

Circuit Court for Montgomery County
Case No. 382477V

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 0281

September Term, 2021

KAMAL MUSTAFA, ET. AL.

v.

CARRIE M. WARD, ET. AL.

Wells, C.J.,
Berger,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wells, C.J.

Filed: August 14, 2023

*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.

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.

Appellants, Kamal Mustafa and Fatima Mustafa (collectively, the “Mustafas”), borrowed a \$600,000 loan secured by a deed of trust on their home, 18306 Bubbling Spring Terrace, Boyds, Maryland 20841 (the “Property”). But, after the Mustafas defaulted on their loan, JP Morgan Chase Bank, through appellees, named Substitute Trustees—Carrie M. Ward, Howard N. Bierman, and Jacob Geesing (collectively, “the Trustees”)—initiated a foreclosure action for the Property in the Circuit Court for Montgomery County. Following the Mustafas’ unsuccessful motions to stay the foreclosure action, the Trustees sold the property at a foreclosure auction. Thereafter, the Mustafas filed for bankruptcy, automatically staying the buyer’s efforts to proceed with post-foreclosure sale actions. Subsequently, however, the bankruptcy court entered an order granting the buyer relief from the automatic stay. Following numerous filings seemingly intended to delay the sale of the Property, ultimately the circuit court ratified the sale. The Mustafas moved to dismiss and vacate this judgment, which the circuit court denied. And, it is from this order that the Mustafas timely appeal.

On appeal, the Mustafas submit the following issue for our review, which we have slightly rephrased: Did the circuit court err by ratifying the sale at a time when it lacked jurisdiction? For the reasons that follow, we answer in the negative and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On May 16, 2005, the Mustafas borrowed \$600,000 (the “Loan”) from Washington Mutual Bank, evidenced by a promissory note and secured by a deed of trust. A couple days later, the Mustafas purchased with the loan proceeds, real property located at 18306 Bubbling Spring Terrace, Boyds, Maryland 20841 (the “Property”). JP Morgan Chase

Bank subsequently purchased the Loan from Washington Mutual Bank. Thereafter, the Mustafas failed to pay their monthly mortgage payments and defaulted on June 1, 2008. In response, on October 1, 2013, JP Morgan Chase Bank, through appellees, named Substitute Trustees—Carrie M. Ward, Howard N. Bierman, and Jacob Geesing (collectively, “the Trustees”)—initiated a foreclosure action for the Property in the Circuit Court for Montgomery County. On October 17, 2014, PennyMac Corp., c/o PennyMac, Loan Services (“PennyMac”) purchased the Property for \$605,000 as the highest bidder. The Mustafas filed exceptions to the sale and a motion to dismiss the foreclosure action, which the circuit court ultimately denied.

On November 22, 2016, the Mustafas filed a voluntary petition for relief under Chapter 13 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Maryland, imposing an automatic stay on certain creditors, like PennyMac, who wanted to start or continue taking action against the debtor or the debtor’s property. *See* 11 U.S.C. § 362. In response, on April 11, 2017, PennyMac moved for relief from the automatic stay and co-debtor stay in order to proceed with post-foreclosure sale actions, such as ratification of the sale, obtaining legal possession of the Property, and recording the Substitute Trustee’s Deed. On May 16, 2017, the bankruptcy court entered an order granting PennyMac’s motion for relief from the automatic stay and co-debtor stay to proceed with post-foreclosure sale actions on the Property.

Then, on March 10, 2020, PennyMac assigned the Deed of Trust for the Property to

TransAm Holdings, LLC (“TransAm”).¹ Ten days later, as part of the bankruptcy case, PennyMac transferred its claim, then in the amount of \$649,430.64, to TransAm.

On July 24, 2020, Mr. Mustafa filed a Notice of Removal, removing the foreclosure action from the circuit court to the United States District Court for the District of Maryland, stating that “jurisdiction of this Court is proper because [the District Court] has original jurisdiction over the case pursuant to Title 11 of the United States Bankruptcy Code.” Noting the statement of jurisdiction, the District Court transferred the case to the bankruptcy court. On November 24, 2020, the bankruptcy court entered a written order concluding that it lacked subject matter jurisdiction over the foreclosure action and remanded the proceeding back to the circuit court. The next day, the clerk of the bankruptcy court filed a letter indicating that she was sending a certified copy of this remand order to the clerk of the circuit court. Thereafter, Mr. Mustafa appealed the remand order.²

After Mr. Mustafa’s appeal, on March 10, 2021, the circuit court granted the

¹ In their brief, the Mustafas claim that they have a “legal interest” in TransAm. In the circuit court, the Mustafas took the position that they “owned” TransAm, which appellees argue is “factually incorrect.”

² We note that Maryland Rule 8-501(c) requires that the record extract “contain all parts of the record that are reasonably necessary for the determination of the questions presented by the appeal...” Further, Rule 8-504(a) provides, among other things, that “[r]eference shall be made to the pages of the record extract or appendix supporting the assertions.” The Mustafas’ record extract lacks several documents relevant to the disposition of this case. Similarly, many of the Mustafas’ assertions in their brief are not clearly cited to or supported by the record extract. Although we are not required to “ferret out” from the record evidence omitted from the record extract, *Miller v. Bosley*, 113 Md. App. 381, 391 (1997), we have attempted—as best we could—to clarify these gaps in the record in order to more fully and completely dispose of the issues in this case.

Trustees’ motion to ratify the sale of the Property.³ On March 16 and 17, 2021, the Mustafas filed a motion to dismiss and a motion to vacate the judgment, respectively, essentially arguing that because PennyMac assigned its interest in this case to TransAm, which Mr. Mustafa claims he owns, “[the Trustees] have no legal interest or standing in this transaction.”⁴ The circuit court denied the Mustafas’ Motion to Dismiss and Motion to Vacate, the subject of this appeal.

Following this notice of appeal, on January 5, 2022, the bankruptcy court issued an Order of Discharge, which in general, releases a debtor from personal liability for certain specified debts.⁵

We will supply additional details where they are relevant to our analysis.

DISCUSSION

Standard of Review

The ratification of a foreclosure sale is . . . presumed to be valid. It is settled law that, there is a presumption that the sale was fairly made, and that the antecedent proceedings, if regular on the face of the record, were adequate and proper, and the burden is upon one attacking the sale to prove the contrary. The party excepting to the sale bears the burden of showing that the sale was invalid, and must show that any claimed errors caused prejudice. Additionally, in reviewing a court’s ratification of a foreclosure sale, we will

³ After the sale was ratified, this Court, on appeal, affirmed the bankruptcy court’s remand order.

⁴ More details on this claim by Mr. Mustafa are discussed, *infra*, in Note 6.

⁵ On July 6, 2022, about six months later, Mr. Mustafa again filed for Chapter 13 bankruptcy, resulting in an automatic stay of the appeal before this Court. However, the 2022 bankruptcy case was dismissed on March 30, 2023 and Mr. Mustafa was found ineligible for discharge.

disturb the circuit court’s findings of fact only when they are clearly erroneous.

Burson v. Capps, 440 Md. 328, 342–43 (2014) (quoting *Fagnani v. Fisher*, 418 Md. 371, 384 (2011) (cleaned up)). The question of subject matter jurisdiction is a legal one, and thus is reviewed de novo. *Beckwitt v. State*, 477 Md. 398, 420, *reconsideration denied* (Mar. 25, 2022), *cert. denied*, 143 S. Ct. 216 (2022), *reh’g denied*, 143 S. Ct. 475 (2022).

A. Parties’ Contentions

The Mustafas assert that the circuit court lacked jurisdiction when it ratified the foreclosure sale on March 11, 2021. The Mustafas note that they removed the case to the U.S. District Court of Maryland on July 30, 2020, and the case had not been remanded to the circuit court on March 11, 2021, as the circuit court had not received certified copies of the remand order. Additionally, the Mustafas note that at the time of the ratification, the remand order was on appeal, and their bankruptcy proceeding was also underway.

The Trustees make numerous counter-arguments. First, they assert that the Mustafas’ argument is not properly before this Court, as the Mustafas appeal from an interlocutory order, rather than a final judgment. Second, the Trustees point out that the Mustafas’ brief does not cite to the record at all, and specifically fails to demonstrate where their arguments were raised below. Finally, the Trustees posit, if this Court is to reach the merits of the Mustafas’ argument, it should nonetheless find it unavailing. In response to the Mustafas’ bankruptcy argument, the Trustees respond that the sale was ratified *after* the bankruptcy court lifted the automatic stay on the Mustafas’ assets so that post-foreclosure sale actions could proceed. Regarding the Mustafas’ claim that the circuit court

lacked jurisdiction because a statutory requirement had not been satisfied, the Trustees assert that this is no more than a conclusory statement in the Mustafas’ brief, and that they do not cite to any evidence of this in the record.

B. Analysis

First, we disagree with the Trustees that the Mustafas’ appeal is not properly before us because it appeals an interlocutory order. We conclude that the Mustafas did, in fact, appeal from a final judgment. The Mustafas’ appeal follows, and essentially challenges, the circuit court’s ratification of the foreclosure sale, which is a final judgment. *Huertas v. Ward*, 248 Md. App. 187, 202–04 (2020). And from a more technical view—assuming the Mustafas’ appeal was only of the denials of their motions to dismiss or vacate the judgment—at least the denial of their motion to vacate the judgment was an appropriate motion for appeal. “The denial of a motion to vacate an enrolled judgment is a final order, subject to appeal, as there is nothing left to be done in the circuit court.” *Davis v. Att’y Gen.*, 187 Md. App. 110, 122 (2009).

However, we agree with the Trustees that there is no merit in the Mustafas’ arguments. First, we see from the record that, on May 16, 2017, the bankruptcy court granted PennyMac’s “Motion for Relief From Automatic Stay and Co-Debtor Stay to Proceed with Post-Foreclosure Sale Actions on Real Property,” listing the address of the Property.] Thus, the Property was not shielded by the automatic stay that accompanies a bankruptcy filing when the circuit court ratified its foreclosure sale on March 11, 2021.

Second, as the Trustees point out, the Mustafas provide no evidence to demonstrate that the bankruptcy court failed to properly remand the case back to circuit court. As the

parties raising this challenge this is their burden, and “appellate courts cannot be expected to . . . search the record on appeal for facts that appear to support a party’s position.” *Ruffin Hotel Corp. of Maryland v. Gasper*, 418 Md. 594, 618, 690 (2011). What we do see from the record is that the bankruptcy court issued an order on November 24, 2020 remanding the case to the circuit court, that the bankruptcy court filed on November 25, 2020 a letter to the circuit court stating that pursuant to its remand order, it was “transmitting a certified copy of the Order remanding the case to your court, along with a certified copy of the docket entries,” and that the circuit court resolved the case on March 10, 2021. We decline to search outside the record extract for evidence that a procedural step of the remand was not satisfied.

Finally, we do not agree that the circuit court was divested of jurisdiction while the remand order was on appeal. Although neither Maryland courts nor the Fourth Circuit have addressed the issue, other jurisdictions confronting appeals of a remand order under 28 U.S.C. § 1447 have held that a state court may decide a case remanded from federal court, even if the remand order has been appealed. *E.g.*, *Fosdick v. Dunwoody*, 420 F.2d 1140, 1141 n.1 (1st Cir. 1970) (citing *People v. Mason* (1968) 259 Cal. App. 2d 30, 42; *Stephens v. American Home Assur. Co.* (S.D. N. Y.1993) 811 F. Supp. 937, 957, *vacated and remanded on other grounds in Stephens v. National Distillers and Chemical Corp.* (2d Cir.1995) 70 F.3d 10; *Eby v. Allied Products Corporation* (N.D.Ind.1983) 562 F. Supp. 528, 531; *Dorsey v. State* (Ind. App.1976) 357 N.E.2d 280, 283; *State v. Lehman* (Neb.1979) 278 N.W.2d 610, 615; 14 Wright & Miller: Federal Practice & Procedure (1998) § 3739, Remand; 4 Witkin & Epstein, Cal. Criminal L.3d (2000) Jurisdiction and

Venue, § 6, pp. 92-92.); *Citizens Bank & Tr. Co. v. Carr*, 583 So. 2d 864, 866 (La. Ct. App.), writ denied, 588 So. 2d 109 (La. 1991); *Drew v. Unauthorized Prac. of L. Comm.*, 970 S.W.2d 152, 156 (Tex. App. 1998).

Finding each of the Mustafas’ arguments unavailing, we affirm.⁶

⁶ Although not related to our holding, we note our serious concern that the Mustafas’ March 16, 2021 motion to dismiss was filed by an attorney, Kos N. Johns, Esq. We explain.

In that motion, the Mustafas asserted that Mr. Mustafa was the owner of TransAm Holdings LLC, the new assignee of the Deed of Trust for the Property. Mr. Mustafa, through counsel, explained in the motion that at the time PennyMac assigned the Deed of Trust to TransAm Holdings LLC on March 10, 2020, TransAm Holdings LLC “was a legally non-existing entity of New York,” as it was not a registered entity in the state of New York.” Then, the motion claims, on January 19, 2021, Mr. Mustafa was “able to register TransAm Holdings LLC in the *State of New York*.” (Emphasis in original). The motion also states that TransAm Holdings LLC “was formed under the laws of the *State of Maryland*” on June 23, 2020. (Emphasis in the original) The motion concludes that “TransAm Holdings LLC of the State of Maryland and New York are both sisters’ [*sic*] companies both owned by [Mr. Mustafa],” and states Mr. Mustafa “did not authorize [the Trustees] to file anything on behalf of TransAm Holdings LLC.”

The clear inference in the motion that Mr. Mustafa, as owner of TransAm Holdings LLC, was the assignee of the Deed of Trust and thus had authority to authorize (or withhold authorization for) actions by the Trustees, is demonstrably false. This is evidenced by the fact that the assignment of the deed occurred months before Mr. Mustafa registered the company name “TransAm Holdings LLC” in New York, by the Mustafas’ own admission. TransAm Holdings LLC—the entity to whom PennyMac actually assigned the deed—is a legal entity that the Mustafas do not own, nor do they have the authority to direct to do anything as far as this assignment of the deed of trust in this case.

It appears that counsel’s conduct may have implicated several canons of the Model Rules of Professional Conduct. For instance, Rule 1.2(d), which proscribes a lawyer from “counsel[ing] a client to engage, or assist[ing] a client, in conduct that the lawyer knows is criminal or fraudulent”; Rule 3.1, which requires that a lawyer only bring or defend a proceeding when “there is a basis in law and fact for doing so that is not frivolous”; Rule 3.3(4) regarding candor toward the tribunal, which proscribes a lawyer from presenting a “[l]egal argument based on a knowingly false representation of law”; and Rule 3.3(12) which provides that “[l]awyers have a special obligation to protect a tribunal against

**THE JUDGMENT OF THE CIRCUIT
COURT FOR MONTGOMERY
COUNTY IS AFFIRMED.
APPELLANT TO PAY THE COSTS.**

criminal or fraudulent conduct that undermines the integrity of the adjudicative process[.]”
Having raised these concerns, we leave any action in this regard ultimately to Bar Counsel
and the Attorney Grievance Commission to determine what, if any, Rules of Professional
Conduct counsel might have violated.