

Circuit Court for Baltimore County
Case No. C-03-CV-19-003911

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1354

September Term, 2020

CARRIE M. WARD, *et al.*

v.

KALENA P. McCRAE

Zic,
Ripken,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zic, J.

Filed: October 12, 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.

Appellants Carrie M. Ward, *et al.*, substitute trustees, conducted a foreclosure sale of the property of appellee, Kalena McCrae, after she defaulted on her mortgage in early 2020. Due to the ongoing COVID-19 pandemic, the Circuit Court for Baltimore County denied ratification of the foreclosure sale, notified appellants of their non-compliance with the current stay on foreclosures, and provided appellants with 30 days to take corrective action, otherwise “an appropriate order may be entered.” After appellants failed to show their exception to the stay within 30 days, the circuit court dismissed the foreclosure action without prejudice and denied the substitute trustees’ subsequent motion to vacate the dismissal order. The substitute trustees present two questions for our review:

1. Whether the circuit court judge abused his discretion by dismissing the foreclosure case?
2. Whether the circuit court judge abused his discretion by denying the Motion to Vacate?

For the reasons that follow, we perceive no error or abuse of discretion and therefore affirm the decisions of the circuit court.

BACKGROUND

On February 9, 2012, appellee Kalena McCrae executed a promissory note in the amount of \$311,877 in favor of PHH Mortgage Corporation. The note was secured by a deed of trust encumbering Ms. McCrae’s residence in Baltimore County. Ms. McCrae defaulted on the note on January 2, 2019. As a result, on August 16, 2019, PHH Mortgage Services issued a notice of intent to foreclose upon the property. Appellants were appointed as substitute trustees on October 18, 2019.

The substitute trustees initiated a foreclosure action on October 23, 2019, with the filing of an order to docket and accompanying affidavits and attachments. PHH Mortgage Corporation filed the final loss mitigation affidavit on December 6, 2019, and although a mediation was held on January 28, 2020, no agreement was reached among the parties. Therefore, a foreclosure sale was scheduled for March 12, 2020. The property was sold on that date to Urban Housing, Inc., for \$285,000. Report of the sale, with supporting documents, was made to the circuit court on March 18, 2020.

Also on March 18, 2020, Mary Ellen Barbera, then Chief Judge of the Maryland Court of Appeals, issued an “Administrative Order on Suspension of Foreclosures and Evictions during the COVID-19 Emergency” that was “effective immediately.”¹ The order stayed all “foreclosures of residential properties . . . pending in the circuit court.”

On May 5, 2020, the substitute trustees filed a supplemental affidavit of deed of trust debt, and on May 12, 2020, filed a certificate of publication and a line suggesting that the foreclosure sale was ripe for ratification. On October 20, 2020, the substitute trustees filed a declaration of exemption from foreclosure moratoria—on the ground that

¹ See Administrative Order on Suspension of Foreclosures and Evictions During the COVID-19 Emergency (Mar. 18, 2020), available at <https://mdcourts.gov/sites/default/files/admin-orders-archive/20200318suspensionofforeclosuresevictions.pdf>. Chief Judge Barbera later issued an amended order lifting the stay on residential foreclosure proceedings, effective July 25, 2020. See Amended Administrative Order Lifting the Suspension During the COVID-19 Emergency of Foreclosures, Evictions, and Other Ejectments (June 3, 2020), available at <https://www.mdcourts.gov/sites/default/files/admin-orders-archive/20200603amendedliftingssuspensionduringcovidofforeclosuresevictionsandotherejectmentsinvolvingresidences.pdf>.

the property was vacant and abandoned—along with a request that the circuit court ratify the foreclosure sale.²

On November 2, 2020, the circuit court issued a “Post-Sale Initial Review Recommendation-Foreclosure of Mortgage or Deed of Trust-Residential Property (Finding of Non-Compliance)” (hereinafter “finding of non-compliance”). The court explained that it would not rule on the request for ratification “at this time,” because, pursuant to Maryland Rule 14-207.1, a review of the record revealed “findings of non-compliance (a.k.a deficiencies)” with the file. Specifically, the court noted that the substitute trustees had filed 12 papers in violation of state and federal COVID-19 emergency stays governing residential foreclosures.

The finding of non-compliance further detailed:

NOTE – Deadline to Respond:

Pursuant to Md. Rule 14-207.1(a), if the plaintiff does not demonstrate within 30 days that the papers are legally sufficient or that the deficiency has been cured, upon review, *an appropriate order may be entered.*

NOTE – File & Serve Suggestions:

Plaintiffs shall file two documents with the Court through Odyssey File & Serve when responding to the Court’s letter of non-compliance: 1) a document titled “Response to Court’s Post-Sale Letter of Non-Compliance,” comprised of any response to the finding(s) of non-compliance (cure or argument), along with any attachments/exhibits; and 2) a document titled “Line-Additional Foreclosure Post-Sale Request to Ratify Sale.”

² Ms. McCrae disputes that the property was either vacant or abandoned.

The Court will then review the response and revisit the request to ratify sale.

(emphasis added). The court also sent a letter enclosing the finding of non-compliance to the substitute trustees’ attorneys, advising that “[t]he Court will take no further action in this matter until such time as the attached is complied with,” and reiterating that “an appropriate order may be entered” if the substitute trustees did not “demonstrate within 30 days that the papers are legally sufficient or that the deficiency has been cured.”

The substitute trustees did not comply with the circuit court’s finding of non-compliance within 30 days. Therefore, on December 9, 2020, the court entered an order dismissing the foreclosure action without prejudice.

On December 18, 2020, the substitute trustees filed a motion to vacate the circuit court’s order of dismissal. They first apologized for failing to respond timely to the finding of non-compliance, claiming they had mistakenly believed that a response would require the re-filing of “a host of documents which takes time to complete and they were in the process of doing so.”

The substitute trustees went on to contend that the circuit court lacked the authority to dismiss the foreclosure action because Maryland Rule 14.207.1(a) required the court to give specific notice that the action would be dismissed if they failed to comply with the finding of non-compliance. Because the finding of non-compliance and the court’s letter “did not reference dismissal,” they continued, dismissal was not an authorized action. The substitute trustees also argued that: (1) even if authorized, the dismissal was extremely prejudicial to them and to the foreclosure purchaser; (2) the

court’s notation that the “request for ratification is DENIED” without further commentary arguably presented “some potential ambiguity about the scope or legal effect of the recommendation;” (3) the surprisingly swift dismissal was “contrary to apparent custom in this circuit,” where the court has “previously taken a lenient approach to deficiency deadlines;” and (4) the court’s findings that the filing of their papers violated the Court of Appeals’ stay of residential foreclosures were “legally incorrect” because the Court of Appeals’ administrative orders were “ambiguous and plaintiffs acted reasonably under the circumstances” by filing the papers with the circuit court.

The circuit court denied the substitute trustees’ motion to vacate without a hearing on January 8, 2021. The substitute trustees filed a timely notice of appeal on January 29, 2021.

DISCUSSION

As they did in their motion to vacate, the substitute trustees challenge the circuit court’s dismissal of the foreclosure action and denial of their motion to vacate the dismissal. The substitute trustees argue the finding of non-compliance “could have, but did not” place them on proper advance notice that the foreclosure was subject to dismissal if they did not take timely action. In addition, the trustees continue, the court abused its discretion considering “the facts, law, prejudicial effect, ambiguity of the [finding of non-compliance], equitable principles that apply to a foreclosure action, and the liberal standard that should have [been] (but was not) applied to the Motion to Vacate.”

Maryland Rule 14-207.1 governs a circuit court’s review of the pleadings and papers filed in foreclosure actions regarding compliance with the Maryland Rules and applicable statutes. *101 Geneva LLC v. Wynn*, 435 Md. 233, 242 (2013). The Rule “broadly permits circuit courts to conduct screenings of pleadings and papers in foreclosure actions, even if no objection or exception has been filed, and to take action in accordance with the Rule thereafter if non-compliant pleadings or papers are found.” *Wynn*, 435 Md. at 259 (Watts, J., concurring in part, dissenting in part).

Rule 14-207.1 provides, in pertinent part:

(a) Generally. The court may adopt procedures to screen pleadings and papers filed in an action to foreclose a lien. If the court determines that the pleadings or papers filed do not comply with all statutory and Rule requirements, *it may give notice* to the plaintiff and each borrower, record owner, party, and attorney of record *that the action will be dismissed without prejudice or that some other appropriate order will be entered by reason of the non-compliance* if the plaintiff does not demonstrate within 30 days that the papers are legally sufficient or that the deficiency has been cured.

(emphasis added).

The Rule grants a circuit court discretion in these decisions. *See Shepherd v. Burson*, 427 Md. 541, 559-60 (2012) (holding that the circuit court properly exercised its discretion under Md. Rule 14-207.1 to deny the motion to dismiss the foreclosure action). *See also Wynn*, 435 Md. at 242 (“Moreover, the vacatur of a foreclosure sale . . . ‘is a judicial decision affecting the rights and interests of litigants, and, as such, it is generally within the discretion of trial judges to rule on the matter.’”) (quoting *St. Joseph Med. Ctr., Inc. v. Turnbull*, 432 Md. 259, 283 (2013)).

Additionally, we review the denial of a motion to vacate a judgment for abuse of discretion. See *In re Adoption/Guardianship of Joshua M.*, 166 Md. App. 341, 351 (2005) (“Our review of the trial court’s decision to grant appellee’s motion to alter or amend judgment under Maryland Rules 2-534 and 2-535(a) is governed by the abuse of discretion standard.”).

Here, consistent with Maryland Rule 14-207.1, the circuit court issued a finding of non-compliance notifying the substitute trustees that if they did not demonstrate within 30 days that the filed papers at issue were legally sufficient or that the deficiency had been cured, “*an* appropriate order may be entered.” The court did not state, pursuant to Rule 14-207.1(a), that it might issue “*some other* appropriate order,” rather than dismissal without prejudice. Therefore, “an appropriate order,” as contemplated by the court, reasonably could have included *any* action permitted by the Rule—either a dismissal without prejudice or “some other” sanction—at the court’s discretion. The court was not required to specify that “an appropriate order” could include a dismissal of the foreclosure action, as the substitute trustees should have been on notice of the possibility of that sanction from the plain language of the Rule.

It is undisputed that the substitute trustees did not timely comply with the circuit court’s requirements in its finding of non-compliance. Therefore, pursuant to Rule 14-207.1, the court was permitted to enter an appropriate order, which, in this matter, consisted of dismissal of the foreclosure action without prejudice. Nothing further is required to support our conclusion that the circuit court did not abuse its discretion in dismissing the foreclosure action.

Similarly, the circuit court did not abuse its discretion in denying the substitute trustees’ motion to vacate the order of dismissal. In their motion to vacate pursuant to Rules 2-534 and 2-535, the substitute trustees acknowledged that they did not timely respond to the finding of non-compliance, but they set forth several reasons the circuit court nonetheless should not have entered a dismissal. Included was the suggestion that the court was legally incorrect in its understanding that the Court of Appeals’ stay on foreclosures applied to the filing of papers in a foreclosure action that was already pending when the stay went into effect. Any of the substantive reasons the substitute trustees set forth in their motion to vacate could have, and should have, been presented to the circuit court in a timely manner. The court’s finding of non-compliance permitted “*any* response to the finding(s) of non-compliance (cure or argument)” (emphasis added) and required the filing of only that response and another request to ratify the foreclosure sale to cure the deficiency. None of the substitute trustees’ arguments as set forth belatedly in their motion to vacate excused their failure to act in a timely manner to avoid dismissal of the foreclosure action.

**ORDERS OF THE CIRCUIT COURT FOR
BALTIMORE COUNTY AFFIRMED;
COSTS TO BE PAID BY APPELLANTS.**