

Circuit Court for Baltimore City
Case No. 24-C-21-004195

UNREPORTED*
IN THE APPELLATE COURT
OF MARYLAND

No. 1188

September Term, 2022

MLS EQUITY, LLC

v.

PIRATE, LLC, ET AL.

Reed,
Tang,
Eyler, James R.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Tang, J.

Filed: September 19, 2023

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

This appeal arises from a tax foreclosure proceeding involving real property located at 2835 Boarman Avenue in Baltimore, Maryland (the “Property”). MLS Equity, LLC (“MLS”), appellant, filed a complaint in the Circuit Court for Baltimore City to foreclose the right to redeem the Property. After the court entered judgment foreclosing the right of redemption, Pirate, LLC (“Pirate”), appellee, moved to vacate the judgment for lack of service, which the court granted. On appeal, MLS presents the following questions which we have rephrased for clarity:

1. Did the circuit court err in reopening the case without a condition precedent being met?
2. Did the circuit court err in finding that MLS did not effectuate service on Pirate?

As to the first question, we conclude that the circuit court erred. Accordingly, we need not address the second question presented. For the reasons set forth below, we shall vacate the judgment of the circuit court.

BACKGROUND

Prior to May 17, 2021, Pirate was the title owner of the Property. After Pirate failed to pay the property taxes, the Director of Finance for the City of Baltimore sold the Property to IPB Management Group, LLC (“IPB”) for \$7,526.00, with taxes and other municipal liens due on the Property at the time of sale in the amount of \$1,933.58. The City issued a tax sale certificate to IPB, which IPB subsequently assigned to MLS.

On September 27, 2021, MLS filed a Complaint to Foreclose Rights of Redemption (“Complaint”). The Complaint named Pirate, among others, and it identified Pirate’s resident agent with an address of 3610 W. Coldspring Lane in Baltimore.

On October 25, 2021, the court issued an Order of Publication. The order required that “this notice be given by the insertion of a copy of this Order” in a daily newspaper once a week for three successive weeks before November 24, 2021. The notice warned:

all persons with an interest in said [P]roperty to be and appear in this [c]ourt by the 24th day of December, 2021, and redeem the [P]roperty and answer the Complaint, or thereafter a final judgment will be entered foreclosing all rights of redemption in [the Property] and vesting in [MLS] a leasehold title, free and clear of all encumbrances.

On January 10, 2022, MLS filed an Affidavit of Compliance and Request for Judgment. MLS affirmed that it served Pirate with the Complaint and related documents, or otherwise provided Pirate with notice, in the following ways:

[B]y making service upon [the State Department of Assessments and Taxation (“SDAT”)] pursuant to Md[.] Rule 2-124(o) as the Resident Agent is not at the address listed with the SDAT, and could not be served despite two good faith attempts.^{1]} The return of service, SDAT record, returned mailing, and affidavit from the process server are attached as Exhibit A.

[T]he [P]roperty was posted by a private process server [on November 11, 2021], the proof of posting having already been filed with the [c]ourt.

¹ Where, as here, a defendant is a limited liability company, Maryland Rule 2-124(h) states that service is made upon the company by serving its resident agent. Rule 2-124(o) provides, in relevant part, that substituted service “may be made upon a . . . limited liability company . . . by serving two copies of the summons, complaint, and all other papers filed with it, together with the requisite fee, upon [the SDAT] if . . . (iii) two good faith attempts on separate days to serve the resident agent have failed.”

[A]ll Defendants and all parties having or claiming to have an interest in the [P]roperty were notified by Order of Publication published in The Daily Record . . . once a week for three (3) successive weeks, in accordance with the Order[.]

Exhibit A included an Affidavit of Service of Process by MLS's counsel, affirming that counsel sent to the SDAT the Complaint and related documents by certified mail, restricted delivery on November 12, 2021, which the SDAT accepted on November 23, 2021. Exhibit A indicated that, on November 12, 2021, counsel attempted service by certified mail on Pirate's resident agent at the W. Coldspring Lane address, but service was not successful.

Exhibit A also included an Affidavit of Due Diligence by the process server. The process server affirmed that he made the following attempts to serve Pirate's resident agent at the W. Coldspring Lane address:

[O]n November 13, 2021 [Saturday] at 2:28 PM, [the process server] went to 3610 W[.] Coldspring Lane, Baltimore, MD 21215. That this was the address of a business and it was closed. That [he] posted a notice for the Resident Agent to call.

[O]n November 28, 2021 [Sunday] at 12[:]35 PM, [the process server] returned to 3610 W[.] Coldspring Lane, Baltimore, MD 21215. That the business was closed. That [he] posted another notice for the Resident Agent to call.

[The process server] did not receive a call from [the Resident Agent].

On April 7, 2022, the court entered a Judgment Foreclosing Right of Redemption in MLS's favor. The order vested MLS with an absolute and indefeasible title to the Property in fee simple. The court found that:

all Defendants were personally served or were notified in accordance with Maryland Rule 14-503 and §14-839(a) of the Tax-Property [“TP”] Article of the Maryland Code Annotated and also were notified by an Order of Publication issued by [the court], that the time limit set in the Order of Publication and in the summons has expired, and that no redemption has been made by any party in interest.

On May 6, 2022, Pirate filed a Motion to Vacate Judgment Foreclosing Right of Redemption (“Motion to Vacate”). It argued that MLS failed to properly serve Pirate: the process server attempted to serve Pirate’s resident agent on the weekend when “of course” the office was closed; MLS’s attempted service on Pirate by certified mail was not successful; and MLS did not comply with substituted service on the SDAT pursuant to Rule 2-124(o) because its two service attempts on a weekend, when the resident agent’s office was closed, did not amount to good faith attempts. It added that Pirate was “never served a first or second notice of delinquency as required.” Pirate did not dispute the amount of taxes owed, nor did it pay the delinquent amount.

MLS filed a Response, opposing the motion. MLS argued, in pertinent part, that, because Pirate did not satisfy the condition precedent of paying the taxes due on the Property, the court “MAY NOT exercise equitable jurisdiction” and consider the Motion to Vacate. (Emphasis in original). In any event, MLS served Pirate via the SDAT when mail and personal service attempts were unsuccessful. MLS added that the W. Coldspring Lane address “is boarded property[,]” the resident agent “is rarely or never [there], weekend or not[,]” and the resident never responded to the server’s posted request to call.

On August 16, 2022, the court entered an order granting Pirate’s Motion to Vacate. It reasoned that the certified mailing to the SDAT was not sent *after* two other service attempts to Pirate’s resident agent had failed:

[MLS] failed to comply with Maryland Rule 2-124(o) prior to effecting substitute service upon the [SDAT]. On **November 13, 2021**, and **November 28, 2021**, [MLS] made unsuccessful attempts at personal service upon [Pirate’s] resident agent at the address maintained by SDAT. *See* Affidavit of Compliance (Paper No. 6000), Ex A. Further, [MLS] filed evidence of a certified mailing post-marked on **November 12, 2021**, and an online United States Postal Service tracking printout showing that the mailing was not delivered. *See Id.* However, [MLS] attempted substituted service upon SDAT on **November 12, 2021**. *See Id.* Therefore, [MLS] failed to make two attempts to serve the resident agent *prior* to serving SDAT. [MLS] failed to properly serve [Pirate] pursuant to Maryland Rule 2-124(o)(iii)[.]

(Footnote omitted and emphasis in original). The court did not address MLS’s contention that Pirate failed to satisfy the condition precedent to filing the Motion to Vacate.

The court vacated the judgment, ordered that the case be reopened, and ordered MLS to file with the clerk the redemption figures within thirty days.² MLS timely noted an appeal. *See Davis v. Attorney General*, 187 Md. App. 110, 120 (2009) (“[A]n order vacating an enrolled judgment is treated as a final judgment, and therefore is immediately appealable.”).

² On October 25, 2022, MLS filed a response with the redemption figures.

DISCUSSION

I.

Precondition to Challenging Foreclosure of Right of Redemption

MLS contends that the circuit court erred in granting the Motion to Vacate. It argues that Pirate did not satisfy the condition precedent to challenging the judgment foreclosing the right of redemption by paying the taxes, costs, and expenses related to the tax sale. We agree.

In *Quillens v. Moore*, 399 Md. 97, 125 (2007), the Court, quoting *Canaj, Inc. v. Baker and Division Phase III*, 391 Md. 374, 396 (2006), stated:

We continue to hold that in order to challenge the foreclosure of the equity of redemption in a tax sale, the taxes and other relevant charges acknowledged to be due, either prior to the challenge or simultaneously with it, must, as a condition precedent, be paid. [The delinquent taxpayer] has not contested the fact that taxes are owed, or in this appeal, the amounts. There is no issue as to his obligation to pay the taxes. If we were to overrule our cases holding that payment is first required, the City would be left where it was before the tax sale. The public would be burdened perpetually with the problems created by the thousands of abandoned properties, which the delinquent owners would be unlikely to ever pay taxes on or ever to rehabilitate.

(Emphasis in original).

Here, Pirate does not dispute that it failed to pay the taxes, costs, and expenses related to the tax sale prior to filing the Motion to Vacate or contemporaneously thereto. Because it did not satisfy the condition precedent, the circuit court should have denied Pirate's motion.

Pirate mentions two points that were not raised below. First, it suggests that it was unable to pay the amounts due because it did not have the redemption figures when it filed

the Motion to Vacate. Second, if the circuit court was without jurisdiction to consider its motion, then MLS’s Complaint should also be dismissed for lack of jurisdiction. Pirate does not cite to any legal authority or expound on its points in its two-page brief. *See* Md. Rule 8-504(a)(6) (requiring that a brief contain “[a]rgument in support of the party’s position on each issue”); *Klauenberg v. State*, 355 Md. 528, 552 (1999) (“arguments not presented in a brief or not presented with particularity will not be considered on appeal”). Accordingly, we decline to address them.

II. Procedural Notice Requirements

On the merits, MLS contends that it had effectuated service on Pirate. Relying on *Voltolina v. Prop. Homes, LLC*, 198 Md. App. 590 (2011), MLS maintains that, because its service attempts were unsuccessful, Pirate’s whereabouts became unknown and thus service was properly effectuated by sending notice to Pirate’s resident agent, posting notice on the Property, and publishing notice for three weeks in *The Daily Record*. *See id.* at 608. Accordingly, MLS was not required to serve Pirate’s resident agent via the SDAT pursuant to Maryland Rule 2-124, and even if it was, it had complied with subsection (o).

We need not address the merits of the service claim because we conclude that the circuit court should have denied Pirate’s Motion to Vacate. Moreover, MLS’s contention that Pirate’s whereabouts were unknown was not raised below and thus not preserved for our review. *See* Md. Rule 8-131(a); *Haslup v. State*, 30 Md. App. 230, 239 (1976) (we may, *sua sponte*, determine that an issue has not been properly preserved for appellate review and decline to decide it); *Jones v. State*, 379 Md. 704, 714 (2004) (“[T]he interests

of fairness generally are furthered by requiring the issues to be brought first to the attention of the trial court so that the trial court may pass upon it in the first instance.”). We, however, provide some guidance on the procedural notice requirements should Pirate refile its Motion to Vacate upon satisfying the condition precedent.

When a property is purchased pursuant to a tax sale, “[c]ertain interested parties retain a right to satisfy the lien and redeem the property[.]” *Voltolina*, 198 Md. App. at 598; see TP § 14-827; see also § 14-828 (setting forth the procedure on redemption). “A court may subsequently foreclose the interested party’s right of redemption upon the filing of a complaint by the tax purchaser and the issuance of process and public notice by the court.” *Ty Webb, LLC v. Mayor of Balt.*, 251 Md. App. 32, 39 (2021); see TP §§ 14-833–14-844. “During the course of those proceedings, certain due process requirements must be met, including that the interested party be given notice.” *Ty Webb*, 251 Md. at 39. “Failure of procedural due process deprives the court of jurisdiction[.]” *Voltolina*, 198 Md. App. at 599.

“However, it is well settled that due process of law is not violated in application because the interested party did not receive actual notice.” *Ty Webb*, 251 Md. at 39 (citation and quotation omitted). “The constitutionality of a particular notice mechanism is not to be judged by its actual success . . . but turns instead on whether the chosen method is reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.”

Voltolina, 198 Md. App. at 599–600 (citations and quotations omitted). In *Ty Webb*, we summarized the procedural safeguards provided by the Tax Property Article:

TP § 14-836 provides, in pertinent part, that notice of the proceeding must be posted at the subject property and must also be sent, via certified mail, to the interested party. TP § 14-836(b). TP § 14-840 provides that notice of the proceeding must be published in a newspaper having general circulation. TP § 14-840. TP § 14-840 also provides that “[w]hen the order of publication is issued and published, any person that has any right, title, interest, claim, lien, or equity of redemption in the property is bound by the judgment of the court that may be passed in the case as if the person were personally served with process.”

251 Md. App. at 39. “Those procedural requirements have since been modified with the adoption of Chapter 500 of Title 14 of the Maryland Rules.” *Id.* at 40.

Rule 14-503(a) states that, upon the filing of a complaint to foreclose a right of redemption and the issuance of a summons by the court, process “shall be served in accordance with [Md.] **Rule 2-121** on each defendant named in the complaint **whose whereabouts are known.**” (Emphasis added). Rule 2-121 provides that:

service of process may be made by personally delivering the requisite papers to the defendant; by leaving the papers at the defendant's home with someone of suitable age; or by mailing the papers by certified mail requesting restricted delivery. Md. Rule 2-121(a). If proof is made that the defendant acted to evade service, the court may order that service be made by mailing the requisite papers to the defendant's last known address and leaving the papers with a person of suitable age at the defendant's place of business. Md. Rule 2-121(b). If proof is made that good faith efforts to personally serve the defendant have not succeeded and that service under section (b) “is inapplicable or impracticable, the court may order any other means of service that it deems appropriate in the circumstances and reasonably calculated to give actual notice.” Md. Rule 2-121(c).

Ty Webb, 251 Md. App. at 40. The Rule also states that the “methods of service provided in this Rule are in addition to and not exclusive of any other means of service that may be provided by statute or rule for obtaining jurisdiction over a defendant.” Md. Rule 2-121(d).

By contrast, when a defendant’s **whereabouts are unknown**, Rule 14-503(b) requires that notice of the proceedings “be served in accordance with **Rule 2-122**.” (Emphasis added). Rule 2-122 states, in pertinent part:

(a) Service by Posting or Publication. In an in rem or quasi in rem action when the plaintiff has shown by affidavit that the whereabouts of the defendant are unknown and that reasonable efforts have been made in good faith to locate the defendants, the court may order service by the mailing of a notice to the defendant’s last known address **and**:

(1) by posting the notice by the sheriff at the courthouse door or on a bulletin board within its immediate vicinity, **or**

(2) by publishing the notice at least once a week in each of three successive weeks in one or more newspapers of general circulation published in the county in which the action is pending, **or**

(3) in an action in which the rights relating to land including leasehold interests are involved, by the posting of the notice by a person authorized to serve process in accordance with Rule 2-123(a) in a conspicuous place on the land.

(Emphasis added).

“[T]he question of whether a defendant’s whereabouts are ‘known’ or ‘unknown,’ and thus the question of whether service must be made in accordance with Md. Rule 2-121 or 2-122, can hinge upon the reasonableness of the plaintiff’s efforts to serve process on the defendant at his last known address.” *Ty Webb*, 251 Md. App. at 41.

In *Voltolina*, the plaintiff attempted to serve the defendant with a summons and via substituted process pursuant to Rules 14-503(b) and 2-122. 198 Md. App. at 595. A process server visited the property a few times, left a note with a request that the defendant call him, sent the defendant a letter with the same request, and attempted to contact the defendant by phone. *Id.* The plaintiff made attempts to send defendant the summons and related documents, but the certified mailings with restricted delivery were returned unclaimed. *Id.* A copy of the notice to interested parties was posted at the property, and notice was published in the newspaper. *Id.* at 596. The plaintiff filed an affidavit showing that reasonable and good faith efforts to serve the defendant at his last known address had failed. *Id.* at 605. Thereafter, the court entered judgment of foreclosure. *Id.* at 597.

The defendant moved to reopen the judgment, alleging lack of personal jurisdiction and constructive fraud in the proceedings for failure of notice and due process. *Id.* at 598. The court denied the motion, and the defendant appealed. *Id.* On appeal, defendant argued that substituted service pursuant to Rules 14-503(b) and 2-122 was improper because the plaintiff had actual knowledge of his correct address. We rejected the argument, explaining that:

[A] complainant’s knowledge of even a “correct” residential address does not necessarily mean that the defendant’s “whereabouts” are known. . . . [D]iscovery of a defendant’s address will initially mean that the defendant’s “whereabouts” are known, but when reasonable and good faith attempts to serve process at that address fail—and if no other facts provide constructive knowledge of a reasonable way to serve the defendant—then the only valid conclusion can be that the defendant’s “whereabouts” revert to being unknown.

Id. at 607–08 (footnote omitted). We held that the defendant was served in accordance with Rule 2-122 because the plaintiff filed an affidavit showing reasonable and good faith efforts to serve defendant, and because the plaintiff posted, mailed, and published notice pursuant to the notice provisions of TP §§ 14-836, 14-839, 14-840, and Rule 14-503(c). *Id.* at 605. We explained that the affidavit showed that reasonable and good faith efforts to serve the defendant had failed—the plaintiff’s agents attempted to serve the defendant “by personal delivery on several occasions and, when those efforts failed, by telephone, mail, and written note”—and his whereabouts were thus unknown. *Id.* at 609.

Similarly, in *Ty Webb*, we determined that it was “clear” that the plaintiff had made reasonable and good faith efforts to notify the defendant of the proceeding where the plaintiff had sent the complaint by certified mail, restricted delivery; published notice; posted a copy of the complaint at the subject property; attempted personal service on the defendant; and conducted a skip trace to confirm the defendant’s last known address. 251 Md. App. at 41. It was “equally clear” that the defendant’s whereabouts were “unknown” and consequently, service pursuant to Rules 14-503(b) and 2-122 was appropriate. *Id.* at 42.

As mentioned, due to the posture of the case before us, we need not, and cannot properly evaluate MLS’s claim that service was effectuated on Pirate. Because Pirate did not fulfill the condition precedent to filing the Motion to Vacate, the circuit court should have denied the motion.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY VACATED;
CASE REMANDED WITH
INSTRUCTIONS FOR THE COURT TO
FILE AN ORDER DENYING APPELLEE'S
MOTION TO VACATE JUDGMENT
FORECLOSING RIGHT OF
REDEMPTION. COSTS TO BE PAID BY
APPELLEE.**