

Circuit Court for Montgomery County  
Case No. 460697V

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 0700

September Term, 2020

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JAMES G. SWEET

v.

THORNTON MELLON LLC, *et al.*

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Shaw Geter,  
Wells,  
Ripken,

JJ.

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Opinion by Shaw Geter, J.

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Filed: July 21, 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.

This appeal arises from a foreclosure action and an order of the Circuit Court for Montgomery County denying appellant James Sweet’s<sup>1</sup> Motion to Vacate a Default Judgment Foreclosing Rights of Redemption. Appellee, Thornton Mellon LLC, initially purchased the real property in question at a tax sale and, after the owners failed to redeem the property, it filed a complaint to foreclose. Following several attempts to serve them, appellee filed a motion requesting a waiver of alternative service and a motion for judgment. The circuit court granted appellee’s motions and issued a default judgment. Appellee then assigned its interest to Al Czervik LLC.<sup>2</sup> Five months later, appellant sought to intervene and vacate the judgment, as well as the notice of substitution. The court held a hearing and later issued its memorandum opinion and order that granted appellant’s motion to intervene but denied appellant’s motion to strike the notice of substitution and motion to vacate the default judgment.

Appellant timely appealed and presents the following rephrased questions for our review:<sup>3</sup>

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<sup>1</sup> James Sweet is the personal representative of the estate of Daniel Grosso.

<sup>2</sup> Al Czervik LLC is an appellee in this case.

<sup>3</sup> Appellant’s original questions presented are stated as follows:

- I. Can a default judgment entered in favor of a tax sale purchaser foreclose a personal representative’s right of redemption where the tax sale purchaser’s Complaint failed to name the personal representative of the decedent’s estate as a Defendant in the action?
- II. Did Thornton Mellon, LLC’s attempted service of the Summons and Complaint on the decedent by publication and “nail and mail” at the decedent’s former home provide due process to the personal representative under the 14<sup>th</sup> Amendment of the United States Constitution and Article 24 of the Maryland Declaration of Rights and constitute good service on the decedent’s personal representative?

1. Did the Circuit Court err in denying Appellant's Motion to Vacate the Default Judgment Foreclosing Rights of Redemption?
2. Did the Circuit Court err in denying Appellant's Motion to Strike Al Czervik, LLC's Notice of Substitution?

### **BACKGROUND**

Appellee, Thornton Mellon LLC, purchased the subject property at a tax sale in Montgomery County on June 11, 2018. The owners of the property were listed as Doris Sweet and Daniel Grosso. On December 18, 2018, after sending the required notices, Thornton Mellon LLC filed a Complaint to Foreclose the Rights of Redemption in the Circuit Court for Montgomery County. Appellee, on April 23, 2019, filed an Affidavit describing its efforts to serve Doris Sweet and Daniel Grosso personally and through the mail. Appellee also filed an Affidavit of Additional Diligence. On May 29, 2019, appellee filed a motion requesting a waiver of alternative service and a motion for judgment. The circuit court, on July 2, 2019, granted the motion for a waiver of alternative service and issued a default judgment. Thornton Mellon LLC then assigned its interests in the tax sale certificate to Al Czervik LLC. Thereafter, Al Czervik LLC obtained and recorded a tax sale deed to the property.

On January 31, 2020, appellant filed a motion seeking to intervene and to vacate the foreclosure judgment because Thornton Mellon LLC sued and purported to serve Daniel

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- III. Did the trial Court err in denying Mr. Sweet's Motion to Strike Al Czervik, LLC's (the substituted Plaintiff) Notice of Substitution where the original Plaintiff (Thornton Mellon, LLC) remained a necessary party to this action for a number of reasons including discovery purposes related to the proper amount of redemption?

A. Grosso, who was deceased. Appellant argued that appellee failed to serve the estate or its personal representative. Appellant asserted that Thornton Mellon LLC did not validly foreclose the right of redemption of the personal representative of the estate of Daniel A. Grosso and thus, the court did not have, and never obtained, personal or subject matter jurisdiction over Daniel Grosso.

Appellee opposed the motions and argued that it fully complied with its obligations under the Tax Property Article. Appellee argued that it engaged in an exhaustive process to ensure that notice of the tax sale foreclosure was given to the record title holders of the property, Doris Sweet and Daniel Grosso. On February 12, 2020, appellees filed a Notice of Substitution of Parties, naming Al Czervik LLC as the party Plaintiff. Appellant then filed a Motion to Strike the Notice of Substitution.

A hearing was held on July 29, 2020, and the court requested additional memoranda on the applicability and effect of Maryland Code, Tax Property §14-836(b)(8) to the dispute. Both sides filed memorandums and replies as requested. On September 2, 2020, Judge Harry C. Storm issued a Memorandum Opinion and Orders granting appellant's Motion to Intervene but denying appellant's Motion to Vacate and Motion to Strike Notice of Substitution. The court concluded that appellee had "satisfied its obligations under the statute to provide notice, and indeed went above and beyond its required obligations and performed additional searches." On September 11, 2020, appellant noted an appeal.

Al Czervik LLC filed a Motion to Deem Stay Not Applicable, or in the Alternative, to Set Supersedeas Bond on September 22, 2020. Appellant responded with a motion to stay the matter pending appeal and to set a supersedeas bond in the amount of \$100,000.

On December 17, 2020, at the conclusion of a hearing, Judge Ronald B. Rubin denied appellant's Motion to Stay. The property was sold on February 23, 2021 to Stuart and Naomi Zirowsky.

### **MOOTNESS**

Following the circuit court's denial of appellant's Motion to Stay, appellant took no further action in seeking relief from this Court. We note that when the parties filed their briefs with us, appellee filed a motion to dismiss which we denied, "but with leave to reassert the motion in the appellees' brief." Appellees did request this Court to reconsider its initial denial in its brief. Thus, before addressing the merits of the appeal, we examine appellee's motion to dismiss. Appellee argues that appellant failed to stay the circuit court judgment or otherwise encumber the property before it was sold to a bona fide purchaser. As a result, any reversal of the circuit court's decision is of no effect and the appeal is moot. Conversely, appellant argues appellee's motion to dismiss was not timely. Appellant also contends that appellees could not properly convey legal title to the property.

#### **I. Appellees' Motion to Dismiss Appeal as Moot Was Timely Filed**

Under Maryland Rule 8-602(c)(8), this Court may dismiss an appeal if the case has become moot. Rule 8-603(a)(4) provides a motion to dismiss shall be filed within ten days after the case becomes moot, if the motion is based on subsection (c)(8) of Rule 8-602.

Appellees argue its motion to dismiss was timely because it was filed on February 25, 2021, two days after the settlement or sale of the property. Appellant argues the motion was untimely because the deed was signed on February 1, 2021 and the motion was filed

more than ten days later. In response, appellees argue the operative date is when title passed to the third-party bona fide purchaser, which was February 23, 2021. We agree.

While we note that the deed was signed on February 1, 2021, the settlement and closing occurred later in the month. The HUD-1 exhibit attached to appellees’ Motion to Dismiss Appeal clearly lists the settlement date as February 23, 2021 and it is on that date, the seller paid the purchase price, the deed to the property changed hands and was delivered to the purchaser. The notice of appeal was filed two days later, and thus, it was timely.

## **II. The Appeal is Moot Because a Reversal Will Be of No Effect**

In *Baltrotsky v. Kugler*, a case where the appellant sought to void a foreclosure sale following the denial of a stay and ratification of the sale, the Court of Appeals held that “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.” *Baltrotsky v. Kugler*, 395 Md. 468, 474 (2006). The Court noted that a bona fide purchaser “is a purchaser who takes the property without notice of defects in the . . . sale.” *Pizza v. Walter*, 345 Md. 664, 674 (1997); *see also Baltrotsky*, 395 Md. at 474–75. Generally, “the rights of a bona fide purchaser of mortgaged property w[ill] not be affected by a reversal of the order of ratification in the absence of a bond having been filed.” *Baltrotsky v. Kugler*, 395 Md. 468, 474 (2006); *Pizza*, 345 Md. at 674; *see also Lowe v. Lowe*, 219 Md. 365, 368 (1959). “Bona fide purchaser status extends only to those purchasers without notice of defects in title . . . [or] defects in the foreclosure sale.” *Pizza*, 345 Md. at 674; *see also Baltrotsky*, 395 Md. at 474–75.

Maryland Rule 8-422(a)(1) provides, “an appellant may stay the enforcement of any other civil judgment from which an appeal is taken by filing with the clerk of the lower court a supersedeas bond under Rule 8-423, alternative security as prescribed by Rule 1-402 (e), or other security as provided in Rule 8-424.” The Court of Appeals, in *Poku v. Friedman*, explained:

If ratified foreclosure sales could be overturned long after the ratification in the absence of the filing of a supersedeas bond and the granting of a stay, the title to any property where any prior conveyance in the chain of title came out of a mortgage foreclosure sale could be questioned even if the foreclosure sale occurred a year in the past, or ten years, or fifty years.

403 Md. 47, 54 (2008). The Court also discussed the required posting of a bond in *Mirjafari v. Cohn*, stating that “mortgagors were required to post a supersedeas bond in order to secure their right to pursue appellate review.” 412 Md. 475, 489 (2010). The exceptions to this general rule are: “(1) the occasion of unfairness or collusion between the purchaser and the trustee; and (2) when a mortgagee or its affiliate purchases the disputed property.” *Baltrotsky*, 395 Md. at 475; *Pizza*, 345 Md. at 674; *Leisure Campground & Country Club Ltd. P’ship v. Leisure Estates*, 280 Md. 220, 223 (1977).

In the present case, the circuit court denied appellant’s Motion to Stay the Judgment of Foreclosure. Appellant sought no further relief thereafter, no motions were filed in the circuit court, nor did appellant post a supersedeas bond. The judgment was not vacated or otherwise disturbed. The property was then sold to a third-party. Tax Property §14-844 provides that a “judgment vests in the plaintiff an absolute and indefeasible title in fee simple in the property, free and clear of all alienations and descents of the property occurring before the date of the judgment and encumbrances on the property.” As such,

the property had no defects in title and the purchasers were, as a matter of law, bona fide purchasers. Thus, reversing the circuit court’s judgment would be of no effect.

### **III. This Court Will Not Consider the Merits of This Moot Case**

Generally, a case is moot if “there is no longer an existing controversy between the parties, so that there is no longer any effective remedy which the court can provide.” *Powell v. Md. Dep’t of Health*, 455 Md. 520, 539–40 (2017); *G.E. Capital Mortg. Servs., Inc. v. Edwards*, 144 Md. App. 449, 453 (2002). When a case is moot, the Court will “usually dismiss the appeal without addressing the merits of the issue.” *Powell*, 455 Md. at 540. This Court may consider the merits of a moot case under two circumstances, “first is where a controversy that becomes non-existent at the moment of judicial review is capable of repetition but evading review, and the second is to prevent harm to the public interest.” *See Comptroller of the Treasury v. Zorzit*, 221 Md. App. 274, 292 (2015). Neither exception applies to the case at bar and we hold that any further consideration of this matter would promote the uncertainty surrounding marketable title, identified by the Court of Appeals in *Poku*.

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