

Circuit Court for Prince George's County
Case No. CAEF20-01954

UNREPORTED*
IN THE APPELLATE COURT
OF MARYLAND**

No. 132

September Term, 2022

DAVID SIMARD

v.

BRIAN GALLAGHER

Leahy,
Friedman,
Wright, Alexander Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: March 22, 2023

*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. R. 1-104.

**At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

In this appeal from a ruling by the Circuit Court for Prince George’s County, David Simard asserts that the circuit court erred in denying his second motion to stay a foreclosure proceeding and in denying his motion to dismiss the foreclosure action without conducting a hearing. For the reasons that follow, we conclude that Simard’s challenges have been rendered moot because the circuit court ratified the sale of the foreclosed property to a third-party purchaser. We therefore dismiss the appeal.

BACKGROUND

In 2012, Simard defaulted on a note secured by a deed of trust encumbering his residence in Prince George’s County. In January 2020, Brian Gallagher, acting on behalf of the lender, NDF1, LLC, initiated a foreclosure action against Simard. The lender filed its final loss mitigation affidavit on June 15, 2020.¹

In September 2020, Simard, representing himself, filed a motion under Maryland Rule 14-211 to stay the sale of the property.² Simard argued that the sale should be stayed because the lender ignored his requests to engage in mediation. He also argued that he had good cause for filing his motion more than 15 days after the lender filed its final loss

¹ “A preliminary or final loss mitigation affidavit must be filed in all actions to foreclose a lien on residential property, even if a loss mitigation analysis is not required.” Comm. Note, MD. R. 14-207(b).

² Maryland Rule 14-211(a)(1) permits a property owner to file a motion to stay the sale of the property and dismiss the foreclosure action. MD. R. 14-211(a)(1).

mitigation affidavit³ because the Office of Administrative Hearings was closed until July 6. Before the court ruled on Simard's motion to stay, however, the foreclosure action was stayed automatically because Simard filed a bankruptcy petition. The automatic stay was lifted several months later when the bankruptcy court dismissed Simard's case.

In March 2021, the circuit court held a hearing on Simard's outstanding motion for a stay of sale. The circuit court denied the motion. The action was automatically stayed again, however, because Simard filed another bankruptcy petition. The second automatic stay was lifted several months later.

In December 2021, Simard filed a second motion to dismiss or stay the sale, arguing, primarily, that the lender was unlicensed as a collection agency until some time in 2021 and therefore lacked authority to maintain the foreclosure action against him in 2020. The circuit court denied the motion without a hearing, pursuant to Maryland Rule 14-211(b), finding that it was filed untimely and with no meritorious basis for the court to excuse the untimeliness. Finally, the circuit court ordered that the case proceed.

Simard moved to alter or amend the circuit court's order denying his motion. The circuit court denied the motion to alter or amend without a hearing and affirmed its finding that the second motion to stay or dismiss was untimely, noting that Simard's second motion to stay was filed 329 days after the bankruptcy court lifted its first automatic stay. The court

³ As pertinent here, a motion to dismiss under Maryland Rule 14-211 must be filed no later than 15 days after the date the final loss mitigation affidavit is filed. MD. R. 14-211(a)(2)(A)(i). The court may extend the time for filing, however, for good cause. MD. R. 14-211(a)(2)(C).

further found that, in any event, Simard’s motion failed to state a defense to the validity of the lien, the lien instrument, or to the right of the lender to foreclose in the pending action. Simard then noted this appeal from the denial of his second motion to stay or dismiss.⁴

Meanwhile, the property was sold on December 14, 2021. The circuit court ratified the sale and referred the matter to audit by order entered July 15, 2022. The property was conveyed to the third-party purchaser by deed on July 22, 2022.

DISCUSSION

Simard contends that the circuit court erred or abused its discretion in denying his second motion to stay or dismiss the foreclosure action and that it should not have done so without first conducting a hearing. Gallagher responds that the present appeal is moot and should be dismissed because the sale of the property was ratified by order and Simard did not post a *supersedeas* bond to stay enforcement of that order.

A notice of appeal alone is insufficient to stay the enforcement of a ratification order. In a foreclosure action, a property owner must file a *supersedeas* bond to stay the enforcement of a judgment. MD. R. 8-422(a)(1); *Jones v. Rosenberg*, 178 Md. App. 54, 71 (2008).⁵ Because Simard did not file a *supersedeas* bond, the circuit court was permitted to enforce the ratification order, even as the appeal was pending in this Court.

⁴ A property owner “may take an immediate appeal from an order denying a motion to stay the sale of the property and dismiss a foreclosure action, even though the order is not a final judgment.” *Huertas v. Ward*, 248 Md. App. 187, 202 (2020).

⁵ The general rule requiring the filing of a *supersedeas* bond has two exceptions: when there is unfairness or collusion between the purchaser and the trustee or when a mortgagee or its affiliate purchases the disputed property at the foreclosure sale. *Mirjafari*,

The Supreme Court of Maryland (formerly the Court of Appeals)⁶ explained the bond requirement as it relates to an appeal in a foreclosure action:

Maryland decisional law speaks clearly on the question of the mootness of appellate challenges to ratified foreclosure sales in the absence of a *supersedeas* bond to stay the judgment of a trial court. The general rule is that the rights of a *bona fide* purchaser of mortgaged property would not be affected by a reversal of the order of ratification in the absence of a bond having been filed. As a consequence, an appeal becomes moot if the property is sold to a *bona fide* purchaser in the absence of a *supersedeas* bond because a reversal on appeal would have no effect. The rule operates even though the purchaser may know that a claim is being asserted against ratification.

Mirjafari v. Cohn, 412 Md. 475, 483-84 (2010) (cleaned up).

We agree with Gallagher that dismissal of the appeal is required because the issue Simard presents is moot.⁷ The sale of the subject property was ratified on July 15, 2022, and the property was conveyed to the third-party purchaser on July 22, 2022. The record does not demonstrate that Simard posted a *supersedeas* bond upon the filing of the present appeal on March 17, 2022, or that the circuit court held a hearing to fix the bond amount.⁸

412 Md. at 485. Simard does not argue, and the record does not show, however, that either of these exceptions are applicable here.

⁶ At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022.

⁷ A case is moot when there is “no longer an existing controversy when the case comes before the Court or when there is no longer an effective remedy the Court could grant.” *Suter v. Stuckey*, 402 Md. 211, 219 (2007). Because courts do not entertain moot controversies, *id.* at 219-20, “we generally dismiss moot actions without a decision on the merits.” *Dep’t of Hum. Res., Child Care Admin. v. Roth*, 398 Md. 137, 143 (2007).

⁸ Simard moved to set a *supersedeas* bond on October 24, 2022, but the request, which was filed seven months after the notice of appeal, and after both parties’ initial appellate briefs were filed in this Court, came too late to stay the ratification order.

Even though the foreclosure case has continued after the ratification of the sale, “the proceeding no longer involves an adjudication of rights in the real property. The ratification of the sale has the practical effect of putting the parties out of court, as they can no longer prosecute or defend their rights with respect to the property.” *Huertas*, 248 Md. App. at 205-06. We therefore dismiss Simard’s appeal.⁹

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

⁹ Even were we to consider the circuit court’s denial of Simard’s motion to dismiss in the absence of a hearing, he would not prevail. The plain language of Maryland Rule 14-211 requires the circuit court to deny a motion to stay and dismiss “with or without a hearing” if it finds, based on the record before it, that the motion was not timely filed and the movant did not show good cause for excusing non-compliance. MD. R. 14-211(b)(1); *Buckingham v. Fisher*, 223 Md. App. 82, 89 (2015) (In those circumstances, the court maintains “the discretion to deny the motion before holding a hearing on the merits.”).

In the instant case, even allowing for extra time for the filing of the motion to dismiss due to the extension permitted by court closures during the pandemic, it is undisputed that Simard did not file his motion to dismiss in a timely manner, as required by Rule 14-211(a)(2)(A)(i). And, he made no attempt to establish good cause to excuse the untimely filing within the purview of Rule 14-211(a)(2)(C). The circuit court therefore did not abuse its discretion in denying the motion without a hearing.

Moreover, for the reasons set forth by the circuit court in its order, Simard’s motion did not set forth a valid reason for dismissal of the foreclosure action and was properly denied on that ground, as well. *See Bechamps v. 1190 Augustine Herman, LC*, 202 Md. App. 455, 461 (2011) (Maryland Rule 14-211 contemplates the grant of a motion to stay or dismiss only if the moving party provides a defense that could defeat the ability of the foreclosing party to foreclose). Finally, the circuit court did not abuse its extremely broad discretion in denying Simard’s request for reconsideration of its decision, in light of its legitimate reasons for denying the motion. *See Steinhoff v. Sommerfelt*, 144 Md. App. 463, 484 (2002) (a trial court need not revisit the merits after it has already made a decision).