Circuit Court for Prince George's County
Case No. CAEF15-16543

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 724

September Term, 2017

DARYL ANTHONY GREEN

v.

ROSENBERG & ASSOCIATES, LLC, ET AL.

Woodward, C.J.,
Friedman,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: October 2, 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.

On June 11, 2015, substitute trustees, appellees, filed an order to docket foreclosure in the Circuit Court for Prince George's County for 15416 Cedar Drive, Accokeek, Maryland 20607 ("the property").[1] A foreclosure sale was scheduled for April 11, 2017. Daryl Green, appellant, filed an emergency motion to stay, which the court granted, staying the sale until May 12, 2017. Green then filed a motion to alter or amend the order granting the emergency stay, which the court denied. Following a hearing on May 12, 2017, the court denied Green's emergency motion to stay. Green then filed a notice of appeal challenging numerous interlocutory rulings by the circuit court. However, for the reasons set forth below, the only issue that is properly before us is whether the circuit court abused its discretion in denying his emergency motion to stay the foreclosure sale. Finding no abuse of discretion, we affirm.

BACKGROUND

On August 24, 2007, Green executed a promissory note ("note"), secured by a deed of trust on the property, promising to repay $417,000 to C&F Mortgage Corporation ("C&F"). In October 2009, Green executed a loan modification agreement, the loan being in default at that time. Green then allegedly defaulted on the modified loan agreement. The note was then transferred several times, from C&F to Franklin American Mortgage Company to Wells Fargo Bank, N.A. ("Wells Fargo"). Wells Fargo then endorsed the note in blank, and, at the time of the order to docket, Wilmington Savings Fund Society, FSB, not in its individual capacity but solely as Trustee for the PrimeStar-H Fund I Trust, was

[1] The substitute trustees in this case are: Diane Rosenberg; Mark Mayer; John Ansell, III; Kenneth Savitz; Caroline Fields; and Jennifer Rochino.

the holder of the note, and Statebridge Company, LLC, was the loan servicer. Subsequent to the filing of the order to docket, the note was transferred to "PROF-2014-S2 Legal Title Trust, by U.S. Bank National Association, as Legal Title Trustee," with Fay Servicing, LLC, as the loan servicer.

On June 11, 2015, substitute trustees filed an order to docket foreclosure. Green responded with a motion to stay and dismiss, as well as a counter-complaint and prayer for a jury trial. On August 22, 2016, the court entered an order permitting substitute trustees to schedule a foreclosure sale, subject to Green's right to file a motion pursuant to Rule 14-211 to stay the sale and dismiss.[2] Substitute trustees scheduled a foreclosure sale for April 11, 2017. On March 23, 2017, Green filed an emergency motion to stay, which the court granted on April 13th, staying the matter until May 12, 2017.[3] Green then filed a "Motion to Alter or Amend Judgment and Order for Emergency Stay Rule 2-534," requesting the court to modify its order granting the temporary stay and to enter a permanent stay and to dismiss the case. The circuit court denied this motion without a hearing.

On May 12, 2017, the court held a hearing, which Green did not attend. Following that hearing, the court denied Green's motion to compel discovery and for sanctions, denied

[2] In this order, the court made no mention of Green's May 4, 2016 motion to dismiss. Green's May 4 motion is different in form, but not in substance, as compared to his March 23, 2017 emergency motion to stay. The differences between the motions are of no moment to our decision.

[3] In the meantime, substitute trustees cancelled the April 11 foreclosure sale.

his motion to stay, dismissed his counter-complaint, and granted substitute trustees' motion to strike Green's discovery request. Green then noted this appeal.

DISCUSSION

Generally, "a party may appeal only from a final judgment." *St. Joseph Med. Ctr., Inc. v. Cardiac Surgery Assocs.*, 392 Md. 75, 84 (2006) (internal quotation marks and citation omitted). "[A] ruling of the circuit court, to constitute a final judgment, must be an unqualified, final disposition of the matter in controversy, which decides and concludes the rights of the parties involved or denies a party the means of further prosecuting or defending rights and interests in the subject matter of the proceeding." *American Bank Holdings, Inc. v. Kavanagh*, 436 Md. 457, 463 (2013) (internal quotation marks and citations omitted). In a foreclosure action, there is no final judgment until the court enters an order ratifying the sale because, until such an order is entered, the defendant has the continuing ability to assert his or her rights in the foreclosure process. *See Baltimore Home Alliance, LLC v. Geesing*, 218 Md. App. 375, 383 n.5 (2014) (stating that "the court must act to ratify the sale before the foreclosure sale is complete . . . ."); *Ed Jacobsen, Jr., Inc. v. Barrick*, 252 Md. 507, 511(1969) (noting that the validity of a foreclosure sale is *res judicata* after "the final ratification of the sale of property").

Here, no final judgment has been entered because the foreclosure sale has not taken place.[4] Therefore, we must treat this as an interlocutory appeal. Interlocutory orders are

[4] We note that the trial court's order dismissing Green's counter-complaint was not a final judgment because his claims in the counter-complaint arise from the same loan transaction that is at issue in the underlying foreclosure action, they arise from common (continued)

immediately appealable only under three narrow exceptions to the final judgment rule: "appeals from interlocutory orders specifically allowed by statute; immediate appeals permitted under Maryland Rule 2-602; and appeals from interlocutory rulings allowed under the common law collateral order doctrine." *Addison v. Lochearn Nursing Home, LLC*, 411 Md. 251, 274 (2009). In his brief, Green challenges the denial of his motion for discovery and sanctions, the dismissal of his counter-complaint, and the denial of his emergency motion to stay. However, only the denial of Green's motion to stay falls within one of the three narrow exceptions to the final judgment rule set forth above. *See Fishman v. Murphy ex rel. Estate of Urban*, 433 Md. 534, 540 n.2 (2013) (noting that the denial of a motion to stay made under Rule 14-211 was immediately appealable pursuant to Md. Code (1973 Repl.Vol.2013), Cts. & Jud. Proc., Art. § 12–303 because the motion contemplated injunctive relief). Consequently, we only have jurisdiction to consider Green's claims regarding the denial of that motion.

In reviewing those claims, we note that "'[t]he grant or denial of injunctive relief in a property foreclosure action lies generally within the sound discretion of the trial court.'" *Svrcek v. Rosenberg*, 203 Md. App. 705, 720 (2012) (quoting *Anderson v. Burson*, 424 Md.

operative facts, and, therefore, are part of the same "claim" for the purposes of determining finality and appealability. *See generally Schuele v. Case Handyman and Remodeling Services, LLC*, 412 Md. 555, 568-69 (2010) (noting that a "claim, regardless of whether it is the original claim, a counterclaim, or a third-party claim, is defined as a substantive cause of action, that encompasses all rights arising from common operative facts" (internal quotations marks omitted)). For the same reason, the dismissal of Green's counter-complaint is not appealable under the collateral order doctrine. *See County Com'rs for St. Mary's Count v. Lacer*, 393 Md. 415, 428 (2006) (noting that to be appealable under the collateral order doctrine the order must resolve an important issue that is "completely separate from the merits of the action").

232, 243 (2011)). A court abuses its discretion where the decision under consideration is "'well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.'" *Consol. Waste Indus., Inc. v. Standard Equip. Co.*, 421 Md. 210, 219 (2011) (quoting *King v. State*, 407 Md. 682, 711 (2009)).

As an initial matter, Green takes issue with the court's decision to only stay the foreclosure case until May 12, 2017. However, any claim that the trial court erred in granting a temporary stay, as opposed to a permanent stay, is moot because, on May 12, 2017, the court issued a new order denying the emergency motion to stay the foreclosure sale. But, even if the issue were not moot, we note that in temporarily granting Green's emergency motion, the court was acting pursuant to Rule 14-211(c). That rule provides that if a hearing cannot be held prior to the foreclosure sale on the moving party's motion to stay, the court may grant a temporary stay. As such, the court's April 13, 2017, order temporarily staying the sale and scheduling a hearing for May 12, 2017, was permissible and its denial of Green's motion to alter or amend that order to enter a permanent stay did not constitute an abuse of discretion.

Green also contends that the circuit court erred in denying his motion to stay on the merits, claiming that he owns the home "outright without any liens or encumbrances" and that the substitute trustees lack standing to foreclose. But Green was given an opportunity to present these claims, and all other claims raised in his motion to stay, at the May 12, 2017 hearing; yet, he failed to appear. As the moving party on the motion to stay, Green had the burden of proof as to his defenses, and he clearly could not carry that burden if he

was not present. *See Bd. of Trustees, Cmty. Coll. of Balt. Cnty. v. Patient First Corp.*, 444 Md. 452, 469-71 (2015) (discussing burden of proof and which party bears it as to claims and defenses). As such, we perceive no abuse of discretion in the denial of his motion to stay.

Green now asserts for the first time on appeal that the hearing was held without his knowledge and that he was never notified of any pending hearings. To be sure, the failure of the clerk to properly notify a party of a scheduled hearing could violate Maryland Rule 1-324(a) and subject any judgment entered at that hearing to being vacated. However, because Green has not raised a violation of Rule 1-324(a) in the lower court, this claim is not preserved for appellate review. *See Fry v. Coyote Portfolio, LLC*, 128 Md. App. 607, 624 (1999).

Finally, Green claims that the hearing was actually held on May 19, 2017, and that the court "backdated" the hearing date on the docket entries to make it appear as if the hearing had occurred prior to his filing his petition for removal to federal court. This claim appears to be based on the fact that the daily sheet documenting the results of the May 12, 2017, hearing was not entered on the docket until May 19, 2017. Green fails to appreciate, however, that sometimes there is a delay between the action and entry on the docket. *See Tierco Md., Inc. v. Williams*, 381 Md. 378, 391 (2004) (observing that there is no judgment until it is recorded on the docket). Therefore, the difference in the date of the hearing and

the date of the docket entry does not demonstrate that the hearing date was illegally "backdated."

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.