp. v. Fibreboard Corp.*, 95 Md. App. 345, 349-350 (1993).

Contentions

Appellants do not expressly contend that the circuit court abused its discretion by denying their motion for a voluntary dismissal of certain of their Awkard Lane claims. They argue instead that the circuit court misinterpreted their voluntary dismissal of those claims as a "tacit admission" that they had failed to join all necessary parties. And, in doing so, they contend that the court erred by failing to "recognize the distinctions among each discrete easement claim as to Awkard Lane."

According to appellants, they were offering to dismiss only those claims that affected Parcels 15 and N400, which abut the northern part of Awkard Lane.[24] Asserting that the Court of Appeals "clearly held that the only necessary parties to easements are those property owners whose land adjoins the easement," the owners of Parcels 15 and N400 would not be affected by the remaining prescriptive easement claim related to the Awkard Lane properties because the properties do not abut Farm Road.[25] They argue that their decision to dismiss claims related to Parcels 15 and N400 was "rooted in good

[24] *See* Close-up Awkard Lane.

[25] In their Omnibus Opposition to [Appellees'] Motions to Dismiss, appellants stated that their easement by prescription claim did not involve the part of Awkard Lane that abuts Parcels 15 and N400. Appellants also aver that Awkard Lane is contained entirely within Parcel 1 aside from the northernmost section which abuts Parcels 15 and N400 on the Full Mosaic. *See* Close-up Awkard Lane. By not including the section of Awkard Lane in their easement by prescription claim, they assert that only the owners of Parcel 1, the Areys, would be necessary parties.

faith that sought to focus the court . . . on the [l]andowners' central grievance: gaining access to their land . . . through the recognition of Farm Road." They also contend that "the trial court did not, and could not, identify any *other* missing parties whose properties *did* adjoin Farm Road," and that appellees had not met their burden because they provided no evidence in support of their motion.

Appellants further argue that "only if [the court] determines that a party is not only necessary but also cannot be joined should it dismiss the action," and that they have named all parties they believe in good faith are necessary parties. Citing the general rule that when a necessary party objection has been raised, "ordinarily dismissal is undesirable and that a preferable procedure is to permit an amendment joining the necessary parties," *Bender v. Sec., Md. Dep't of Personnel*, 290 Md.345, 350 (1981), they contend that the circuit court should have again granted leave to amend the complaint rather than dismiss the claims with prejudice.

Appellees argue that appellants' Full Mosaic identifies Parcels 15 and N400 as adjacent to Awkard Lane, the owners of which are necessary parties that have not been joined. Appellees also assert that Christine Hill, the owner of Parcel 14, is an adjacent property owner, and that appellants have not excused her absence from this case. And, pointing to the Hamilton Letter, they contend that several other parties alleging an interest in Farm Road have not been joined in the case. In appellees' view, appellants' persistent failure to properly join all necessary parties justified dismissal of their claims with prejudice.

Analysis

Failure to Join Necessary Parties

Maryland Rule 2-211 requires:

> (a) Except as otherwise provided by law, a person who is subject to service of process shall be joined as a party in the action if in the person's absence
>
> (1) complete relief cannot be accorded among those already parties, or
>
> (2) disposition of the action may impair or impede the person's ability to protect a claimed interest relating to the subject of the action or may leave persons already parties subject to a substantial risk of incurring multiple or inconsistent obligations by reason of the person's claimed interest.
>
> The court shall order that the person be made a party if not joined as required by this section.
>
> * * *
>
> (c) If a person meeting the criteria of (1) or (2) of section (a) of this Rule cannot be made a party, the court shall determine whether the action should proceed among the parties before it or whether the action should be dismissed. Factors to be considered by the court include: to what extent a judgment rendered in the person's absence might be prejudicial to that person or those already parties; to what extent the prejudice can be lessened or avoided by protective provisions in the judgment or other measures; whether a judgment rendered in the person's absence will be adequate; and finally, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

The joinder rule is "intended 'to assure that a person's rights are not adjudicated unless that person has had his 'day in court' and to prevent 'multiplicity of litigation by assuring a determination of the entire controversy in a single proceeding.'" *City of Bowie v. MIE Properties, Inc.*, 398 Md. 657, 703 (2007) (quoting *Bodnar v. Brinsfield*, 60 Md. App. 524, 532 (1984)).

"[J]oinder in litigation is 'generally' necessary for the court to grant complete relief without risking further litigation." *Burns v. Scottish Dev. Co. Inc.*, 141 Md. App. 679, 709 (2001). Non-joinder of necessary parties is, however, not always grounds for complete dismissal of an action because parties may be dropped from or added to the action by amendment or order of the court, and claims may be severed and proceeded with independently. Md. Rule 2-213. In other words, *each claim* must independently lack a necessary party to defeat a complaint for non-joinder.

As to the standard of review of necessary party determinations, the Court of Appeals has stated that "Rule 2-211 essentially tracks Fed. R. Civ. P. 19," and "[t]herefore, interpretations of that federal rule are persuasive as to the meaning and proper applications of the Maryland rule." *Garay v. Overholtzer*, 332 Md. 339, 335 (1993) (internal citations omitted). That said, federal circuit courts of appeal appear split between *de novo* review and abuse of discretion review. In *Burns v. Scottish Dev. Co. Inc.*, 141 Md. App. 679, 708-10 (2001), we applied an abuse of discretion standard to determine whether a party was properly found to be necessary, citing cases from the United States Court of Appeals for the Fourth Circuit. But, another panel of this Court later noted that it is unclear whether Maryland employs an abuse of discretion or *de novo* standard for reviewing the trial court's necessary parties determination. *Serv. Transp., Inc. v. Hurricane Exp., Inc.*, 185 Md. App. 25, 36-37 (2009). The *Serv. Transp.* Court, however, found no need to address the issue because, whether under a *de novo* or an abuse of discretion standard, it agreed with the trial court. *Id*. at 37. Because we agree

with the circuit court under either standard in this case, we need not reenter what the *Serv. Transp.* Court referred to as "the thicket" to resolve this case. *Id.*

Appellants contend that their admitted failure to join the owners of Parcels 15 and N400 should not have defeated their Farm Road easement claims[26], or their prescriptive easement claim regarding Awkard Lane.[27] The circuit court, after considering a number of unjoined properties in its opinion, ultimately focused on Parcels 15 and N400[28] to conclude that appellants had failed to join all necessary parties:

> "[The circuit court] does not base its decision to grant [appellees'] Motion[s] to Dismiss with prejudice on these [other] allegations, **but rather, upon what [appellants] do not dispute:** that Parcel 15 and Parcel N400 abut Awkard Lane as pleaded in the Second Amended Complaint yet the owners of such have not been joined in this suit." (Emphasis added.)

Appellants seek declaratory relief in regard to their easement claims, citing the Courts and Judicial Proceedings § 3-405(a) of the Maryland Code ("a person who has or claims any interest which would be affected by the declaration, shall be made a party."). In addition, Md. Rule 2-211(a) requires joinder where, in the person's absence, complete relief cannot be accorded, the disposition may impair or impede the person's ability to

[26] These claims refer to the following counts:

- Count II – Farm Road Express Easement by Reservation
- Count III – Farm Road Implied Easement by Necessity
- Count IV – Farm Road Easement by Prescription
- Count V – Farm Road Implied Easement by Subdivision

[27] This claim refers to Count VIII – Awkard Lane Easement by Prescription.

[28] Appellants omitted the owners of these properties in both the original Complaint filed in 2011 and the Second Amended Complaint filed in 2015.

protect a claimed interest, or it may leave persons already parties subject to a substantial risk of incurring multiple or inconsistent obligations.

Appellants do not argue that Counts VI, VII, and IX would not require the joinder of Parcels 15 and N400. Indeed, they offered to dismiss these claims with prejudice when confronted with appellees' motions to dismiss. They argue, instead, that Parcels 15 and N400 would not be affected by the remaining easement claims[29] because they do not adjoin Farm Road or the route of access to Farm Road claimed by prescription. We are not persuaded.

Appellants, noting that the remand was to join "necessary adjacent landowners," assert in their brief that "the Court of Appeals clearly held that the only necessary parties to easements are those property owners whose land adjoins the easement." That assertion appears to rest on the Court's citation to *Williams v. Moore*, 215 Md. 181 (1957). To be sure, the *Williams* Court held that property owners abutting a disputed private road were necessary parties, and that failure to join them was "fatal." *Id.* at 185. It did not hold or imply that adjacent property owners were the *only* interested parties in an easement dispute.

We do not read *Rounds* as limiting necessary parties only to the owners of properties that abut the claimed easement. For example, that Court wrote: "The Court of Special Appeals affirmed, because 'the record leaves unclear **who** is directly interested in the case, much less whether the directly interested people **know** of the case' . . . We

[29] These would be appellants' easement claims over Farm Road (Counts II-V) and their claim for an easement by prescription over Awkard Lane (Count VIII).

agree." 441 Md. at 647 (emphasis in original). In *Rounds*, the focus was directed to the adjacent landowners because the appellants acknowledged that they had not joined all adjacent landowners and excused not doing so by stating that these parties had agreed not to contest the lawsuit. *Id.* In rejecting that argument, the Court of Appeals stated that appellants had failed to demonstrate sufficient facts that "(1) the non-joined party clearly had knowledge of the pending litigation, and (2) the non-joined party must have purposefully declined to join the litigation, despite the party's ability to join." *Id*. at 649.

In short, *Rounds* and *Williams* stand for the proposition that in an easement action seeking declaratory relief, all persons with an interest that would be affected by the declaration are interested and necessary parties in the action, which would obviously include adjoining landowners. *See Williams*, 215 Md. at 185; *Rounds*, 441 Md. at 649.

We now turn to whether the owners of Parcels 15 or N400 are interested parties to a declaration concerning Farm Road and Awkard Lane, and therefore necessary parties to the claims in appellants' Second Amended Complaint.[30] Appellants assert that the circuit court "erroneously applied the law" and "failed to evaluate whether these two parties would be necessary under each easement claim, and rather applied its necessary party analysis across the board." It is true that the circuit court's opinion does not explicitly state its reasoning for dismissing the Farm Road claims for failure to join Parcels 15 or

[30] To recap, these claims refer to the following:

- Count II – Farm Road Express Easement by Reservation
- Count III – Farm Road Implied Easement by Necessity
- Count IV – Farm Road Easement by Prescription
- Count V – Farm Road Implied Easement by Subdivision
- Count VIII – Awkard Lane Easement by Prescription

N400. However, "it is a well-established principle that '[t]rial judges are presumed to know the law and to apply it properly.'" *Aventis Pasteur, Inc. v. Skevofilax*, 396 Md. 405, 426 (2007) (quoting *State v. Chaney*, 375 Md. 168, 179 (2003)). This is true "even in the absence of a verbal indication of having considered [the law]." *Wagner v. Wagner*, 109 Md. App. 1, 50 (1996).

But here, the reasoning behind the circuit court's determination that the owner of Parcel 15 was a necessary party to a Farm Road declaration seems clear. In its opinion, the circuit court noted that appellants had relied on the Full Mosaic to advance their claims. Appellants referred to the Full Mosaic in their Second Amended Complaint and used it to illustrate property lines. Notably, appellants did not begin to assert that the Full Mosaic was unreliable until appellees referred to it in identifying a number of adjacent but unjoined property owners, including Parcels 15 and N400. According to the Second Amended Complaint, the Full Mosaic was compiled by a professional surveying company that "conducted in-depth research into Farm Road and the Awkard Lane by reviewing the deeds and conducting field observations of the properties surrounding Farm Road and the Awkard Lane." The Second Amended Complaint also includes a letter from Jefferson D. Lawrence,[31] which states that "[i]n each case, the deeds for property *located adjacent to or near the Farm Road*, shaded in blue on the attached drawing, refer to the Farm Road and/or access to it." (Emphasis added.) Parcel 15 is one of the blue-shaded properties that, according to the mosaic's legend, "reference[s] Farm

[31] Mr. Lawrence's letter identifies himself as the professional land surveyor who created the Full Mosaic.

Road as its boundary or right of way."[32] That letter also states that Parcel 15's deed provides "access to the Farm Road through a right of way." Thus, it appears that the owner of Parcel 15 has an interest in any declaration concerning Awkard Lane and Farm Road that may be affected by the litigation. We therefore agree with the circuit court that Parcel 15 is a necessary party to Counts II-V of the Second Amended Complaint that appellants have failed to join.

Parcel N400 does not abut Farm Road nor is it a blue colored property on the Full Mosaic, and apparently, based on the Full Mosaic, does not "reference Farm Road as its boundary or right of way." Rather, Parcel N400, as shown on the Full Mosaic, appears to be a flag lot connecting directly to Chandlee Mill Road to the east. Because Parcel N400 would not appear to require access to Farm Road to reach a public road, the owner of Parcel N400 may not be a necessary party to Counts II, III, and V of the Second Amended Complaint. But, whether the owner has an interest in Count IV (Farm Road Easement by Prescription) is not clear from the pleadings, and that uncertainty may be construed against the pleader.

We next consider whether the owners of Parcels 15 or N400 are necessary parties to appellants' claim in Count VIII for a prescriptive easement over Awkard Lane. Appellants claim that neither owner is a necessary party to Count VIII because appellants' prescription claim would not include the portions of Awkard Lane that abut Parcels 15 and N400. It is true that appellants' prescriptive easement claim, as described

[32] On black and white printing, these "blue" properties are those in a solid, dark gray shading.

in the Omnibus Opposition to [Appellees'] Motion to Dismiss, proposed a route that would not abut these properties. However, the Second Amended Complaint specifically asks that the circuit court declare "that these Plaintiffs have and enjoy an easement by prescription to use the Awkard Lane, as identified and as shown on Exhibit 3 and 28."

The circuit court examined both of these exhibits and found that:

> Exhibit 3 is the "1895 Plat of Clarence L. Gilpin Land Containing 202 Acres prepared by C.J. Maddox [which] clearly refers to and depicts Farm Road at the bottom corner of the plat" . . . Indeed, there are arrows, which correspond to a text box that identifies a "10 Ft R of W (10' right of way from Martin and Awkard properties south to Farm Road." The Court understands this "10' right of way" to be "Awkard Lane."

As to Exhibit 28, the circuit court stated:

> The Court finds Exhibit 28[33] to be significantly less instructive as to the alleged location of Awkard Lane . . . [Exhibit 28] makes no mention of "Awkard Lane," referring only to "farm road," and explaining "[a]s best as I recall, the farm road traversed the Dellabrooke property as shown by the double-dashed line that appears on the attached 1966 Maryland Tax Map, Plate Number 27." The Court is unclear as to which "double-dashed line" [Exhibit 28] refers, finding that there are several areas of the attached map that feature such. Furthermore, the Court is unable to find any reference to "Farm Road" or "Awkard Lane," and notes that the size and overall clarity of the writing on the map makes much of it illegible.

To say the least, Exhibit 28 of the Second Amended Complaint does not indicate that appellants' Second Amended Complaint was seeking an easement by prescription that

[33] The Second Amended Complaint identifies Exhibit 28 as an affidavit of Gregory Pries, whose family were tenant farmers that rented land from Nathan Kahn, the grandfather of former defendant Warren Brown, between 1957 and 1959. The circuit court was concerned by the fact that the printed name and the signature both stated it was an affidavit of *Jeffrey* Pries.

did not include the entirety of Awkard Lane as depicted on the Full Mosaic.[34] In other words, appellants sought the entirety of Awkard Lane until they were required to join Parcels 15 and N400.

The circuit court concluded that:

> Essentially, in addition to the voluntarily [sic] dismissal of Counts VI, VII, and IX, [appellants] also seek to amend Count VIII of their Second Amended Complaint to avoid the requirement that the owners of Parcel 15 and Parcel N 400 be joined in this action by requesting a prescriptive easement over a smaller portion of Awkard Lane than what was originally requested. . . . The Court find that without such amendment (*vis a vie* dismissal of Counts VI, VII, and IX), [appellants] have failed to join necessary parties because the alleged Awkard Lane touches Parcel 15 and Parcel N 400, the owners of which have not been joined in this action.

Because appellants' request to amend their complaint regarding the extent of Awkard Lane was denied along with their request to voluntarily dismiss Counts VI, VII, and IX, the circuit court concluded that appellants had failed to join all necessary parties to Count VIII. We agree. Parcels 15 and N400 border appellants' proffered prescriptive easement over Awkard Lane as outlined in their Second Amended Complaint.

Although not relied on by the circuit court, we will address appellees' identification of Christine Hill as a necessary party who had not been joined.[35] Ms. Hill is identified as the owner of Parcel 14 on the Full Mosaic, and her property lies to the

[34] *See* Close-up Awkard Lane. In essence, appellants requested to amend their claim for an easement by prescription to now omit the top two dashed lines that abut Parcel N400.

[35] Although raised by appellees and defended by appellants, the circuit court did not address Ms. Hill's status as a potentially interested party in its ruling, but relied on the undisputed parcels abutting Awkard Lane as pleaded.

south abutting both Farm Road and Brooke Road.[36] Appellants declined to join Ms. Hill by stating that they "agreed not to pursue a claim against [Ms. Hill], Ms. Hill no longer contests the relief sought, and she has relinquished any claim or interest she may otherwise have in this action."[37] Appellants submitted as proof a Declaration of Confirmation of Title signed by Ms. Hill.[38] However, we agree with appellees that appellants' statements regarding Ms. Hill are insufficient to preclude Ms. Hill as a necessary party under the standard articulated in *Rounds*. Appellants have not shown that Ms. Hill is both aware of and disclaims all interest in this litigation.

A party may be excused from non-joinder of necessary parties if they "demonstrate, without resorting to self-serving hearsay declarations, that (1) the non-joined party clearly had knowledge of the pending litigation, and (2) the non-joined party must have purposefully declined to join the litigation, despite the party's ability to join." *Rounds*, 441 Md. at 649. In *Rounds*, appellants claimed that several potential parties had disclaimed all interest in the lawsuit. The Court of Appeals rejected their claim citing a lack of concrete and specific information. *Id*. at 647-648.

[36] *See* Close-Up Farm Road.

[37] Appellants refer to Ms. Hill as "Former Defendant Christine Hill" in their Second Amended Complaint. Because it appears to us that Ms. Hill was first addressed by appellants in their Second Amended Complaint, it seems likely that appellants refer to Ms. Hill as a former defendant due to her involvement in *Bacon v. Arey*, 203 Md. App. 606 (2012).

[38] Appellants referenced this Declaration in a footnote of their Second Amended Complaint, but did not include it as an exhibit until their Omnibus Opposition to [Appellees'] Motion to Dismiss.

Appellants agree that "to comply with . . . the Court of Appeals decision regarding [] joinder," specific parties must be joined, and they identified Ms. Hill in their Second Amended Complaint, stating that she has been dismissed from the case. But what the Court of Appeals instructed was that appellants, "without resorting to self-serving hearsay declarations," had to prove that an excused party both had knowledge of the litigation at hand and purposefully declined to join that litigation. *Id*. at 649.

Appellants submitted satisfactory affidavits for several other parties that show knowledge of the litigation and their disclaimer of any interest in it.[39] But Ms. Hill's declaration is from a different case entirely,[40] and is dated May 12, 2009, which is two years before this litigation began. While appellants claim in the Second Amended Complaint that "[Ms.] Hill duly executed a Declaration of Confirmation of Title . . . whereby she affirmed she has no *title* interest in Farm Road," the Declaration does not disclaim *any* interest in Farm Road.

In short, this declaration does not disclaim Ms. Hill's interest in this litigation, and it does not show that she is even aware of it. Appellants aver they have dismissed her from this litigation, but, as the *Rounds* Court stated, "the court does not consider 'bald

[39] These affidavits are for Laura Anderson Wright (in official capacity as counsel for the Sandy Spring Slave Museum and African Art Gallery), Kenneth Prather, Karen Theresa Clark, Laurana G. McCants, Leonard L. McCants II, Henry G. McCants, Charles F. Mess, Jr., Mary Ellen Mess, Sarah Ann Mess, Francis Marie Stillwell, Charles F. Mess, and Marilyn S. Mess. These parties are all named in appellants' Second Amended Complaint.

[40] The Declaration was filed in *Bacon v. Arey*, 203 Md. App. 606 (2012). Ms. Hill was a party in the trial proceedings, but withdrew from the case on May 29, 2009. *Id.* at 616 n.4.

assertions [or] conclusory statements." *Rounds*, 441 Md. at 649. Based on the Second Amended Complaint, Ms. Hill would appear to be a necessary party to appellants' Farm Road claims.

As to appellants' contention that appellees did not meet their burden of proof in regard to their motion to dismiss, we are not persuaded. Appellees were able to demonstrate that appellants had not joined all necessary parties by using appellants' own exhibits to the Second Amended Complaint to support their motions.[41] The circuit court neither erred nor abused its discretion in granting appellees' motions to dismiss for failure to join all necessary parties.

Leave to Amend

Appellants claim that, instead of granting appellees' motions to dismiss with prejudice, the circuit court should have granted them leave to amend their complaint. To be sure, the general rule is that "amendments should be freely allowed in order to promote justice, so that cases will be tried on their merits rather than upon the niceties of pleading." *Kirkpatrick v. Gilchrist*, 56 Md. App. 242, 247 (1983) (quoting *Earl v.*

[41] Appellees also filed a Motion to Supplement the Record and added the Hamilton Letter, *supra* footnote 21. This letter identifies several other parties, including Kelly Y. Schools, Judy Penny, and Donald Awkard, along with all seven appellants in this case. The letter alleges that the parties had "lost the use of their Sandy Spring, Maryland properties due to the Tortfeasors' refusal to recognize the deeded and/or prescriptive rights of way to the Parties and/or their family's Farm Road properties." Further, appellants' first Complaint in 2011 identified Thelma Thornton as the owner of the landlocked P22 on the Full Mosaic. The Complaint alleged that "the Commission's Address and Subdivision Book clearly depicts access to the Thornton Property as being exclusively by means of Farm Road," but Ms. Thornton has never been a party to this case. Neither we nor the circuit court relied on these potential claims.

Anchor Pontiac Buick, Inc., 246 Md. 654, 656 (1967). But, a trial court granting a motion to dismiss has discretion to grant or deny leave to amend. Md. Rule 2-322(c); *see Pulte Home Corp. v. Parex, Inc.*, 174 Md. App. 681, 727 (2007) (holding that dismissal of a second amended complaint was proper in "light of the extensive history of litigation between the parties" and "that the complaint that initiated the case was filed nearly five months earlier"), *aff'd*, 403 Md. 367 (2008).

The circuit court expressly recognized in its opinion that leave to amend is "ordinarily" preferred over dismissal for failure to join a necessary party, but concluded that "this is no ordinary case." Its reasoning and ongoing concerns are reflected in its refusal to allow the voluntary dismissal of appellants' Awkard Lane claims. It observed:

> [Appellants] have now had two opportunities to properly bring their claims and join the required parties, and have failed to do so. The Court of Appeals made clear that [the circuit court's] role was to permit [appellants] to join the necessary adjacent landowners to the easements claims. [The Court of Appeals' remand] did not empower [appellants] to have multiple opportunities to comport with the high court's clear directive, nor does it require the [circuit court] to accommodate [appellants] by exercising its discretion solely in [appellants'] favor.

In regard to Parcels 15 and N400, the circuit court found that "a lack of diligence has likely informed [appellants'] eleventh hour attempts to salvage their case." And, the circuit court also noted its concern with appellants' "evolving conceptualization of the location of Farm Road and Awkard Lane: relying on the [Full Mosaic's] depiction of such locations unless and until its depiction is somehow challenged."

Citing *Serv. Transp., Inc. v. Hurricane Exp., Inc.*, 185 Md. App. 25, 35-36 (2009), appellants assert that a motion to dismiss should only be granted if a necessary party

cannot be joined. That case involved the plaintiff's attempt to add a party defendant two days before trial was to begin, and the circuit court's determination that the party, a joint tortfeasor, was not a necessary party to the proceedings. We explained that "if the court finds that an absent necessary party cannot be joined, it must determine under Rule 2-211(c)[42] whether the case should continue or be dismissed," and "[i]f the court concludes that the case must be dismissed, the party is labeled 'indispensable.'" *Id.* In *Serv. Transp.*, we also noted that compulsory joinder is not required for parties "who are directly interested in a suit and have knowledge of its pendency, [but who] refuse or neglect to appear and avail themselves of their rights." *Id.* at 41 (citing *City of Bowie v. MIE Properties, Inc.*, 398 Md. 657 (2007)). This case, however, involves plaintiffs who have refused to join parties the circuit court deemed necessary to the litigation under Md. Rule 2-211(a), and who have not been shown to be aware of this litigation and to have disclaimed any interest in it.

Appellants also cite *Kirkpatrick v. Gilchrist*, 56 Md. App. 242, 247 (1983) in support of their argument that "dismissal with prejudice for failure to join necessary

[42] Maryland Rule 2-211(c) provides:

> If a person meeting the criteria of (1) or (2) of section (a) of this Rule cannot be made a party, the court shall determine whether the action should proceed among the parties before it or whether the action should be dismissed. Factors to be considered by the court include: to what extent a judgment rendered in the person's absence might be prejudicial to that person or those already parties; to what extent the prejudice can be lessened or avoided by protective provisions in the judgment or other measures; whether a judgment rendered in the person's absence will be adequate; and finally, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

parties should be reserved for circumstances where a plaintiff's bad faith actions were 'inexcusably dilatory.'" Here, the circuit court found both a "lack of diligence" and after almost five years of litigation a still "evolving conception" of Farm Road and Awkard Lane. The circuit court expressly noted that appellees, and the Areys in particular, "had been significantly impacted by the duration of this litigation." Under these circumstances, we agree that the circuit court was not required to exercise its discretion in favor of the appellants in this case. And, because we are not persuaded that "no reasonable person would take the view adopted by the [trial] court," or that the ruling was "clearly against the logic and effect of facts and inferences before the court," we hold that the circuit court did not abuse its discretion in dismissing the easements claims with prejudice. *Beyond Systems, Inc. v. Realtime Gaming Holding Co.*, 388 Md. 1, 28 (2005) (quoting *Wilson v. Crane*, 385 Md. 185, 198 (2005)).

Remand for sanctions

Appellee Paul Arey has requested in his brief that this case be remanded to the circuit court in order to allow him to file a motion for attorneys' fees and other reasonable expenses pursuant to Maryland Rule 1-341.[43] He claims that appellants' bad faith in protracting this litigation necessitates such a motion. While Mr. Arey was freed from this

[43] "In any civil action, if the court finds that the conduct of any party in maintaining or defending any proceeding was in bad faith or without substantial justification, the court, on motion by an adverse party, may require the offending party or the attorney advising the conduct or both of them to pay to the adverse party the costs of the proceeding and the reasonable expenses, including reasonable attorneys' fees, incurred by the adverse party in opposing it."

lawsuit as a result of the dismissal of the claims against him, the case continued to resolve Count X (Slander of Title).[44] Mr. Arey points to a number of statements in the record that surfaced following discovery for Count X and claims that this entire lawsuit was revealed to be wholly meritless.

The Areys[45] stated in their Answer to the Second Amended Complaint[46] that they intended to file a motion pursuant to Md. Rule 1-341 because appellants' slander of title claim against them were made "either in bad faith or without substantial justification," but no motion was filed in the nearly four years between the answer and the circuit court's dismissal of the Areys from this litigation.[47] Nor has Mr. Arey filed a cross-appeal. When "a timely cross-appeal is not filed, we will ordinarily review only those issues properly raised by the appellant." *Maxwell v. Ingerman*, 107 Md. App. 677, 681 (1996).

[44] This was appellants' sole remaining claim, and the only named defendants that remained parties to this claim were MHG and Riggs. This claim proceeded to discovery before eventually being dismissed.

[45] The Areys filed their Answer to the Second Amended Complaint together, but only Mr. Arey appears to have filed an appellate brief.

[46] The Areys filed their Answer on October 26, 2015, and filed their Motion to Dismiss for Failure to Join Necessary Parties seven days later.

[47] Such a motion has numerous requirements including an itemization of specific costs and expenses sought such as "filing fees, the cost of a deposition transcript, or copying costs." Paul V. Niemeyer, Linda M. Schuett & Joyce E. Smithy, Maryland Rules Commentary 89 (4th ed. 2014). In short, the Areys' statement was merely one of an *intention* to file a motion.

Mr. Arey points to an exception to the general rule provided within Maryland Rule 8-131(a), which states in pertinent part:

> Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court, but the Court may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal.

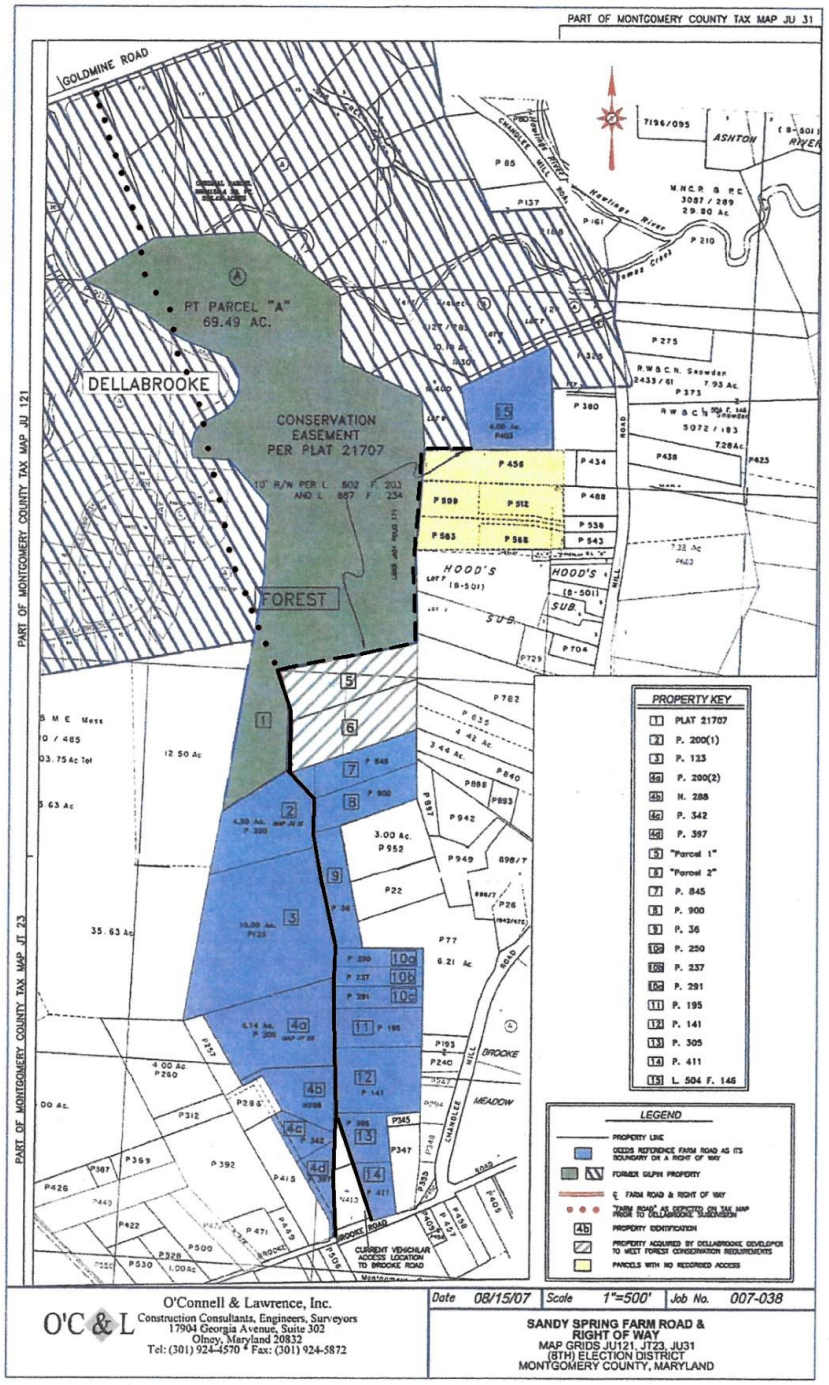
He argues that remanding this case would be "desirable to . . . avoid the expense and delay of another appeal," because it "can stop the litigation abuses that have been employed by 'Farm Road's' proponent(s) for a decade and a half."

"The underlying rationale of [Md. Rule 8-131(a)] is to promote the interests of fairness and judicial economy." *Anderson v. Litzenberg*, 115 Md. App. 549, 568 (1997). Its purpose is "to prevent the trial of cases in piecemeal fashion, thereby saving time and expense and accelerating the termination of litigation." *Zellinger v. CRC Dev. Corp.*, 281 Md. 614, 620 (1977).

In this case, the circuit court did not deny Mr. Arey a motion for attorney's fees because he never filed such a motion. Far from avoiding "the expense and delay of another appeal," remanding this case for the sole purpose of allowing Mr. Arey to file such a motion would likely generate further litigation and present additional issues for appeal.

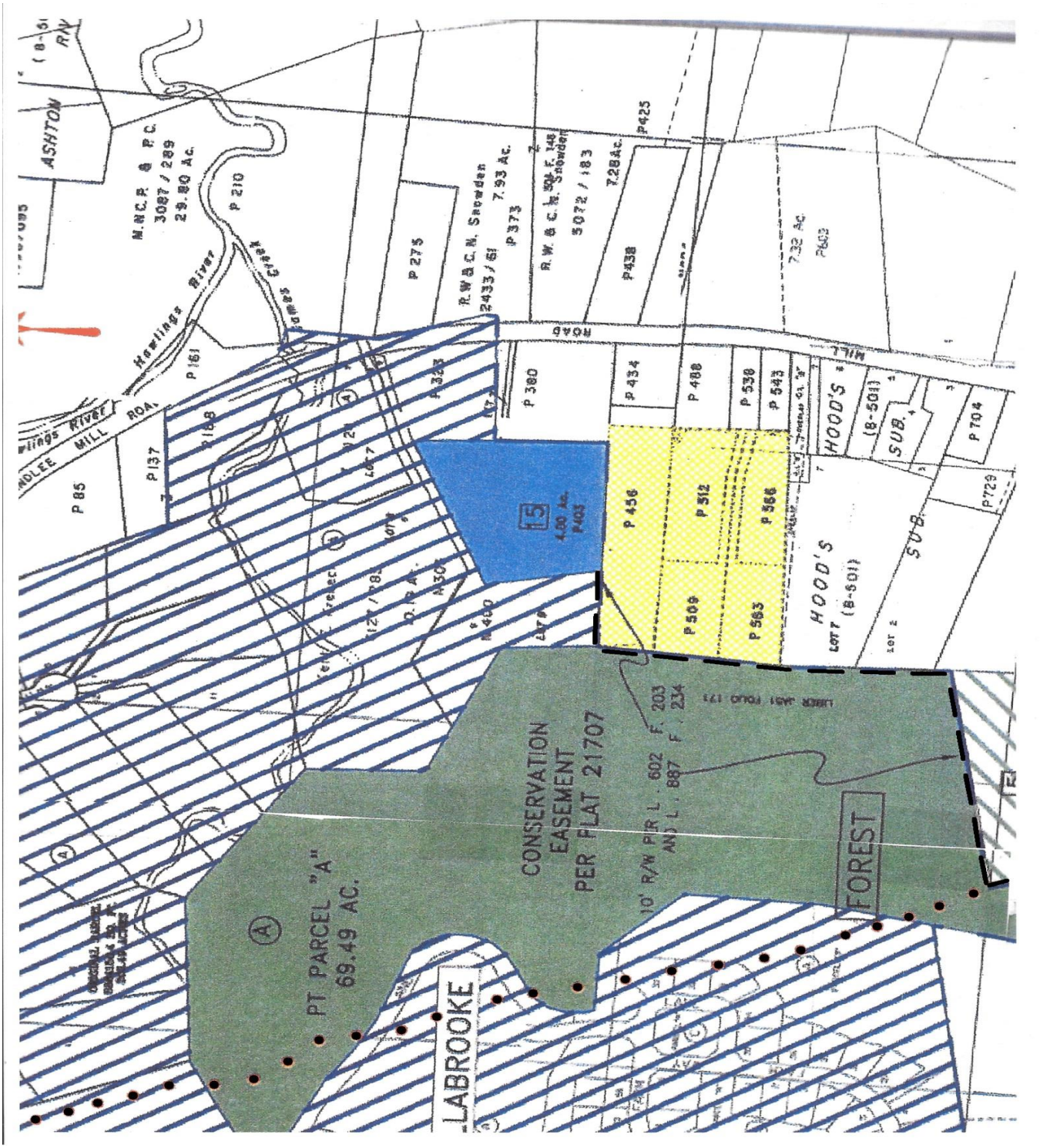
JUDGMENTS OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANTS.

Full Mosaic



E359

Close-up Awkard Lane



Close-up Farm Road