

Circuit Court for Montgomery County
Case No. 382445-V

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 474

September Term, 2015

KAMAL MUSTAFA, *et al.*

v.

CARRIE M. WARD, *et al.*

Fader, C.J.
Leahy,
Reed,

JJ.

Opinion by Reed, J.

Filed: February 15, 2019

*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 and Fatima Mustafa, appeal an order from the Circuit Court for Montgomery County denying their exceptions and ratifying a foreclosure sale of the property located at 18932 Quail Valley Boulevard in Gaithersburg, Maryland (“the Property”).¹ In bringing this appeal, Appellants present two questions for our review, which we have rephrased for clarity:²

- I. Is the circuit court judgment still valid after the United States Bankruptcy Court declared the note null and void?
- II. Did the substitute trustees have legal standing to ask for final ratification of sale after the note was declared null and void?

For the foregoing reasons, we conclude that Appellants were untimely in their appeal and the issues presented will not be heard by this Court.

¹ Appellants filed multiple appeals pertaining to three of their Maryland properties: one located at 18306 Bubbling Spring Terrace in Boyds, another located at 14406 Autumn Branch Terrace in Boyds, and the last one located at 18932 Quail Valley Boulevard in Gaithersburg. After a detailed search into the docket entries, there is confusion between which case pertains to which property. For example, Appellants list the 18306 Bubbling Spring Terrace address as the property in question. However, the trial court order corresponding to this case lists 14406 Autumn Branch Terrace, Boyds, MD 20841 as the property at issue. We rely on the trial court’s filing of this case regarding the 18932 Quail Valley Boulevard property. Additionally, listed as defendants in the docket, are Appellants at both the Bubbling Springs and Autumn Terrace properties. This Court would be remiss not to discuss the discrepancies in the docket entries.

² Appellants presented the following two questions for appellate review:

WHETHER THE CIRCUIT COURT JUDGMENT IS STILL VALID AFTER THE U.S. BANKRUPTCY COURT DECLARED THE NOTE NULL AND VOID (BY CONSENT OF THE PARTIES).

WHETHER THE SUBSTITUTE TRUSTEES HAVE LEGAL STANDING TO ASK FOR FINAL RATIFICATION OF SALE AFTER THE NOTE IS DECLARED NULL AND VOID.

FACTUAL AND PROCEDURAL BACKGROUND

On April 2007, Kamal and Fatima Mustafa (“Appellants”) borrowed \$372,000.00 (the “Loan”) from JP Morgan Chase Bank, NA (“Chase”), evidenced by a promissory note and secured by a deed of trust encumbering Appellants’ former home at 18932 Quail Valley Boulevard, Gaithersburg, Maryland 20872 (“the Property”). Appellants later defaulted on the Loan after failing to make their monthly mortgage payments as required. As such, Chase served Appellants with a Notice of Intent to Foreclose and appointed Appellees³ as substitute trustees under the Deed of Trust.

Appellees then initiated a foreclosure action against the Property by filing an Order to Docket in the Circuit Court for Montgomery County. On December 3, 2013, Appellants filed a motion to dismiss the foreclosure pursuant to Maryland Rule 14-211, which was denied by the circuit court on December 6, 2013. On December 4, 2013, Appellees sold the Property at a foreclosure auction for \$315,666.00.

Appellants noted an appeal of the Order denying their pre-sale filing on December 6, 2013. That appeal was dismissed by this Court on September 16, 2014, and a Mandate concerning the dismissal was entered on December 1, 2014.

Appellants then filed Exceptions to the December 4, 2013 Sale on January 17, 2014. In their Exceptions, Appellants alleged that the Note was void because Chase fraudulently modified the Note, effectively discharging Appellants from their obligations under the Note. Following a motion to postpone the Exceptions hearing filed by Appellants, an

³ Appellees are Carrie M. Ward, Howard N. Bierman, and Jacob Geesing.

Opposition to the Exceptions filed by Appellees, and a Reply filed by Appellants, a hearing was heard by the circuit court on May 13, 2015. At the conclusion of the hearing, the circuit court denied Appellants' Exceptions and ratified the December 4, 2013 foreclosure sale.

Appellants noted the present appeal from the May 14, 2015 Order. However, because no stay was sought or obtained by Appellants during the pendency of this appeal, a Substitute Trustee's Deed conveying the Property to Chase was recorded in the Montgomery County Land Records on June 9, 2015.⁴

Further circuit court proceedings were stayed due to a bankruptcy petition filed by Appellant Fatima Mustafa on July 20, 2015. That bankruptcy case was closed on October 31, 2017. During that case, Appellant Kamal Mustafa filed his own bankruptcy petition on November 22, 2016. On May 4, 2017, Mr. Mustafa filed a proof of claim on behalf of Chase, who had already initiated foreclosure and been conveyed the Property by Appellees upon ratification of the foreclosure sale. Mr. Mustafa then filed an objection to the proof of claim that *he filed*, arguing the filing was insufficient.

Chase responded by consenting to the relief sought by Mr. Mustafa, which was disallowing the proof of claim he had previously filed on behalf of Chase. Specifically, Chase stated it was consenting to Mr. Mustafa's objection to the proof of claim because it already foreclosed upon the Property and was not seeking a deficiency judgment against

⁴ As an aside, it is worth noting that the foreclosure purchaser was also the secured lender who initiated the foreclosure proceeding in this matter.

Appellants.⁵ Thereafter, the Bankruptcy Court entered a Consent Order sustaining Mr. Mustafa's objection and disallowing the claim filed by Mr. Mustafa.

DISCUSSION

A. Parties' Contentions

Appellants argue that when Chase consented to Mr. Mustafa's objection during his bankruptcy proceedings, the Note relating to the Property became null and void. Appellants claim that because the Note is nullified, the Deed of Trust is also nullified. As a result, Appellants contend that the foreclosure sale of the Property was improper.

Appellees contend that the issues raised by Appellants were not heard before the circuit court and are therefore waived as a matter of law. Appellees assert, *in arguendo*, the consent given by Chase during Mr. Mustafa's bankruptcy proceedings does not nullify the Note nor prevents the foreclosure sale of the Property from being ratified.

B. Standard of Review

Under Maryland Rule 8–131(a), this Court “[o]rdinarily ... will not decide any ... issue unless it plainly appears by the record to have been raised in or decided by the trial

⁵ In its Consent Motion, Chase states in part:

2. More than three and a half years ago, on December 4, 2013, the Property was sold to Chase at a foreclosure sale. . .

3. On or about May 18, 2015, an order ratifying the foreclosure sale was entered by the Circuit Court for Montgomery County, Maryland. . .

...

6. The proof of claim deadline for this case has passed, and Chase is not pursuing a deficiency claim through the Debtor's bankruptcy case. The Debtor does not treat Chase in his latest plan . . . and the Property is not property of the bankruptcy estate.

court....” Use of the word “ordinarily” connotes that the appellate court has discretion to consider issues that were not preserved. This discretion is exercisable by each appellate court, independently. *Squire v. State*, 280 Md. 132, 134–35 (1977). However, “the Court may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal.” Md. Rule 8-131(a).

C. Analysis

As provided by Maryland Rule 8-131(a), this Court will not decide any issue unless it plainly appears by the record to have been raised in or decided by the trial court. “In other words, if a party fails to raise a particular issue in the trial court, or fails to make a contemporaneous objection, the general rule is that he or she waives that issue on appeal.” *Nail v. State*, 437 Md. 674, 691 (2014). Here, Appellant is appealing the Circuit Court for Montgomery County’s denial of Appellants’ Exceptions regarding the ratification of the Property’s foreclosure sale on May 14, 2015. As such, this Court’s first step is to determine whether the issues raised by Appellants were properly preserved during the May 13, 2015 Exceptions hearing.

Appellants’ present appeal is in regard to the validity of the Note following consent given by Chase during Mr. Mustafa’s bankruptcy proceedings. However, such an issue **was not and could not have been** preserved during the Exceptions because Mr. Mustafa’s bankruptcy proceedings did not commence until November 22, 2016. Instead, the only issue raised during the Exceptions hearing at the subject of this appeal was in regards to alleged fraudulent modification of the Note committed by Chase. There, the circuit court

ultimately rejected Appellants' allegations of fraudulent modification; however, that issue is not before this Court.

Simply put, Appellants attempt to appeal the circuit court's May 14, 2015 Order on the basis of an issue that did not present itself until more than a year later in federal bankruptcy proceedings. As such, the issue was not properly preserved for appellate review and this Court need not address Appellants' appeal any further.

Accordingly, the judgment of the Circuit Court for Montgomery County is affirmed.

**JUDGMENT OF THE CIRCUIT
COURT FOR MONTGOMERY
COUNTY AFFIRMED; COSTS TO
BE PAID BY APPELLANTS.**