

Circuit Court for Prince George's County
Case No. CAEF17-36003

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 914

September Term, 2022

DENISE SMITH

v.

WILLIAM M. SAVAGE, *et al.*

Wells, C.J.,
Zic,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: November 6, 2023

*This is a per curiam opinion. Consistent with Rule 1-104, the opinion is not precedent within the rule of stare decisis nor may it be cited as persuasive authority.

After Denise Smith, appellant, defaulted on her deed of trust home loan, appellees,¹ the substitute trustees, filed an Order to Docket Foreclosure in the Circuit Court for Prince George’s County. Appellant’s home was eventually sold at a foreclosure auction in August 2018. The sale was ratified in November 2021. Shortly thereafter, the court determined that appellant had filed timely exceptions to the foreclosure sale which had not been ruled on prior to the ratification order being entered. Following a hearing on those exceptions, the Magistrate filed a report recommending that the exceptions be overruled. Appellant filed timely exceptions to the Magistrate’s recommendations. On April 29, 2022, the circuit court entered an order overruling the exceptions and adopting the Magistrate’s recommendation that the ratification of the sale had been proper. The case was then referred to an auditor, who issued his report on May 25, 2022. Appellant did not file exceptions to the auditor’s report, and the report was ratified on June 23, 2022.

On June 25, 2022, appellant filed a notice of appeal. The same day she also filed two post-judgment motions: (1) a “Motion to Dismiss Based on Plaintiff’s Acceptance of Mortgage Payments Subsequent to the Foreclosure Sale” (motion to dismiss), and (2) a “Motion to Vacate Order Ratifying Report of Auditor” (motion to vacate). The circuit court denied the motion to dismiss on September 26, 2022. Appellant did not file a new notice of appeal from that order. The circuit court has not yet ruled on the motion to vacate.

¹ Appellees are William M. Savage, Gregory N. Britto, Kristine D. Brown, and Lila Stitely.

Appellant raises three issues on appeal: (1) whether the failure to file the report of sale within 30 days after the foreclosure auction acted “to reject the auction bid;” (2) whether appellees’ acceptance of mortgage payments after the foreclosure sale reinstated her right of redemption in the property; and (3) whether the auditor failed to send her and her attorney of record a copy of the auditor’s report prior to the report being ratified, as required by Maryland Rule 2-543(e). For the reasons that follow we shall affirm.

Appellant’s first two contentions relate to the validity of the underlying foreclosure sale. An order ratifying a foreclosure sale constitutes the “final judgment as to any rights in the real property, even if the order refers the matter to an auditor to state an account.” *Huertas v. Ward*, 248 Md. App. 187, 205 (2020). Thus, to challenge the validity of the foreclosure sale on appeal, appellant had to file a timely notice of appeal from either the court’s 2021 order ratifying the foreclosure sale, or the court’s April 2022 order overruling her exceptions to that order. But because a notice of appeal must be filed within 30 days after entry of the judgment or order from which the appeal is taken, *see* Maryland Rule 8-202(a), appellant’s July 25, 2022, notice of appeal was untimely as to both of those orders. Consequently, we hold that appellant’s first two claims are not properly before us.²

² Notably, appellant also raised her second claim in her motion to dismiss. But the circuit court did not rule on that motion until September 2022, several months after she filed her notice of appeal in this case. Therefore, her notice of appeal was premature as to the court’s order denying the motion. And appellant did not file a new notice of appeal after that motion was denied.

Appellant’s notice of appeal was timely as to the court’s order ratifying the auditor’s report.³ But appellant’s third contention, that the auditor failed to send her and her attorney a copy of the auditor’s report, was not raised prior to that order being entered. Rather, it was raised for the first time in her motion to vacate the ratification order, which was filed 30 days later, and has not yet been ruled on by the circuit court. Thus, this issue is not ripe for appeal.

Appellant does not raise any other issues related to the court’s order ratifying the auditor’s report, the only order that was timely appealed. And she ultimately has the burden of demonstrating that the court erred in entering that order. Because she has not done so, we shall affirm.⁴

**MOTION TO DISMISS DENIED.
JUDGMENT OF THE CIRCUIT
COURT FOR PRINCE GEORGE’S
COUNTY AFFIRMED. COSTS TO
BE PAID BY APPELLANT.**

³ Appellees have filed a motion to dismiss the appeal on the grounds that the appeal was untimely. Although we agree that the notice of appeal was untimely as to the court’s orders denying appellant’s exceptions and ratifying the foreclosure sale, it was timely as to the court’s June 23, 2022, order ratifying the auditor’s report. Therefore, we shall deny the motion to dismiss.

⁴ This affirmance is without prejudice to appellant filing a new notice of appeal in the event that the circuit court denies her motion to vacate.