

Circuit Court for Wicomico County
Case No. 22-C-15-001633

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 592

September Term, 2019

HENRY M. OSOWIECKI

v.

ROBERT E. FRAZIER, *et al.*

Fader, C.J.,
Zic,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: March 30, 2021

*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.

Henry M. Osowiecki, appellant, appeals from an order issued by the Circuit Court for Wicomico County ratifying and confirming the auditor’s report that was filed following the foreclosure sale of his real property located at 501 Main Street, Mardela Springs, Maryland (the property). He presents a single question for our review, which we quote verbatim:

When certified-mail notice is sent to the homeowner and returned undelivered, is the failure to take any additional steps to notify the owner excused because regular-mail notice had been sent at the same time, and to the same destination, as the certified mail that was returned.

For the reasons that follow, we shall affirm the judgment of the circuit court.

In 2015, appellees, acting as substitute trustees,¹ filed an Order to Docket Foreclosure. The property was eventually sold to Deutsche Bank National Trust Company at a foreclosure auction in November 2018. On January 28, 2019, the court entered an order ratifying the foreclosure sale. The same day the court referred the case to an auditor.

In March 2019, the auditor filed his report with the circuit court, which accounted for the proceeds from the foreclosure sale and stated a deficiency in the proceeds of the sale less than the amount required to pay the debt. Mr. Osowiecki filed exceptions to the auditor’s report, claiming, *inter alia*, that: (1) the auditor had failed to account for a portion of the debt that had been discharged; (2) the auditor’s interest rate calculation was incorrect; (3) he had filed a Qualified Written Report after the ratification of the sale; (4) appellees did not provide the auditor with the proper appraised value of the property; (5) the auditor

¹ Appellees are Robert Frazier, Thomas J. Gartner, Thomas W. Hodge, Gene Jung, Glen H. Tschirgi, and Keith M. Yacko.

failed to disallow certain attorney’s fees from a prior foreclosure attempt that had not been reduced to judgment; and (6) the substitute trustees had relied on unspecified fraudulent documents in prosecuting the foreclosure action. On April 29, 2019, the court entered an order overruling Mr. Osowiecki’s exceptions. Two days later it entered an order ratifying the auditor’s report. Mr. Osowiecki filed his notice of appeal on May 31, 2019.

Mr. Osowiecki’s sole contention on appeal is that appellees violated his due process rights by proceeding with the foreclosure sale, and failing to make any “follow-up efforts,” even though the Notice of Sale that had been sent to him via certified mail was returned as undelivered. However, this claim is not properly before us for two reasons. First, it is not preserved for appellate review because it was not raised in the circuit court. *See* Maryland Rule 8-131(a). Second, this contention relates to the validity of the underlying foreclosure sale, not the validity of the auditor’s report. In a foreclosure action, an order ratifying a foreclosure sale constitutes the “final judgment as to any rights in the real property, even if the order refers the matter to an auditor to state an account.” *Huertas v. Ward*, 248 Md. App. 187, 205 (2020). Thus, to raise this issue on appeal, Mr. Osowiecki was required to file a timely notice of appeal from the court’s January 2019 order ratifying the foreclosure sale. Because a notice of appeal must generally be filed within 30 days after entry of the judgment or order from which the appeal is taken, *see* Maryland Rule 8-202(a), Mr. Osowiecki’s May 31, 2019 notice of appeal was untimely with respect to that order.

Finally, we note that Mr. Osowiecki does not address the court’s denial of his exceptions to the auditor’s report in either the “questions presented” or “argument” of his brief. Therefore, we do not consider that issue on appeal. *Klauenberg v. State*, 355 Md.

528, 552 (1999) (stating that “arguments not presented in a brief or not presented with particularity will not be considered on appeal”).

**JUDGMENT OF THE CIRCUIT
COURT FOR WICOMICO COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**