UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2532

September Term, 2012

SILLERY BAY IMPROVEMENT ASSOCIATION, INC. *et al.*

v.

JOHN F. McGAHAGAN, III, *et al.*

Nazarian,
Leahy,
Friedman,

JJ.

Opinion by Friedman, J.

Filed: February 5, 2015

This appeal arises from an action by John and Diane McGahagan to quiet title to several strips of land in the waterfront community of Sillery Bay in Pasadena, Maryland. The Sillery Bay Improvement Association ("SBIA") contests the determination of the Circuit Court for Anne Arundel County as to the rights in two of those strips of land. The issues presented are rephrased as follows:

(1) Did the trial court err by finding that the McGahagans acquired title by adverse possession to a platted road that runs through a field of lots that they own?

(2) Did the trial court err by finding the right of use of the 25-foot Gravel Road was limited to marina access for those validly using the marina?

(3) Did the trial court err in finding that Sillery Bay residents had not acquired a prescriptive easement for use of the 25-foot Gravel Road?

(4) Did the trial court err in concluding that the deed from the estate of Frank Cuccia to the McGahagans was valid?

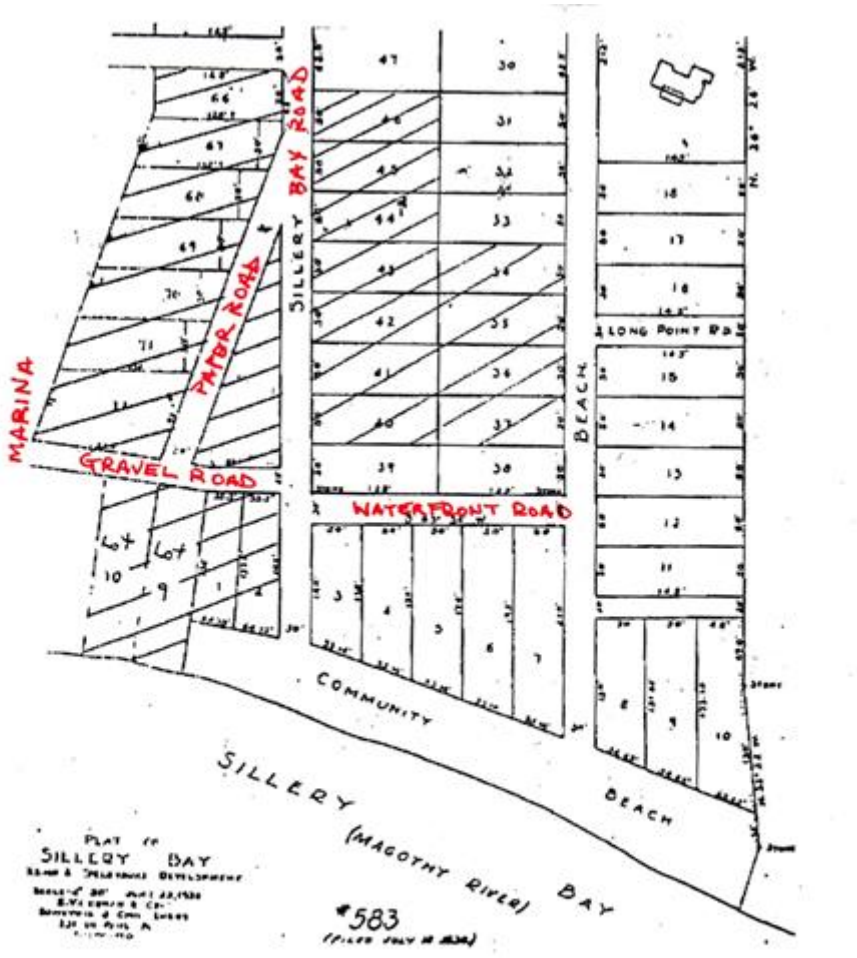
For the reasons stated below, we affirm the decision of the circuit court.

FACTUAL AND PROCEDURAL HISTORY

John and Diane McGahagan own a home in the Sillery Bay subdivision, which is located on the north shore of the Magothy River in Pasadena in northern Anne Arundel County. Their home sits on lots 1 and 2 on the following plat (which we have modified slightly for purposes of this opinion). The McGahagans also own several additional lots to the west and north, adjoining the two lots on which their home is located.[1] Their property is bisected by Sillery Bay Road, a two-lane, county-maintained road that runs north-south

[1] The properties owned by the McGahagans are numbered 1-2, 9-10, 34-37, 40-46, and 66-72 and are indicated by crosshatching on the attached plat.

about 4 blocks from Long Point Road until it ends at an intersection with Waterfront Road. Waterfront Road runs only east from that intersection; to the west it continues in a 25-foot wide, unnamed gravel road that provides access to a marina and is one subject of this litigation. For convenience, we will refer to that 25-foot wide stretch of road as the Gravel Road. The other subject of this litigation is a 30-foot wide road that exists only on paper but that, if built, would provide the hypotenuse to a triangle, the other legs of which are Sillery Bay Road and the Gravel Road. We will refer to that as the Paper Road.



The issues raised on this appeal case are best understood by considering the basic history of land ownership in the Sillery Bay subdivision. In 1938, the land in Sillery Bay was subdivided and a plat of the subdivision was recorded in the land records of Anne Arundel County. From there, there are two relevant chains of title.

First, Minna Theis owned title to the community beach, marsh area, roadbeds, and lots 3-7. When Ms. Theis transferred her property to Elise and Howard Baker, the deed conveyed rights of "use of all community beaches shown on the Plat of Sillery Bay" and "rights and privilege of the use of all roads shown on the plat to and from the property hereby conveyed." The Bakers held title until 1961, when they transferred their property to Howard Baker's company, the Wayland Company. The Wayland Company held title to these Sillery Bay lots, as well as land in the adjacent developments of Hunter Harbor and Long Point, until 1966 when the Wayland Company conveyed its interest to Frank and Florence Cuccia. Five years later, a confirmatory deed was executed and recorded, which made corrections to the metes and bounds description in the original deed from the Wayland Company to the Cuccias. The community beach, the area that is now the marina, and all roadbeds (arguably including both the Paper Road and Gravel Road) were included in the conveyance from the Wayland Company to the Cuccias. In 1982, the Cuccias conveyed the area to the west of the Gravel Road (marked on the plat as "Marina") to the Sillery Bay Harbor Civic and Recreation Association, which then built the marina on the previously undeveloped land. The Cuccias also transferred lots 3-7, abutting the community beach on the south, to the SBIA.

The second chain of title relates to the lots now owned by the McGahagans, which includes lots 1, 2, 66-72, and the unnumbered triangular lot adjoined by Sillery Bay Road and the Paper Road. In 1947, Arthur and Helen Baerhold acquired title to the lots bordering the Gravel Road on the north and south, identified on the plat as 1, 2 and 72. In 1955, the Baerholds also acquired the lots adjoining the Paper Road on both sides, identified on the plat as lots 66-72 and the unnumbered triangular lot. These lots existed as an open field where the Baerholds maintained a garden that extended over portions of the Paper Road and surrounding lots. In 1982, Anne Arundel County executed a quit claim deed conveying any interest it might have in the Paper Road to the Baerholds. In 1992, the McGahagans purchased the Baerholds' lots adjoining the community beach and the Gravel Road. They also obtained from the Baerholds the triangular lot adjoining the Paper Road on the east side, and lots 66 to 72 adjoining it on the west. The McGahagans continued to maintain the garden that the Baerholds had planted across the open field. Today, the McGahagans own 20 of the 72 platted lots in Sillery Bay.

At some point around 2010, a dispute arose between the McGahagans and SBIA regarding the ownership and rights of use of several pieces of land, including the Gravel and Paper Roads. The quarrel appears to have initially been caused by the SBIA's renting out the pavilion area on lots 3 through 7 (which sit across Sillery Bay Road from the McGahagans' home) for allegedly raucous parties. The McGahagans filed a nuisance action to prevent such rentals. That action remains pending in the Circuit Court for Anne Arundel County.

The controversy over the use of the pavilion area eventually led to a dispute over ownership and rights of use of several strips of land. This dispute appears to have initially been focused on a nine-foot section of the platted community beach, which was enclosed by a bulkhead and used as a side yard patio by the McGahagans.[2] In January of 2010, an SBIA board member (who coincidentally worked as an Anne Arundel County right of way official) sent an email to the SBIA president and board members stating his belief that the community had full rights to use the platted roads adjoining the beach and that the SBIA owned the portion of the beach within the McGahagans' bulkhead. More importantly for this appeal, the author of the email further stated:

> [T]he platted road from our beach to the marina is a platted road and all in the community have the right to use this road. Law states that if you buy a lot in a community with a platted road you have the right to use that road. It is not, per law, just for those property owners and the marina to use for their own. [It is] a paper road and subject to state law under Md 2-114 among other codes. The [McGahagans] bought a lot in the subdivision and nothing more (not the road) and have the right to that road as we do. Also, note on the plat that there is a 30' road that [the McGahagans] use as their open field. Unless they filed some type of adverse possession *we have a right to use that portion of the road that the field is situated in if we want to be jerks*.

(emphasis added). The McGahagans, in an October 2011 letter to the Sillery Bay community members, wrote that they interpreted this email as a threat by the SBIA. In response to the perceived aggression by the SBIA, the McGahagans brought an action to

[2] This bulkhead has been in place for many decades and the nine foot strip of land was found by the trial court to have been acquired by the McGahagans by adverse possession. That ruling is not challenged here.

quiet title to the bulkhead strip and the Paper Road based on adverse possession. The quiet title action named only the estate of Frank Cuccia as a defendant. The estate of Frank Cuccia consented to the action and a Consent Order was issued. Pursuant to this Consent Order, the Cuccia estate executed a deed conveying all of its remaining interest in the disputed land, obtained through the Wayland Company chain of title, to the McGahagans. SBIA thereafter intervened in the quiet title action and succeeded in having the Consent Order vacated. SBIA also filed its own action, joining all Sillery Bay residents as parties, seeking to strike the deed between the Cuccia estate and the McGahagans, and claiming that Sillery Bay residents have easements over all platted roads that stemmed from the Minna Theis deed, regardless of who currently holds title. The two actions—the McGahagans' quiet title action and the SBIA's action to strike the Cuccia estate deed and establish residents' rights—were consolidated for trial. The nuisance action was stayed pending a final judgment in the consolidated proceeding.

Following a two-day trial, the Circuit Court for Anne Arundel County determined that the McGahagans had acquired title to both the Paper and Gravel Roads. As to the Paper Road, the circuit court found that the McGahagans had acquired title to the Paper Road both through adverse possession and by operation of Section 2-114 of the Real Property ("RP") Article of the Maryland Code, which grants title in streets to the owners of land adjoining the street on both sides.[3] The circuit court also found further proof supporting

[3] Section 2-114 provides in part:

> Except as otherwise provided, any deed, will, or other instrument that grants land binding on any street or highway,

the McGahagans' right to title based on the fact that Anne Arundel County had quit claimed the Paper Road to the Baerholds years before the McGahagans purchased the land, and therefore, that the road had passed to the McGahagans through the chain of title.[4] The circuit court stated that all three of these bases were sufficient to vest title in the McGahagans.

As to the Gravel Road, the trial court also found that the McGahagans held title to the Gravel Road subject to an easement for access only by those validly using the marina. Title to the Gravel Road was acquired pursuant to RP § 2-114, as well as by virtue of the recent Cuccia Estate deed. The court also found for the McGahagans with respect to several other pieces of land, but those findings are not challenged on appeal.

> or that includes any street or highway as 1 or more of the lines thereof, shall be construed to pass to the devisee, donee, or grantee all the right, title, and interest of the devisor, donor, or grantor… in the street or highway for that portion on which it binds.

RP § 2-114. The purpose of this provision is to "assure landowners that they will have access to streets bounding on their land by granting to them title to the center line of the street while recognizing an easement in the other half of the street." *Boucher v. Boyer*, 301 Md. 679, 693 (1984). The Gravel Road is adjoined on both sides by lots to which the McGahagans have obtained title without reservation of any roads. Thus, they hold their title to the Gravel Road subject to an easement for access to other lots and public property.

[4] We do not see anything in the record that indicates that Anne Arundel County ever actually owned the Paper Road. It appears to us that the Baerholds obtained the quit claim deed from the County as a prophylactic measure, just in case the County had any ownership interest in the land. Of course, adverse possession cannot run against land held by a county for a governmental function. *See, e.g., Siejack v. Mayor & City Council of Baltimore*, 270 Md. 640 (1974). But SBIA does not argue that the county ever owned the road and we see nothing in the record to suggest that it did.

DISCUSSION

SBIA challenges the trial court's determination that the Paper Road was acquired by adverse possession. With regard to the Gravel Road, SBIA argues that the trial court erred by not finding an easement based on a dedication to public use implicit in the Sillery Bay plat. Alternatively, SBIA contends that the community acquired an easement by prescription for general use of the Gravel Road, rather than a right limited to marina use. Finally, SBIA claims that the deed transferring the Sillery Bay lots from the Wayland Company to Frank Cuccia failed to effectuate a transfer of title to the platted roads and, therefore, the Cuccia estate held no title in the Gravel Road to convey to the McGahagans. We examine these in turn.

I. The Paper Road

SBIA contends that the trial court erred in finding that the evidence on the record was sufficient to satisfy the elements of adverse possession.[5] The elements of adverse possession are well-established. Adverse possession requires a showing of possession for a 20-year statutory period,[6] which is actual, hostile, exclusive, open and notorious,

[5] SBIA does not challenge the trial court's alternative bases (the Anne Arundel County quit claim deed and RP § 2-114) for finding that the McGahagans have title to the Paper Road. The trial court's discussion focused primarily on adverse possession and mentioned the two alternative bases as further support for finding the McGahagans acquired title. As noted above, we do not see anything in the record that suggests the county ever owned the Paper Road, so we will assume that the quit claim deed did not transfer title and that the McGahagans' adverse possession is capable of ripening into legal title.

[6] Maryland's adverse possession statute provides:

continuous and uninterrupted. *Senez v. Collins*, 182 Md. App. 300 (2008) (listing the elements of adverse possession). The trial court found that these elements were satisfied by the McGahagans and their predecessors in title, the Baerholds, and that their successive possessions of the Paper Road could be tacked together for purposes of the statutory period.

For conceptual clarity, the six elements of adverse possession "can be placed in three groups: possession must be (1) actual, open and notorious, and exclusive; (2) continuous or uninterrupted for the requisite period; and (3) hostile, under claim of title or ownership." *Senez*, 182 Md. App. at 324. There is often, as here, factual overlap between the elements within a given category. We will address the facts of this case as applied to these three broader categories. The first group of elements focuses on the use of the adverse possessor. The second group looks at the possession over the 20-year period of time. The third group considers whether the nature of the possession was adverse or permissive.

Whether a given element of adverse possession is satisfied is primarily a question of fact. This Court will defer to factual findings of the trial court unless they are clearly erroneous. *White v. Pines Community Improvement Ass'n, Inc.*, 403 Md. 13 (2008). We

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> (a) Within 20 years from the date the cause of action accrues, a person shall:
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> (1) File an action for recovery of possession of a corporeal freehold or leasehold estate in land; or
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> (2) Enter on the land.

Md. Code Ann., Courts & Judicial Proceedings ("CJ") Art., § 5-103.

will give due regard to the opportunity of the lower court to judge the credibility of the witnesses. Md. Rule 8-131(c). If there is "any competent material evidence" that supports the trial court's factual findings, those findings are not clearly erroneous. *Figgins v. Cochrane*, 403 Md. 392, 409 (2008).

A. Actual, Open and Notorious, and Exclusive

With regard to the first category of factors (which pertain to the use of the property), the trial court concluded that the character of the McGahagans' possession of the Paper Road was actual, open and notorious, and exclusive. Actual possession entails using the land as the true owner would use that specific land. *Senez*, 182 Md. App. at 326. Mere occasional use of the land will not be sufficient to find actual possession. *Id.* The open and notorious element "pertains to the concept of constructive notice to the title owner." *Id.* at 325. It requires finding that there was sufficient conduct on the land to constructively or actually notify the true owner that the adverse possessor was using the land as if it was his own. *Id.* Logically, the conduct that establishes that a person used the land as if he was the true owner will often also establish that there was sufficient conduct to create constructive or actual notice of that fact. *Id.* (quoting *Miceli v. Foley*, 83 Md. App. 541, 561 (1990)) ("Possessory acts of dominion over land may be sufficient to charge the record owner with knowledge that the land is adversely possessed."). In other words, the open and notorious requirement does not require the adverse possessor to overtly make a point to alert the true owner of his possession. *Id.* ("[A]ctual notice to the owner is not required."). The actual use itself will often be sufficient to charge the title owner with notice. *Blickenstaff v. Bromley*, 243 Md. 164, 173 (1966) ("[I]n general, it may be said that

those acts which go to make possession actual, likewise suffice to make it visible and notorious."). Finally, the exclusivity element also relates to the nature of the use. The adverse possessor must show "an exclusive dominion over the land and an appropriation of it to his own use and benefit. An adverse claimant's possession need not be absolutely exclusive, however; it need only be a type of possession which would characterize an owner's use." *Id.* (quoting *Blickenstaff v. Bromley*, 243 Md. 164, 173 (1966)). We will examine each of these use-related factors, although SBIA's argument primarily challenges the trial court's finding that the McGahagans' use was open and notorious.

The trial court concluded that the possession was actual because the Baerholds and McGahagans used the land as an actual owner would. The court found:

> In this case we had the [Baerholds] and we had Mr. McGahagan acting as the owner of the property, whether it was planting trees or shrubs, cutting the grass, putting up a garden, granting permission to use the Wiffle ball field, granting permission to use a garden, telling people they can't go on there, it was actual. They acted as the owner.

According to the trial court, this was "not mere occasional use." The facts cited provide sufficient evidence for the trial court's conclusion that possession was actual and we will not disturb that finding on appeal.

The trial court also determined that the possession was open and notorious. The aerial pictures going back to 1984 showed that the land appeared the same as it does now. The garden, trees, and shrubs were visible. Mark Anderson, a Sillery Bay resident since 1972, testified that he always believed the whole field through which the Paper Road runs was the Baerholds' and then the McGahagans' property. The circuit court also noted that

the email from the SBIA board member referred to the Paper Road as the road "the McGahagans use as their open field." It found this evidence established that there was sufficient conduct to inform the true owner that the Baerholds and McGahagans were holding the property as their own. There was competent evidence to support the circuit court's finding and, thus, we conclude that the circuit court did not err in concluding that the open and notorious use requirement was satisfied.

Finally, the circuit court found that the evidence sufficiently demonstrated that the McGahagans' possession was exclusive. Anderson testified that the community never used the road in all of the time since he moved there in 1972. SBIA cites no evidence to the contrary and does not appear to challenge this element in its brief. The circuit court determined that the community had never used the Paper Road, and concluded based on this fact that the exclusivity element was satisfied. Because there was competent evidence to support this finding, we find no error in the circuit court's determination regarding exclusive use.

B. Continuous and Uninterrupted for the 20-Year Period

The second group of factors pertain to the possession of the property and whether it was continuous and uninterrupted by any person claiming superior rights to land for the statutory period of twenty years. When no single adverse possessor has possessed the property for the full statutory period, "the court must consider whether successive periods of adverse possession may be tacked together to meet the requisite duration." *Senez*, 182 Md. App. at 332. Tacking requires privity of estate between successive parties. *Id.* Privity of estate, in this context, simply means that the party seeking to tack must be the successor

to the freehold estate of the previous adverse possessor. One way that privity of estate can be established is when the adversely possessed land is transferred by a deed purporting to convey title to the adversely possessed land. *Gore v. Hall*, 206 Md. 485, 491 (1955). While a deed is a sufficient means of proving tacking, our cases have held that it is not the only method. Alternatively, this Court has held:

> For tacking to apply, the land in dispute need not be included in the deed by which the last occupant claims title, provided the land in question [is] *contiguous to that described in a deed*, and that lands both titled and untitled [are] part of [an enclosure], *apparent by reason of physical boundaries such as fences or hedges*. [T]wo possessions will be tacked if it appears that the adverse possessor *actually turned over possession* of that part as well as of that portion of the land expressly included in his deed.

Senez, 182 Md. App. at 332-33 (emphasis added) (internal citations omitted). Thus, even if not described in the deed, tacking can be permitted if deed and undeeded land are (1) contiguous; (2) enclosed; and (3) actually turned over.

SBIA argues that the trial record lacks support for the finding that the McGahagans' adverse possession could be tacked on to the Baerholds' possession. If this were correct, the McGahagans would not satisfy the requirement that possession be continuous for the 20-year statutory period, because although their actual possession began in 1992, it was interrupted after 19 years by the SBIA's lawsuit to recover the right to use the land. *See* CJ § 5-103. As a result, we must consider whether the evidence on the record was sufficient to support the trial court's conclusion that the McGahagans could tack on to the Baerholds' adverse possession.

It is clear that privity existed between the Baerholds and McGahagans with regard to the open field lots themselves by virtue of the deed. But the Paper Road was not described in the deed conveying title to those lots. Therefore, in the absence of a deed, for tacking to apply, the Paper Road must be contiguous to the deeded open field lots and part of an enclosed area, as made "apparent by reason of physical boundaries such as fences or hedges," and possession must have been "actually turned over" to the McGahagans. *See Senez*, 182 Md. App. at 332-33.

The plat shows that the Paper Road is contiguous to the lots transferred from the Baerholds to the McGahagans. The trial court found that the Paper Road is adjoined on both side by those lots. As to the enclosed area requirement, SBIA argues that under *Senez* the land must be physically enclosed to tack the two possession periods. The circuit court noted that there were large trees blocking the entrance of the Paper Road on both sides. SBIA contends that these trees do not constitute a physical enclosure and, therefore, that the adverse periods of the Bearholds and the McGahagans cannot be tacked. The circuit court's determination that these trees are sufficient to form an enclosure is a factual determination that we will not lightly discard.[7]

[7] SBIA claims that while fences and hedges are legally sufficient to create an enclosure, trees are not. As an initial matter, this strikes us as a factual question best left to the trial court. Moreover, the case on which SBIA relies for this proposition, *Senez*, is readily distinguishable from this one. The *Senez* case, unlike this one, did not involve a strip of land that was surrounded by lots that the putative adverse possessor owned. 182 Md. App. at 308 (holding that a strip of land located on the border of the respective lots of the two parties must be enclosed for tacking to apply when the deed transferring title did not include the adversely possessed strip). Here, the Paper Road runs through the middle of several lots that were all owned by the McGahagans, and previously by the Baerholds. John McGahagan testified at trial that the field was enclosed with bushes when he bought

The trial court found that possession of the road was actually turned over along with the adjacent lots (lots 66-72 and the unnumbered triangular lot) expressly included in the deed. The Baerholds had maintained a garden on the Paper Road land for years. When they sold their land, the McGahagans continued to use the Paper Road for their garden. Thus, the McGahagans continued the same use that the Baerholds had made of the road previously. The Baerholds did not continue to use or claim ownership of the road after they conveyed the surrounding lots to the McGahagans. The trial court did not err in relying on such facts to find that the Baerholds actually turned over possession when they sold the adjoining lots.

Given the existence of competent evidence, there is no clear error in the circuit court's finding that tacking applied based the facts adduced at trial. Therefore, the element of continuous possession for the statutory period is satisfied.

C. Hostility

The third category of factors concerns whether the putative adverse possessor claimed a right to the land that is superior to the rights of others, which courts generally refer to as "hostility." This Court has defined the hostility element as:

> [A] possession that is adverse in the sense of it being "without license or permission," and "unaccompanied by any recognition of … the real owner's right to the land." The type of "recognition of right" that destroys hostility is …

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the property in 1992. There were also trees blocking the two entry points from other streets. These facts provided sufficient evidence for the circuit court to find that the land was physically enclosed. These facts are quite different from a situation where a landowner is claiming title to a strip just beyond the property line that separates his property from his neighbor's, as was the dispute in *Senez*.

> ***acceptance*** that another has a ***valid right*** to the property, and the occupant possesses subordinately to that right.

Yourik v. Mallonee, 174 Md. App. 415, 429 (2007) (internal citations omitted) (emphasis in original). To establish hostility, "a showing that the use has been made openly, continuously, and without explanation for twenty years, justifies a presumption that such use was adverse." *Banks v. Pusey*, 393 Md. 688, 699 (2006). "The court need not find that the occupant specifically intended to oust the title holder at the time the occupancy began, because the fact that the possession is due to inadvertence, ignorance or mistake, is entirely immaterial." *Yourik*, 174 Md. App. at 428-29.

There is no indication that the McGahagans ever accepted that their right to the land was subordinate to the right of the community as a whole. According to the record, they sometimes *gave permission* for residents to use the field to play Wiffle ball, use the garden, and things of that nature. Giving permission to other residents to use the field through which the Paper Road runs suggests that the McGahagans, in fact, believed that others did not have any right to use that land. The trial court's decision was supported by competent evidence that the McGahagans never recognized any right of community use to which their possession was subordinate.

Despite this, SBIA argues that the hostility element is absent because the McGahagans' and Baerholds' possession was permissive from its beginning. It asserts that title to most of the lots in Sillery Bay can be traced back to the Minna Theis deed, which provided all Sillery Bay residents rights of use to all platted roads to access their own property and the community areas. Appellant Br. at 16. As a result, SBIA urges the

conclusion that neither the McGahagans, nor the Baerholds, satisfied the hostility requirement.

The trial court correctly summarized the law in making its decision:

> To claim hostile possession, a person must assert he or she owns or has title to the property and denies the ownership or title of everyone else. It doesn't mean ill will. It means conduct that indicates an express or implied denial of the true owner's right to the property.

Even assuming that the Theis deed did reserve a right for all community members to use the Paper Road for access to community areas and adjoining roads, the trial court's factual findings suggest that the Baerholds' and McGahagans' use went beyond the scope of any such permissive right. They did not use the road as a normal community member would have a right to use it based on the Theis deed. The act of planting a garden in the area showed a denial of others' rights by blocking the community from using the road as a pathway. The trial court found that they had used it as if they had the same title to the platted road as they did to the lots surrounding it, which they undisputedly owned. Based on the evidence on the record, it was not clearly erroneous for the circuit court to find that the hostility element was satisfied.[8]

[8] We reject, in summary fashion, three additional arguments advanced by SBIA to challenge the finding of hostility: (1) that there was "no indicia of ouster;" (2) that the McGahagans "embarked on a clandestine mission to secretly possess" the road by paying someone else to mow it; and (3) that the land itself lacked any indicia of their possession. The trial court did not agree with any of these factual assertions. Moreover, even if we did not review the trial court's factual findings under a deferential standard, these facts would still have no bearing on whether the hostility element is satisfied. First, ouster is not typically required for possession to be hostile. If it were, there would be no cases in which someone acquires title by adverse possession to land that was previously unused or abandoned. *See, e.g.*, *Yourik*, 174 Md. App. at 418 ("We shall hold that a person who

In conclusion, because we find that there was significant competent evidence to support each aspect of its decision, we conclude that the trial court did not err in finding that the McGahagans obtained title to the Paper Road through adverse possession.

II. The Gravel Road

The Gravel Road is a 25 foot wide road that runs east from Sillery Bay Road to the marina. It provides access to the lot on which the McGahagan's home sits, as well as to lots owned by two other Sillery Bay residents, whose homes do not appear on the plat, and to the marina. The trial court found that the McGahagans have title to the portion of the Gravel Road adjoining their lots by virtue of the Cuccia Estate deed and RP § 2-114, with an easement for access only by the two other lot owners and by any individuals using the road for valid access to the marina.

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acknowledges legal title in a family member who abandoned the disputed property to foreclosure may occupy the property "hostilely" for purposes of acquiring that title by adverse possession."). If the law required ouster even where those individuals with legal rights of use never enter the land, then the doctrine of adverse possession would not accomplish one of its main policy objectives: allowing those who make beneficial use of unused land for a significant period of time to obtain legal title. *Hillsmere Shores Improvement Ass'n, Inc. v. Singleton*, 182 Md. App. 667, 691 (2008) (noting the policy "goal of promoting land development, seeks to reward those who will use land and cause it to be productive"). Second, paying someone to mow an adversely possessed field is evidence supportive of actual possession, not undermining of a finding of hostility. Case law shows that performing, or hiring people to perform, maintenance on adversely possessed land indicates actual use. *See, e.g.*, *Senez*, 182 Md. App. at 329. SBIA provides no support for the proposition that hostility is lacking because the McGahagans did not mow the field themselves. Finally, there is no requirement that adverse possession be somehow marked on the land. That is not and never has been a requirement for adverse possession.

SBIA claims the trial court erred by declining to find that all residents of Sillery Bay, not just those using the marina, have the right to use the Gravel Road for general purposes. At oral argument, counsel disclosed that this argument was advanced in favor of a single Sillery Bay resident who was not a member of the marina but wished to walk her dog on the Gravel Road. SBIA advances two separate theories to explain why this dog walker should be allowed to use the Gravel Road as well. First, SBIA contends that all Sillery Bay residents acquired an implied easement by virtue of the plat's depiction of the Gravel Road as a right of way leading to the area that is now the marina. Alternatively, SBIA argues that the trial court erred in failing to find that all Sillery Bay residents obtained a prescriptive easement over the Gravel Road for use that is not limited to marina access.[9] For the reasons that follow, however, these theories are not availing.

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[9] We note SBIA's third argument for allowing access is that the deed from the Cuccia Estate to the McGahagans did not validly transfer title to the Gravel Road. Its argument is that the metes and bounds description in the deed from the Wayland Company to Mr. and Mrs. Cuccia did not actually transfer all platted roads in Sillery Bay because the metes and bounds description did not extend to the roads. This argument is based on the principle that a metes and bounds description trumps any contrary indication of intent in the deed, including reference to a plat. *East Washington Ry. Co. v. Brooke*, 244 Md. 287, 295 (1966). Thus, SBIA claims that the deed from the Wayland Company to the Cuccias did not actually transfer title to the roads, despite the deed's reference to "all platted roads." Therefore, it contends that the subsequent transfer from the Cuccia Estate to the McGahagans could not have transferred title to the Gravel Road because the Cuccia Estate never obtained title.

This argument need not be addressed. The trial court found the McGahagans acquired title to Gravel Road on two separate grounds: RP § 2-114, and the Cuccia deed. Even if we found that the Cuccia deed was invalid, RP § 2-114 would still give the McGahagan's title subject to an easement for use by other owners of property adjoining the road. The trial court found that the McGahagan's title was subject to an easement for use by other property owners on the road, including those who own shares in the adjoining marina. Any decision regarding the Cuccia deed would not change the result. The trial

A. Implied Easement by Plat

SBIA first argues that the appearance of the Gravel Road as a right of way on the 1938 Sillery Bay plat demonstrates an intent to dedicate the road for community use and, therefore, the entire community has an implied easement for use of the road. Easements by implication may be created in a variety of ways, including by "prescription, *the filing of plats*, necessity, estoppel and implied grant or reservation." *Kobrine, L.L.C. v. Metzger*, 380 Md. 620, 636 (2004) (emphasis added). An implied easement is "based on the presumed intention of the parties at the time of the grant or reservation as disclosed from the surrounding circumstances." *Boucher*, 301 Md. at 688. Moreover, courts have implied easements for general public use when no other reading is sensible. *Klein v. Dove*, 205 Md. 285 (1954).

As a general rule, "the construction or interpretation of mortgages, deeds, plats, easements and covenants has been held to be a question of law." *White v. Pines Community Improvement Ass'n, Inc.*, 403 Md. 13, 30 (2008). We review conclusions of law to determine whether those conclusions are legally correct. *Id.* at 31. Thus, we will affirm the trial court's determination that no implied easement was created by deed if it was legally correct.

It is important to understand that the marina did not exist in 1938 and the label that says "Marina" on the plat was only added by this Court for clarity. SBIA contends,

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court correctly applied RP § 2-114 and SBIA does not make any argument that it was misapplied. We do not see the defect in the Cuccia deed that SBIA contends renders it invalid, however, we still decline to base our holding on the deed.

however, that despite the fact that the marina did not exist in 1938 and was not even imagined at that time, that the Gravel Road's depiction on the plat could only have been intended to create an easement for general community use, arguing "there is no readily perceptible reason for the … Gravel Road … except to provide residents with access between the [community beach and the marina]." Appellant Br. at 10. SBIA, therefore, asks us to find that the plat gave rise to an implied easement over the Gravel Road for use by all Sillery Bay lot owners.

A common sense reading of the plat leads us to the conclusion that the Gravel Road was—at the time the plat was drawn—intended merely to provide access to the adjoining lots. That was all that existed (or was even contemplated) at the time the plat was drawn and, therefore, was all that the parties could have intended. It would stretch logic to read the explicit designation of the beach as a community area on the Sillery Bay plat, and then assume that there must also have been an equal, but silent, intention to designate the completely unmarked marina as a community area as well. Moreover, this is not a situation like that presented in the *Klein* case, where a dedication for public use was the only sensible implication of the plat.[10] Here, the Gravel Road does not actually provide direct access

[10] In *Klein*, the Court of Appeals determined that an undesignated strip of land on a "scantily marked" plat was intended to grant public access to an adjoining lake area, which was also undesignated on the plat. 205 Md. 285 (1954). The Court of Appeals concluded that there was no other sensible reason for a ten-foot strip between the development's main road and the lake area other than to dedicate the lake as a community area and to provide access to that community area across the undesignated ten foot strip of land, despite the lack of a legend explicitly describing the land as such. *Id.* The Sillery Bay plat does not designate the land where the marina now sits as a community area because marina did not exist at the time the land was platted. Rather, the area was unused marsh land. The marina is not currently used as a community area. It is a private club that requires purchasing a

between the marina and the community beach but does provide access to the adjoining lots. Thus there is an alternative sensible reading of the plat. Finally, if there had been an intent by the parties to dedicate the Gravel Road for public use, it was not accepted, as the county did not maintain the Gravel Road.

Based on the record and our common sense reading of the plat, we find that the trial court made no error in its conclusion that there was no easement implied by reference to the plat. The trial court's order preserved the right to use the Gravel Road to access the marina for any person with a valid reason to be there. There was no reversible error in the court's declining to find an implied easement for any use whatsoever.

B. Easement by Prescription

Next, SBIA argues that a prescriptive easement for general use arose from the community's use of the Gravel Road for the twenty-year statutory period. The trial court found that the marina members had acquired a prescriptive easement for use to access the marina. SBIA claims, however, that this is insufficient and that the prescriptive right to use the Gravel Road should be available to the entire community, including persons who are not members of the marina, and that the permissible uses of the Gravel Road should not be limited to accessing the marina.

As a general matter, a prescriptive easement may be created when there is an adverse, exclusive, and uninterrupted use of another's property for twenty years. *Banks v.*

membership. Unlike in *Klein*, where the lake was not designated as a community area on a "scantily marked plat," the marina area on the 1938 plat is merely an unmarked area on a plat that explicitly designates other areas for community use.

Pusey, 393 Md. 688, 698 (2006); *Clickner*, 424 Md. at 278. The general rule is that the law disfavors the creation of an easement by prescription. *Rupli v. S. Mountain Heritage Soc., Inc.*, 202 Md. App. 673, 696 (2011) (citing *Banks v. Pusey*, 393 Md. 688, 701 (2006)). "[W]hen an easement has been acquired by prescription, the character and extent of the permissible use are commensurate with and determined by the character and extent of the use during the prescriptive period." *Mahoney v. Devonshire, Inc.*, 86 Md. App. 624, 628 (1991) (quoting *Bishields v. Campbell*, 200 Md. 622, 625 (1952)).

There is also a subspecies of prescriptive easements, called public prescriptive easements, which allow for the creation of what is essentially a prescriptive easement for use by the general public. "Continued use and enjoyment of a private street or road by the public over the [twenty-year period] will establish the existence of a public way by prescription." *Washington Land Co. v. Potomac Ridge Dev. Corp.*, 137 Md. App. 33, 55-56 (2001). Although the doctrine of public prescriptive easements operates much like the ordinary prescription doctrine, the two doctrines are not completely identical. *Mt. Sinai Nursing Home, Inc. v. Pleasant Manor Corp.*, 254 Md. 1, 5-6 (1969) ("It is certainly a settled doctrine in this State that public roads or ways of any kind can … be established by … long [use] by the public, which, though not strictly prescription … bears so close an analogy to it that it is not inappropriate to apply to the right thus acquired the term prescriptive."). Although the "elements necessary to establish a prescriptive easement in the public are generally the same, […], the element of exclusivity necessarily functions differently in the context of public use." *Clickner v. Magothy River Ass'n Inc.*, 424 Md. 253, 278 (2012). Basically, a prescriptive easement can be created by the actions of an

individual or a limited group and, once created, will exist for the benefit of those individuals or groups. By contrast, a public prescriptive easement must be created by the public at large and, once created, will exist for the public benefit.

SBIA's argument that the entire Sillery Bay community has a prescriptive right to use the Gravel Road will necessarily fail if analyzed under the ordinary doctrine of prescriptive easements, which is applied where an individual or a limited group claims that a private easement arose by virtue of adverse use for the twenty-year period. The exclusivity analysis for such private prescriptive easements follows the Court of Appeals' articulation in *Cox v. Forest*:

> By *exclusive*, the law does not mean that the right of way must be used by one person only, because two or more persons may be entitled to the use of the same way, but simply that *the right should not depend for its enjoyment upon a similar right in others*, and that the party claiming it exercises it under some claim existing in his favor, independent of all others. *It must be exclusive as against the right of the community at large.*

60 Md. 74, 80 (1883) (emphasis added); *see also Kiler v. Beam*, 74 Md. App. 636, 639 (1988). For a person's use of land to ripen into a prescriptive easement, they must claim to have a right to use the land that is unique to them. *Mahoney v. Devonshire, Inc.*, 86 Md. App. 624, 637 (1991). Adverse use is not exclusive if a person's purported right to use the land exists because they believe the community at large has the right to use it. *Id.*

Given the operation of the exclusivity element under the ordinary prescriptive easement doctrine, the Sillery Bay community, as a whole, is incapable of acquiring prescriptive rights. We cannot logically find that the community used the Gravel Road under a unique claim of right. Any right to use the Gravel Road that is capable of existing

in the community at large is necessarily a shared one, rather than one that is unique to any individual person and "independent of [the rights] all others." *Kiler*, 74 Md. App. at 639. Any non-marina members who used the Gravel Road under the belief that the whole community was entitled to use it, were essentially exercising a claim of right that was "dependent on a similar right existing in others." *See*, *Devonshire*, 86 Md. App. at 637. Such use is not exclusive and therefore unavailing under the ordinary prescriptive easement analysis.

By contrast, the trial court's conclusion that there is a prescriptive easement for marina access is conceptually possible because the individual marina members who adversely used the Gravel Road conceivably did so under a right believed to exist by virtue of their personal marina membership. Such use by marina members could be considered exclusive under the ordinary prescriptive easement analysis. The community as a whole, however, may not piggyback on the rights of the marina members. We, therefore, will analyze SBIA's argument under the easement by public use framework.

In the context of public prescriptive easements, exclusive use "*does not* depend upon others' lack of similar rights." *Washington Land Co. v. Potomac Ridge Dev. Corp.*, 137 Md. App. 33, 57 (2001) (emphasis added). Instead, exclusive use means that the public treated the private land similarly to how it would treat public land. *See*, *id.* at 57-58. The key distinction from the ordinary prescriptive easement analysis it that the shared nature of public land is taken into account. *Id.* The result is that the exclusivity element may be satisfied when members of the public use private land under a claim or belief that there is a right to use that land that is shared by all members of the public. In other words, we focus

on the nature of the use and whether it was for public purposes, rather than on the claim of right as we would under the ordinary prescriptive easement analysis.

Although the operation of the exclusivity element under public prescriptive easement doctrine does not automatically foreclose the possibility of the Sillery Bay community acquiring a prescriptive easement over the Gravel Road, we nevertheless decline to find an easement by public use in this case. For there to be a prescriptive right acquired by the public, there would have to be sufficient evidence suggesting that the Gravel Road was used by the general community in a manner similar to that of other public streets. *See Potomac Ridge Dev. Corp.*, 137 Md. App. at. 57. SBIA cites to no evidence suggesting that the Gravel Road was widely used for anything other than marina access by marina members. The fact that a single community member who is not a marina member sometimes walks her dog down the Gravel Road does not constitute use by the general public. We therefore find no error in the trial court's determination that the prescriptive easement acquired was for the benefit of marina members only.

The trial court also noted that although the marina is a private club, open to those who pay for membership or anyone else that the club decides to allow to use its property, the marina association will essentially determine who may use the Gravel Road because it decides who may have access to its private property. Non-marina members will be allowed to use the Gravel Road to the extent the marina association allows public access to the marina. We are not persuaded that this Court should disturb the judgment of the trial court.

SBIA's argument also fails because the prescriptive easement they ask us to find is broader in scope than the actual use made during the prescriptive period. SBIA essentially

asks this Court to find a prescriptive easement for general public use based on the marina members' use for a limited purpose. In *Kiler*, we observed that "the type of usage may not be increased just because the use has ripened into a prescriptive right." 74 Md. App. at 640. SBIA cites only to the fact that aerial photographs showed residents used the road to access the marina for over twenty years. But the aerial photographs do not clearly indicate that the Gravel Road was used for any purpose other than to access the marina, and the trial court determined that it may still be used for that purpose. We do not believe the use of the Gravel Road by some persons for marina access, which the trial court found to have ripened into a prescriptive easement, may now be broaden such that the entire community may use the privately-owned Gravel Road as if it was public property.

Further, for this Court to find that a more expansive prescriptive easement over the Gravel Road was acquired, we would have to reach a factual conclusion different than that of the trial court. As noted above, we review challenges to the trial court's factual determinations under a clearly erroneous standard. *White v. Pines Community Improvement Ass'n., Inc.*, 403 Md. 13 (2008). Here, SBIA fails to cite any clearly erroneous factual determination that, but for the error, would have changed the result reached by the trial court. Therefore, we must conclude that the trial court did not err in finding that the right to use the Gravel Road was limited to use for valid marina purposes.

CONCLUSION

In sum, we find no clear error in the circuit court's conclusion that the McGahagans acquired title to the Paper Road by adverse possession, and that they also have title to the

Gravel Road, subject to an easement for valid marina access. Therefore, we must affirm the decision of the circuit court.

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY IS AFFIRMED. COSTS TO BE PAID BY APPELLANT.