Circuit Court for Baltimore County
Case No. 03-C-14-011507

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1081

September Term, 2018

HARRIETTE BELL

v.

JOHN E. DRISCOLL, III, *et al.*

Graeff,
Beachley,
Alpert, Paul E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: December 26, 2019

This case raises several issues stemming from a real estate foreclosure action initiated in the Circuit Court for Baltimore County by substitute trustees John E. Driscoll, III, Jana Gantt, Arnold Hillman, Kimberly Lane, and Deena Reynolds (hereinafter collectively referred to as "Driscoll"), appellees, against mortgagor Harriette Elizabeth Bell, appellant. In her timely appeal, Bell, as a self-represented litigant, raises eight questions for our review, but we rephrase and consolidate the issues, as follows:

> 1. Did the circuit court err or abuse its discretion in granting possession of the property to the foreclosure purchaser and denying Bell's subsequent motions related to possession?
>
> 2. Did the circuit court err or abuse its discretion in quashing Bell's subpoena to the clerk of the Circuit Court for Baltimore County requiring her appearance at a July 18, 2018 exception hearing, declining to admit 12 pieces of evidence at the hearing, and in denying Bell's exceptions to the auditor's report?[1]

[1] We reprint *verbatim* the questions presented by Bell in her brief:

> 1. Did the Circuit Court judge abuse his discretion when he failed to hold Appellees accountable for their unlawful violation of a court order, by purposely delaying ruling on Appellant's Motion for Contempt against Appellees until after it became MOOT and Appellant had been unlawfully evicted?
>
> 2. Did the Circuit Court judge abuse his discretion when he granted Appellee's Writ of Possession prior to ruling on Appellant's Motion for Contempt against Appellees?
>
> 3. Did the Circuit Court judge abuse his discretion when he denied Appellee's Motion to Stay Writ of Possession prior to ruling on Appellant's Motion for Contempt against Appellees?
>
> 4. Did the Circuit court judge abuse his discretion when he denied Appellant's Emergency Motion to Stay Execution of May 8, 2018 [writ of possession] Pending Rulings on Appellant's Motion for Circuit Court Judge Micky J. Norman to Recuse Himself Effectively Immediately?

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

FACTUAL AND PROCEDURAL BACKGROUND

After Bell defaulted on a deed of trust loan on her house in 2012, Driscoll, *et al.*, acting as substitute trustees, filed a foreclosure action in the Circuit Court for Baltimore County. Bell's house was sold to the Federal National Mortgage Association ("Fannie Mae") in November 2015. On February 11, 2016, the circuit court ratified the sale and referred the case to an auditor. Although Bell filed a motion to oppose the ratification of the sale, she did not appeal from the order of ratification.

On May 24, 2016, Fannie Mae sought a judgment of possession of the property, which Bell opposed. The circuit court granted Fannie Mae's motion for judgment of immediate possession on July 1, 2016.

5. Did the Circuit court judge abuse his discretion when he denied Appellant's Motion for Exception to Auditor's Report Due to Procedural Irregularity of an Invalid Auditor's Report?

6. Did the Circuit court judge abuse his discretion when he allowed Appellees to respond to Appellant's motion after the time allotted in violation of Maryland law?

7. Did the Circuit court judge abuse his discretion when he squashed the subpoena of a key witness the day before the July 19, 2018 hearing?

8. Did the Circuit court judge abuse his discretion at the July 19, 2018 hearing, when he when he denied twelve pieces of Appellant's evidence to be entered and considered?

On July 5, 2016, Bell filed a motion to dismiss the foreclosure action. The circuit court denied the motion, without a hearing, by order dated July 22, 2016.[2] On August 10, 2016, Bell filed motions to stay or to vacate the circuit court's order denying her motion to dismiss. On July 25, 2016, Bell filed motions to stay or to vacate the July 1, 2016 order granting Fannie Mae immediate possession. Bell noted an appeal on July 18, 2016, and a second appeal on August 1, 2016.

On September 12, 2016, Fannie Mae sought a writ of possession, after which the court issued a writ directing the Sheriff to evict Bell from the property. Bell filed two "emergency motions" to stay and to set aside the execution of the writ of possession, claiming that the writ had been illegally entered because the circuit court had not yet ruled on Fannie Mae's request for writ of possession.

On October 3, 2016, the court denied all of Bell's pending motions. On November 3, 2016, Bell moved to vacate the rulings set forth in the court's October 3, 2016 order. On September 15, 2016, and October 31, 2016, Bell noted two more appeals from the circuit court's orders.

In December 2016, the circuit court stayed the proceedings and recalled the writ of possession after Bell filed a petition for Chapter 13 bankruptcy. On February 15, 2017, Bell filed a petition for contempt against Driscoll, after the sheriff attempted to evict her

[2] The order was not docketed until August 1, 2016.

on February 1, 2017, alleging a violation of the court's stay.[3]

In a *per curiam* opinion, *Bell v. Driscoll, et al*., Nos. 1018 and 1776, Sept. Term, 2016 (filed Dec. 27, 2017), we reduced the 21 issues raised by Bell relating to the court's October 3, 2016, order to four: "(1) whether the circuit court erred in issuing the possession order before the auditor's report was ratified; (2) whether the circuit court erred in denying Bell's motions to dismiss the foreclosure action and vacate or stay the possession order because, she claims, she was not properly served with Fannie Mae's response; (3) whether the circuit court erred in not holding a hearing on her motions to dismiss the foreclosure action and to vacate or stay the possession order; and (4) whether the clerk illegally issued Fannie Mae a writ of possession because the circuit court had not yet ruled on its 'Request for Writ of Possession.'" The *per curiam* panel affirmed the judgments of the circuit court, resolving all issues pertaining to possession. *Id.* [4]

On April 24, 2018, Fannie Mae again requested the issuance of a writ of possession. Bell moved for a stay of the issuance of a writ of possession, claiming her case presented "serious legal questions," and in the absence of a stay, she would suffer "irreparable injury." The circuit court issued a writ of possession to Fannie Mae on May 8, 2018, and eviction was scheduled for June 1, 2018. Bell filed an emergency motion to stay execution of the writ of possession pending rulings on seven of her motions, including one for the

[3] On July 23, 2018, the circuit court ruled that Bell's motion for contempt, left open by the stay related to the pending bankruptcy and appellate proceedings, was moot, as Bell had been evicted and was out of the property.

[4] The Court of Appeals denied Bell's petition for writ of *certiorari* on April 24, 2018.

circuit court judge who issued the writ to recuse himself for his "habitual failure to dispose of court business promptly and responsibly."

After we returned the record to the circuit court following Bell's first appeal, the auditor's report—although stamped as "filed" on April 15, 2016—was docketed on May 2, 2018. On May 7, 2018, Bell filed a "motion of exception to auditor's report due to procedural irregularity of an invalid auditor's report." Although acknowledging therein that she had received the auditor's report on April 18, 2016, along with a note from the auditor that the report had been filed with the court clerk, Bell nonetheless argued that the report had not been docketed until 2018, which she alleged was "highly irregular" and, in her view, provided a basis for her to ask the court to invalidate the foreclosure sale and vacate the order ratifying the sale.

Driscoll opposed the motion, arguing that any issues regarding the right to foreclose should have been raised by Bell prior to the foreclosure sale in the form of a motion to stay pursuant to Maryland Rule 14-211. Moreover, Bell had alleged no errors or defects in the auditor's report.[5] Bell replied that Driscoll's opposition should be stricken as untimely because it was filed more than 15 days after the filing of her motion.

On June 14 and 18, 2018, the circuit court denied Bell's motions to stay Driscoll's request for writ of possession, her motion to vacate the order ratifying the account due to

[5] Indeed, in a subsequent court filing, Bell conceded that "[t]he key issue in the hearing is the time of the filing and entering of the Auditor's Report and Account and not the content of the Auditor's Report and Account."

procedural irregularity of auditor's report, and her motion for the circuit court judge to recuse himself.

On July 3, 2018, Bell issued a subpoena to Julie Ensor, the clerk of the Circuit Court for Baltimore County, compelling Ensor to appear at the scheduled July 19, 2018 hearing on Bell's exceptions to the auditor's report. On July 11, 2018, Ensor moved to quash the subpoena and sought a protective order. In her motion, Ensor explained that Bell had issued the subpoena compelling Ensor to appear personally in court on July 19, 2018, to testify about the docketing of the auditor's report, but Ensor, as clerk of the court, had "no personal information or knowledge relevant to either the preparation or the contents of the auditor's report," and her sole connection to the report was the exercise of her employees' clerical function in accepting the report for filing. In addition, Ensor had a scheduling conflict with the hearing date, which she had explained to Bell; Bell nonetheless refused to withdraw the subpoena. Finally, Ensor stated, her presence at the hearing was not required, as a certified copy of a public record (the docket entries) would be accepted by the court. The court issued an order quashing Bell's subpoena and granting Ensor's protective order on July 18, 2018.

On July 19, 2018, the court held a hearing on Bell's exceptions to the auditor's report. At that hearing, Bell argued that the delay between the filing of the report and its docketing amounted to an irregularity requiring that the foreclosure sale be vacated. Notably, she made no argument about the specifics of the actual accounting reflected in the auditor's report. The court found no irregularity, fraud, or mistake with respect to the filing of the auditor's report, which itself was admittedly not contested. The court further found

that the possession issue pertaining to the property had already been litigated. On July 23, 2018, the court issued its written order denying Bell's exceptions and related motions.

Bell filed several notices of appeal on July 20, 2018,[6] purportedly relating to twelve of the circuit court's orders: (1) the July 12, 2018 order granting Driscoll's July 11, 2018 motion to shorten time to respond; (2) the June 14, 2018 order denying as moot Bell's May 21, 2018 emergency motion for Judge Mickey Norman to recuse himself; (3) the June 18, 2018 order declaring as moot Bell's May 5, 2018 motion to stay request for writ of possession; (4) the June 18, 2018 order denying Bell's May 5, 2018 motion to stay Driscoll's request for writ of possession pending the court's ruling on Bell's petition of contempt against Driscoll; (5) the June 18, 2018 order denying Bell's May 8, 2018 motion to vacate the order ratifying the account due to procedural irregularity of invalid auditor's report; (6) the June 18, 2018 order denying Bell's May 5, 2018 motion to stay Driscoll's request for writ of possession pending the court's ruling on Bell's motion to vacate the order ratifying the account due to procedural irregularity of invalid auditor's report; (7) the June 18, 2018 order denying Bell's motion to stay Driscoll's request for writ of possession ruling on Bell's motion of exceptions to auditor's report due to procedural irregularity of an invalid auditor's report; (8) the June 18, 2018 order denying Bell's emergency motion to stay execution of writ of possession pending rulings on Bell's May 8, 2018 motion for

[6] Although Bell's notices of appeal were filed before the court had issued and entered its written order, Md. Rule 8-602(f) provides that "[a] notice of appeal filed after the announcement or signing by the trial court of a ruling, decision, order, or judgment but before the entry of the ruling, decision, order, or judgment on the docket shall be treated as filed the same day as, but after, the entry on the docket."

Judge Mickey Norman to recuse himself; (9) the July 23, 2018 order denying Bell's May 7, 2018 motion of exception to auditor's report due to procedural irregularity of an invalid auditor's report; (10) the July 23, 2018 order denying Bell's motion to oppose substitute trustees' response to Bell's motion to strike substitute trustees' opposition to Bell's motion to exception; (11) the July 23, 2018 order declaring as moot Bell's motion to strike substitute trustees' opposition to Bell's motion of exception to the auditor's report; and (12) the July 23, 2018 order denying Bell's February 27, 2017 petition for contempt. In addition, Bell claimed that she had never received a ruling or order notifying her that the court had granted the motion to quash the subpoena of Ensor, her "key witness," despite its attachment to one of her July 20, 2018 notices of appeal.

DISCUSSION

Bell continues to assert that her home was wrongfully foreclosed upon and that the foreclosure sale should be vacated due to "the unlawful actions of circuit court judges" in intentionally delaying the docketing and ruling on her motions, in denying twelve of her motions without any legal explanation, in granting Fannie Mae a writ of possession without ruling on pending motions, and "several other irregularities." From what we can glean from Bell's somewhat rambling brief, she essentially raises two issues: (1) the propriety of the circuit court's rulings granting Fannie Mae's requests for writs of possession; and (2) the propriety of the court's rulings relating to and denying her exceptions to the auditor's report. We address each in turn.

I. Issues relating to possession

The first four questions Bell raises in her brief pertain to the circuit court's rulings granting Fannie Mae's writs of possession and denying her own motions to stay the writs of possession. Because this Court, in its 2017 *per curiam* opinion, considered (and found lacking) the merits of Bell's claims relating to possession, she is precluded, under the law of the case doctrine, from re-litigating any possession claim.

> The law of the case doctrine provides that once a decision is established as the controlling legal rule of decision between the same parties in the same case it continues to be the law of the case. . . . Specifically, a ruling by an appellate court upon a question becomes the law of the case and is binding on the courts and litigants in further proceedings in the same matter.

Kline v. Kline, 93 Md. App. 696, 700 (1992). Put another way, "[o]nce an appellate court has answered a question of law in a given case, the issue is settled for all future proceedings." *Stokes v. Am. Airlines, Inc.*, 142 Md. App. 440, 446 (2002).

The law of the case doctrine bars re-litigation of both questions that were decided and questions that could have been raised and decided on appeal.[7] *Kline*, 93 Md. App. at 700 (citing *Fidelity-Balt. Nat'l Bank & Trust Co. v. John Hancock Mut. Life Ins. Co.*, 217 Md. 367 (1958)). Furthermore,

[7] Law of the case and *res judicata* are "similar defenses aimed at preventing parties from re-litigating issues that have already been decided in court. The law of the case doctrine acts as a corollary to *res judicata* keyed specifically to appellate decisions." *Holloway v. State*, 232 Md. App. 272, 282 (2017). This Court has stated that "the law of the case doctrine 'lies somewhere beyond *stare decisis* and short of *res judicata*.'" *Id.* (quoting *Stokes*, 142 Md. App. at 446).

> Not only are lower courts bound by the law of the case, but "[d]ecisions rendered by a prior appellate panel will generally govern the second appeal" at the same appellate level as well, unless the previous decision is incorrect because it is out of keeping with controlling principles announced by a higher court and following the decision would result in manifest injustice.

Scott v. State, 379 Md. 170, 184 (2004)) (alteration in original) (quoting *Hawes v. Liberty Homes*, 100 Md. App. 222, 231 (1994)).

As we noted in our 2017 *per curiam* opinion, Bell raised only a single challenge to the merits of the circuit court's possession order—"that it was prematurely issued because the auditor's report had not been ratified." Slip op. at 2. We determined, however, that "a purchaser of property at a foreclosure sale is generally entitled to seek possession of that property 'when the sale is ratified by the Circuit Court.'" Slip op. at 2 (quoting *Empire Properties v. Hardy, LLC*, 386 Md. 628, 651 (2005)). Because the circuit court had ratified the sale to Fannie Mae and Bell did not appeal, we held that the court did not err in issuing the possession order, even prior to the auditor's report being filed. Slip op. at 3. We further commented that none of Bell's motions set forth a valid basis to vacate judgment of possession. Slip op. at 4-5.

Because we perceive nothing in our previous opinion that would result in manifest injustice to Bell, our decision determining that the circuit court did not err in upholding its judgment awarding possession of the property to Fannie Mae is dispositive. Therefore, the law of the case doctrine precludes Bell from again raising any issue relating to the propriety

of the circuit court's issuance of a writ of possession to Fannie Mae.[8]

II. Issues relating to the auditor's report

Bell also claims error or abuse of discretion in the circuit court's rulings relating to her exceptions to the auditor's report. As we previously discussed, the circuit court ratified

[8] There are exceptions to the law of the case doctrine, but none that apply here. We have explained that "the law of the case doctrine does not apply when one of three exceptional circumstances exists: the evidence on a subsequent trial was substantially different, controlling authority has since made a contrary decision on the law applicable to such issues, or the decision was clearly erroneous and would work a manifest injustice." *Baltimore Cty. v. Balt. Cty. Fraternal Order of Police, Lodge No. 4*, 220 Md. App. 596, 659 (2014) (quoting *Garner v. Archers Glen Partners, Inc*., 405 Md. 43, 56 (2008)), *aff'd sub nom.*, *Baltimore Cty. v. Fraternal Order of Police, Balt. Cty. Lodge No. 4*, 449 Md. 713 (2016). Here, there was no subsequent trial with different evidence. There was no change in controlling authority that would demand a different result from Bell's first appeal. The decision of this Court in Bell's first appeal was well reasoned, not clearly erroneous, and did not work a manifest injustice.

Moreover, even were we to consider the circuit court's granting of Fannie Mae's, and denial of Bell's motions relating to possession, we would find no abuse of discretion in the court's rulings, nor fraud, mistake, or irregularity as contemplated by Md. Rule 2-535. *See Thacker v. Hale*, 146 Md. App. 203, 217 (2002) ("Maryland courts 'have narrowly defined and strictly applied the terms fraud, mistake, [and] irregularity,' in order to ensure finality of judgments." (alteration in original) (quoting *Platt v. Platt*, 302 Md. 9, 13 (1984))).

And, finally, any issue relating to possession of the property is moot in any event, as Bell was evicted, and Fannie Mae took possession of the property, which it had lawfully purchased at foreclosure sale. *See* Driscoll's deed to the property, filed among the Land Records of Baltimore County on March 14, 2016, at liber 37279, folio 92. "A case is moot when there is no longer an existing controversy when the case comes before the Court or when there is no longer an effective remedy the Court could grant." *Suter v. Stuckey*, 402 Md. 211, 219 (2007) (citing *Dept. of Human Resources, Child Care Admin. v. Roth*, 398 Md. 137, 143 (2007)). Courts ordinarily do not entertain moot controversies. *Id.* at 219-20.

the foreclosure sale and referred the case to the auditor for an audit in February 2016. Although the auditor's report was undisputedly stamped as filed on April 15, 2016, and received by Bell shortly thereafter, the report was not entered on the circuit court's docket until May 2, 2018, presumably as a result of the record's absence from the circuit court clerk's office pending the conclusion of Bell's first appeal to this Court or her bankruptcy proceedings.

In excepting to the auditor's report, Bell did not challenge the allowed costs or expenses, nor did she object to the distribution of proceeds from the foreclosure sale; instead, in another apparent collateral attack on the validity of the foreclosure sale itself, she claimed that the "irregularity and possible fraud" in the docketing of the report more than two years after it was filed required vacation of the foreclosure sale. To support her claim of irregularity, Bell subpoenaed the clerk of the circuit court to explain the delay in the docketing of the auditor's report and attempted to introduce into evidence at the July 19, 2018 exception hearing twelve documents in support of her claim that the audit was invalid due to the docketing delay. After the circuit court quashed the subpoena and declined to admit the documents into evidence, it denied Bell's exceptions to the auditor's report, ruling that "there has been no irregularity with respect to the filing of the auditor's report, which is not contested," and, despite the discrepancy between the filing and the docketing dates of the report, "there is no irregularity, fraud or mistake with the respect to the auditor's report[.]" We perceive no error in the court's rulings.

In a foreclosure proceeding, "if the sale was not procedurally irregular and the price is not unconscionable," the sale is ratified. *Greenbriar Condo., Phase I Council of Unit*

Owners, Inc. v. Brooks, 387 Md. 683, 742 (2005). The matter is then referred to the auditor for an audit, pursuant to Md. Rule 2-543, after which exceptions to the auditor's report may be taken "[w]ithin ten days after the filing of the auditor's account or report." *Id.*; Md. Rule 2-543(g). Exceptions must be in writing and are required to "set forth the asserted error with particularity. Any matter not specifically set forth in the exceptions is waived unless the court finds that justice requires otherwise." Md. Rule 2-543(g)(1). An exceptions hearing is required if timely requested. Md. Rule 2-543(h).

Despite the arguable failure of Bell to take exceptions to the auditor's report in a timely manner (having filed her exceptions in May 2018, which was not within ten days after the April 2016 filing of the auditor's account or report, as required by Md. Rule 2-543(g)), the court nonetheless permitted Bell a full hearing on her exceptions. Therein, Bell specified that she was "not disputing the content of the auditor report." Instead, she claimed only that the "irregularity" in the delay between the "filing" of the auditor's report and the "docketing" of the report entitled her to a reversal of the foreclosure sale, notwithstanding the fact that she admittedly had received the auditor's report in April 2016 and asserted no prejudice in the purported delay in the docketing of the report.

Bell's claim of irregularity in the docketing of the auditor's report is not a cognizable exception to the auditor's report because such exceptions can only challenge the amount that is due and owing on the mortgage following the foreclosure sale. *See Pac. Mortg. & Inv. Group, Ltd. v. LaGuerre*, 81 Md. App. 28, 33-34 (1989) (noting that the auditor determines "the amount that is due and owing under the mortgage in stating the account" and, if that "amount due is disputed, exceptions may be filed pursuant to Rule 2-543(g)").

Rather, any challenge to the validity of the foreclosure sale must be raised in a motion to stay the sale and dismiss the foreclosure action pursuant to Md. Rule 14-211. Because Bell did not raise a cognizable exception to the auditor's report, the circuit court did not err in denying her exceptions to the auditor's report.[9]

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.

[9] Nor do we perceive an abuse of discretion on the part of the circuit court in quashing Bell's subpoena compelling the clerk of the court to appear at the hearing or in declining to admit into evidence the twelve documents offered by Bell.

In an attempt to provide the court with information about the delay in docketing the auditor's report, Bell subpoenaed the clerk of the circuit court to appear at the exceptions hearing, despite the clerk's lack of personal knowledge about the receipt of the auditor's report for docketing. Because the timing of the docketing of the auditor's report was irrelevant to the court's determination of Bell's exceptions and to the validity of the foreclosure sale, and because the court clerk would not have been able to offer the court any information not contained in the court docket, we find no abuse of discretion in the circuit court's granting of the clerk's motion to quash the subpoena. *See Floyd v. Balt. City Council*, 241 Md. App. 199, 207 (2019) ("We review the trial court's ruling on a motion to quash subpoenas under an abuse of discretion standard.").

Neither did the court abuse its discretion in declining to admit certain evidence offered by Bell. *See Brown v. Daniel Realty Co.*, 409 Md. 565, 601 (2009) ("[T]he admissibility of evidence, including rulings on its relevance, is left to the sound discretion of the trial court, and absent a showing of abuse of that discretion, its rulings will not be disturbed on appeal." (alteration in original) (quoting *Dehn v. Edgecombe*, 384 Md. 606, 628 (2005))). The twelve pieces of evidence Bell sought to have admitted at the exceptions hearing were all apparently copies of the court's docket she had printed on various dates in May through November 2016 to show that the auditor's report had not yet been docketed on each of those dates, and one in May 2018 showing that it had been docketed. Again, the docket entries were irrelevant to the court's determination of Bell's exceptions and to the validity of the foreclosure sale, and, in addition, the documents were cumulative and their admission into evidence was unnecessary, as the court was permitted to take judicial notice of its own records. *See Lerner v. Lerner Corp.*, 132 Md. App. 32, 40-41 (2000).