

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 303

September Term, 2016

LEVI MCDANIEL, ET UX.

v.

CARRIE M. WARD, ET AL.
SUBSTITUTE TRUSTEES

Graeff,
Kehoe,
Moylan, Jr., Charles E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: February 8, 2018

*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.

Levi and Susan McDaniel, self-represented appellants, appeal from the denial of an emergency motion to dismiss foreclosure proceedings in the Circuit Court for Prince George’s County. They present the following question for this Court’s review¹, which we have consolidated and rephrased, as follows:

Did the circuit court properly deny appellants’ emergency motion to dismiss foreclosure proceedings?

Substitute Trustees Carrie M. Ward, Howard N. Bierman, and Jacob Geesing, appellees, move to dismiss the appeal, alleging that the McDaniels failed to timely file their notice of appeal. We agree that the appeal is not timely filed, and therefore, we shall dismiss the appeal.

FACTUAL AND PROCEDURAL BACKGROUND

On December 18, 2007, the McDaniels executed a Note and Deed of Trust encumbering real property located at 3921 Etrick Court, Bowie, Maryland 20716 (the “Property”) in the amount of \$258,000. BankUnited, FSB, was listed as the lender on the Note and Deed of Trust. Mortgage Electronic Registration Systems, Inc. (“MERS”), was listed as the “beneficiary under this Security Instrument.” The Deed of Trust stated that

¹ The McDaniels present two questions for our review, which they phrase as follows:

I. Should a party be allowed to foreclose on real property without, “verifying” and “validating” the alleged debt.

II. Should a party be allowed to foreclose on real property without being a Holder-In-Due-Course of the original “wet ink” document evidencing ownership and allonge, not being the Real-Party-In/Of-Interest nor having true Standing and Capacity.

the Note and the Security Instrument “can be sold one or more times without prior notice to Borrower.” It also stated that the lender could appoint a successor trustee, that the “Lender may transfer this Note,” and that the “Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the ‘Note Holder.’”

On March 2, 2011, the McDaniels defaulted under the Deed of Trust securing the Note when they failed to tender payment per the terms of the Note and Deed of Trust. On October 19, 2012, following the McDaniels’ default, appellees were appointed as Substitute Trustees under the Deed of Trust.

On April 12, 2013, the Substitute Trustees filed an Order to Docket foreclosure action on the Property. Along with several other documents required by Md. Rule 14-207, they attached to the Order to Docket an “Affidavit Certifying Ownership of Debt Instrument and Truth and Accuracy of Copy Filed Herein,” and indicated that “Federal National Mortgage Association is the owner of the Note and that Residential Credit Solutions, Inc is servicer for said owner.” The McDaniels were served notice of the foreclosure action by posting and mailing after good faith attempts at personal service failed.

On July 30, 2013, the McDaniels filed a “Motion to Dismiss Sham Complaint and Request for Hearing Per Md Rule 2-311(f).” The motion alleged that the court did not have jurisdiction over the McDaniels because they were improperly served and that the secured party, Residential Credit Solutions, Inc., did not have standing to foreclose. On September

19, 2013, the court denied the motion on the grounds that the McDaniels did not “state a valid defense or present a meritorious argument,” failed to “state factual and legal basis per Md. Rule 14-211(a)(3)(B),” and did not include a certificate of service attesting that appellees were notified of the motion. The McDaniels then filed several additional pleadings, i.e, motions, bankruptcy, and a request for mediation. On June 5, 2014, mediation was held and concluded without an agreement.

On April 24, 2015, the McDaniels filed another “Emergency Motion to Dismiss Foreclosures [sic] Proceeding Sale/Request an Evidenciary [sic] Hearing Based Upon Fraud On Court.” The McDaniels asserted that appellees were “fraudulently enforcing rights they do not have,” and challenged the assignments of the Deed of Trust and the Note. The court denied the motion without a hearing on April 28, 2015.

On March 18, 2016, close to a year later, the McDaniels filed an “Emergency Motion to Dismiss Foreclosures Proceeding Sale/Request an Evidenciary [sic] Hearing Based on Md[.] Rule 14-211 Invalid Lien and Lien Instrument.” They challenged Federal National Mortgage Association’s standing to foreclose on the Property, the assignments of the Deed of Trust, and the Appointment of the Substitute Trustees.

On March 21, 2016, the court denied the McDaniels’ motion without a hearing, finding that the motion: (1) did “not state a valid defense or present a meritorious argument”; (2) was not timely filed or excused for good cause; and (3) did not otherwise comply with Rule 14-211. This appeal followed.

DISCUSSION

As indicated, appellees move to dismiss the appeal on the ground that the notice of appeal was not timely filed. Pursuant to 8-202(a), “the notice of appeal shall be filed within 30 days after the entry of the judgment or order from which the appeal is taken.” This Court has made it clear that the requirement that the notice of appeal be filed within thirty days of a final judgment is jurisdictional, and “if the requirement is not met, the appellate court acquires no jurisdiction and the appeal must be dismissed.” *Comptroller of Treasury v. J/Port Inc.*, 184 Md. App. 608 (2009) (quoting *Houghton v. Cty. Comm’rs of Kent Cty.*, 305 Md. 407, 413 (1986)).

Here, the record reflects that the circuit court entered the order denying the motion from which this appeal is taken on March 22, 2016, and the McDaniels filed their notice of appeal on April 22, 2016, which is 31 days after the order was entered. Accordingly, the appeal was not timely filed, and we shall dismiss the appeal.

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