

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1527

September Term, 2015

CHARLES THOMAS, III

V.

JOHN DRISCOLL III, *ET AL,*
SUBSTITUTE TRUSTEES

Krauser, C.J.,
Nazarian,
Moylan, Charles E. Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: October 31, 2016

*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 May 20, 2015, John Driscoll, III, together with the substitute trustees, sold the residential property owned by Charles Thomas, III and Wendy Thomas at a foreclosure sale. The following day, the Thomases filed a motion to stay the sale, which the circuit court denied as untimely because the sale had already taken place. The court then ratified the sale, and the Thomases filed exceptions to the sale. Following a hearing, the circuit court overruled the Thomases' exceptions to the sale, and Mr. Thomas noted this appeal.

As an initial matter, substitute trustees filed a motion to dismiss the appeal for failure to join a necessary party, namely, appellant's wife, Wendy Thomas, who was a codefendant in the circuit court, but did not join Mr. Thomas in noting the appeal. Substitute trustees contend that, according to well-settled principles of property law, spouses, who hold property as tenants by the entirety, are required to "be of one mind" and act jointly with respect to the disposition of their property, and the failure of Mrs. Thomas to join in this appeal violates those principles. *See Beall v. Beall*, 291 Md. 224, 234 (1981). Maryland Rule 8-401(a), however, provides that joinder of codefendants is *not* required on appeal. Moreover, Mr. Thomas asserts that he and his wife "are in total agreement" with respect to the instant appeal, as evidenced by Mrs. Thomas having personally signed the opposition to the motion to dismiss the appeal. Substitute trustees fail to cite any authority to support their position that Rule 8-401(a) does not apply to matters involving property held by tenants by the entirety, and we are aware of none. Accordingly, pursuant to Rule 8-401(a), Mrs. Thomas' failure to join in the instant appeal does not warrant dismissal, and the motion to dismiss is denied.

Mr. Thomas presents three questions for our review:

1. By continuously ignoring the Appellant's attempts to question the validity of the loan [d]ocuments (with references to Md. Rule 14-207.1^[1]) presented by Appellee, did the Circuit Court for Harford County cause the Appellants to sustain abuse of judicial discretion and or other prejudice? (Especially since the Appellee's legal representation has been accused of this before).
2. Should an error by a court employee (looking at the wrong file) be enough to stop the Appellant from filing a timely Exception to Sale Motion? And, did this error cause the Appellant to sustain abuse of judicial discretion and or other prejudice?
3. Is an incorrect letter from the Court of Special Appeals (to the Appellant) addressing him as an attorney for a divorce case of which he has no knowledge, enough evidence to prove that one or both courts have mishandled the paperwork and or files for this case, further proving question number 2?

Finding no prejudicial error, we affirm.

Mr. Thomas contends that the circuit court erred in ratifying the foreclosure sale and the auditor's report² "by continuously ignoring Appellant's attempts to question the validity of the loan [d]ocuments (with references to Md. Rule 14-207.1)[.]" Appellant also

¹ Appellant contends that the circuit court erred by failing to conduct a "court screening" pursuant to Rule 14-207.1. There is no evidence, however, that appellant requested a court screening prior to the sale, or that he raised the issue in the circuit court. In a letter to the circuit court noting the appeal on September 11, 2015, appellant states that, at the hearing on his motion for exceptions to the sale, he "did not bring up this matter as it did not seem relevant because we were discussing the validity of the sale only." Because this issue was not raised in the circuit court, it is not preserved for appeal. *See* Md. Rule 8-131(a) (Ordinarily, except for certain jurisdictional issues, "the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]"); *accord Robinson v. State*, 404 Md. 208, 216 (2008).

² The circuit court ratified the auditor's report subsequent to appellant's appeal of the ratification of the sale. Because appellant did not appeal the ratification of the auditor's report, the ratification order is not before the Court.

claims the circuit court erred in denying his motion to stay as untimely and non-compliant with Maryland Rule 14-211, because, he claims, a clerical error by the circuit court prevented him from filing his motion to stay on May 20, 2015, the day of the sale.

Pursuant to Rule 14-211(a)(2)(A)(iii)(c), appellant's deadline for filing the motion to stay was December 3, 2014, sixty days from the date appellant submitted his request for mediation (October 21, 2014). Any error by the circuit court clerk's office (assuming, without deciding, that one existed) did not prejudice appellant because his motion to stay, even if it had been filed on the day of the foreclosure sale, was filed more than five months beyond the deadline. Moreover, appellant's motion to stay failed to comply with the requirements of Rule 14-211(a)(3), which requires that a motion be supported by an affidavit and "state with particularity the factual and legal basis of each defense that the moving party has to the validity of the lien[.]". Accordingly, we discern no error in the circuit court's finding that appellant's motion was untimely and non-compliant with Rule 14-211.

With respect to the merits of their exceptions to the sale, the Thomases argued that the sale should not have taken place because they were then in the process of negotiating with the lender regarding a loan modification. The circuit court found that, "at best, the allegations made by the [Thomases] are issues that should have been raised prior to the sale and they simply were not." We agree.

"[A] homeowner/borrower ordinarily must assert known and ripe defenses to the conduct of a foreclosure sale prior to the sale, rather than in post-sale exceptions." *Bates v. Cohn*, 417 Md. 309, 328 (2010). This principle includes defenses based on the lender's

failure to comply with loan modification requests, as the Thomases alleged. *See id.* A debtor can, however, attempt to stop the sale and redeem the property by offering to pay the outstanding amount owed, or by filing a motion to stay the sale. *Greenbriar Condo., Phase I Council of Unit Owners, Inc. v. Brooks*, 387 Md. 683, 746 (2005). But after the foreclosure, a debtor's remedy generally is limited to filing exceptions challenging procedural irregularities in the sale, such as insufficient advertising or improper notice. *Jones v. Rosenberg*, 178 Md. App. 54, 69 (2008).

The Thomases waived their challenges to the foreclosure by failing to raise defenses in a motion to dismiss or request for a stay prior to the sale. And because they failed to demonstrate any procedural irregularities in the sale, the circuit court did not err in overruling the exceptions and ratifying the sale.

Finally, appellant complains that a clerical error by this Court in sending him a letter “addressing him as an attorney in a divorce case” demonstrates that the Court “mishandled” his paperwork and caused him “an abuse of judicial discretion or prejudice.” But appellant fails to support his claim of prejudice beyond the general assertion that his case was “mishandled,” and therefore has not established how the clerical error, if any, might entitle him to relief.

JUDGMENT AFFIRMED. COSTS TO BE PAID BY APPELLANT.