

Circuit Court for Montgomery County
Case No. 406049

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1751

September Term, 2016

ROBERT TAYLOR

v.

LAURA H. G. O'SULLIVAN, ET AL.,
SUBSTITUTE TRUSTEES

Berger,
Nazarian,
Thieme, Raymond G., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Thieme, J.

Filed: September 18, 2017

*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.

In June of 2015, Laura O’Sullivan, Erin Shaffer, Diana Theologou, Chasity Brown, Laura Curry, Lorryn Logan, Kelly Howard, and Lauren Bush (“Appellees”), acting as Substitute Trustees on behalf of Washington Mutual Bank, filed in the Circuit Court for Montgomery County a Notice of Foreclosure Action against Robert Taylor, appellant, regarding his home at 6 Hall Court in Potomac, Maryland (the “Property”). On March 9, 2016, appellant filed a motion to stay the foreclosure sale of the Property. Following a hearing, the court denied appellant’s motion. In this appeal, appellant presents the following question for our review:

Did the circuit court err in denying appellant’s motion without an evidentiary hearing?

Because we find the instant appeal to be untimely filed, we dismiss.

BACKGROUND

In April of 2004, appellant obtained a mortgage from Washington Mutual Bank (the “Mortgage”) to purchase the Property. In March of 2012, appellant defaulted on the Mortgage. In June of 2015, appellees filed a Notice of Intent to Foreclose on the Property, and foreclosure proceedings commenced. On February 23, 2016, appellees sent appellant a notice of impending foreclosure sale, which stated that the Property was to be sold at auction on March 9, 2016. The Property was thereafter sold to U.S. Bank Trust on March 9, 2016.

That same day, appellant filed an “Emergency Motion to Stay Foreclosure Sale and to Extend Time to File Motion to Stay.” In that motion, appellant alleged, among other things, that the servicer on the Mortgage, Caliber Home Loans (“Caliber”), failed to

adequately evaluate his application for loss mitigation, failed to notify him of a decision on that application, and denied him the opportunity to appeal Caliber's decision regarding his application. Appellant argued, therefore, that the court should stay the sale of the Property pursuant to Maryland Rule 14-211.¹

On May 16, 2016, the court held a hearing on appellant's motion to stay the foreclosure sale. At that hearing, appellant put forth the same arguments that were outlined in his motion. In the end, the court issued an order denying appellant's motion to stay, and that order was entered as a judgment on May 17, 2016.

That same day, appellant filed "Exceptions to the Foreclosure Sale and Motion to Dismiss This Action." In that filing, appellant incorporated by reference the arguments raised in his motion to stay. The court held a hearing on appellant's exceptions on June 22, 2016. Ultimately, the court denied appellant's exceptions as "untimely filed."²

On June 28, 2016, the court entered a judgment ratifying the foreclosure sale and ordering that the matter be referred to an auditor. Pursuant to that judgment, the auditor issued a report, which was filed on September 7, 2016. The court ratified the auditor's

¹ Maryland Rule 14-211 provides, in pertinent part, that a party to a foreclosure action "may file in the action a motion to stay the sale of the property and dismiss the foreclosure action." Md. Rule 14-211(a)(1). The Rule's Committee Notes state that "[t]he failure to grant loss mitigation that should have been granted in an action to foreclose a lien on owner-occupied residential property may be a defense to the right of the plaintiff to foreclose in the pending action." Md. Rule 14-211(a)(3)(B).

² Maryland Rule 14-305(d) provides that exceptions to a foreclosure sale must be filed within 30 days after the date the clerk issues notice of the sale. *Id.* Here, notice of the sale was issued on March 23, 2016. As noted, appellant did not file his exceptions until May 17, 2016.

report by way of judgment entered on September 22, 2016. On October 21, 2016, appellant noted this appeal.

DISCUSSION

Appellant's sole contention is that the circuit court erred in denying his motion to stay the foreclosure sale. Maryland Rule 14-211 "allows homeowners to prevent a foreclosure sale by challenging, among other things, the 'right of the [lender] to foreclose[.]'" *Bates v. Cohn*, 417 Md. 309, 328-29 (2010) (citations omitted). Because such a challenge contemplates injunctive relief as a remedy, the denial of motion to stay under Rule 14-211 may be appealed immediately. *Fishman v. Murphy ex rel. Estate of Urban*, 433 Md. 534, 540 n. 2 (2013); *See also* Maryland Code, Courts and Judicial Proceedings Article § 12-303 (discussing interlocutory appeals).

"Even when interlocutory appeals are permitted, however, such an appeal must be filed within thirty days of the entry of the order from which the appeal is taken." *In re Guardianship of Zealand W.*, 220 Md. App. 66, 78 (2014). "If the appeal is not filed within thirty days after the entry of an appealable interlocutory order, this Court lacks jurisdiction to entertain the interlocutory appeal." *Id.* (citing Maryland Rule 8-202(a) (Notice of appeal "shall be filed within thirty days after entry of the judgment or order from which the appeal is taken.")).³ Because the 30-day filing requirement is jurisdictional, "if the appeal is not

³ Maryland Rule 8-202 provides a few limited exceptions, none of which are applicable here, to the 30-day time limit for filing an appeal. Md. Rule 8-202(b)-(e).

timely noted, we must dismiss the appeal.” *Scarborough v. Altstatt*, 228 Md. App. 560, 565 (2016), *cert. denied*, 450 Md. 129 (September 29, 2016).

Here, the circuit court entered the judgment denying appellant’s motion to stay on May 17, 2016; however, appellant did not note the instant appeal until October 21, 2016.⁴ Accordingly, appellant’s claim is untimely and must be dismissed.

**APPEAL DISMISSED.
COSTS TO BE PAID BY
APPELLANT**

⁴ Even if, in applying the 30-day filing requirement, we were to consider appellant’s claim from the date of the court’s denial of his exceptions to the foreclosure sale, his appeal would still be untimely, as that judgment was entered on June 28, 2016. In fact, the only judgment for which appellant’s claim would be timely is the judgment ratifying the auditor’s report. Nevertheless, appellant did not raise any challenges to the auditor’s report in the circuit court, nor does he raise any here.