

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1236

September Term, 2014

JIMMY FASUSI

v.

KRISTINE D. BROWN, et al.
SUBSTITUTE TRUSTEES

Kehoe,
Leahy,
Raker, Irma, S.
(Retired, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: October 23, 2015

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

On December 26, 2013, substitute trustees, Kristine Brown, *et. al.* (“Appellees”) filed an order to docket a foreclosure action in the Circuit Court for Prince George’s County for property located at 5630 Duchaine Drive, Lanham, Maryland. The property was sold on April 1, 2014, and on May 23, 2014, the owner of the property, Jimmy Fasusi (“Appellant”), filed exceptions to the trustee’s sale. The circuit court denied Appellant’s exceptions in an order entered on August 20, 2014, and, on August 22, 2014, Appellant noted his appeal to this Court. We do not reach the merits of Appellant’s appeal because, as discussed further below, the order from which he appeals was not a final order because the court had not entered an order of ratification before Appellant noted an appeal.¹ The appeal must be dismissed.

¹ Appellant presents the following issues for our review:

- I. Did the Circuit Court abuse its discretion when it denied Appellant’s Motion to Stay and Consideration as untimely – No Loss Mitigation?
- II. Whether Appellant[’s] lien instrument is valid after rescission and whether tender is required first to exercise his right to rescind a refinanced loan.
- III. Whether Appellees[’] [a]llonge to Note is voidable due to fraud or misrepresentation.
- IV. Whether Appellees[’] Intervenors[’] Request was Timely and Whether the Release of Original Document Post Sale Hastily without Appellant’s opposition Violated Due Process and As Condition Precedent to Sale.
- V. Whether Appellees[’] Notice of Sale that was mailed to the wrong address, coupled with insufficient advertisement constituted irregularities in the sale.

BACKGROUND

On January 10, 2006, Appellant and his wife, Patricia Fasusi,² obtained a \$315,000 refinance loan that was secured by a deed of trust on the property located at 5630 Duchaine Drive in Lanham, Maryland. On October 2, 2008, Appellant defaulted on the loan by not making payments.³ In the present case, Kristine Brown, William Savage, Gregory Britto, Lila Stitely, and Brett Callahan, as substitute trustees on behalf of U.S. Bank National Association,⁴ sent notices of intent to foreclose to Jimmy and Patricia Fasusi on July 31, 2012. Then on December 26, 2013, after the Fasusis remained in default on the loan for over five years, the substitute trustees filed an order to docket the foreclosure action in the Circuit Court for Prince George’s County.

Appellant was served on January 16, 2014, and filed a motion to stay the substitute trustee sale, alleging insufficient notice and other claims, on January 29, 2014. The circuit court denied the motion without prejudice, as moot, on February 25, 2014,⁵ because the court was advised by the substitute trustees that no sale was currently scheduled for the

² Patricia Fasusi quitclaimed her interest in the property to her husband by deed dated December 24, 2008.

³ On January 26, 2010, prior substitute trustees instituted a foreclosure action, *Buonassissi v. Fasusi*, Prince George’s Cnty. Cir Ct. Case No. CAE10-02523, but this action was dismissed without prejudice.

⁴ The affidavit of ownership submitted by the loan servicing company, Wells Fargo Bank NA, states that “U.S. Bank National Association, as Trustee, for RASC 2006-EMX3 is the owner and holder of the loan evidenced by the Note.” (Capitalization omitted).

⁵ The order was signed on February 25, 2014, and entered on March 5, 2014.

property. On March 14, 2014, Appellant filed a motion for clarification and reconsideration of the February 25 order, and, on March 28, 2014, upon being informed that the sale had been scheduled, the court reviewed the motion to stay on the merits. On March 28, 2014, the circuit court determined that the motion to stay was untimely and that neither the motion to stay nor the motion for reconsideration stated a “valid defense to the validity of the lien or the lien instrument or to the right of Plaintiff to foreclose in the pending action, as required under Md. Rule 14-211(a)(3)(B).” Accordingly, the court denied Appellant’s motion to stay and his motion for reconsideration.

The property was sold on April 1, 2014, with nine bidders present for \$187,000. On May 23, 2014, Appellant filed exceptions to the trustee’s sale, once again alleging insufficient notice and other claims. The substitute trustees filed a response on July 25, 2014, to which Appellant replied on July 29, 2014.

The circuit court, on August 20, 2014,⁶ entered an interlocutory order overruling Appellant’s exceptions to the sale because Appellant had failed to comply with Maryland Rule 14-305(d) in failing to identify a legitimate procedural irregularity with the sale. The court “**ORDERED** that this case shall continue in due course.” (Emphasis in original).

Appellant filed a Notice of Appeal on August 22, 2014, asserting that it is an appeal from an “interlocutory order” and that it is an appeal “to the proper appellate court from the decision of the Circuit Court Hon. Clarke dated August 14, 2014 Overruling Defendant Objection to Substitute Trustee sale ratification [sic].” But the record does not contain an

⁶ The order was signed on August 14, 2014.

order of ratification, and the docket does not reflect that the court entered an order of ratification of the sale by the time of the notice of appeal was filed on August 22, 2014. Despite Appellant’s characterization of the notice of appeal as appealing from a “sale ratification,” no ratification of the sale is reflected in the docket entries. The record does contain a “NOTICE” signed by the clerk of the court and filed on August 25, 2014, providing that, if a copy of the same notice be published for three consecutive weeks in the Washington Post, the sale will be ratified on September 25, 2014.

DISCUSSION

The threshold jurisdictional issue that we must address is whether the circuit court’s August 22, 2014, order constitutes a final, appealable order. Although neither party has raised this jurisdictional issue, we must address it, and may do so *sua sponte*. *Baltimore Home Alliance, LLC v. Geesing*, 218 Md. App. 375, 380 (2014) (citing *Stuples v. Baltimore City Police Dep’t*, 119 Md. App. 221, 241 (1998)). The requirement that a party appeal only from a final judgment is jurisdictional. *Id.* at 381 (citing *Waters v. Whiting*, 113 Md. App. 464, 470 (1997)). “Whether a judgment is final, and thus whether this Court has jurisdiction to review that judgment, is a question of law to be reviewed *de novo*.” *Id.* (citing *Shofer v. Stuart Hack Co.* 107 Md. App. 585, 591 (1996)).

I. Final Orders

Maryland Code (1973, 2013 Repl. Vol.), Courts and Judicial Proceedings (“CJP”) § 12-301 provides that “a party may appeal from a final judgment entered in a civil or criminal case by a circuit court.” For a judgment to be final, “the ruling must ‘determine *and conclude* the rights involved or . . . deny the appellant the means of further prosecuting

or defending his or her rights and interests in the subject matter of the proceeding.”
Remson v. Krausen, 206 Md. App. 53, 71 (2012) (emphasis in original) (quoting *Rohrbeck v. Rohrbeck*, 318 Md. 28, 41 (1989)). A final order must “leave nothing more to be done in order to effectuate the court’s disposition of the matter.” *Id.* at 72 (quoting *Rohrbeck*, 318 Md. at 41).

As to non-final orders, Maryland Rule 2-602(a) provides that

an order or other form of decision, however designated, that adjudicates fewer than all of the claims in an action (whether raised by original claim, counterclaim, cross-claim, or third-party claim), or **that adjudicates less than an entire claim**, or that adjudicates the rights and liabilities of fewer than all the parties to the action:

- (1) **is not a final judgment;**
- (2) does not terminate the action as to any of the claims or any of the parties; and
- (3) **is subject to revision at any time before the entry of a judgment that adjudicates all of the claims by and against all of the parties.**

(Emphasis supplied).

In *Baltimore Home Alliance, LLC v. Geesing*, 218 Md. App. 375 (2014), this Court faced a similar factual and procedural scenario. Two borrowers defaulted on a mortgage, and foreclosure proceedings were docketed. *Id.* at 378-79. The appellants in that case purchased the property, on December 28, 2012, from the appellees for \$100,000 and paid a \$27,000 deposit. *Id.* at 379. The circuit court ratified *this* original sale on March 20, 2013, after the sale was reported to the court, but the appellant did not pay the remaining balance of the sale within ten days of ratification. *Id.*

On May 1, 2013, appellees filed a motion to forfeit, which requested the forfeiture of the deposit and for the property to be resold at the risk and expense of the appellants,

and, on June 11, 2013, appellants filed a response. *Id.* at 379-80. The court, on August 7, 2013, entered an order that the deposit be forfeited and that the property be resold at the risk and expense of appellant. *Id.* at 380. The appellant did not wait for a ratification of the second sale and, instead, appealed the August 7, 2013, order. *Id.* In that case, we held that, “because of the undetermined fate of the deposit, appellant's continuing ability to assert its rights regarding the deposit, as well as the continuing foreclosure process, the Order at issue is not final,” and, thus, could not be appealed. *Id.* at 383.

Like the appellant in *Baltimore Home Alliance*, at the time his appeal was filed, Mr. Fasusi retained the “continuing ability to assert [his] rights” in the foreclosure process. *Id.* The order appealed from did not determine the rights of the parties, nor did it “leave nothing more to be done in order to effectuate the court's disposition of the matter.” *Id.* at 381 (quoting *Remson*, 206 Md. App. at 72). The order simply mandated that the “case shall continue in due course.” A foreclosure sale is not complete until the circuit court enters a final order ratifying the sale. *See id.* at 383 n.5 (“[A]fter resale of the Property, the court must act to ratify the sale before the foreclosure sale is complete . . .”). Further, as per Maryland Rule 2-602(a)(3), the order entered here would normally be “subject to revision at any time” before the entry of a final judgment by the circuit court. The record reflects that the circuit court has not entered an order of ratification of the sale. Thus, the August 20, 2014 order was not a final judgment, and we lack jurisdiction to review Appellant’s appeal.

II. Appealable Interlocutory Orders

In the notice of appeal, Appellant avers that he is appealing from an “interlocutory order.” The Legislature has provided by statute that certain interlocutory orders constitute distinct exceptions to the requirement that a party may only appeal from a final judgment. “An order that is not a final judgment is considered to be an interlocutory order and ordinarily is not appealable unless it falls within one of the statutory exceptions set forth in [CJP] § 12–303.” *In re Samone H.*, 385 Md. 282, 298 (2005) (citing *In re Damon M.*, 362 Md. 429, 434 (2001)). The provision most relevant to the circumstances before us provides for an appeal from an interlocutory order entered by a circuit court in a civil case “[f]or the sale, conveyance, or delivery of real or personal property or the payment of money, or the refusal to rescind or discharge such an order, unless the delivery or payment is directed to be made to a receiver appointed by the court.” CJP § 12-303(3)(v).

At the outset, we note that this provision does not provide an avenue to appeal in the instant case because in the non-judicial foreclosure sale, there was no order “for the sale . . . of real . . . property . . . or the refusal to rescind or discharge such an order.” On April 1, 2014, the substitute trustees sold the property without judicial intervention or the direction of the court. Then on May 23, 2014, Appellant filed exceptions to the trustee’s sale, and the circuit court, in an August 20, 2014 order, overruled the exceptions to the sale. The denial of exceptions to the sale, however, is not itself a refusal to discharge an order for the sale of real property.

In *Baltimore Home Alliance*, we addressed the applicability of this provision to the pre-ratification order in that case, and we stated that:

the circuit court's Order authorized the resale of the Property, but the court's involvement with the Property and parties was not complete upon its issuance of the Order. Instead, after resale of the Property, **the court must act to ratify the sale before the foreclosure sale is complete**, as well as rule on any exceptions to the auditor's report. **Thus, because the court's Order did not terminate the court's involvement in the sale of the Property, it cannot be appealed pursuant to CJP § 12–303(3)(v).**

218 Md. App. at 383 n.5 (emphasis supplied).

Thus, because the court never entered an order directing the sale of the property, and because the order was entered before the sale was complete and before the court's involvement in the sale of the property ended, *Baltimore Home Alliance*, 218 Md. App. at 383 n.5, we hold that the pre-ratification order entered in the instant case does not qualify as an appealable interlocutory order pursuant to CJP §12–303(3)(v).⁷

The substitute trustees also filed a motion to allow for oral argument on August 4, 2015. Because we hold that we do not have jurisdiction in this case, this motion to allow oral argument is dismissed as moot.

APPEAL DISMISSED.

COSTS TO BE PAID BY THE APPELLANT.

⁷ For clarification, although we said in *Granados v. Nadel* that “[a]ppellate review of a circuit court's denial of a motion to dismiss a foreclosure is proper when a party appeals after the denial of exceptions to a sale[,]” 220 Md. App. 482, 497 n.13 (2014), there, the circuit court had already ratified the sale. *Id.* at 487. Thus, the circuit court had entered an order of ratification before appeal was taken from the final, appealable order. On appeal, after a ratification of the sale and final judgment, a party may seek review of the pre-sale denial of the motion to stay and dismiss a foreclosure action, as was the case in *Granados*, 220 Md. App. at 497 n.13. A final judgment, however, remains a jurisdictional prerequisite to appellate review.