UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2290

September Term, 2015

SULION, LLC

v.

HAROLD R. PHIPPS, ET AL.

Arthur,
Beachley,
Shaw Geter,

JJ.

Opinion by Arthur, J.

Filed: April 4, 2017

A company bought a property at a tax sale and filed a timely complaint to foreclose rights of redemption. No one opposed the company's request for a judgment, the court entered a judgment in the company's favor, and the judgment became enrolled.

Months after the judgment became enrolled, two parties moved to strike the judgment under Md. Rule 2-535(b), asserting arguments that they could have asserted even before the judgment was ever entered. The circuit court granted their motion and vacated the enrolled judgment. We reverse.

FACTUAL AND PROCEDURAL HISTORY

Harold R. Phipps and his ex-wife, Patricia G. Phipps, failed to pay the property taxes that were due on real estate that they owned at 1737 Swinburne Avenue in Crofton. Consequently, on June 3, 2014, the tax collector, Anne Arundel County, sold the property at a tax sale. *See generally* Md. Code (1986, 2012 Repl. Vol.), Title 14, Subtitle 8, Part III, of the Tax-Property Article ("TP").

The tax-sale purchaser, Sulion LLC, received a certificate of sale (*see* TP § 14-820), evidencing that it had acquired the property, subject to Mr. and Ms. Phipps's right to redeem it by paying all of the taxes that were or had become due (plus penalties and interest) and reimbursing Sulion for any taxes, penalties, or interest that it had paid and any expenses that it had incurred, plus interest. *See* TP §§ 14-827, 14-828.

Pursuant to TP § 14-833, Sulion filed a timely complaint to foreclose rights of redemption in the property on December 10, 2014.[1] As defendants, Sulion named the owners of record, Mr. and Ms. Phipps; two judgment-creditors; and Anne Arundel County.

There is no dispute that Sulion served its complaint on Mr. Phipps, the judgment-creditors, and the County. Furthermore, according to an affidavit of service that was filed in the circuit court, Sulion personally served Ms. Phipps with the summons and the complaint at her address in Lothian, Maryland, on February 20, 2015. Sulion also served Ms. Phipps, by mail, at that address, with a request for judgment on February 26, 2015.

Notwithstanding the affidavit of service, Ms. Phipps claims that she did not receive service of process on February 20, 2015. Nonetheless, Ms. Phipps admitted that she learned of the litigation "sometime in early March 2015," while, she said, she was looking at the Maryland Judiciary Case Search website to see the status of her divorce case against Mr. Phipps. With the assistance of her divorce lawyer and of John J. Ryan, an attorney whom the circuit court had appointed as a trustee to sell the Crofton property in the divorce litigation between Mr. and Ms. Phipps, she met Sulion's process server on March 17, 2015, and received a summons (or perhaps another summons) in this case.

Although Ms. Phipps admittedly received a summons no later than St. Patrick's Day of 2015, she did not file an answer. Nor did she file any of the mandatory motions

[1] Sulion was required to file suit to foreclose rights of redemption no sooner than six months after the date of the sale and no later than two years after the date of the certificate of sale. TP § 14-833(a), (c).

under Md. Rule 2-322(a), such as a motion to dismiss because of insufficiency of process or insufficiency of service of process. Nor did she oppose Sulion's pending request for judgment.

Mr. Ryan, the court-appointed trustee, moved to intervene on April 15, 2015, about a month after he said he first became aware of the litigation.[2] Sulion responded that it did not object to his motion, and the court entered an order permitting Mr. Ryan to intervene on May 6, 2015. Mr. Ryan, however, did not file an answer. Furthermore, even though the response to the motion to intervene disclosed that Sulion had filed a request for judgment, Mr. Ryan did nothing in response to the request for judgment.

Meanwhile, on April 6, 2015, the circuit court had signed a judgment foreclosing rights of redemption in the property, but for reasons that are unclear from the record, it did not send the judgment to the parties until sometime in May 2015.[3]

[2] Mr. Ryan submitted an affidavit stating that he "discovered" this litigation "[a]t some point in the late winter or early spring 2015," when Ms. Phipps told him that "she had discovered a case that she believed was against her and her ex-husband and asked [him] to research it." Because Mr. Ryan assisted Ms. Phipps in arranging the meeting with Sulion's process server on March 17, 2015, he must have learned of this litigation on or before that date.

[3] Although the docket states that the order was entered on April 7, 2015, the order appears not to have been publicly available until sometime after April 30, 2015, as Sulion observed that its request for judgment was still pending as of that date.

Upon the entry of the judgment, neither Ms. Phipps, nor Mr. Ryan, nor any of the other defendants took any prompt action to challenge it in any way. The judgment became enrolled.[4]

On July 30, 2015, after the judgment had become enrolled, the Anne Arundel County Director of Finance conveyed the property, in fee simple, to Sulion. The deed recited that Sulion had paid a total of $175,401.00 for the property.

On August 10, 2015, also after the judgment had become enrolled, the County issued a cash receipt, evidencing Sulion's payment of over $165,000.00. That figure presumably represented the balance due after an initial payment that Sulion had made at the time of the tax sale.

On September 8, 2015, Sulion requested a writ of possession, because Mr. Phipps had not vacated the property. The court granted the writ on September 14, 2015.

After Sulion obtained the writ of possession, Ms. Phipps and Mr. Ryan finally snapped into action. On October 1, 2015, Ms. Phipps met with a new attorney. On October 9, 2015, Ms. Phipps and Mr. Ryan, through the new attorney, moved to strike the enrolled judgment under Md. Rule 2-535(b), which generally permits a court to revise a judgment at any time upon a showing of "fraud, mistake, or irregularity."

[4] Sulion asserted that it received a copy of the order foreclosing rights of redemption by mail on May 22, 2015. Mr. Ryan denied that he received a copy of the order foreclosing rights of redemption, but did not explain why he was unable to ascertain what had happened from a review of public court records. Ms. Phipps did not deny that she received a copy of the order – indeed, the order includes a distribution list that contains her name and address. She claims to have believed that Mr. Ryan "was doing whatever needed to be done to preserve her rights."

In moving to strike the enrolled judgment, Ms. Phipps and Mr. Ryan argued, among other things, that the property was *in custodia legis* (because the court had appointed Mr. Ryan to sell it) and that Ms. Phipps had been served with a stale summons that was more than 60 days old. The motion did not address why they had waited for months before challenging the enrolled judgment with arguments that were at their disposal even before the court entered the judgment.

In the certificate of service for their motion to vacate the enrolled judgment, Ms. Phipps and Mr. Ryan stated that they served it on Sulion by mailing it to Sulion's counsel's address at 27 N. Wacker Drive in Chicago. The certificate of service, however, omitted counsel's room or suite number.[5]

Sulion claims not to have received the motion to vacate. In any event, Sulion did not respond to the motion. Consequently, on November 4, 2015, the circuit court granted the motion to strike, evidently treating it as unopposed. No one questioned why the owner of an enrolled judgment, which had paid $175,000.00 for a property, received a deed granting it title in fee simple, and sought and obtained a writ of possession to evict the former title owner, had not responded to the motion to strike the judgment foreclosing rights of redemption.

Sulion claims that on November 9, 2015, it received a letter in which Ms. Phipps's counsel informed it of the order vacating the judgment and asking how much Ms. Phipps

[5] The building must have at least five floors, as the record reflects that counsel's room or suite number is 503.

would have to pay to exercise her right of redemption. Sulion promptly obtained a copy of the order from counsel for Anne Arundel County and, on November 16, 2015, filed a motion to alter or amend the judgment under Rule 2-534. Among other things, Sulion's motion asserted that it had not received the motion to strike and that, after the entry of the enrolled judgment, it had expended considerable sums to improve the property. In addition, the motion pointed out that, by their own admission, Ms. Phipps and Mr. Ryan had known of the action to foreclose the rights of redemption since March 2015, but had done nothing to assert their rights until they moved to strike the enrolled judgment.[6]

Although none of the defendants opposed Sulion's post-judgment motion, the court denied it on December 17, 2015. Two weeks later, Sulion noted a timely appeal.

QUESTION PRESENTED

Sulion presents a number of questions, but we need to decide only one, which we have condensed and rephrased as follows: Did the circuit court err in vacating Sulion's enrolled judgment foreclosing rights of redemption?[7]

[6] Ms. Phipps and Mr. Ryan contend that Sulion's motion was untimely. It was not. The order vacating the judgment was docketed on November 4, 2015, a Wednesday. Sulion had 10 days to file a post-judgment motion. Md. Rule 2-534. The tenth day fell on Saturday, November 14, 2015. Consequently, under Rule 1-203(a)(1), Sulion had until the following Monday, November 16, 2015, to file its motion. Sulion filed its motion on November 16, 2015, the day it was due.

[7] Sulion phrased its questions as follows:

> 1. Did the Circuit Court err in vacating Sulion's Judgment Foreclosing Rights of Redemption Where Allegations Related to Sulion's Failure to Serve were not proved and where Appellees Admit they had Actual Notice of the Tax Foreclosure Action

For the reasons enumerated below, we conclude that the court erred. Consequently, we reverse.

ANALYSIS

Under Md. Rule 2-535(a), a circuit court has "'unrestricted discretion'" to revise a judgment within 30 days after the entry of judgment. *See, e.g.*, *Platt v. Platt*, 302 Md. 9, 13 (1984) (quoting *Maryland Lumber Co. v. Savoy Constr. Co.*, 286 Md. 98, 102 (1979)). After 30 days, however, the judgment is said to become "enrolled." Thereafter, a circuit court can revise the judgment only upon a showing, by clear and convincing evidence,[8] of "fraud, mistake, or irregularity," as those terms are "'narrowly defined and strictly applied'" in the case law. *Pelletier v. Burson*, 213 Md. App. 284, 290 (2013) (quoting

Prior to the Entry of Judgment Foreclosing rights of Redemption, and where one Appellee Intervened in the Action?

2. Did the Circuit Court err in vacating Sulion's Judgment as to *all* parties to the action, rather than solely as to either Ms. Phipps or Mr. Ryan?

3. Did the Circuit Court err in denying Sulion's Motion for Reconsideration despite the fact that it was unopposed and despite the due process issues surrounding Sulion's failure to receive the Motion to Vacate the Judgment and despite the fact the service by mail on Sulion's Counsel was not adequate because his appearance was terminated as a matter of law?

(Emphasis and capitalization in original.)

[8] *See, e.g.*, *Powell v. Breslin*, 430 Md. 52, 70 (2013); *Pelletier v. Burson*, 213 Md. App. 284, 290 (2013); *Davis v. Attorney General*, 187 Md. App. 110, 123-24 (2009).

Thacker v. Hale, 146 Md. App. 203, 217 (2002)); *accord Early v. Early*, 338 Md. 639, 652 (1995).

Rule 2-535(b) reflects a strong policy in favor of putting an end to litigation (*see, e.g.*, *Penn Cent. Co. v. Buffalo Spring & Equip. Co*., 260 Md. 576, 585 (1971); *Bland v. Hammond*, 177 Md. App. 340, 357 (2007)) and of fostering the certainty and reliability of enrolled judgments. *See Powell v. Breslin*, 430 Md. 52, 70 (2013) ("[t]he overarching aim of Md. Rule 2-535(b) . . . is the preservation of the finality of judgments, unless specific conditions are met"). "[O]nce parties have had the opportunity to present before a court a matter for investigation and determination, and once the decision has been rendered and the litigants, if they so choose, have exhausted every means of reviewing it, the public policy of this State demands that there be an end to that litigation." *Schwartz v. Merchants Mortg. Co*., 272 Md. 305, 308 (1974); *accord Kent Island, LLC v. DiNapoli*, 430 Md. 348, 366 (2013); *Tandra S. v. Tyrone W*., 336 Md. 303, 314 (1994). The policy is so strong the Court of Appeals has rejected a challenge to an enrolled judgment that was shown, through scientific proof, to be wrong. *Tandra S. v. Tyrone W*., 336 Md. at 320.[9]

[9] In *Tandra S. v. Tyrone W.*, 336 Md. at 319-20, the Court held that Rule 2-535(b) did not authorize a trial court to vacate an enrolled judgment of paternity based on a post-judgment blood test that conclusively excluded the movant as the potential father. The General Assembly later enacted a statute permitting the revision of a paternity judgment on grounds other than the narrow grounds enumerated in Rule 2-535(b). *See Langston v. Riffe*, 359 Md. 396, 403-06 (2000).

A party acquires a "substantial right" when a judgment in his or her favor becomes enrolled. *Williams v. Snyder*, 221 Md. 262, 268 (1959). Consequently, even though an order striking the enrolled judgment does not have the conventional attributes of a final, appealable judgment, in that it does not put the parties out of court and deny them the means of further prosecuting the case or the defense (*see Houghton v. County Comm'rs of Kent County*, 307 Md. 216, 221 (1986)), Maryland appellate courts have long held that "an order vacating an enrolled judgment is treated as a final judgment, and therefore is immediately appealable." *Davis v. Attorney General*, 187 Md. App. 110, 120 (2009) (citing *Ventresca v. Weaver Bros., Inc.*, 266 Md. 398, 403 (1972); *Mutual Benefit Soc'y of Baltimore, Inc. v. Haywood*, 257 Md. 538, 540 (1970)); *Williams v. Snyder*, 221 Md. at 268.[10]

We assume for the sake of argument that Ms. Phipps has alleged a basis for a finding of jurisdictional "mistake" within the meaning of Rule 2-535(b). Notwithstanding the allegations in the affidavit of service from Sulion's process server,

[10] The courts have not clearly articulated the basis for "treating" such an order as a final judgment. An explanation may lie in the collateral order doctrine. *See generally Ehrlich v. Grove*, 396 Md. 550, 563 (2007) (enumerating the elements of an appealable collateral order). If an order vacates an enrolled judgment on the grounds of "fraud, mistake, or irregularity," as those terms are narrowly defined in the case law interpreting Rule 2-535(b), the order is likely to be completely separate from (or "collateral" to) the merits of the action. Furthermore, an order vacating an enrolled judgment is likely to be effectively unreviewable on appeal from a final judgment, because the order divests the judgment-holder of something irreplaceable – the certainty of vested rights under an enrolled judgment. *Cf. Scriber v. State*, 437 Md. 399, 406-07 (2014) (denial of motion to dismiss criminal case on grounds of double jeopardy is immediately appealable under collateral order doctrine).

Ms. Phipps denies that she was personally served with the summons and complaint on February 20, 2015. In addition, although Ms. Phipps admits that she received a copy of the summons from Sulion's process server on March 17, 2015, she asserts that the summons was ineffective because it had expired. These allegations of deficient service could support a finding of "mistake." *See, e.g.*, *Tandra S. v. Tyrone W.*, 336 Md. at 317 ("[t]he typical kind of mistake occurs when a judgment has been entered in the absence of valid service of process; hence, the court never obtains personal jurisdiction over a party").

We also assume, again for the sake of argument, that Mr. Ryan has alleged a basis for a finding of "irregularity" within the meaning of Rule 2-535(b). The court granted Mr. Ryan's motion to intervene on May 6, 2015, but he asserted that he did not receive a copy of the judgment, which the court did not mail to the parties until sometime after he was permitted to intervene. This Court has held that an "irregularity" occurred when the clerk failed to send a notice of dismissal to the plaintiff's address of record. *Estime v. King*, 196 Md. App. 296, 308 (2010); *Gruss v. Gruss*, 123 Md. App. 311, 320 (1998). By analogy, the clerk's failure to send the judgment to Mr. Ryan, an intervenor-defendant, might support a finding of "irregularity" as well.

Nonetheless, even if a party can establish "fraud, mistake, or irregularity" by clear and convincing evidence, a motion to revise an enrolled judgment will succeed only if the moving party acted in good faith and with ordinary diligence. *See, e.g.*, *Thacker v. Hale*, 146 Md. App. at 217 (quoting *Platt v. Platt*, 302 Md. 9, 13 (1984)) ("the party moving to

set aside the enrolled judgment must establish that he or she 'act[ed] with ordinary diligence and in good faith upon a meritorious cause of action or defense'"); *see also J.T. Masonry Co. v. Oxford Constr. Servs., Inc.*, 314 Md. 498, 506 (1989) (quoting *Platt*, 302 Md. at 13) ("[t]he power of the circuit court to revise a final judgment which has been entered for more than thirty days requires, in addition to fraud, mistake, irregularity or clerical error, 'that the person seeking the revision acts with ordinary diligence and in good faith upon a meritorious cause of action or defense'"); *Davis*, 187 Md. App. at 124 ("[o]nce fraud, mistake, or irregularity has been shown, the court may vacate the judgment upon consideration of equitable factors, including whether the moving party has shown that he has acted in good faith and with ordinary diligence, and that he has a meritorious cause of action or defense, as the case may be").

Maryland appellate courts have repeatedly held that parties failed to act in good faith and with ordinary diligence when they were aware of a basis to vacate a judgment, but did not promptly assert it. *See*, *e.g.*, *J.T. Masonry Co. v. Oxford Constr. Servs., Inc.*, 314 Md. at 507 (holding that party did not act with diligence when it "did not move to challenge the dismissal [of its case] until forty-five days or more after it uncontrovertedly knew that judgment had been entered"); *Hughes v. Beltway Homes, Inc*., 276 Md. 382, 389 (1975) (holding that party did not "show the diligence required by our cases" where it waited until almost six months after entry of judgment to raise an issue concerning defects in advertisement for foreclosure sale, of which it knew or should have known at or before the entry of judgment); *Owl Club, Inc. v. Gotham Hotels, Ltd*., 270 Md. 94,

101-02 (1973) (holding that defendant did not act with ordinary diligence where it knew that it was in default before judgment became enrolled, but did not move to set aside judgment until approximately 50 days after it became final); *Cohen v. Investors Funding Corp. of New York*, 267 Md. 537, 541 (1973) (holding that defendant did not act with ordinary diligence where it waited more than two months after entry of default judgment, and more than two weeks after its bank account was attached, to move to vacate); *see also Platt v. Platt*, 302 Md. at 16-17 (holding that husband "did not act with the diligence required by our cases" because he waited five years to challenge a divorce judgment when "[i]t was readily apparent on the face of the decree," which he received "when it was entered[,]" that the support orders did not conform with his expectations); *Thacker v. Hale*, 146 Md. App. at 230 (party failed to exercise ordinary diligence when he took 12 years to challenge an aspect of a judgment of which he was aware when the judgment was entered).

Although ordinary diligence is sometimes a question of fact that appellate courts cannot decide,[11] we do not think that any reasonable person could conclude, from the

[11] *See, e.g.*, *Estime v. King*, 196 Md. App. at 308 (where court had dismissed complaint, but erroneously failed to send notice of dismissal to plaintiff's address of record, the question of whether plaintiff had acted with ordinary diligence despite three-month delay in moving to vacate was "outside the scope of our review"); *Gruss v. Gruss*, 123 Md. App. at 321 (where clerk erroneously failed to send dismissal notice to unrepresented person's address of record, and two and one-half years passed before plaintiff moved to revise judgment, appellate court would "not make factual determinations properly left to the trial court" about whether plaintiff acted with ordinary diligence).

face of the motion to strike, that Ms. Phipps and Mr. Ryan exercised ordinary diligence in the circumstances of this case.

If Mr. Ryan's status as the court-appointed trustee to sell the property for Mr. and Ms. Phipps prevented Anne Arundel County from selling the property at a tax sale, there is no reason why Mr. Ryan could not have raised that or any other relevant issue in the "late winter or early spring" of 2015, when he first claims to have become aware of this litigation; or on April 15, 2015, when he formally moved to intervene; or in the immediate aftermath of the court's decision to permit him to intervene on of May 6, 2015. It is the antithesis of reasonable diligence for a party, particularly a lawyer, to attack an enrolled judgment months after it was entered while relying solely on arguments that he had at his disposal before the court had entered the judgment in the first place.

Likewise, if Sulion did not properly serve Ms. Phipps in February 2015, and if it served her only with an expired summons in March, there is no reason why she could not – and, in fact, no reason why she should not – have raised that issue in a mandatory preliminary motion to dismiss on grounds of insufficiency of process or insufficiency of service of process. *See* Md. Rule 2-322(a) (stating that the defenses of insufficiency of process or insufficiency of service of process "shall be made by motion to dismiss filed before the answer" and that "[i]f not so made and the answer is filed, these defenses are waived"). It defies credulity to suggest that Ms. Phipps exercised "reasonable diligence" when she failed to assert a mandatory motion, suffered a judgment, and waited for

months after the judgment become enrolled before attacking it on the basis of an argument that she was required to assert before answering the complaint.

It makes no difference that Mr. Ryan claims to have been unaware of the judgment and that Ms. Phipps claims to have relied on Mr. Ryan to protect her rights. "'[A] litigant has a duty to keep himself [or herself] informed as to the progress of a pending case.'" *Bland v. Hammond*, 177 Md. App. at 358 (quoting *Das v. Das*, 133 Md. App. 1, 19 (2000)); *see also Wooddy v. Wooddy*, 256 Md. 440, 454 (1970) (holding that negligence or mistake of agents or counsel was insufficient to justify striking an enrolled judgment for mistake or irregularity because the litigant had the duty to stay "informed as to what was occurring in the case"); *Iskovitz v. Sakran*, 226 Md. 453, 455-56 (1961) (per curiam) (holding that defendant who claimed that he had never received notice of the trial date and did not attend trial was not entitled to have enrolled judgment stricken on ground of mistake or irregularity, at least nine months after it was entered, because he neglected his "obligation to keep himself apprised of the trial date"); *Tasea Inv. Corp. v. Dale*, 222 Md. 474, 479 (1960) (holding that where a defendant was properly summoned, it was not necessary to inform her of subsequent proceedings because she had the duty "to keep herself informed as to what was occurring in the case"); *Baltimore Luggage Co. v. Ligon*, 208 Md. 406, 421-22 (1955) ("[i]t is settled that a party to litigation, over whom the court has obtained jurisdiction, is charged with the duty of keeping aware of what actually occurs in the case and is affected with notice of all subsequent proceedings and that his actual knowledge is immaterial"); *Furda v. State*, 194 Md. App. 1, 42 n.19 (2010)

(quoting *Bland*, 177 Md. App. at 359, for the proposition that it was the defendant's "'duty to keep [himself] informed of the status of [his] case'"), *aff'd*, 421 Md. 332 (2011).

In this regard, we note that Ms. Phipps is familiar with Maryland Judiciary Case Search, because she said that she discovered this case while using it. Mr. Ryan must also have some familiarity with the means of reviewing the docket, not only because he is an attorney, but also because he said that he assisted Ms. Phipps in researching the status of the case. Given that both Ms. Phipps and Mr. Ryan had instantaneous access to the docket in this case, 24 hours a day, seven days a week, as long as they had either a computer or a mobile device and an internet connection, there is no conceivable excuse for them to have waited until five months after the court announced the judgment before raising the arguments that they raised in their motion to strike.

Nor does it make a difference that Sulion did not oppose the motion to vacate. Just as a court must deny even an unopposed motion for summary judgment if the motion itself reflects a genuine dispute of material fact (*Thompson v. Baltimore County*, 169 Md. App. 241, 251-52 (2006)), so too must a court deny an unopposed motion to vacate an enrolled judgment under Rule 2-535(b) if (as in this case) it is clear from the face of the motion that the moving party did not act with reasonable diligence.

While Ms. Phipps and Mr. Ryan waited to assert the arguments that they had at their disposal even before the judgment was entered, Sulion took a number of actions in eminently reasonable reliance on the enrolled judgment it had won: Sulion paid the

County the $165,000.00 balance due on its bid; it obtained a deed to the property; it incurred expenses in obtaining a writ of possession to evict Mr. Phipps, who refused to leave even after Sulion had received its deed; and it claims to have spent substantial sums to repair and improve the property. If we affirmed the decision vacating the enrolled judgment notwithstanding Ms. Phipps's and Mr. Ryan's sloth, we would draw the validity of the deed into question, introduce doubt as to who has title to the property, take the property back off the County's tax rolls, potentially require the County to refund Sulion's $165,000.00, and foment further litigation about the extent of any benefit that Sulion may have conferred upon Mr. and Mrs. Phipps by making repairs to the house. For these additional reasons, we conclude that Mr. Ryan and Ms. Phipps indisputably failed in their burden to demonstrate good faith and ordinary diligence.[12]

In summary, from the face of the motion to strike the enrolled judgment itself, it was beyond any serious dispute that Ms. Phipps and Mr. Ryan failed to exercise ordinary diligence in presenting their challenge to the court. Accordingly, the court erred in granting the motion.

JUDGMENTS OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY REVERSED. COSTS TO BE PAID BY APPELLEES.

[12] In an inadvertent attempt to devise a new definition of "temerity," Mr. Phipps joined this case as an appellee even though he filed nothing in the circuit court – not even a tardy motion to vacate the enrolled judgment. Mr. Phipps, who engendered this litigation by failing to pay his taxes, has not dissuaded us from the conclusion that his co-appellees did not exercise ordinary diligence.