

Circuit Court for Baltimore City
Case No. 24-C-19-004793

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0987

September Term, 2020

MARK HAYNES

v.

GEORGE KRITIKOS

Kehoe,
Zic,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zic, J.

Filed: June 22, 2022

* 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.

Mark Haynes, the appellant, filed a notice of appeal after an in banc panel of the circuit court, appointed pursuant to Rule 2-551, dismissed the in banc review as untimely and denied a subsequent motion for reconsideration of the dismissal. Because the issues the appellant briefed are not properly before this Court, and because the appellant did not brief the issue that could be properly before this Court, we dismiss the appeal on our own motion.

BACKGROUND

On April 23, 2020, the circuit court entered its order granting the appellee’s motion for summary judgment and denying the appellant’s cross-motion for summary judgment, and the appellant filed his notice of in banc review pursuant to Rule 2-551. That Rule requires that a notice for in banc review must be filed within ten days of entry of the judgment. Following the filing of the parties’ memoranda, the in banc panel dismissed the review because it determined that the notice was untimely. Specifically, the panel found that for the notice to be timely it must have been filed by May 4, 2020. It also found that the notice was filed on May 5, one day late.¹

¹ The notice was docketed as having been received on May 6. The in banc panel found that, pursuant to the then extant COVID-19 administrative order, the date of receipt was constructively May 5. *See* Court of Appeals of Maryland, *Fourth Amended Administrative Order Expanding & Extending Statewide Judiciary Restricted Operations Due to the COVID-19 Emergency* 7 (May 4, 2020), <https://mdcourts.gov/sites/default/files/admin-orders-archive/20200504fourthamendedadministrativeorderexpandingandextendingjudiciaryrestrictedoperations.pdf>.

After the review was dismissed, the appellant filed a motion for reconsideration of the dismissal. That motion was filed more than ten days after the circuit court entered its order dismissing the review.² The panel denied the motion for reconsideration and the appellant timely noted an appeal from the entry of the order denying the motion for reconsideration. Notably, the notice of appeal was filed more than six months after the entry of summary judgment in favor of the appellee.

DISCUSSION

In his brief, the appellant presents only two questions for consideration by this Court:

1. Whether the [c]ircuit [c]ourt erred in grant[ing] summary judgment to the Appellee when the court held that Real Property Section 14-109 cannot be a substitute for compliance with Title Seven of the Real Property Title foreclosure procedures, despite the fact that the Appellee Granter waived all legal process following default in the underlying Commercial Deed of Trust[.]
2. Whether the [c]ircuit [c]ourt further erred in granting summary judgment when the movant failed to comply with Maryland Rule 2-501(a), in that he adduced no certified evidence into the record of the matter, therefore failing to establish any material fact, much less the absence of any genuine dispute thereof[.]

These issues relate to the April 23 judgment. We do not reach those issues.

When the appellant elected to seek in banc review of the judgment of the circuit court and then allowed more than 30 days to pass from the entry of that judgment, he lost

² The order dismissing the in banc review was filed on August 4, 2020. The tenth day following August 4 was Friday, August 14. The motion for reconsideration was not filed until August 18.

the opportunity to take a direct appeal to this Court from the April 23 judgment. *See State Rds. Comm’n of Maryland v. Smith*, 224 Md. 537, 540-44 (1961).

At most, the appellant has an appeal from the in banc court’s dismissal of that review because it found that his notice of in banc review was untimely. More accurately though, the issue is whether the in banc court abused its discretion in denying the motion for reconsideration. *See Estate of Vess*, 234 Md. App. 173, 204-05 (2017). This is so because the motion for reconsideration, filed more than ten days after entry of the dismissal, did not toll the time for noting an appeal. *Pickett v. Noba, Inc.*, 114 Md. App. 552, 556-57 (1997). By waiting until the motion was decided, here more than 30 days from the entry of the dismissal, the appellant lost the ability to seek direct review of the dismissal.

We do not reach that issue either because the appellant has not presented any argument addressing whether the in banc court properly dismissed his review or denied his motion for reconsideration of the dismissal. By failing to present such an argument, those issues are waived. *Klauenberg v. State*, 355 Md. 528, 552 (1999) (“[A]rguments not presented in a brief . . . will not be considered on appeal.”). As no other issues are properly before us, the appeal must be dismissed. *See* Md. Rules 8-504(a)(6), (c) & 8-602(c)(6).

To be sure, in footnote one of his brief, the appellant identifies two other “potential issues.” The second of those “potential issues,” as stated by the appellant, is: “[W]hether the Appellant timely noted a request for in banc review before the [c]ircuit

[c]ourt, which was mooted by this Court’s acceptance of this appeal (and rejection of Appellee’s motion to dismiss the same).”³ Appellant concludes the footnote by stating that he would address that issue “should this Court wish [him] to do so.” Not only does the appellant bear the responsibility to present argument as to the issues he selects, he, not this Court, also bears the responsibility to identify those issues in the first instance. *See* Md. Rule 8-504(a)(3); *Impac Mortg. Holdings, Inc. v. Timm*, 245 Md. App. 84, 117 (2020) (explaining that it is not the role of the appellate court to “issue-spot errors”); *Klaunberg*, 355 Md. at 552.

Accordingly, we dismiss the appeal. The appellee’s motion to dismiss, contained in his brief, is denied as moot.⁴

THE APPEAL IS DISMISSED. THE APPELLEE’S MOTION TO DISMISS IS DENIED. COSTS TO BE PAID BY THE APPELLANT.

³ This Court does not “accept” an appeal. When the appellant appeals from a final judgment, it is an appeal of right and, subject to dismissal for procedural and substantive issues, *see* Md. Rule 8-602, the appeal proceeds on the issues *identified by the appellant*. Further, the denial of the appellee’s motion to dismiss does not have preclusive effect and does not springboard this appeal into a review of the underlying judgment.

⁴ In his brief, the appellee filed a motion to dismiss the appeal raising three contentions: (1) that the appellant, by invoking the in banc process, is precluded from seeking further appellate review; (2) that the record is incomplete; and (3) that the appeal was not taken timely from the judgments that the appellant challenges in his brief. In light of the disposition of the appeal, we do not need to reach these contentions except to note that the notice of appeal was timely from a judgment, and that it is not clear that the invocation of the in banc process acts as a complete bar to further appellate review. *See Smith*, 224 Md. at 540-44.