Circuit Court for Charles County
Case No. C-08-CV-20-000459

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 803

September Term, 2024

DEBBIE TIPPETT, ET AL.
v.

MARIE DAVIS, ET AL.

Graeff,
Ripken,
Eyler, Deborah S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: April 17, 2026

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

This case involves a property dispute between two neighbors, Deborah and John Tippett, appellants, and Dominic and Marie Davis, appellees. The Tippetts bought their property ("Lot 2") in 1995. After the Davises purchased their vacant lot ("Lot 1") in 2019, they discovered several encroachments on their lot. They filed a complaint in the Circuit Court for Charles County, seeking to quiet title and recover damages from the Tippetts for civil trespass.

After a six-day trial on the merits, and a two-day bifurcated trial on damages, the court determined that the Tippetts failed to prove title by adverse possession, but they were entitled to access Lot 1 by way of a prescriptive easement over the driveway. The court also found that the Tippetts committed a trespass in using the garden/kennel area and the parking pad, and they were liable for civil trespass. The court ultimately assessed damages in favor of the Davises in the amount of $4,175.00.

On appeal, the parties present the following questions for this Court's review,[1] which we have rephrased slightly, as follows:

[1] The Tippetts raised the following questions:

1. Whether the trial court erred in determining that the Tippetts failed to establish a claim of adverse possession over the disputed property, including the garden and parking pad.

2. Whether the Tippetts established adverse possession of the driveway, rather than merely a prescriptive easement.

3. Whether the trial court erred in finding that the Tippetts committed a trespass on the property claimed by the Davises.

1. Did the circuit court err in determining that the Tippetts failed to establish a claim of adverse possession over the disputed property?

2. Did the circuit court err in concluding that the Tippetts did not establish adverse possession of the portion of the driveway on the Davises' lot but then granting a prescriptive easement over that property?

3. Did the circuit court err in finding that the Tippetts committed a trespass on the Davises' property?

4. Are the Tippetts barred from recovery in a court of equity under the doctrine of unclean hands?

For the reasons set forth below, we shall affirm, in part, and reverse, in part, the judgments of the circuit court.

The Davises, on cross appeal, raised the following questions:

1. Whether the trial court erred in granting the Tippetts a prescriptive easement over a portion of the Davises' real property being used by the Tippetts as a driveway for ingress and egress to the Tippetts' real property.

2. Whether the Tippetts established adverse possession of the driveway.

3. Whether the trial court erred in determining that the Tippetts failed to establish a claim of adverse possession over the garden and parking pad.

4. Whether the Tippetts are barred from recovery in a court of equity under the doctrine of unclean hands.

5. Whether the trial court erred in finding that the Tippetts committed a trespass on the property claimed by the Davises.

FACTUAL AND PROCEDURAL BACKGROUND

I.

Events Leading to Trial

The Tippetts purchased their property, Lot 2, on June 28, 1995. The property is a "flag lot," with a narrow portion, the "flag stem," that provides access to and from the public road and a larger area set farther back from the road. When the Tippetts purchased Lot 2, the property had several improvements on the land, including a house, driveway, shed, and garden. The Tippetts subsequently made several more improvements, including converting the driveway from gravel to asphalt, adding a parking pad, and converting half of the garden into a dog kennel.

In 2019, the Davises were looking for an empty lot to build a home. After seeing an online listing, they made an offer to purchase Lot 1, which consisted of 3.251 acres. Mr. Davis then drove to the property to see it in person. It was "completely overgrown . . . [and] full of vegetation." The seller rejected the Davises' first offer, so they followed up with another offer, which the seller accepted.

Three weeks prior to the November 18, 2019 closing date, Mr. Davis and his real estate agent met at the property with the seller's agent. Lot 1 was so overgrown that the seller's agent brought knee high rubber boots and a machete "for whacking at the underbrush." The Davises' agent, by contrast, was dressed in business attire, including high heels. Mr. Davis did not walk the property because it did not "seem appropriate for [his agent] to try to get through the sticker bushes" in high heels, and he did not think the

machete would successfully clear a path. During this visit, Mr. Davis did not see the parking pad or garden because the vegetation was too thick to see through to the other side of the property.

During the meeting, the seller's agent stated that the Davises needed to close on the property within three weeks because the sellers had received another offer, and they were not going to give the Davises an extension.[2] The Davises obtained a title search, which "went through perfectly." They understood that they "were purchasing the 3.251 acres of wooded lot."

The Davises did not walk the entire boundary of Lot 1 prior to purchasing the property. They did not have a boundary survey completed because the seller gave them three weeks to close on the property, so they felt "pressure to not lose [their] opportunity to buy the land." Mr. Davis stated that there was not enough time to get on a boundary surveyor's schedule within that timeframe, so the Davises purchased Lot 1 on November 18, 2019, without reviewing a boundary survey.

After purchasing Lot 1, the Davises retained an architect who designed a home for the property. In January 2020, in preparation for building the home, the Davises hired a specialist to perform percolation tests to identify the possible location of a septic system for the home they intended to build. While conducting the percolation tests, the specialist measured portions of the Davises' property, and "noticed what looked to be possible

[2] The Tippetts placed a competing offer, but the seller had already entered into a contract with the Davises.

encroachments" from Lot 2. Mr. Davis instructed the specialist to do additional research regarding the encroachments, and he contacted Mr. Tippet to see if he would move the suspected encroachments.

In March 2020, the Davises went to the Tippetts' house to discuss work that the Davises planned to conduct on Lot 1. During this discussion, Mr. Davis asked Mr. Tippett to remove the garden. Mr. Tippett agreed to remove the garden if Mr. Davis gave him five days to do so. Mr. Tippett did not mention that the parking pad also was encroaching onto Lot 1. Mr. Davis stated that he did not learn that the parking pad was also encroaching until April 2020 when the specialists that he hired to perform the percolation tests advised him that a boundary survey needed to be performed.

On April 28, 2020, the Davises and Tippetts again met to discuss the suspected encroachments. During this second meeting, Mr. Tippett stated that "he would move the garden areas," but he felt that he had a right to keep the parking pad. Following the April 28, 2020 conversation, Mr. Davis informed Mr. Tippett that he intended to hire an attorney to help him navigate the boundary dispute. On May 26, 2020, the Davises' attorney sent the Tippetts a letter explaining that "a kennel, concrete parking pad, garden as well as a small portion of your driveway encroach on to [the Davises'] property." The letter requested that the Tippetts remove the listed encroachments by June 8, 2020. The Davises visited Lot 1 after June 8, 2020, and they found that all the encroachments were still present.

On July 14, 2020, the Davises filed a complaint in the Circuit Court for Charles County seeking to quiet title and recover damages from the Tippetts for civil trespass. On October 13, 2020, the Tippetts filed a counterclaim seeking declaratory judgment that they obtained title to the encroachments by adverse possession.

II.

Evidence at the hearing

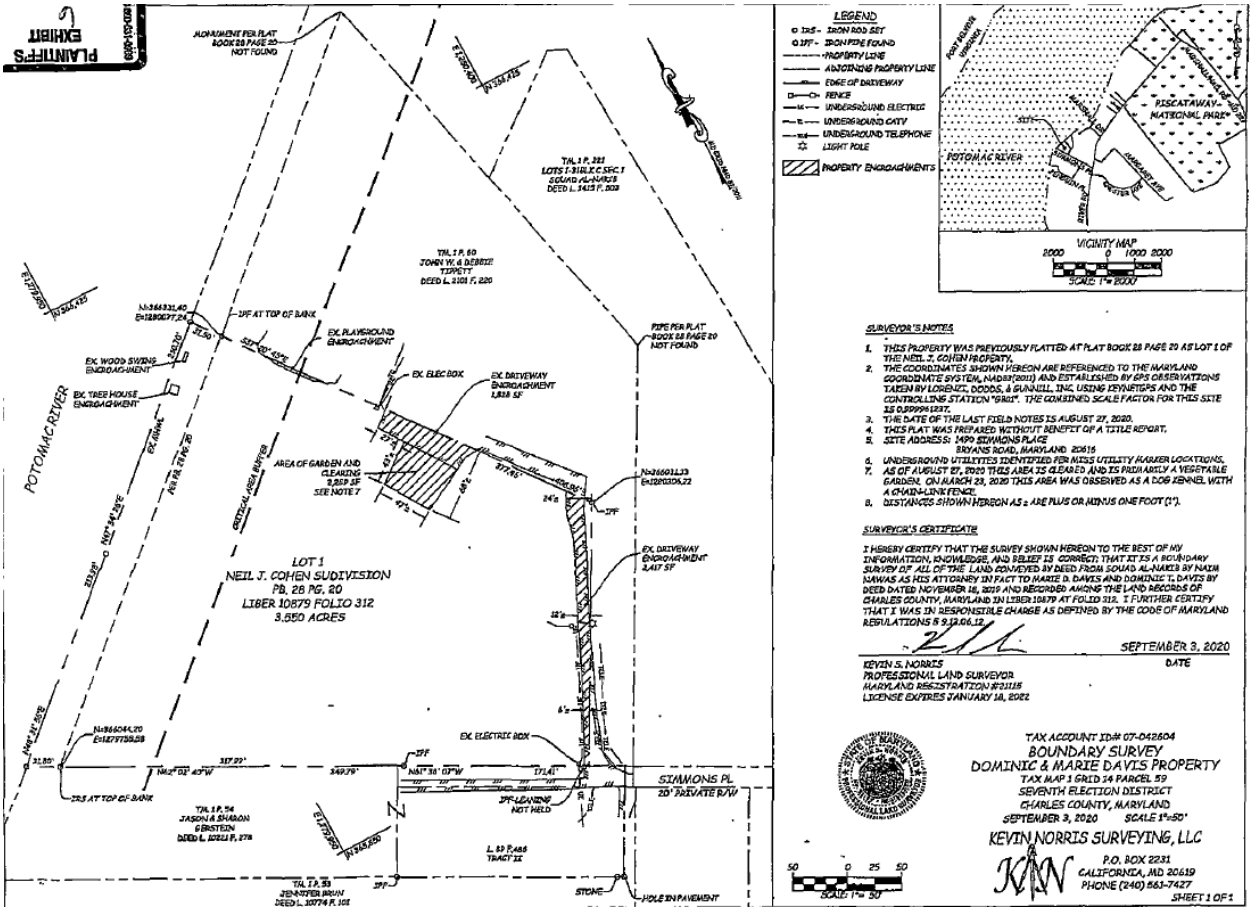
After learning of the encroachments, the Davises hired Kevin Norris, a professional land surveyor, to complete a boundary survey of Lot 1. This survey and others were admitted into evidence.

A.

Surveys

Mr. Norris completed his survey on September 3, 2020 (the "Norris Survey") and found several encroachments, including 2,417 square feet in the form of an asphalt driveway, 1,828 square feet in the form of a macadam parking pad, and 2,259 square feet consisting of the fenced-in garden. The Norris Survey also identified an encroaching playground, wooden swing, and a treehouse.

A copy of the Norris Survey is included below.



In describing the driveway encroachment, Mr. Norris explained that, on the flag stem close to the road, a portion of the Tippetts' driveway was on Lot 1. As the driveway continued down the flag stem, it veered completely into Lot 1. As the flag stem opened to the main portion of Lot 2, the driveway re-entered Lot 2 where the adjacent parking pad encroached over the property line.

Mr. Norris testified that, on March 23, 2020, his field crew noted that there was a garden area, but at the time he personally visited the property on August 27, 2020, the garden "was removed. And it was an area that had pretty much grown up, but there [were] remnants of a garden adjacent to the parking pad." Mr. Norris did not observe any fence

around the garden area. Mr. Norris included the garden in the Norris Survey, however, since his crew observed the garden on March 23, 2020.

Another survey, dated June 5, 1985, was admitted into evidence. It resembled the Norris Survey with respect to the Tippetts' driveway, showing it beginning on the flag stem of Lot 2, and then veering off completely into Lot 1 before returning to Lot 2. Both Mr. and Ms. Tippett testified that they received a copy of the House Location Survey when they purchased Lot 2, but Mr. Tippett noted that they "didn't really take notice to [the survey]" at that time.

In 2001, the Tippetts hired Ben Dyer Associates, Inc., to prepare a Critical Area Site Plan (the "Site Plan") in connection with a permit application for a detached garage they wanted to build. The Site Plan included a land survey of Lot 2 (the "Dyer Survey"), which showed "an asphalt driveway beginning at Simmons Road proceeding North along Lot 2, with an encroachment upon Lot 1 at the North East Corner of Lot 1." The encroachment depicted in the Dyer Survey is smaller than the one shown in the Norris Survey, and it shows that the driveway was located almost entirely within the Lot 2 flag stem.

William Tomlinson Jr., an employee of Ben Dyer Associates, Inc., supervised the preparation of the Dyer Survey. On August 1, 2001, Charles County contacted Mr. Tomlinson to inform him that the proposed Site Plan did not meet the county regulations for impervious surface area, which prohibited impervious surfaces in excess of 7,000 square feet. To meet the impervious area regulations, the Tippetts agreed to revise the Site

Plan and agreed to remove a portion of the asphalt driveway. The revised Site Plan included instructions to "REMOVE EXISTING ASPHALT D/W RESURFACE WITH 6" BANK RUN GRAVEL." Mr. Tippett testified that he remembered Ben Dyer's employees informing him in 2001 that the asphalt driveway needed to be removed in order to meet the County's impervious surface requirements. Mr. Tippett subsequently constructed the detached garage, but he never removed the asphalt.

B.

Testimony regarding the location of driveway

After the litigation began, the Tippetts hired Mr. Tomlinson as an expert witness. Mr. Tomlinson testified that there were "significant difference[s]" between the survey he completed for the Tippetts in 2001, and the boundary survey completed by Kevin Norris. In an affidavit, which was submitted into evidence, Mr. Tomlinson discussed the difference in the surveys and evaluated whether the Tippetts had ever changed the location of the driveway. He explained that the purpose of his Site Plan "was not to show the precise location of all improvements and structures located upon the property, . . . but rather, to identify and show the approximate dimensions and location of such improvements and structures." He further explained that the Tippetts' driveway "maintain[ed] . . . basically the same direction and course into the property as it did in 2001." Mr. Tomlinson noted that, "[a]lthough it appears that the Tippett[s'] driveway may have been widened somewhat in several areas along the western perimeter . . . the current location of said driveway does not appear to have been moved into the Davis property." Mr. Tomlinson explained that

"the majority of [the Tippetts' driveway] . . . appears to be in the same location that it was at the time that the Site Plan drafted by Ben Dyer Associates was prepared and submitted."

During his testimony, Mr. Tomlinson acknowledged that he likely made an "innocent mistake" in depicting the driveway entirely within the Lot 2 flag stem when he completed the Dyer survey in 2001. Mr. Tomlinson testified that he believed the inaccuracies in his survey arose because not "enough data was collected in the field to show the true representation of the driveway location." Several witnesses also testified that the driveway had always been in the same place during the time the Tippetts owned Lot 2.

C.

Testimony regarding the location of the garden

The Tippetts testified that the garden was present when they purchased the property in 1995. Several witnesses similarly testified that Lot 2 always had a fenced-in garden, or dog kennel, located in the same area on the property. Ms. Tippett stated that, when they first purchased the property, the garden was completely fenced in with barbed wire. She explained that it looked like the prior owners of Lot 2 had also maintained a garden within the fenced area. The Tippetts changed the construction of the fence several times, at one point replacing the barbed wire fence with chain link and then replacing the chain link fence with "wood with wire" fencing. Other witnesses also testified that construction of the fence changed periodically over the years.

Mr. Tippett testified that they planted a garden within the fenced-in area every year since they began living on the property in 1995. They typically planted the garden each

March, and the gardening season typically concluded in August. At the end of each season, the Tippetts would let the remaining plants "kind of . . . stay in there" until the following March because it was good for the fertilizer.

The Norris Survey showed that the garden area was located entirely within Lot 1. Mr. Norris testified that, on March 23, 2020, his field crew noted that there was a garden area, but by the time he personally visited the property on August 27, 2020, the garden was removed, but there were remnants of a garden adjacent to the parking pad. Mr. Tippett testified that there was no fence around the garden when Mr. Norris visited Lot 2 because the Tippetts replaced the fence in August 2020. They installed the new fence at some point after August 27, 2020, but Mr. Tippett could not recall the exact date.

Neither the June 5, 1985 survey nor the Dyer survey depicted the garden area. Mr. Tomlinson testified that, if the garden had been present when he completed the 2001 survey, it "would not have been shown because there's . . . nothing physical with a garden. It's just lawn . . . . There is no physical feature there that would have affected the site plan." Mr. Tomlinson testified that he would have no reason to show the garden on his survey.

D.

Testimony regarding location of the parking pad

None of the witnesses could provide a clear or consistent timeline for when the asphalt parking pad was constructed. The Tippetts testified that, when they first purchased Lot 2, the parking pad was grass, but they later "covered it with [asphalt] millings" in 2002

or 2003. One witness testified that the parking pad was either gravel or blacktop as early as 1997, but a different witness stated that the parking pad had always been asphalt.

While the parking pad was grass, the family consistently mowed the area. Ms. Tippett explained that they never hid their use of the parking pad, and it was visible from the road.

E.

Testimony regarding the condition of Lot 1.

During the entire time that the Tippetts lived on Lot 2, Lot 1 was heavily wooded, including in 2019 when the Davises began to consider purchasing the land. The Tippetts and their neighbors used Lot 1 for recreation from time to time because it had trails "that pretty much went around the entire property." A neighbor testified that the neighborhood used Lot 1 as a type of recreation area for these activities and to access the Potomac River. The neighbor testified that use of Lot 1 did not require the Tippetts' permission because use of the Lot was "a mutual thing."

Ms. Tippett testified that the trails on Lot 1 were easily accessible from Lot 2 because the trails came "really close by the garden." In addition, there were several access points to the trails along the Tippetts' driveway. Both the Tippetts and a neighbor testified that the Lot 1 trails could be walked with relative ease without any special shoes or tools for clearing brush.

III.

The Court's Ruling

On March 20, 2023, the circuit court issued a written memorandum opinion and order. The Court began by discussing the law on adverse possession, easement by prescription, and the woodlands exception. The court explained:

> The woodlands exception exists where an easement, or adverse possession, is claimed on land that is unimproved or otherwise in a general state of nature. The rationale behind the woodlands exception stems from the idea that where land is in a general state of nature, "it may be presumed that use of that land is permissive, because it is the custom of neighboring owners to travel over such land for pleasure or convenience, and the owners usually make no objection to their doing so."
>
> [* * * *]
>
> Where the woodlands exception applies, the burden is on the claimant to demonstrate that the land use was not permissive. If the use is "permissive," the use is not "adverse" or without permission, and thus [the] claimant cannot meet the "adversity" element of adverse possession.

(quoting *Breeding v. Koste*, 443 Md. 15, 24 (2015)).

The court then addressed the three areas at issue. With respect to the garden/kennel area, the court found that the garden was in existence since 1995, and the Tippetts had used it since then. It stated that the key to whether the Tippetts had acquired the garden through adverse possession, "hinge[d] upon whether the use was hostile or permissive." The court continued:

> [T]he term "hostile" signifies a possession that is adverse in the sense of it being "without license or permission," and "unaccompanied by a[] recognition of the real owner's right to the land." The type of "recognition of . . . right" that destroys hostility is not mere acknowledgment or awareness that

> another claim of title to the property exists, but rather a*cceptance* that another has a *valid right* to the property, and the occupant possesses subordinately to that right.
>
> In April of 2020 Mr. Davis and Mr. Tippett met, in person, and discussed the use of the garden/kennel. Mr. Tippett agreed to remove his property and asked Mr. Davis for five days to complete the restoration process. Once this happens the use of the garden/kennel becomes permissive. This permissive use, albeit a short use, breaks the continuity needed for the defendants to bring a successful adverse possession claim. In short, the Davis' have met their burden to show that the use for the statutory period preceding the filing was not continuous. The defendants' claim of adverse possession to the garden/kennel fails.

With respect to the parking pad, the court stated that it could not "find credible, reliable, competent evidence to determine when the parking pad was created." Because "the court, and the witnesses, are unsure as to when the parking pad was constructed and/or began being used, the [Tippetts'] adverse possession claim to the parking pad fails."

In considering the Tippetts' claim to the driveway, the court noted that the driveway crossed onto both lots. The court first concluded that the driveway constituted an "improvement" on the land, and therefore, the woodlands exception did not apply. The court then addressed "what right, if any, do the Tippetts have to the continued use of the driveway." The court discussed the law on easements and found that the Tippetts had a prescriptive easement permitting the use of the driveway. The court stated:

> The [Tippetts] have been using the driveway since they moved to the property in 1995. There is no evidence in the record of a license or permission to use the driveway. There is nothing to suggest that the use is permissive. The presumption of adverse use which arises from an unexplained use of the

> right of way for twenty years has not been rebutted by any evidence. The Tippetts use of the driveway area satisfies the adverse, exclusive, and continuous requirements for the statutory period requirements of a prescriptive easement.
>
> Because the woodlands exception does not apply to the driveway, the court finds that the [Tippetts] have created a prescriptive easement permitting the continued use of the portion of the driveway that encroaches onto the Davis[es'] lot.

The court then addressed the claim of trespass. It stated:

> In this case, there is no competent evidence establishing the loss of value to the Davis property or the cost of restoring the property. Additionally, there is no evidence that would allow the court to make an award for discomfort or annoyance, especially since the Davis' did occupy their lot prior to this litigation.[3] However, since the Tippett's use of the Davis parking pad is not permissive and the Tippett use of the Davis' garden/kennel area, while permissive for a short period, is no longer permissive, there is a trespass. The Davis' have been harmed, but a specific amount of damages has not been proven. Thus, the Davis' are entitled to nominal damages.

The court ordered the Tippetts to pay nominal damages in the amount of $350.

On March 24, 2023, the Davises filed a motion to alter or amend, requesting an opportunity to submit evidence of damages regarding the loss of value to their property and the cost of restoration. The Davises also requested the opportunity to submit evidence relevant to an award for discomfort or annoyance.

The court granted the motion, and after two hearings, it assessed damages in favor of the Davises in the amount of $4,175 for the cost of services by Kevin Norris to survey

[3] The Davises did not occupy the land prior to litigation. This appears to be a typo in the court's opinion.

their property to "mark the property line along which encroachments are to be removed, and to perform a follow-up survey to confirm that said encroachments have been satisfactorily removed and prepare a revised survey plat indicating that said encroachments have in fact been removed." The court denied the Davises' request for monetary damages regarding the asphalt driveway. The court then ordered, by agreement of the parties, that the Tippetts remove the following encroachments from Lot 1:

> - Parking pad described as being 1828 square feet;
>
> - Garden area described as being 2259 square feet (including the fence, water spigot/standpipe, and water supply line);
>
> - Triangular stone parking area described as being 68 square feet; and
>
> - The shed and playground equipment shown as encroachments existing on or along the common boundary line between the [Davises'] and the [Tippetts'] respective properties on the aforesaid Kevin Norris Boundary Survey.[4]

The court then ordered that, by agreement of the parties, the Bob Taylor Engineering Firm shall "supervise the removal of said encroachments and establish guidelines and/or

[4] In one of the hearings, the court discussed that, rather than awarding money damages, the court could order the Tippetts to remove encroachments using their employees to reduce the cost to them. Counsel for the Tippetts stated that, if the court required removing of the parking pad, the Tippetts had the equipment to remove it. The court set a hearing to see if the parties could agree on the name of someone to oversee the Tippetts' removal of encroachments. The Tippetts' counsel stated that "the garden and parking pad [were] going to go." The parties agreed that Bob Taylor of Taylor Engineering would oversee the removal of the encroachments, and the court would determine what encroachments needed to be removed. They agreed that the Tippetts would pay for the services of Bob Taylor Engineering.

requirements that are reasonable and appropriate under the circumstances for the installation and performance of appropriate sediment control and site stabilization measures." The court ordered the Tippetts to begin removing the encroachments by July 1, 2024, and to be finished removing them no later than August 15, 2024. The court ordered the Tippetts to pay any costs associated with the Bob Taylor Engineering Firm regarding the oversight and completion of the work.

On June 24, 2024, the Tippetts noted this appeal.

DISCUSSION

I.

Standard of Review

Maryland Rule 8-131(c) sets forth our standard of review of the circuit court's decision as follows:

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

A factual finding is clearly erroneous when "there is no competent and material evidence in the record to support it." *Hoang v. Hewitt Ave. Assocs., LLC*, 177 Md. App. 562, 575 (2007). When the circuit court's ruling "involves an interpretation and application of Maryland statutory and case law, we must determine whether the [circuit] court's conclusions are legally correct under a de novo standard of review." *Floyd v. Balt. City*

Council, 241 Md. App. 199, 208 (2019) (quoting *Johnson v. Francis*, 239 Md. App. 530, 542 (2018)).

II.

Motion to Dismiss

Before addressing the parties' claims on the merits, we address the Davises' motion to dismiss the appeal. They contend that the appeal should be dismissed for mootness because the Tippetts acquiesced in the court's ruling. The Davises argue that the Tippetts voluntarily agreed in open court to remove, and subsequently did remove, certain encroachments, and therefore, they acquiesced to the court's rulings, including the boundary line determinations made by the court. The Davises assert that the Tippetts' consent agreement and removal of some encroachments constitutes a waiver of their right to appeal.

The Tippetts contend that the motion to dismiss lacks merit. They argue that they exercised limited compliance with the order to avoid contempt sanctions and mitigate financial damages, after repeated denials of motions to stay the judgment. The Tippetts assert that, under the circumstances here, they did not waive their appellate rights. We agree.

Acquiescence is conduct from which it may be inferred that a party has intentionally relinquished a known right. *Exxon Mobil Corp. v. Ford*, 433 Md. 426, 462, *modified*, 433 Md. 493 (2013). "The doctrine of acquiescence . . . is that 'a *voluntary* act of a party which is inconsistent with the assignment of errors on appeal normally precludes that party from

obtaining appellate review.'" *Id.* (quoting *Bd. of Physician Quality Assurance v. Levitsky*, 353 Md. 188, 200 (1999)). "[W]hile 'a voluntary act of a party which is inconsistent with the assignment of errors on appeal normally precludes that party from obtaining appellate review,' . . . a party is not precluded from pursuing an appeal when he or she merely complies with a court order, because such action is not voluntary." *Taylor v. Mandel*, 402 Md. 109, 126 (2007) (quoting *Franzen v. Dubinok*, 290 Md. 65, 69 (1981)). The doctrine of acquiescence applies only to a party's post-judgment conduct, not to statements made during open court before a judgment is rendered. *Id. Accord Exxon Mobil Corp.*, 433 Md. at 464.

Here, after the court issued its decision on liability and held hearings on damages, the Tippets' counsel stated that, if the court required removal of structures, the Tippetts could save some money by doing it themselves. The agreement to do so in this context does not constitute acquiescence that is inconsistent with their right to appeal. Accordingly, we deny the motion to dismiss the appeal.

We turn now to the merits of the claims raised by the parties.

III.

Adverse Possession

We begin by addressing the Tippetts' claim that they established title to the disputed property based on the doctrine of adverse possession. "Adverse possession is a method whereby a person who was not the owner of property obtains a valid title to that property by the passage of time." *USA Cartage Leasing, LLC v. Baer*, 202 Md. App. 138, 199 (2011)

(quoting *Yourik v. Mallonee*, 174 Md. App. 415, 422 (2007)). To prevail on a claim of adverse possession, the claimant must "show continuous possession of the property for 20 years in an actual, open, notorious, exclusive, and hostile manner, under claim of title or ownership." *Anderson v. Great Bay Solar I*, 243 Md. App. 557, 594 (2019) (quoting *Porter v. Schaffer*, 126 Md. App. 237, 276 (1999)), *cert. denied*, 468 Md. 224 (2020). These elements "can be placed in three groups: possession must be (1) actual, open and notorious, and exclusive; (2) continuous or uninterrupted from the requisite period; and (3) hostile, under claim of title or ownership." *Senez v. Collins*, 182 Md. App. 300, 324 (2008). "[T]he burden of proving title by adverse possession is on the claimant." *Id*. (quoting *Costello v. Staubitz*, 300 Md. 60, 67 (1984)).

"The element of 'open and notorious' pertains to the concept of constructive notice to the title owner. Possession 'must be visible and notorious, so that the owner may be presumed to have notice of it.'" *Senez*, 182 Md. App. at 325 (quoting *Beatty v. Mason*, 30 Md. 409, 414 (1869)). Actual notice to the owner, however, is not required. "[A]cts of dominion over land may be sufficient to charge the record owner with knowledge that the land is adversely possessed." *Id.* (quoting *Miceli v. Foley*, 83 Md. App. 541, 561 (1990)).

Exclusive possession involves possession showing "an exclusive dominion over the land and an appropriation of it to his own use and benefit." *Senez v. Collins*, 182 Md. App. 300, 325 (2008) (quoting *Blickenstaff v. Bromley*, 243 Md. 164, 173 (1966)). The possession need not be absolutely exclusive, but it must show possession indicating an owner's use. *Id*.

The element of hostility under a claim of title or ownership refers to possession that is without license or permission and unaccompanied by any recognition of the real owner's right to the land. *Senez*, 182 Md. App. at 339-40. This element of hostility "does not necessarily import enmity or ill will," but it refers to possession of another's land "without license or permission" and without recognition of that person's right to the land. *Id.* (quoting *Hungerford v. Hungerford*, 234 Md. 338, 340 (1964)). When a party shows that the use of the property was open and notorious for a continuous period of 20 years, courts typically presume that the use was "hostile," and "[t]he burden then shifts to the landowner to show that the use was permissive." *Id.* at 340 (quoting *Kirby v. Hook*, 347 Md. 380, 392 (1997)).

An exception to this general rule is the "woodlands exception," which provides that, for a property that is "unimproved or in a general state of nature," there is a "legal presumption that the use is by permission of the owner." *Breeding v. Koste*, 443 Md. 15, 29-30 (2015). The Court defined "unimproved lands" as "undeveloped land that lacks additions that increase the land's value or utility or enhance the land's appearance" and "improved land" as land that "does not necessarily have a building or structure on it" but has "human-created additions that increased the land's utility and made it more useful for humans." *Id.* at 40. The rationale for the woodlands exception and presuming permission is that:

> (1) owners of land that is unimproved or otherwise in a general state of nature usually do not object to their neighbors traveling over such land, for either the neighbor's convenience or his or her pleasure, because the owners "ordinarily suffer no

> deprivation of their rights of use and enjoyment by allowing others access to their property[,]" [*Clickner v. Magothy River Ass'n Inc.*, 424 Md. 253, 286 (2012)] (citations omitted); and (2) given the nature of woodlands, activities on land that is unimproved or otherwise in a general state of nature generally are not visible to the owner such that he or she has notice and can object.

Id. at 37. The woodlands exception applies to both adverse possession and prescriptive easements because they "share substantially the same elements." *Id.* at 36. *Senez*, 182 Md. App. at 325 (quoting *Blickenstaff*, 243 Md. at 173).

Once a person has shown the elements of adverse possession, the person "can divest any right to property held by the title landowner." *Saunders v. Gilman*, 490 Md. 413, 421 (2025). The Supreme Court of Maryland has explained:

> By adverse possession of land for the statutory period of limitation the adverse holder acquires a title in fee simple, which is as perfect as a title by deed. Its legal effect is, not only to bar the remedy of the owner of the paper title, but to divest his estate, and vest it in the party holding adversely for the required period of time, so that he may maintain an action of ejectment for the recovery of the land even as against the holder of such paper title who has ousted him.

Id. (quoting *Safe Deposit & Trust Co. of Balt. v. Marburg*, 110 Md. 410, 416-17 (1909)).

With that background in mind, we address the Tippetts' claims with respect to each of the encumbrances at issue.

A.

The Driveway

The Tippetts contend that the circuit court erred "by concluding the Tippetts were entitled to a prescriptive easement rather than determining title by adverse possession."

They argue that the driveway served as a visibly maintained boundary line, and their "occupation was and is possessory, more than a mere use of the property." The Tippetts assert that they took possessory actions, such as "maintaining the driveway over the Davises' property, improving its surface, paving it, and using it exclusively." They argue that the court disregarded "the visible boundaries, regular maintenance, and exclusive use over the statutory period which all support ownership through adverse possession rather than just for use." They contend that the circuit court properly found that the woodlands exception did not apply because the property was improved by the driveway.

The Davises contend that the circuit court correctly rejected the Tippetts' adverse possession claim with respect to the driveway, but it erred in granting a prescriptive easement over the driveway. They argue that the Tippetts did not meet the elements of adverse possession because they did not show that possession of the driveway was open, notorious, and exclusive, noting that, when the Tippetts submitted their Critical Area Site Plan, "the driveway was incorrectly or perhaps deceptively shown to be on their lot." The Davises contend that, for these same reasons, the Tippetts' claim for a prescriptive easement fails.

The Davises also argue that the court erred in finding that the woodlands exception did not apply because the "Tippetts' use of the driveway occurred on land that remained unimproved and in a natural state." They assert that the driveway did not constitute an improvement that rendered the woodlands exception inapplicable because the driveway starts on the Tippetts' lot and does not fully encroach on their lot "until it is approximately

100' from the entrance, at which point it is enclosed by dense woodland." The Davises argue that, because the portion of their land being used as a driveway by the Tippetts is entirely enclosed by naturally vegetative woods, this reinforces "that the alleged adverse use was not open and notorious as required for adverse possession."

1.

Woodlands Exception

In addressing the driveway, the circuit court stated that a key part to the analysis was "whether Lot 1 meets the requirements of the woodlands exception." In finding that it did not, the court found that the disputed driveway area had "been cleared for the purpose of constructing the driveway, has been paved in order to be more useful, and has been maintained over the years, despite its proximity to a formerly forested area, Lot 1." The court found that the woodlands exception did not apply because the "driveway would constitute an 'improvement' that would make the woodlands exception inapplicable."

The circuit court properly determined that the woodlands exception did not apply to Lot 1. As indicated, the woodlands exception "applies to land that is unimproved or otherwise in a general state of nature." *Breeding*, 443 Md. at 38. Although Lot 1 was a wooded lot, this does not result in automatic application of the woodlands exception. *Id.* at 44. Here, as in *Breeding*, there was a visible improvement on a portion of the property, in this case a driveway, during the period of adverse possession, which changed the "undeveloped property into developed property." *Id.* at 40. The circuit court correctly applied *Breeding* to conclude that the woodlands exception did not apply in this case.

Accordingly, the court properly determined that there was no presumption of permissive use.

2.

Adverse Possession v. Prescriptive Easement

In addressing the Tippetts' ultimate claim of adverse possession, the court rejected that claim in its order, finding that the Davises were the fee simple title owners of Lot 1. The court's discussion of the driveway in the memorandum, however, was limited to whether the Tippetts had an easement, and it stated as follows:

> The [Tippetts] have been using the driveway since they moved to the property in 1995. There is no evidence in the record of a license or permission to use the driveway. There is nothing to suggest that the use is permissive. The presumption of adverse use which arises from an unexplained use of the right of way for twenty years has not been rebutted by any evidence. The Tippetts' use of the driveway area satisfies the adverse, exclusive, and continuous requirements for the statutory period requirements of a prescriptive easement.

Accordingly, the court held that the Tippetts had "created a prescriptive easement permitting the continued use of the portion of the driveway that encroaches onto the Davis lot."

As indicated, the Tippetts contend that the court's decision finding a prescriptive easement, but not adverse possession, was inconsistent because the elements for each are "near-identical." In addressing this claim, we first address the law on easements.

An easement is "broadly defined as a nonpossessory interest in the real property of another," which "arises through express grant or implication." *Bd. of Cnty. Comm'rs of St.*

Mary's Cnty v. Aiken, 483 Md. 590, 620 (2023) (quoting *Boucher v. Boyer*, 301 Md. 679, 688 (1984)). "An easement involves primarily the privilege of doing a certain class of act on, or to the detriment, of another's land, or a right against another that he refrain from doing a certain class of act on or in connection with his own land." *Anderson*, 243 Md. App. at 600 (quoting *USA Cartage Leasing, LLC*, 202 Md. App. at 174-75).

An easement can be created by express grant or by implication. *USA Cartage Leasing*, 202 Md. App. at 174. Implicit easements can be created by prescription, necessity, the filing of plats, estoppel, and implication. *Id.* at 175. Here, as indicated, the court found a prescriptive easement.

To acquire an easement by prescription, the use must have been adverse, exclusive, continuous, and uninterrupted, under a claim of right for 20 years. *Banks v. Pusey*, 393 Md. 688, 699 (2006). In the context of prescriptive easements, the exclusivity requirement means "the claim of user must not depend on the claim of someone else." *Turner v. Bouchard*, 202 Md. App. 428, 451 (2011) (quoting *Shuggars v. Brake*, 248 Md. 38, 45 (1966)). Even when the claimant is not the only user, "it is sufficient if he used the way under a claim of right independently of others." *Id.* at 452 (quoting *Shuggars*, 248 Md. at 45). *Accord Schaffer v. Wietzel*, 132 N.E.3d 220, 228 (Ohio Ct. App. 2019) ("[Possession] need not be absolutely exclusive; it need only be the type of possession which would characterize an owner's use. In other words, the adverse possessor must exclude third parties to the extent that the true owner would do the same."). The party claiming a prescriptive easement "bears the burden of showing that 'it ha[s] the character and is of the

duration required by law.'" *Turner*, 202 Md. App. at 443 (quoting *Dalton v. Real Estate Imp. Co.*, 201 Md. 34, 41 (1952)).

A claim of adverse possession differs from a claim of a prescriptive easement because adverse possession requires the claimant to "possess" the land, while prescriptive easements only require the claimant to "use" the land. *Breeding*, 443 Md. at 28-29. The Tippetts argue that their occupation of the property was possessory rather than use, stating that the driveway served as a boundary line, which, along with their maintenance and improvement of the driveway, showed ownership of the property rather than mere use. We agree with the Tippetts that the evidence here was sufficient to show adverse possession.

The Missouri case of *Trokey v. R.D.P. Development Group, L.L.C.*, 401 S.W.3d 516 (Mo. Ct. App. 2013), is instructive. In that case, as here, the contested property was a gravel driveway, which was subsequently improved by paving a portion of the driveway with concrete. *Id.* at 520. A 1995 survey of the area showed that the Trokey's property line cut across and through the concrete driveway, indicating that they did not own the disputed property. *Id.* at 521. Other individuals utilized the concrete driveway and the gravel driveway, but they asked Mr. Trokey if they could use his concrete driveway and only used it "when it was really necessary." *Id.* at 521.

In 1998 or 1999, the Trokeys constructed a garage and subsequently used the gravel part of the disputed driveway to pull into their garage. *Id.* at 522. The Trokeys used the gravel driveway because the garage was angled in a way that otherwise would have prevented the Trokeys from accessing the garage. *Id.*

In March 2007, R.D.P. Development Group, L.L.C. ("RDP") purchased the adjoining property. *Id.* A dispute arose regarding the property line and ownership of the property, which resulted in the Trokeys filing a petition alleging that they adversely possessed the disputed land. *Id.* At trial, Mr. Trokey testified that he maintained the driveway for 47 years by placing gravel on the gravel driveway and grading it ten or fifteen times. *Id.* at 523. There was never any fence around the disputed property, nor was there any "No Trespassing" signs posted on the disputed property. *Id.* The trial court found that the Trokeys were in adverse possession of the property, finding that, for 45 years, the Trokeys had used and maintained the gravel driveway and concrete driveway. *Id.*

The Missouri Court of Appeals affirmed. *Id.* at 528. In analyzing the elements of adverse possession, the court first addressed whether the Trokeys' possession was hostile. *Id.* at 525. The court disagreed with the argument that the possession was not hostile because the Trokeys erected no barriers, posted no signs prohibiting use of the property, or excluded anyone from access, noting that, for possession to be hostile, there merely needs to be a showing of an intent to possess and exercise dominion over the property. *Id*. The court assessed the Trokeys' intent from the surrounding circumstances and the Trokeys' actions. *Id.* The court stated that it was undisputed that the Trokeys claimed the property was theirs and believed it to be theirs, noting that the Trokeys had claimed that the surveys indicating to the contrary were "all wrong." *Id.* They maintained the property by mowing, trimming, and raking the disputed grassy area, and placing gravel on the gravel drive and grading it multiple times over the course of 45 years. *Id*. The Trokeys also constructed their

garage in a manner that required use of the gravel driveway to access the garage. *Id.* These circumstances showed the Trokeys' intent to possess and exercise dominion over the property, and therefore, the possession of the property was hostile. *Id*.

Turning to the element of actual possession, the court noted that, although others occasionally used the property, they first asked Mr. Trokey for permission, which indicated that "Mr. Trokey exercised control over the disputed property." *Id.* at 526. The Trokeys also maintained the driveway and used it for egress and ingress to their garage, all of which was substantial evidence that they maintained "actual possession" of the property. *Id*.

The court found that the Trokeys' use was open and notorious, noting that "[v]isible acts of ownership can include maintaining and improving property." *Id.* at 526. Additionally, the Trokeys' use was conspicuous and widely recognizable "by the fact they built a garage which required use of the disputed property to gain access." *Id.* at 527. No one stopped the Trokeys from constructing the garage, including the previous landowner and general contractor. *Id.*

With respect to the element of exclusive possession, the court held that the Trokeys "clearly h[e]ld possession of the disputed property for their benefit: to pull into their garage." *Id.* Although the Trokeys allowed others to use the driveways on occasion, the court explained that "sporadic use, temporary presence, or permissive visits by others," does not defeat the exclusive possession element. *Id.* (quoting *Machholz-Parks v. Suddath*, 884 S.W.2d 705, 708 (Mo. Ct. App. 1994)). Finally, the court found that the Trokeys had continuously possessed the disputed property for 47 years. *Id.* at 528.

Applying that analysis to this case, we conclude that the Tippetts have met the burden on all elements necessary to show adverse possession of the driveway. With respect to the first group of elements, possession that was actual, open and notorious, and exclusive, the Tippetts performed maintenance and upkeep of the driveway that was consistent with the typical management of property that an owner would undertake. *See Senez*, 182 Md. App. at 328 (maintenance and improvement of property showed possession that was actual, open, notorious, and exclusive). The Tippetts possessed the driveway for their own benefit: to access their property, residence and garage. Although neighbors and guests occasionally used the Tippetts' driveway to visit or to access the walking paths located on the Davises' lot, such use was "sporadic use, temporary presence, or permissive visits by others." *Trokey*, 401 S.W.3d at 527.

With respect to the continuity requirement, the court found that the Tippetts had used the driveway since they had moved into the property in 1995. The record supports the trial court's finding that the possession was continuous for the statutory period of 20 years. The evidence demonstrated that the driveway has been in the same location for that entire time.

Once a claimant has shown open, continuous use for the statutory period, "[t]he burden then shifts to the landowner to show that the use was permissive." *Senez*, 182 Md. App. at 340 (quoting *Kirby v. Hook*, 347 Md. 380, 392 (1997)). In establishing the element of hostility, a showing of open and continuous use for the statutory period "justifies a presumption that such use was adverse." *Id*.

Here, the circuit court found that there was no evidence to suggest that the use of the driveway was permissive. Mr. Tippett testified that he never asked permission to use the driveway, or the garden or parking pad, because they were his property. Moreover, the Tippetts took actions that showed their intent to exercise dominion over the property, including maintaining and upgrading the driveway and posting "No Trespassing" signs along the driveway to put others on notice that they were entering the Tippetts' property. These actions were sufficient to meet the hostility element. *Trokey*, 401 S.W.3d at 525. The evidence showed that the Tippetts obtained title by adverse possession to the portion of the driveway that encroached on the Davises' property.

3.

Unclean Hands

The Davises contend, however, that the circuit court erred in finding that the Tippetts have any claim to the driveway "because the Tippetts have unclean hands and are barred from recovery in a court of equity." They assert that the Tippets are barred from obtaining equitable relief – whether by adverse possession or a prescriptive easement – based on the following misconduct: (1) fraudulently misrepresenting the driveway's location on the 2001 Site Plan as entirely on their lot; (2) violating county regulations regarding impervious surfaces; and (3) shifting their factual positions to now assert adverse possession. We disagree.

The doctrine of unclean hands mandates that a party seeking an equitable remedy "must come with clean hands." *Mona v. Mona Elec. Grp., Inc.*, 176 Md. App. 672, 713

(2007) (quoting *Precision Instrument Mfg. Co. v. Auto. Maint. Mach. Co.*, 324 U.S. 806, 814 (1945)). This Court explained in *Turner v. Turner*:

> The equitable doctrine of unclean hands is "designed to 'prevent the court from assisting in fraud or other inequitable conduct....' " *Gordon v. Posner*, 142 Md. App. 399, 433, 790 A.2d 675 (quoting *Adams v. Manown*, 328 Md. 463, 482, 615 A.2d 611 (1992)), *cert. denied*, 369 Md. 180, 798 A.2d 552 (2002). It is available to deny relief to those guilty of unlawful or inequitable conduct with respect to the matter for which relief is sought. *Hicks v. Gilbert*, 135 Md. App. 394, 400, 762 A.2d 986 (2000). It is "not applied for the protection of the parties nor as a punishment to the wrongdoer." *Adams v. Manown*, 328 Md. at 474–75, 615 A.2d 611. Instead, "it protects the integrity of the court and the judicial process by denying relief to those persons 'whose very presence before a court is the result of some fraud or inequity.' " *Hicks*, 135 Md. App. at 400, 762 A.2d 986 (citation omitted).

147 Md. App. 350, 419 (2002). Accordingly, the clean hands doctrine "is intended to protect the courts from having to endorse or reward inequitable conduct." *Mona*, 176 Md. App. at 714 (quoting *Adams v. Manown*, 328 Md. 463, 475 (1992)).

Here, there is no evidence in the record demonstrating that, when the Tippets applied for the building permit for the detached garage in 2001, they committed fraud or engaged in inequitable conduct in a manner that calls into question the defense of unclean hands. The Tippetts hired Ben Dyer Associates, Inc., to create the Site Plan in connection with a detached garage that the Tippetts intended to build. Mr. Tomlinson, the Ben Dyer employee who created the survey, explained that he likely made an "innocent mistake" in placing the driveway entirely within the Lot 2 flag stem when he completed the Dyer survey in 2001. Mr. Tomlinson testified that he believed the inaccuracies in his survey arose because "not . . . enough data was collected in the field to show the true representation of driveway

location." The doctrine of unclean hands does not preclude a finding that the Tippetts obtained title to the driveway by adverse possession. Accordingly, we reverse the circuit court's ruling that the Tippetts did not obtain title to the driveway by adverse possession.

B.

The Parking Pad

We reach a different result, however, with respect to the Tippetts' claim that they obtained ownership of the parking pad by adverse possession. The circuit court stated that it could not "find credible, reliable, competent evidence to determine when the parking pad was created." Accordingly, the court found that "the defendants' adverse possession claim to the parking pad fails."

The Tippetts contend that the court erred in this ruling, stating that the uncontested evidence supported "their continuous use and maintenance of the parking pad for over 20 years." They point to testimony from Chris Baker, a friend of the Tippetts, that, as far as he could remember, the parking pad had always been there. They assert that their maintenance and improvement of the area was consistent with ownership to establish adverse possession.

The Davises contend that the court correctly denied the Tippets' adverse possession claim for the parking pad. They assert that the Tippetts "failed to establish when their exclusive possession began and did not provide sufficient evidence of continuous, uninterrupted use for 20 years."

None of the witnesses who testified during the trial could pinpoint an exact year when the Tippetts installed the parking pad. Ms. Tippett testified that the parking pad was grass when they first purchased the property in 1995. Chris Baker testified that the parking pad had existed for as long he could remember, although he acknowledged that it was not always paved with asphalt. Tammy Baker testified that the parking pad was initially gravel, and the Tippetts converted it to asphalt at the same time they converted the driveway to asphalt, but she could not recall when this transition occurred. Jimmy Demeulenaere, Ms. Tippett's cousin testified that the parking pad had always been asphalt. Mr. Tippett testified that they paved the parking pad in 2002 or 2003. When the Davises' counsel showed Mr. Tippett a 2007 satellite photo of Lot 2, he admitted that he did not see the parking pad. Mr. Tippett stated, however, that it was hard to see certain portions of his property in the photo because it was covered by a shadow. Given this record, and the deferential standard of review set forth by 8-131(c), we will not disturb the circuit court's factual finding that there was insufficient evidence to determine when the parking pad was created. Therefore, there was insufficient evidence of the continuity element to satisfy the claim to adverse possession of the parking pad. We affirm the circuit court's ruling that the Tippets did not obtain title to the parking pad by adverse possession.

C.

The Garden

In rejecting the Tippetts' claim to title of the garden area based on adverse possession, the circuit court found that the garden was in existence since 1995, and the

Tippetts had used it and treated it is as their own since then. The court found, however, that in April 2020, Mr. Davis and Mr. Tippett discussed the garden/kennel, and Mr. Tippett agreed to remove the property, asking for five days to complete the restoration process. The court found that, by agreeing to remove his property after five days:

> [T]he use of the garden/kennel [became] permissive. This permissive use, albeit a short use, [broke] the continuity needed for the defendants to bring a successful adverse possession claim. In short, the Davis' have met their burden to show that the use for the statutory period preceding the filing was not continuous.

The Tippetts contend that the circuit court erred in denying adverse possession for the garden. They argue that title to the garden area vested in 2015 after 20 years of open, notorious, exclusive, hostile, and continues use. They assert that the March 2020 conversation occurred after their title to the property had already vested.

The Davises argue that the court properly denied adverse possession of the garden for two reasons. First, the Davises argue that the Tippetts failed to establish open and notorious possession because their 2001 Site Plan did not depict the garden. Second, they argue that the Tippetts failed to establish a claim of title or ownership because, by agreeing to move the garden, the Tippetts acquiesced "to the superior right of the Davises," which is "an act of subordination."

We have discussed the issue of open and notorious possession. With respect to the garden, we note that, in *Blickenstaff*, 243 Md. at 171, the Supreme Court of Maryland has discussed the types of possessory acts that show adverse possession, as follows:

> It is sufficient if the acts of ownership are of such a character as to openly and publicly indicate an assumed control or use such as is consistent with the character of the premises in question. The standard to be applied to any particular tract of land is whether the possession comports with the ordinary management of similar lands by their owners, and if so, it furnishes satisfactory evidence of adverse possession.

In *Blickenstaff*, 243 Md. at 171-72, the Court held that possessory acts of dominion on the land, such as landscaping, cutting trees, burning trash, and planting flower beds is sufficient to charge the record owner with notice that an adverse claim to the property was being asserted.

Here, as indicated, the court found that the Tippetts had used the garden area and "treated it as their own since purchase" in 1995. The Tippetts used the land to plant a garden each year, and the garden was surrounded by a fence. The evidence regarding the Tippetts' use of the garden area was sufficient to support the circuit court's finding that the use was open and notorious.

The more problematic issue is the court's finding that the possession was not continuous for the 20-year statutory period. *See Breeding*, 443 Md. at 28 (quoting *White v. Pines Cnty. Improvement Ass'n*, 403 Md. 13, 36 (2008)) ("To establish title by adverse possession, the claimant must show possession of the claimed property for the statutory period of [twenty] years[.]"). The period of adverse possession begins to run when all the necessary elements simultaneously coexist. *Bratton v. Hitchens*, 43 Md. App. 348, 355 (1979). Based on the court's reasoning in this case, the Tippetts took possession in 1995, and title to the garden would have vested in 2015. *See Miceli*, 83 Md. App. at 555

(where visible boundary lines have existed for the period set forth in the statute of limitations, "title will vest in the adverse possessor where there is evidence of unequivocal acts of ownership") (quoting *Costello*, 300 Md. at 71). The conversation at issue, however, occurred in 2020. We agree with the Tippetts that Mr. Tippett's agreement in 2020 to move the garden cannot "undo adverse possession that has already vested." *See Saunders*, 490 Md. at 421 ("By adverse possession of land for the statutory period of limitation the adverse holder acquires a title in fee simple.").

We conclude that the circuit court erred in concluding that the Tippetts' claim of adverse possession for the garden failed because they failed to meet the requirement that the adverse possession was continuous for the statutory period. We reverse the court's conclusion in this regard.

IV.

Judicial Estoppel

The Davises contend that "[t]he Tippetts' claim for adverse possession is barred because their prior representations to the County directly contradict their current position," and "[u]nder judicial estoppel and estoppel by admissions, a party cannot assert a legal or factual position that is inconsistent with one they previously maintained to their benefit." The Davises argue that the Tippetts represented in their garage permit application that the driveway was entirely within their lot, and after misrepresenting the location of the driveway to get regulatory approval to build their garage, they are estopped from reversing that position and claiming adverse possession now to get equitable relief.

The Tippetts contend that judicial estoppel does not apply because "[t]he site plan was a regulatory filing, not a legal position in adjudication." They assert that they "never disavowed their continuous, exclusive, and hostile driveway use, much less did they ever remove the driveway or refrain from using it," but instead, the driveway's "location has remained consistent and visible for nearly three decades," and they used it daily.

Before judicial estoppel can be applied, the following three circumstances must be met:

> (1) one of the parties takes a . . . position that is inconsistent with a position it took in previous litigation, (2) the previous inconsistent position was accepted by a court, and (3) the party who is maintaining the inconsistent positions must have intentionally misled the court in order to gain an unfair advantage.

Bank of New York Mellon v. Georg, 456 Md. 616, 625 (2017) (quoting *Dashiell v. Meeks*, 396 Md. 149, 171 (2006)). Although the Tippetts did submit a Site Plan to Charles County in 2001, which failed to depict the encroachments on the Davises' property, this was not an inconsistent position accepted by a court. Accordingly, judicial estoppel does not apply.

V.

Trespass

The Tippetts contend that circuit court erred in finding that they committed trespass on Lot 1 for four reasons: (1) they reasonably believed they owned the property; (2) adverse possession, if established, precludes trespass; (3) the Tippetts' actions did not substantially

interfere with the Davises' property rights; and (4) the Davises purchased the property with full knowledge of these longstanding encroachments. We disagree.

A trespass is "generally 'an intentional or negligent intrusion upon or to the possessory interest in property of another.'" *Litz v. Md. Dept. of Env't*, 446 Md. 254, 276-77 (2016) (quoting *Schuman v. Greenbelt Homes, Inc.*, 212 Md. App. 451, 475 (2013)). "In order to prevail on a cause of action for trespass, the plaintiff must establish: (1) an interference with a possessory interest in his property; (2) through the defendant's physical act or force against that property; (3) which was executed without his consent." *Mitchell v. Balt. Sun Co.*, 164 Md. App. 497, 508 (2005), *cert. denied*, 390 Md. 501 (2006). Trespass to real property exists "whether the defendant committed the trespass unwittingly . . . or willfully and wantonly." *Balt. Gas and Elec. Co. v. Flippo*, 348 Md. 680, 690-91 (1998) (quoting *Atlantic Coal Co. v. Md. Coal Co.*, 62 Md. 135, 143 (1884)).

"Every unauthorized entry upon the land of another is a trespass," which results in the owner suffering at least a legal injury. *Bittner v. Huth*, 162 Md. App. 745, 752 (quoting *Tyler v. Cedar Island Club, Inc.*, 143 Md. 214, 219 (1923)), *cert. denied*, 389 Md. 125 (2005). Accordingly, the landowner is entitled "to a verdict for some damages; though they may, under some circumstances, be so small as to be merely nominal." *Id.* at 753 (quoting *Tyler v. Cedar Island Club, Inc.*, 143 Md. 214, 219 (1923)).

Here, the Tippetts are correct that adverse possession supersedes a claim of trespass. *Saunders*, 490 Md. at 421. As the above discussion explains, however, the Tippetts have only established adverse possession to the garden and driveway. The parking pad,

playground, treehouse, and swing were encroachments on Lot 1 for which the Tippetts have not obtained a valid claim of title, nor did they receive permission from the Davises. By erecting and using these encroachments, the Tippetts committed an unauthorized entry upon the Davises' land, which is grounds for a finding of trespass. *Bittner*, 162 Md. App. at 752. The court properly found that the Tippetts committed a trespass on the Davises' land.

MOTION TO DISMISS APPEAL DENIED. JUDGMENTS OF THE CIRCUIT COURT FOR CHARLES COUNTY AFFIRMED IN PART AND REVERSED IN PART. COSTS TO BE SPLIT EVENLY BY APPELLANTS AND APPELLEES.