UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2146

September Term, 2015

ERICH E. BLATTER, ET UX.

v.

ESTATE OF CHARLES HOWARD ZIMMERMAN

Arthur,
Leahy,
Thieme, Raymond G., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: June 26, 2017

The genesis of this appeal is an ongoing dispute over title to a six-acre parcel of land (the "Disputed Parcel") situated along the boundary of two farm properties in Union Bridge, which is located in Frederick County, Maryland. To the west of the Disputed Parcel lies a farm owned by Erich Blatter and Dr. Susan Maharaj (collectively "Appellants") at 7977 Timmons Road ("Laughlin Farm"). To the east of the Disputed Parcel is a farm that was formerly owned by the Estate of Charles Howard Zimmerman ("Appellee" or the "Estate") at 8021 Timmons Road ("Zimmerman Farm"). Neither party is the record owner of the disputed parcel.

On June 4, 2014, Robert Stevens, the personal representative for the Estate, filed a quiet title action on behalf of the Estate in the Circuit Court for Frederick County against Appellants. The Estate claimed ownership by reason of adverse possession for more than the statutory period by the Zimmermans. Appellants, who also claimed ownership of the disputed parcel, filed a counterclaim for the tort of trespass against the Estate. No record owner of the disputed parcel was made a party to the quiet title action.

At the conclusion of a two-day bench trial, the circuit court determined that the Estate had the right to possession and use of the disputed parcel by adverse possession. The circuit court noted in its written order that its ruling was only effective against the parties, and, impliedly so, not effective against the record owner or any other person with interest in the disputed parcel.

On appeal, Appellants present four questions:

> 1. "Whether the enrollment of the disputed land in the Maryland Conservation Reserve Enhancement Program constituted actual

possession?"

2. "Whether the estate failed to prove continuous possession for twenty years, where the evidence showed a two-year gap in possession?"

3. "Whether the estate failed to prove exclusive possession, where many others, including the appellants, used the disputed land?"

4. "Did the circuit court erroneously conclude that the estate was entitled to possession of the entire disputed land, where the estate's claim was one of right (by adverse possession), not under color of title, and its possessory acts were not done on the entire parcel?"[1]

The trial court accurately identified the dispositive issue at the outset of trial: the quiet title action lacked a necessary party. Reluctantly, the court proceeded with trial to determine which party to the action had a superior right to possess the Disputed Parcel, and in so doing erred. We vacate the judgment of the trial court and remand with instructions to dismiss this case.

BACKGROUND

The Property Dispute

Beginning in the 1950s, Charles and Mildred Zimmerman rented and resided on the

[1] The Estate attempts to reframe the issues as:

1. "Given the present posture of this appeal, does this action remain justiciable?"

2. "Did the Estate's decedent and predecessor in title establish adverse possession of the disputed land prior to 1999?"

3. "Did the trial court abuse its discretion in denying Appellants' motion to dismiss for non-joinder of owners of record?"

three tracts of land, now known as Zimmerman Farm, with their "foster son," George Stevens.[2] Hilda Davies conveyed Zimmerman Farm to Charles and Mildred Zimmerman, husband and wife, as tenants by the entireties in a deed dated September 28, 1965.[3] Charles and George began a dairy farm operation on Zimmerman Farm in the 1950s. Later on, George's son, Robert Stevens, also grew up on Zimmerman Farm and helped his father and Charles Zimmerman with the farm.

Appellants purchased Laughlin Farm on December 20, 2001 from John Laughlin, trustee of the Laughlin Family Trust. Appellants believed they owned the Disputed Parcel from the time they purchased the Laughlin Farm.

In September 2010, Charles Zimmerman had a land survey conducted. According to Robert Stevens's testimony at trial, he first learned that the ownership of the Disputed Parcel was unknown when they received the results of the survey.[4] He testified that he spoke with Mr. Blatter in 2010 regarding the ownership of the Disputed Parcel and that

[2] George Stevens presently lives on Zimmerman Farm.

[3] Upon Mildred Zimmerman's death on March 17, 2007, Zimmerman Farm automatically vested in Charles Zimmerman as sole owner.

[4] Robert Laughlin, son of the prior owner of Laughlin Farm, testified that Mr. Zimmerman and his father got into an argument sometime in the 1980s about their properties' boundaries. Mr. Laughlin testified that there was "some discussion of going to court about this" but he tried to mediate the dispute. Mr. Laughlin testified that he drafted a document in which Mr. Laughlin's dad and Mr. Zimmerman acknowledged the properties' boundaries were disputed and that "they would mutually agree that if, in fact, either one of them was using land belonging to the other, they would do so rent-free." Mr. Laughlin testified that both parties signed it but the written document was not presented at trial or submitted into evidence. There was no evidence to establish whether their disagreement pertained to a part or all of the Disputed Parcel.

Mr. Blatter said the Disputed Parcel was on their tax map. He "figured it was theirs" and he "was just going to see what [he] could do to get it back to them." He also assumed Appellants' deed contained the Disputed Parcel if it was included in their tax map.

Charles Zimmerman passed away on January 29, 2011. Then on October 5, 2011, Dr. Maharaj wrote a letter to Robert Stevens, who was serving as personal representative of the Zimmerman Estate, claiming ownership of the Disputed Parcel, discouraging Stevens from seeking legal action, and requesting they attempt to resolve the matter. Then, on January 18, 2012, Dr. Maharaj wrote a letter opening a claim with her title insurance company, Commonwealth Land Title Insurance Company, stating that she suspected the Disputed Parcel was "inadvertently excluded" from the Laughlin Farm deed and asked who rightfully owned it. On December 13, 2012, Todd Niemczyk, assistant vice-president and claims counsel for Commonwealth Land Title Insurance Company, traced the chain of title for Appellants' property and concluded that the Disputed Parcel was conveyed out of the chain of title through two "out conveyances" in deeds dated March 20, 1857 and April 19, 1886. Determining that Dr. Maharaj's property was insured as described, he denied her claim. Niemczyk's letter did not state the identity of the record owner of the Disputed Parcel, leaving Dr. Maharaj's question unanswered.

On April 18, 2012, the Estate conveyed two portions of the first tract of Zimmerman Farm (totaling 5.515 acres of land) to Robert Stevens and Diane Cole Stevens, husband and wife; and William E. Moxley and Joan Moxley, husband and wife, as life tenants and then to Robert Stevens and George Stevens as tenants in common. On January 1, 2013,

the Estate conveyed the remaining 162.33 acres of Zimmerman Farm to Robert Stevens and George Stevens.

Quiet Title Action

On June 4, 2014, the Estate[5] filed a complaint in the Circuit Court for Frederick County against Appellants, Mid-Atlantic Farm Credit ACA (lender on Appellants' deed of trust to Laughlin Farm), James D. Aird (trustee of the deed of trust), and Mortgage Electronic Registration Systems, Inc. (MERS) (beneficiary of the deed of trust), seeking to quiet title the Disputed Parcel by adverse possession.[6]

On August 25, 2014, Appellants filed their answer, denying that the Estate had a right to possess the Disputed Parcel and denied that the Estate was in actual or constructive, peaceable possession of the Disputed Parcel. On the same day, Appellants filed a counterclaim alleging that the Disputed Parcel "has always been regarded as a part of the Blatter/Maharaj/Laughlin parcel" and that the Estate trespassed onto the Disputed Parcel. The Estate filed its answer to the counterclaim on September 24, 2014, denying that Appellants held legal title to the land, arguing that Appellants failed to state a claim, and asserting several affirmative defenses.

[5] The Estate filed the quiet title action even though Stevenses owned Zimmerman Farm at the time the action was initiated.

[6] On June 9, 2015, after defendants Mid-Atlantic Farm Credit ACA, Aird, and MERS agreed to be bound by the circuit court's order, the circuit court entered a consent order dismissing the Estate's claims against them.

The circuit court conducted a two-day bench trial on September 15-16, 2015.[7] As a preliminary matter, the Estate sought to clarify for the court the issue involved in the quiet title action. The Estate's counsel explained that the dispute pertained "not necessarily [to] ownership," but rather "the degree of possession that the [E]state has exercised over this piece of [the Disputed Parcel]."

The parties stipulated that Disputed Parcel was last conveyed along with other properties by Preston S. Devilbiss and Mollie L. Devilbiss to Abner C. Devilbiss in a deed dated April 19, 1886, which was recorded in the land records for Frederick County. The parties did not enter into evidence a chain of title tracing their properties back to this April 19, 1886 deed, but they stipulated that the Disputed Parcel was in Appellants' chain of title in 1886 and that the Disputed Parcel has never been in the Estate's chain of title. The parties also stipulated that Abner C. Devilbiss omitted the Disputed Parcel from any conveyance of his real estate holdings and his Will devising his real estate holdings. The Estate's attorney speculated that the omission was in error. He then surmised that Abner C. Devilbiss or the personal representative of his estate remained the record owner of the Disputed Parcel, reasoning that there have been no conveyances subsequent to the April 19, 1886, deed conveying the land to Abner C. Devilbiss. Notably, the Estate did not bring

[7] The parties elicited testimony regarding each party's use of the land in attempts to satisfy the elements of adverse possession. Those facts are not relevant to this appeal and may arise if this case is re-tried. We decline to opine on the strength of each parties' respective adverse possession claim to avoid interfering with future trial court proceedings, should there be any.

the quiet title action against the record title owner of the Disputed Parcel.

The circuit court accurately identified that the Estate failed to bring the action against a necessary party—the record owner of the Disputed Parcel. The Estate's counsel, however, asserted, relying on *Porter v. Schaffer*, 126 Md. App. 237 (1999), that the court could determine which party—Appellants or the Estate—has a superior interest in the Disputed Parcel without joining the record owner. The Estate's counsel questioned the feasibility and necessity of joining the record owner because he believed including the record owner of the Disputed Parcel would have involved researching into at least three estates and Abner C. Devilbiss likely erred in omitting the Disputed Parcel when disposing of his real estate holdings. Appellants' counsel asserted, to the contrary, that the record owners were a necessary party, reasoning that the court could not make an ownership determination on the Estate's theory of adverse possession without the record owner. After admonishing Appellants' counsel for failing to file a mandatory pretrial motion raising the necessary party issue, the trial court decided to regard Appellants' argument as a motion to dismiss and recessed to evaluate the parties' arguments.

After a brief recess, the circuit court determined that it lacked authority to decide absolute ownership of the Disputed Parcel without the record owners, but that it did have the authority to determine which party to the action had a superior right to possess the Disputed Parcel. Both parties were amenable to the limited relief. The court then conducted a two-day bench trial.

At the conclusion of the trial, on September 16, 2015, the circuit court ruled from

the bench, finding against Appellants on their trespass claim, reasoning that Appellants had no claim to title of the Disputed Parcel. The circuit court found that the Estate's conduct met the elements of adverse possession and granted the right to possess and use the land as between the parties to the Estate. The circuit court instructed that its decision merely established that the Estate had a claim superior to Appellants', and that the court did not determine who owns the Disputed Parcel. The circuit court entered its order on November 3, 2015. Appellants filed a timely appeal on November 30, 2015.

DISCUSSION

Although Appellants' briefing focuses on the trial court's adverse possession finding,[8] the determinative issue is whether the Estate failed to join a necessary party to its quiet title action. "Failure to join a necessary party constitutes a defect in the proceedings that cannot be waived by the parties, and may be raised at any time, including for the first time on appeal." *Mahan v. Mahan*, 320 Md. 262, 273 (1990) (citations omitted). This Court has noted that the standard of review over necessary and indispensable party determinations has not been decided in Maryland and the federal circuit courts are split. *See Serv. Transp., Inc. v. Hurricane Exp., Inc.*, 185 Md. App. 25, 37 (2009). We declined to decide the issue in *Service Transport* and we are inclined to do the same here for the

[8] Appellants argue that the Estate failed to meet its burden of proving four of the elements of adverse possession. Specifically, Appellants contend that the Estate failed to prove the actual, continuous, and exclusive possession of the Disputed Parcel for at least twenty years. The parties also dispute whether the Estate had a claim to the entirety of the Disputed Parcel.

simple reason that, as in *Service Transport*, we reach the same result whether we review the legal issue *de novo* or for abuse of discretion. *See id.*

Actions to quiet title are governed by Maryland Code (1974, 2015 Repl. Vol.), Real Property Article ("Real Prop."), § 14-108.[9] At the time of the Estate filed its quiet title action, Section 14-108(a) provided that

> [a]ny person in actual peaceable possession of property, or, if the property is vacant and unoccupied, in constructive and peaceable possession of it, either under color of title or **claim of right by reason of his or his predecessor's adverse possession for the statutory period**, when his title to the property is denied or disputed, or when any other person claims, of record or otherwise to own the property, or any part of it, or to hold any lien encumbrance on it, regardless of whether or not the hostile outstanding claim is being actively asserted, and if an action at law or proceeding in equity is not pending to enforce or test the validity of the title, lien, encumbrance, or other adverse claim, **the person may maintain a suit in equity in the county where the property lies to quiet or remove any cloud from the title, or determine any adverse claim**.

(Emphasis added). Real Prop. § 14-108(b) provided that

> [t]he proceeding shall be deemed in rem or quasi in rem so long as the only relief sought is a decree that the plaintiff has absolute ownership and the right of disposition of the property, and an injunction against the assertion by the person named as the party defendant, of his claim by any action at law or otherwise. **Any person who appears of record**, or claims to have a hostile outstanding right, **shall be made a defendant in the proceedings.**

(Emphasis added).

[9] The General Assembly recently enacted substantial changes to the statutory provisions in the Real Property Article governing actions to quiet title. Specifically, the General Assembly amended Real Prop. § 14-108(a) and enacted Real Prop. § 14-601 *et seq*.—a new subtitle governing quiet title actions—effective October 1, 2016. Subtitle 6 prescribes precise procedures for actions to quiet title that did not exist prior to 2016. Although Subtitle 6 was not enacted at the time the Estate filed the quiet title action in this case, its provisions further inform and support the purpose of quiet title actions related here.

Appellants assert, relying on *Porter*, *supra*, that they were entitled to bring their quiet title action without joining the record owners. In *Porter*, Mr. Porter and Ms. Schaffer were disputing ownership of three unimproved tracts of land in Allegany County, named "Wolf Pen," "Hornet's Nest," and the "Third Tract." 126 Md. App. at 242–43. Ms. Schaffer filed an action to quiet title against Mr. Porter in the circuit court, claiming record title ownership, as well as adverse possession, to all three tracts of land. *Id.* at 243. In his answer, Mr. Porter claimed record title to Wolf Pen and Hornet's Nest, as well as title to all three tracts of land by adverse possession. *Id.*

After a bench trial, the circuit court concluded that Ms. Schaffer had superior record title to Hornet's Nest and the Third Tract. *Id.* at 244. The court also concluded that, although Mr. Porter's chain of record title to Wolf Pen pre-dated Ms. Schaffer's, his inability to locate the tract "'with reasonable certainty'" caused his record title claim to fail. *Id.* The court also found against Mr. Porter on the adverse possession issue for all three tracts of land. *Id.*

On appeal, this Court affirmed on all issues. *Id.* at 278. This Court noted that Mr. Porter's "record title claim to Wolf Pen ordinarily would be superior to [Ms. Schaffer's], because a patent gives title by relation to the date of the surveyor's certificate" and Mr. Porter's patent was issued before Ms. Schaffer's. *Id.* at 262. This Court concluded "the evidence adduced at trial supported the court's conclusion that [Mr. Porter] failed to identify Wolf Pen's on-the-ground location within [the larger area of land conveyed in Ms.

Schaffer's patent], and that [Mr. Porter] failed to meet his burden of proving superior record title to the Wolf Pen tract." *Id.* at 270.

On appeal, Mr. Porter did not present argument to rehabilitate his own record title ownership of Hornet's Nest. *Id.* Instead, he attacked Ms. Schaffer's record title and the circuit court's decision to quiet title in Ms. Schaffer when there could be a person in the world with superior record title to Ms. Schaffer. *Id.* at 270–71. This Court rejected Porter's argument, observing that a quiet title plaintiff must establish, as part of a *prima facie* case, the legal right to possession, either by color of title or a predecessor's adverse possessory interest, and that Ms. Schaffer met that burden by color of title. *Id.* at 274–75. The Court stated:

> Significantly, Porter does not challenge the court's determination as to his own title in the property. Rather, he contends that his evidence . . . should have prompted the court to shift the burden of proof back to Ms. Schaffer, to show that her claim is superior to whomever may legitimately boast title by virtue of the 1795 patent. To shift the burden in this way would require [Ms. Schaffer] to prove title as against an unidentified person who has not appeared to defend his or her rights as against appellee. Because [Mr. Porter] has not met his burden of proof, the relative strength of appellee's title as against the rest of the world is of no concern to him. Therefore, the trial court was correct in its application of the burdens of proof.
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> . . . [Mr. Porter] urges that title may not be quieted in Hornet's Nest because of a possible claim by an unidentified third party who has not stepped forward to assert his right. In our view, that is not a basis to deny [Ms. Schaffer]'s request to quiet title as to [Mr. Porter].

Id. The Court also concluded that the trial court did not err as to Mr. Porter's adverse possession claim, because the court was able to conclude that Mr. Porter's use was little more than occasional use. *Id.* at 277–78.

Appellants' reliance on *Porter* is mistaken. *Porter* concerned a quiet title action by

an individual with record title ownership, not only a claim of right by adverse possession. *See id.* at 262, 275. Unlike in *Porter*, both parties here claimed to have adversely possessed the Disputed Parcel. Neither party asserts a claim to the Disputed Parcel under color of title. The Estate performed sufficient due diligence to identify the record owner, but failed to go a step further and join the record owner as a party to the action, which, as we discuss *infra*, is required by Real Prop. § 14-108(b).

We are bound to follow the Court of Appeals' more recent decision *Jenkins v. City of College Park*, 379 Md. 142 (2003). Jenkins filed two quiet title actions in circuit court, claiming a right to two contiguous properties by adverse possession. *Id.* at 148–49. Jenkins conducted a title search through which he identified the named defendants in his quiet title actions. *Id.* at 148. Although the City of College Park (the "City") purportedly acquired an interest in the properties prior to the suits filed by Jenkins, the City was not a named defendant in the actions. *Id.* at 148–49. Because the whereabouts of the named defendants were unknown, Jenkins effected service by publication. *Id.* at 149. Jenkins also asserted, in an affidavit, that no other persons claimed rights to the properties. *Id.* After receiving no response to Jenkins's suits, the circuit court entered default judgments in Jenkins favor in both cases. *Id.* More than 30 days after entry of the judgments, the City filed motions to intervene and to vacate the default judgments. *Id.* at 145–46. The City simultaneously filed its own quiet title action for the same properties and a motion to consolidate all three cases. *Id.* at 146. The circuit court denied the City's motions to intervene, vacate the judgments, and consolidate the three cases, but the court did consolidate Jenkins's two

quiet title actions. *Id.*

The Court of Appeals granted *certiorari* to consider whether Jenkins should have included the City as a named defendant in the quiet title actions and whether the trial court erred in denying the City's motions to intervene and to amend the judgments. *Id.* at 152. The Court looked to the purpose and language of the quiet title statute in answering these inquiries. *Id.* at 157–59. The purpose of a quiet title action is "to resolve clouds on title so to protect the owner of legal title to the property in question." *Id.* at 164 (citation omitted). To effect that purpose, the quiet title statute requires that "'[a]ny person who appears of record, or claims to have a hostile outstanding right, [to] be made a defendant in the proceedings.'" *Id.* at 157 (emphasis omitted) (quoting Real Prop. § 14-108(b)). The Court remarked that Real Prop. § 14-108(b) "clearly mandates that, in pursuing an *in rem* proceeding to quiet title, a plaintiff *shall* name *all* persons identified by the land records as having an interest in the property or otherwise claiming an interest in the property in question." *Id.* (emphasis in *Jenkins*). The Court held that the City should have been a named defendant to the action if the City's deed was within the chain of title of the properties—a factual determination that can only be made by reviewing the properties' complete chains of titles, which neither party had submitted into evidence. *Id.* at 158–59, 164.

Next, the Court determined that the circuit court should have consolidated the City's case with Jenkins's cases because the City's claims to the properties represent a "cloud" on the properties' titles. *Id.* at 165. And "[u]nder the circumstances where [the City's]

case remain[ed] separate from the ones at bar, it w[ould] be impossible to resolve fully the issues regarding the title to the property." *Id.* at 164. Therefore, the Court concluded that the circuit court abused its discretion in denying the City's motion to consolidate. *Id.* at 169.

The Court of Appeals' interpretation of the quiet title statute leaves no room for doubt in this case. The record owner is necessary party and must be joined to a quiet title action. Real Prop. § 14-108(b). Outstanding claims to a property are clouds on that property's title and prevent a court from granting the relief provided for in the quiet title action—absolute ownership and the right to dispose of the property. *Id.* The limited relief granted by the circuit court was a clear indicator that something was amiss. As the Estate admitted at trial, there was a record owner it did not name as a defendant in the action. Real Prop. § 14-108(b) plainly required the Estate to join the record owner. We hold, therefore, that the trial court erred in conducting trial without ordering the Estate to join the record owner or any person who may "claim[] to have a hostile outstanding right" to the Disputed Parcel as a party, and we reverse the judgment of the trial court with instructions to dismiss this case.

JUDGMENTS OF THE CIRCUIT COURT FOR FREDERICK COUNTY VACATED WITH INSTRUCTIONS TO DISMISS THE CASE.

EACH PARTY TO PAY THEIR OWN COSTS.