

COURT OF APPEALS OF VIRGINIA

Record No. 1100-25-2

HAMILTON PALMER
v.
CITY COUNCIL FOR THE CITY OF FREDERICKSBURG, ET AL.

Present: Judges Malveaux, Friedman and Bernhard

Argued at Richmond, Virginia

Opinion Issued September 8, 2026*

FROM THE CIRCUIT COURT OF THE CITY OF FREDERICKSBURG

Charles S. Sharp, Judge

Hamilton Palmer, *pro se*.

Andrew D. Mullen (Blair H. O'Brien; David P. Corrigan; Landon C. Davis, III; Kevin B. McCandlish; Harman, Claytor, Corrigan & Wellman; Parrish, Snead, Franklin, Simpson, PLC, on brief), for appellees.

MEMORANDUM OPINION BY JUDGE DAVID BERNHARD

Hamilton Palmer appeals the order of the Circuit Court of the City of Fredericksburg sustaining a plea in bar and dismissing with prejudice his amended petition challenging approval by the City Council for the City of Fredericksburg (“the City Council”) of a certificate of appropriateness for the construction of four townhouses at 400 Princess Anne Street. He contends the court erred in holding that he failed to allege particularized harm sufficient to confer standing under *Friends of the Rappahannock v. Caroline County Board of Supervisors*, 286 Va. 38, 48 (2013), and that the court abused its discretion in refusing to stay the proceedings

* This opinion is not designated for publication. *See* Code § 17.1-413(A).

pending resolution of a federal suit he had filed over his lack of access to the judiciary's remote records system.

Respecting both of his assignments of error, Palmer cannot prevail. The only concrete injury Palmer pleads is damage to two mature oak trees standing on a boundary line beyond the garage and asphalt he occupies. He occupies; he does not own. An occupant's rights are possessory and secure the premises he holds; an owner's are proprietary and reach the land itself and what is rooted in it. An occupant may therefore complain that his premises have been invaded, but not that a benefit generated beyond them has ceased. Whatever property right those trees represent belongs to the owner or owners of the land they stand on, and Palmer's status as sole member and owner of the limited liability company that holds title to the adjoining parcel gives him no interest in its real estate. The harm he claims for himself—the loss of the shade those trees cast over those premises—depends entirely on their destruction and so rests on the same right he does not hold. The amended petition also supplies no measure of the loss it predicts, and a pleading that describes a concern rather than an injury does not carry the petitioner's burden to allege particularized harm. His federal suit sought access to the judiciary's remote records system from a defendant who is not a party here, and nothing it could yield bore on whether Palmer's pleading alleged a harm to a right of his own. The circuit court acted within its discretion in declining to hold this case in abeyance for the suit.

Accordingly, the circuit court's judgment is affirmed.

BACKGROUND

The City of Fredericksburg Architectural Review Board issued 400 PA a certificate of appropriateness regarding site planning, scale, and massing for the construction of four townhouses at 400 Princess Anne Street.¹ Palmer appealed to the City Council, and after a

¹ 400 PA has owned the subject property since July 2022.

public hearing, it adopted a resolution affirming the Board’s decision. Pursuant to Code § 15.2-2306 and Fredericksburg City Code § 72-23.1(F)(2), Palmer petitioned for appeal to the Circuit Court of the City of Fredericksburg.²

Palmer does not own the parcel adjoining the property subject to the certificate. Title is held by Purina Fredericksburg, LLC, of which Palmer represented that he is the sole owner. The circuit court sustained the pleas in bar to Palmer’s original petition on the ground that he “does not own real property in close proximity to the subject property in this appeal” and dismissed that petition with leave to amend.

Palmer filed an amended petition on February 4, 2025. It acknowledged that Palmer does not own the adjoining parcel and that Purina Fredericksburg, LLC would be time-barred from pursuing an appeal in its own name. It asserted that Palmer “occupies” the garage and part of the asphalt of the adjoining parcel to store and restore his personal automobiles. It further alleged that “over 22 years” earlier, Palmer and the adjoining owner planted 2 oak trees on the common boundary line between that parcel and the subject property; that the oaks shade the asphalt and reduce the cost of cooling the garage; and that Palmer would lose those cooling features if the townhouses were built as approved. Concerning the trees themselves, the amended petition posited that the oaks’ dripline extends up to 22 feet from the trunks and so reaches that far onto 400 PA’s parcel. It contended 400 PA told the City Council it intended to trim the branches and

² Code § 15.2-2306(A)(1) permits a locality to delineate historic districts by ordinance, to provide a review board to administer the ordinance, and to require that no structure be erected or altered within a district unless approved by that board or, on appeal, by the governing body as being architecturally compatible with the historic landmarks, buildings, or structures in the district. Subdivision (A)(3) directs the governing body to provide by ordinance for appeals to the circuit court from its final decisions and to “specify therein the parties entitled to appeal.” Fredericksburg City Code § 72-23.1(F)(2) is the ordinance that does so here.

the root system, actions that “will likely kill the trees,” and that the certificate’s approval of construction five feet from the property line could also harm the trees.³

400 PA filed a plea in bar, which the City Council joined, again contesting standing. Palmer opposed the plea and asked the circuit court to stay the proceedings pending resolution of an action he had filed in the United States District Court for the Eastern District of Virginia seeking access to OCRA. The circuit court denied Palmer’s earlier motion for OCRA access at the outset of the case.

At a hearing on April 7, 2025, the court denied the motion to stay proceedings and sustained the plea in bar. The court found Palmer had not alleged facts showing particularized harm to Palmer or the adjoining property owner. It observed that the proposed or potential removal of the mature oak trees did not support such a finding because there was “no evidence of a diminution of property” and “no evidence of substantial diminution of use of the property by the occupant.” “And in the absence of those things,” the court explained, “it’s hard for the [c]ourt to conjecture as to whether there is going to be any harm. And the [c]ourt must make its decision based on the allegations in the pleadings.” The court noted “the tree issue is not over, and there may be other ways to address it, but this is not it,” highlighting the parties’ mention of pending proceedings relative to special use permits.

Regarding the stay motion, the court concluded that resolution of the federal case, even in Palmer’s favor, would have no substantive effect on the analysis in this matter. A final order denying the stay and dismissing the action with prejudice followed on May 8, 2025. Palmer appealed.

³ The amended petition further alleged that Palmer had been prejudiced by his inability to use the Officer of the Court Remote Access (“OCRA”) system.

ANALYSIS

I. Standing

The circuit court took no evidence on the plea in bar addressed to the amended petition.⁴ That court and this one therefore “consider solely the pleadings in resolving the issue presented,” and “the facts stated in the plaintiff’s [petition] are deemed true.”⁵ *Massenburg v. City of Petersburg*, 298 Va. 212, 216 (2019) (quoting *Lostrangio v. Laingford*, 261 Va. 495, 497 (2001)). Review is accordingly “functionally de novo.” *Id.* Whether the facts alleged suffice to establish standing is itself a question of law that we review anew. *Platt v. Griffith*, 299 Va. 690, 692 (2021) (order).

Palmer petitioned the circuit court under Fredericksburg City Code § 72-23.1(F)(2), which permits “[a]ny person aggrieved by a decision of the City Council” to appeal that decision to the circuit court. When a locality uses the term “aggrieved” in such an ordinance, it incorporates the meaning that term bears in Virginia law. *Historic Alexandria Found. v. City of Alexandria*, 299 Va. 694, 698 (2021) (order). In the land use context, the word “aggrieved” carries a settled meaning: the petitioner “must show that he has an immediate, pecuniary and substantial interest in the litigation, and not a remote or indirect interest.” *Va. Beach Beautification Comm’n v. Bd. of Zoning Appeals*, 231 Va. 415, 419 (1986) (quoting *Nicholas v. Lawrence*, 161 Va. 589, 593 (1933)).

Where the petitioner claims no ownership interest in the property that is the subject of the challenged decision, the Supreme Court of Virginia has distilled that inquiry into two requirements. First, the petitioner “must own or occupy ‘real property within or in close

⁴ As part of their response, appellees filed a motion to dismiss, which we deny.

⁵ The circuit court’s dismissal of the original petition with leave to amend rested on deeds received in evidence.

proximity to the property that is the subject of the land use determination, thus establishing . . . ‘a direct, immediate, pecuniary, and substantial interest in the decision.’” *Friends*, 286 Va. at 48 (quoting *Va. Beach Beautification Comm’n*, 231 Va. at 420). Second, the petitioner “must allege facts demonstrating a particularized harm to ‘some personal or property right, legal or equitable, or imposition of a burden or obligation upon the petitioner different from that suffered by the public generally.’” *Id.* (quoting *Va. Marine Res. Comm’n v. Clark*, 281 Va. 679, 687 (2011)). “Absent an allegation of injury or potential injury not shared by the general public,” a petitioner has not established standing to challenge a land use decision. *Id.* at 49. The Supreme Court has applied that test to a challenge to a certificate of appropriateness approved by an architectural review board and affirmed by a city council. *Historic Alexandria Found.*, 299 Va. at 697-700.

Palmer does not own the parcel adjoining the site. He alleges that he occupies it, and *Friends* by its terms reaches an occupant as well as an owner. *Friends*, 286 Va. at 48. We assume without deciding that his alleged use of a garage on the adjoining parcel satisfies the first requirement. *Cf. id.* at 49 (assuming sufficient proximity and resolving the case on the second requirement). The amended petition founders on the second.

Before turning to that requirement, it is worth saying what the posture of this case concedes Palmer. The allegations of the amended petition are measured as they would be on demurrer, which “accepts as true all facts properly pled, as well as reasonable inferences from those facts.” *Friends*, 286 Va. at 44 (quoting *Steward v. Holland Fam. Props., LLC*, 284 Va. 282, 286 (2012)). We therefore accept that Palmer occupies the garage and part of the asphalt; that he and the neighboring owner planted the oaks more than 22 years ago; that he has since tended them and paid an arborist to advise on them; that the oaks shade the asphalt and lower the cost of cooling the garage; that construction within the dripline is likely to destroy them; and that Palmer would then lose the shade.

What the posture does not concede is the legal significance Palmer assigns those facts. A demurrer admits neither “inferences or conclusions from facts not stated,” *Friends*, 286 Va. at 44 (quoting *Arlington Yellow Cab Co. v. Transp., Inc.*, 207 Va. 313, 319 (1966)), nor “the correctness of the pleader’s conclusions of law,” *Yuzefovsky v. St. John’s Wood Apts.*, 261 Va. 97, 102 (2001). The amended petition’s assertion that Palmer “meets the occupant test,” and its assertion that what it describes is the particularized harm *Friends* requires, are propositions of law rather than statements of fact, and they are the propositions the plea puts in issue. Whether a pleaded loss invades a legally protected interest is not answered by the pleader’s assertion that it does. Taking every fact the amended petition alleges as true, and taking each at its strongest, the pleading neither measures the harm it predicts nor identifies a right of Palmer’s own that the certificate invades.

We begin where the circuit court did. The burden of alleging the particularized harm the second requirement demands rests on the petitioner. The amended petition supplies no measure of the loss it predicts. It does not allege that the garage would become unusable, or less usable, or that Palmer’s occupancy of it would be worth less; it does not allege what cooling the garage costs now, what it would cost then, or how much of any difference would fall on him. The prediction the pleading does make is conditional at each step: 400 PA told the City Council that it intended to trim the branches and the root system; such trimming “will likely kill the trees”; and the arborist opines that root removal would “create an immediate potential issue with the stability of these trees” and that building so close “would greatly affect both the value and the longevity of these trees.” The particulars do not fill the gap. The arborist’s opinion and the temperature differential the petition recites describe the condition of the trees and the properties of shade in general; neither states what the loss of these trees would do to Palmer’s use of the garage or the asphalt. A factual basis for harm to the trees is not a factual basis for harm to him.

Allegations in that form describe a concern rather than an injury, and a court asked to find particularized harm may not supply the missing measure by conjecture. That is the defect *Friends* itself identified: conclusory allegations of possible harm, unaccompanied by any factual background from which an inference of harm could be drawn, do not carry a complainant's burden. 286 Va. at 49-50.

The confinement of review to the four corners of the pleading does not cut the other way. Where a plea in bar asserts a defense, an ambiguity in the pleading is resolved against the party asserting the plea, and genuinely contested facts may be sent to a jury on demand. *Robinson v. Nordquist*, 297 Va. 503, 516-17 (2019). But the particularized harm *Friends* requires belongs to Palmer's own case, and the pleading's silence as to the measure of his loss is not an ambiguity to be resolved in his favor—it is the absence of the allegation the second requirement demands.⁶

The amended petition fails for a further and independent reason. The particularized harm *Friends* requires is harm to “some personal or property right, legal or equitable,” *of the petitioner*, or the “imposition of a burden or obligation upon the petitioner different from that suffered by the public generally.” 286 Va. at 48 (quoting *Clark*, 281 Va. at 687). The amended petition alleges neither. The injury the amended petition describes is, at bottom, injury to the two mature oak trees standing on the line between the adjoining parcel and the property subject to the certificate. Whatever rights and remedies the law affords as to encroaching vegetation, it assigns them to the owners of the land—the owner of the tree on the one hand and the adjoining

⁶ The certificate approved site planning, scale, and massing. The trimming Palmer fears is conduct 400 PA told the City Council it intended, not conduct the certificate authorizes, and the amended petition itself recounts the Board's position that it lacked purview over landscaping and existing trees. Palmer contests that position, contending that Fredericksburg City Code §§ 72-23, 72-80.3 required the Board to consider the trees. We express no view on that contention, which goes to the merits and which the circuit court did not reach. We note the scope of the certificate only because it bears on whether the harm alleged is one the land use decision imposes upon Palmer.

landowner on the other. *See Fancher v. Fagella*, 274 Va. 549, 555-56 (2007) (adopting the rule that encroaching trees and plants may be a nuisance when they cause actual harm or pose an imminent danger of actual harm, for which the owner of the tree or plant may be held responsible).⁷

We need not decide whether the trees standing on the line belong to the owner on one side or to both, because the amended petition places Palmer in neither position. Irrespective of how that question is answered, the right it identifies belongs to someone else. The amended petition alleges no ownership or other proprietary interest of Palmer's in either parcel; as to the adjoining parcel it alleges the opposite. Having pleaded no proprietary interest in the land, Palmer has pleaded no right in the trees rooted in it. That he helped plant the oaks, and has since tended them at his own expense, does not supply what the pleading omits.

Nor does Palmer's sole ownership of Purina Fredericksburg, LLC furnish the missing right. Title to an estate or interest in property acquired in the name of a limited liability company "vests in the limited liability company." Code § 13.1-1021. A member's interest in the company is "personal property," and the only transferable component of that interest is the member's share of profits and losses together with the right to receive distributions. Code § 13.1-1038; *cf.* Code § 13.1-1020 (providing that a member, "solely by reason of being a member, is not a proper party to a proceeding by or against a limited liability company," subject

⁷ That duty is not automatic. The trial court must first consider whether the conditions existing on the adjoining lands make it reasonable to impose a duty on the owner of a tree or plant to protect a neighbor's land, an inquiry the Court described as inapt for "historically forested or agricultural land" but "entirely appropriate" for parties who "dwell on adjoining residential lots." *Fancher*, 274 Va. at 556-57. The Court reserved the question of a large rural tract whose neighbor creates an adjoining subdivision of small residential lots. *Id.* at 557 n.1. The Court added that the chancellor may consider evidence bearing on whether cutting the invading roots back to the property line "will cause the tree to become so unstable or diseased as to constitute an imminent danger to the properties of either of the parties, or others." *Id.* at 557 n.2. The parcels at issue here adjoin one another in a developed part of the City's historic district.

to exceptions not applicable here). A sole member is a member still. The injury Palmer describes to the boundary trees is, on the face of his own pleading, an injury to property the General Assembly has placed in the company, and his membership does not convert the company's real estate into a personal or property right of his own. The amended petition's acknowledgment that the company itself would be time-barred from pursuing the appeal confirms rather than cures the difficulty. The pleading thus names the holder of the right and explains why that holder cannot sue, which answers Palmer's contention rather than supports it.

That leaves the interest Palmer does claim as his own—his occupancy of the garage and part of the asphalt on the adjoining parcel. That Palmer occupies rather than owns is not the difficulty. *Friends* itself numbered a lessee of adjacent land among the complainants. 286 Va. at 41-42. The Court there assumed the sufficiency of every complainant's property interest before resolving the case on the sufficiency of their allegations. *Id.* at 49. An occupant pleads a particularized harm when he pleads an invasion of what he occupies—something done to the premises, or brought onto them, that interferes with his possession or use. The certificate authorizes no construction on the garage or the asphalt, no interference with Palmer's access to either, and no activity touching his possession of them. Even assuming his occupancy is close enough to satisfy the first requirement, it does not follow that the occupancy is harmed for purposes of the second.

The amended petition ties the certificate to that occupancy in one way only: the oaks shade the asphalt, the shade reduces the cost of cooling the garage, and construction within the dripline may cost him "the cooling features these trees provide." The harm to his occupancy is thus wholly derivative of harm to the trees. The requirement asks for harm to a right, and a loss does not become an invasion of a right merely because it falls on Palmer alone.

Encroaching trees “are not nuisances merely because they cast shade,” even as between the landowners themselves. *Fancher*, 274 Va. at 555 (quoting *Lane v. W.J. Curry & Sons*, 92 S.W.3d 355, 364 (Tenn. 2002)). *Fancher* concerned a landowner complaining of vegetation that encroached upon him, not an occupant complaining that vegetation would be lost. Palmer nevertheless identifies no source of law giving an occupant a right to the continued shade of trees rooted in land he does not hold. An occupant who enjoys a benefit produced by property in which he pleads no interest has not, by pleading the loss of that benefit, alleged a particularized harm to “some personal or property right, legal or equitable,” of his own. *Friends*, 286 Va. at 48. The right on which the claim depends belongs to the owner of the land in which the oaks are rooted, and the loss Palmer describes is an incident of that right rather than a right of his. The difficulty is not the likelihood of the harm but the absence of a right of Palmer’s that it invades. Palmer alleged facts about trees in which he pleaded no right, and the interest he did assert rises no higher than one in those trees.

The distinction between an owner’s right and an occupant’s is not a formal one. An occupant’s interest is a possessory one. It secures the premises he holds—not the land around them, and not whatever that land happens to supply. The owner’s interest is proprietary and reaches the soil itself; the occupant’s reaches only so far as his possession. Shade falling on the asphalt is an incident of the trees; the right to insist that the trees remain standing is an incident of ownership of the soil in which they are rooted.

Virginia’s treatment of light and air illustrates the same division. A right to light and air across a neighbor’s land is recognized where a deed creates it, and the scope of the easement so created is read to the purpose the grant states. *Robinson*, 297 Va. at 517. The neighbors’ plantings there were said to restrict the light and air reaching the dominant parcel, and the claim was justiciable because a deed had secured the right. *Id.* at 508. Palmer’s amended petition

pleads no such instrument, and he pleads no ownership of a parcel to which one could be appurtenant. That is why the law of encroaching vegetation, which the amended petition itself invokes, speaks in the vocabulary of owners and assigns the remedy to them. *See Fancher*, 274 Va. at 556-57 (framing the remedial inquiry as whether to impose a duty on the owner of the tree or plant and reserving self-help to the adjoining landowner).

The line is between invasion and deprivation. The harms that have sufficed in these cases came onto the premises the petitioner held: the noise, dust, and traffic pleaded in *Friends* were said to reach the complainants' own land. 286 Va. at 43. Each was an interference with the use of what the petitioner occupied. Shade is not of that kind. Nothing the certificate authorizes comes onto the garage or the asphalt; the shade simply stops arriving. An occupant may complain that the premises he occupies have been invaded. He may not complain that a benefit generated beyond them has ceased.

The point can be tested. Nothing in the amended petition suggests that Palmer could complain if the owner of the land in which the oaks are rooted cut them down tomorrow. He pleads no lease term, no covenant, no easement, and no other undertaking that the oaks would remain; he pleads that he occupies a garage and some asphalt and that he has tended trees standing on a line beyond them. A benefit that its source may withdraw at will is not a right in the recipient, and its loss at the hands of a third party is not the invasion of one. Palmer's tending of the oaks, and his paying to preserve them, is a service to their owner rather than the acquisition of an interest in what is tended.

The result is the same for a burden or obligation, which, no less than a personal or property right, must be one the land use decision imposes upon the petitioner. The added cost of cooling the garage is a consequence of losing a benefit Palmer had no entitlement to receive, not

an obligation the certificate places upon him, and it therefore supplies neither a burden the certificate imposes nor a right the certificate invades.

Palmer's reliance on *Seymour v. Roanoke County Board of Supervisors*, 301 Va. 156 (2022), is understandable but misplaced. It is materially different. The appellants in *Seymour* owned the properties the private easement traversed, or, in the case of the individual appellants, a separate nearby property held in their own names, and they alleged harms they had already sustained in their own right—maintenance costs they themselves bore, occasions on which their own children were nearly struck by traffic, and dust, noise, and light at their own homes. 301 Va. at 167-69. The Court stressed that the easement was private and was maintained by no governmental entity, so that the appellants, and not the public, carried its upkeep. *Id.* The limited liability company through which one *Seymour* appellant held title does not assist Palmer either: the harms attributed to that parcel were pleaded as the company's, and the individual appellants pleaded harms to property they owned themselves. Palmer's amended petition contains no comparable allegation of a burden falling on him rather than on the owner of the adjoining parcel. Each of the harms *Seymour* credited, moreover, reached property the appellants themselves held; none was the loss of a benefit generated beyond it.

The result accords with *Historic Alexandria Foundation*, 299 Va. at 697-700, where a petitioner that owned property in the historic district near the parcel at issue nonetheless failed to plead a particularized harm, the harms it described being shared with the public at large rather than particular to it. Palmer's amended petition fails the same requirement for a different reason: the harm he describes is particular to him, but it invades no personal or property right of his own. The circuit court therefore did not err in sustaining the plea in bar.

II. The Motion to Stay

We review a circuit court’s decision whether to stay a pending proceeding for abuse of discretion. *Qiu v. Huang*, 77 Va. App. 304, 327 (2023). “[T]he power to stay [a] proceeding[] is incidental to the power inherent in every court to control . . . its docket,” with an eye to “economy of time and effort for itself, . . . counsel, and . . . litigants.” *Primov v. Serco, Inc.*, 296 Va. 59, 67 (2018) (quoting *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936)). How best to answer a request for a stay “calls for the exercise of judgment,” requiring the court to “weigh competing interests and maintain an even balance.” *Id.* (quoting *Landis*, 299 U.S. at 254-55). The comparison is between the “hardship or inequity” to the moving party of going forward and the risk of harm to the opposing party from delay. *Qiu*, 77 Va. App. at 328 (quoting *Landis*, 299 U.S. at 255). And because abuse of discretion means that the circuit court “has a range of choice, and that its decision will not be disturbed as long as it stays within that range and is not influenced by any mistake of law,” *Landrum v. Chippenham & Johnston-Willis Hosps., Inc.*, 282 Va. 346, 352 (2011), “[o]nly when reasonable jurists could not differ can we say an abuse of discretion has occurred,” *Qiu*, 77 Va. App. at 328 (quoting *Sauder v. Ferguson*, 289 Va. 449, 459 (2015)).

Palmer’s federal action sought access to OCRA. Its defendant was not a party to this case, and its subject was not the sufficiency of his allegations of particularized harm. The circuit court concluded that a decision in that case, even one favorable to Palmer, would have no substantive effect on the analysis in this one. That conclusion lay comfortably within the range of choice the law commits to the trial court. A stay serves economy of effort when resolution of the other proceeding will “in all likelihood . . . simplify” the stayed suit. *Qiu*, 77 Va. App. at 329 (quoting *Landis*, 299 U.S. at 256). Palmer identified no material obtainable only through OCRA that he needed in order to plead his own injury, and the question the circuit court decided—

whether the amended petition alleged particularized harm to a right of his—turned on the four corners of that pleading.⁸

Palmer’s remaining complaint is that the circuit court gave no reasons. But the court did state its reason. And the abuse-of-discretion standard asks whether the ruling fell within the range of choice available to the circuit court, not whether the court elaborated upon it. *See Landrum*, 282 Va. at 352.

Hence, the circuit court did not abuse its discretion in denying the stay.

CONCLUSION

Palmer’s amended petition did not allege a particularized harm to any personal or property right of his own, so he lacked standing to challenge the certificate of appropriateness, and the circuit court did not abuse its discretion in declining to stay the proceedings. We therefore affirm the judgment of the circuit court.

Affirmed.

⁸ The appellees urge us to weigh the fact that Palmer’s federal action was later dismissed with prejudice. We assess the circuit court’s exercise of discretion on the circumstances before it when it ruled, and we do not rely on that later development.