UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0805

September Term, 2014

DUC T. BUTCHER, et al.

v.

DIANE S. ROSENBERG, et al.
SUBSTITUTE TRUSTEES

Woodward,
Graeff,
Moylan, Charles E., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Moylan, J.

Filed: May 21, 2015

The appellants, Duc T. Butcher and Kam Y. Butcher, borrowed $490,493 from Washington Mutual Bank, FA on September 6, 2003. As security for their promissory note, the appellants executed a deed of trust on the property located at 12200 Falls Road in Potomac, Maryland, in favor of the bank. On November 2, 2010, the appellants defaulted on their note. After the default, the appellants engaged in loan modification negotiations with the servicing agent of the loan, but their request for mortgage assistance was denied on July 15, 2013, for the reason that they failed to provide the documents required by the servicing agent.

Following the breakdown of negotiations, the bank appointed as substitute trustees the appellees in this case, Diane S. Rosenberg; Mark D. Meyer; John A. Ansell, III; Kenneth Savitz; and Stephanie Montgomery on August 16, 2013. The appellees docketed the foreclosure action on 12200 Falls Road in the Circuit Court for Montgomery County on October 3, 2013.

The appellants exercised their right to request mediation on December 9, 2013, and mediation was conducted on January 17, 2014. No agreement, however, was reached. On February 24, 2014, the Circuit Court entered an order permitting the appellees to schedule the foreclosure sale. On March 12, 2014, the appellants filed a Motion to Stay Permanently, or in the alternative, Motion to Dismiss Foreclosure Proceedings or Motion to Grant Relief of Loan Modification pursuant to Maryland Rule of Procedure, Rule 14-211. The appellees filed their Opposition to the [Appellant's] Motion on April 7, 2014. A hearing on the motion

was conducted by Judge Joseph M. Quirk on April 30, 2014. Judge Quirk ruled that the appellant's motion had not been timely filed and, accordingly, he denied the motion.

> "THE COURT: Thank you. All right. The matter is before the court on docket entry number 20, which is defendant's motion to stay permanently, or in the alternative, a motion to dismiss foreclosure proceedings, or motion to grant relief of loan modification. I have listened to argument of the – of counsel, and, I have also reviewed the filings in this case. And, I'm going to deny the defendant's motion in its – in its entirety on the basis that it was not timely filed. The rule 14-211(a)(2) requires a motion of stay to be filed no later than 15 days after the last of certain events to occur. In this case, that would have been the mediation, which occurred in January of 2014. In this case, the motion was not filed until March the 12th, 2014. So, it's on that basis, and, that I am going to deny the relief sought, which is either motion to stay, dismiss, or to grant modification – loan modification. I've signed an order."

(Emphasis supplied).

The appellants have not appealed that April 30, 2014 denial of their motion pursuant to Rule 14-211.

On May 6, 2014, the appellants filed a Motion to Reconsider the court's ruling of April 30, 2014. On June 9, 2014, Judge Quirk denied the Motion to Reconsider. This appeal followed on June 27, 2014. The appeal was exclusively from the denial of the Motion for Reconsideration.

"NOTICE OF APPEAL:

> "Defendant, by and through undersigned counsel, and pursuant to Maryland Rule 8-201(a) hereby notes an appeal in the above captioned matter,

> from the Order of the Court dated June 9, 2014, denying Defendant's *Motion for [Re]Consideration*."

(Emphasis supplied).

That is, indeed, the only issue before us and it renders all three pages of argument in the appellant's brief completely immaterial. The appellants are rearguing precisely the same merits that they argued before Judge Quirk at the hearing on their Rule 14-211 motion on April 30, 2014. Their motion was denied and they have not appealed that ruling. The merits of the foreclosure are not in any way before us.

It is a common failing not to appreciate the limited nature of a motion for reconsideration. It is a threshold procedural question that does not involve the ultimate merits. It may lead in that direction, but it is not there yet. It is a request, directed to the trial judge's discretion, simply to reopen an issue that has already been decided and to rule on it afresh. It does not presuppose what that ruling will be.

The mere making of a motion to reconsider is not an appeal to the trial judge of the merits of his or her earlier determination. The denial of a motion to reconsider, on the one hand, is a one-step process. Procedurally, the judge has not reopened the matter. The judge is content to abide by the earlier ruling and is not willing to entertain reargument on a matter that has already been decided. It is a time for repose. The matter is closed.

If, on the other hand, the motion for reconsideration is granted, that would not mean that the moving party had necessarily prevailed on the merits. He would simply have

survived step one of a two-step process. In the language of parliamentary procedure, the main motion would simply be back on the table for fresh consideration. Both parties might then argue the merits just as they had on an earlier occasion. At the end of the reconsideration, the decision on the merits might go in a different direction than it had the first time around. Conversely, it might go in the same direction. The ultimate disposition of a question following reargument is by no means the same as the threshold decision even to entertain the reargument.

It is nonetheless easy to conflate the threshold issue of whether to revisit a ruling with the substantive merits of the ruling itself. The procedural purists counsel that the two stages of the reconsideration phenomenon are separate and distinct and require precise fine-tuning. Posit the trial judge, faced with a motion for reconsideration, who rules, "I made a ruling a month ago and you have not persuaded me why I should even think about it again. Motion for reconsideration denied." Posit a second trial judge, faced with a similar motion for reconsideration, who rules, "I have read what you have said about my earlier ruling but, after careful thought, I decline to change it. Motion for reconsideration denied." Those two rulings are not remotely the same. A considered decision not to change an earlier ruling is far different from a decision not even to reconsider that earlier ruling. Caselaw can be treacherous in this area because what it might say about one of these rulings might not be true with respect to the other. Technically speaking, the second judge has actually granted

the motion for reconsideration but then, upon reconsideration, declined to change the original ruling.

We are, in any event, dealing in this case with the first example, not the second. None of the appellants' arguments even addresses the threshold question of why Judge Quirk might wish to reopen a question he had already decided. Purely procedural reasons for requesting a reconsideration, without presuming to engage in the very reconsideration the allowance of which is the moot question for decision, might be such things as the failure on the earlier occasion to have been granted a hearing, the inability of critical parties to have attended the earlier hearing, possible time constraints at the earlier hearing, or the discovery of critical new evidence bearing on the ruling. The appellees, in turn, will reply that the issue has already been settled, is in effect res judicata, and that there is no need to revisit a settled issue.

But can a judge reconsider the substantive merits of an earlier ruling in the course of deciding not to reconsider those merits? That's a heavy question. The arguments put forward in this case are nothing but rearguments directed to the substantive merits of the original ruling. They might be appropriate if the April 30, 2014 ruling on the Rule 14-211 motion were the contention actually before us. It is not.

Indeed, if the appellants' Rule 14-211 motion of March 12, 2014 was untimely filed (as, indeed, it was), the appellants' even later effort to readdress these same merits via their

motion for reconsideration of May 6, 2014 was even more untimely. There are many things that a Motion for Reconsideration is not. It is not, inter alia, intended to be a ploy for outflanking a filing deadline that was fatal to the earlier motion. You do not get a second chance when you were not entitled even to a first chance.

The caselaw on how to review a trial judge's handling of a motion for reconsideration is exceedingly skimpy. In Wilson-X v. Department of Human Resources, 403 Md. 667, 674-75, 944 A.2d 509 (2008), the Court of Appeals told us simply that "the ruling on a motion for reconsideration is ordinarily discretionary, and the standard of review in such a circumstance is whether the court abused its discretion in denying the motion." See also, RRC Northeast, LLC v. BAA Maryland, Inc., 413 Md. 638, 673, 994 A.2d 430 (2010); Miller v. Mathias, 428 Md. 419, 438, 52 A.3d 53 (2012); Falcinelli v. Cardascia, 339 Md. 414, 430, 663 A.2d 1256 (1995). That is little more than a bland generality.

One thing, however, the caselaw does make clear. That is that a litigant may not use an appeal from the denial of a motion for reconsideration as a back-up vehicle for appealing the underlying ruling or decision that one failed to appeal in the first instance. Judge Quirk's denial on April 30, 2014, of the appellants' Rule 14-211 motion effectively resolved the entire case against the appellants. The appellants, however, did not appeal from that order. The appellants' Motion for Reconsideration of May 6, 2014 and their June 27, 2014 appeal from its denial will not serve as a substitute appeal from the unappealed primary decree of

April 30, 2014. A similar attempt to appeal from a decree's shadow form was before the Court of Appeals in S. & G. Realty Co. V. Woodmore Realty Corp., 255 Md. 684, 259 A.2d 281 (1969). Chief Judge Hammond's opinion held that the merits of the primary decree were not thereby on the table for appellate review.

> "S. & G. would have us, in effect, review the primary decree. It took no appeal from that decree which has become enrolled and is bound by it; it cannot obtain a review of it under the guise of seeking a review of the exercise of judicial discretion in refusing to set it aside."

255 Md. at 692-93. (Emphasis supplied).

In Wormwood v. Batching Systems, Inc., 124 Md. App. 695, 700, 723 A.2d 568 (1999), Judge James Eyler held even more broadly for this Court:

> "An appeal from a denial of a motion to revise or 'motion for reconsideration,' pursuant to Rule 2-535(a), does not serve as an appeal from the underlying judgment, and the applicable standard is whether the court abused its discretion."

(Emphasis supplied).

It follows that in this case, we see no abuse of discretion by Judge Quirk in denying the Motion for Reconsideration.

JUDGMENT AFFIRMED; COSTS TO BE PAID BY APPELLANT.