

Circuit Court for Baltimore City
Case No. 24-O-13-000528

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1463

September Term, 2017

RENEE L. MCCRAY

v.

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

Woodward, C.J.,
Friedman,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: October 3, 2018

*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.

In 2013, appellees, acting as substitute trustees,¹ filed an Order to Docket, in the Circuit Court for Baltimore City, seeking to foreclose on real property owned by Renee McCray, appellant. Between 2013 and 2017, McCray filed four motions to either stay or dismiss the foreclosure action, all of which were denied.

In August 2017, McCray filed two additional motions: (1) an “Emergency Motion for Injunctive Relief,” wherein she again sought a stay of the foreclosure proceedings (fifth motion to stay) and (2) a “Demand to Vacate Order Dated March 31, 2017 and All Orders Denying Defendant’s Motions to Dismiss Foreclosure Action Because the Court Lacks Jurisdiction Over the Subject Matter and Request for Hearing,” wherein she requested the court to vacate all of its previous orders denying her motions to stay or dismiss (motion to vacate). In both motions, McCray claimed that appellees had “no lawful nor legal right to file the non-judicial foreclosure action” because they had violated the Fair Debt Collection Practice Act (FDCPA). She further contended that, because appellees were “debt collectors” under the FDCPA, they could only bring a legal action to collect a debt in a “competent judicial district” and that the circuit court was not a competent judicial district because it was a “private for-profit corporation.”

In support of both motions, McCray also noted that she had recently received favorable rulings in two pending federal lawsuits that she filed against appellees in 2013 and 2016. Specifically, she indicated that, in both cases, the court had found that her

¹ Appellees are John Driscoll, III; Robert E. Frazier; Jana M. Gantt; Laura D. Harris; Kimberly Lane; and Deena L. Reynolds.

complaint had sufficiently alleged claims against appellees for violating the FDCPA and, therefore, had denied appellees’ motions to dismiss. The circuit court denied both of McCray’s motions without a hearing. On appeal, McCray contends that the court abused its discretion in denying both motions, and that the court erred in denying them without a hearing.² For the reasons that follow, we affirm.

Maryland Rule 14-211(a)(2)(A) provides that a motion to stay or dismiss the foreclosure action must be filed no later than 15 days after the last to occur of: 1) the filing date of the final loss mitigation affidavit; 2) the date the court grants a motion to strike post-file mediation; or 3) where mediation was requested and not stricken the first to occur of: (a) the date the post-file mediation was held; (b) the date the [OAH] files with the court a report stating that no post-file mediation was held; or (c) sixty days after transmittal of the request for mediation. Any motion that is untimely must state with particularity the reasons why it was not timely filed. Md. Rule 14-211 (a)(3). If the court concludes that the motion was not timely filed and does not show good cause for excusing non-compliance, it must deny the motion. Md. Rule 14-211(b)(1). Otherwise, it must hold a hearing on the merits.

² In her questions presented, McCray also asserts that the “circuit court erred by not providing its Findings of Facts and Conclusions of Law in denying [her] motions.” Because McCray does not present any argument in her brief to support of this claim, it is not properly before us. *See Klauenberg v. State*, 355 Md. 528, 552 (1999) (“[A]rguments not presented in a brief or not presented with particularity will not be considered on appeal.”). In any event, the failure of the circuit court to set forth factual findings and legal conclusions would not warrant reversal because it is clear from the record that McCray’s motions were properly denied as a matter of law.

Here, post-file mediation was held on June 26, 2013, and no agreement was reached. Therefore, any request to stay or dismiss the foreclosure action had to be filed within fifteen days from that date. Because McCray’s fifth motion to stay was filed almost four years later, it was clearly untimely. Moreover, the motion did not state with particularity any reason why it could not have been filed in a timely manner. Although McCray indicated that she had recently received favorable rulings in her federal cases against appellees, the FDCPA claims that she raised in those cases were not new and the court’s rulings did not resolve any factual issues. In fact, McCray had essentially raised the same claims regarding appellees in several of her previous motions to stay. Moreover, the court rulings that she referenced occurred in October 2016 and March 2017, yet she did not file the fifth motion to stay until August 2017. Consequently, we hold that the circuit court did not abuse its discretion in denying her fifth motion to stay.

The court also did not abuse its discretion in denying McCray’s motion to vacate. Because that motion was filed more than thirty days after the orders that McCray sought to vacate, the only basis for the circuit court to have granted the motion would have been if McCray could demonstrate the existence of fraud, mistake, or irregularity in those judgments. *See* Maryland Rule 2-535(b). However, none of the claims raised in her motion to vacate demonstrate the existence of fraud, mistake, or irregularity, as those terms are used in Rule 2-535(b), that would have warranted the circuit court vacating its orders denying her previous motions to stay or dismiss the foreclosure action. *See generally Thacker v. Hale*, 146 Md. App. 203, 217 (2002) (“Maryland courts have narrowly defined

and strictly applied the terms fraud, mistake, [and] irregularity, to ensure finality of judgments.”).

We also find no error in the court’s decision to deny both motions without a hearing. First, Rule 14-211(b)(1) provides that the court “shall” deny a motion to stay the foreclosure “*with or without a hearing,*” if the court determines that the motion was untimely and does not show good cause for the late filing. Second, because the court’s decision to deny McCray’s motion to vacate was not dispositive of a claim or defense, no hearing was required. *See Pelletier v. Burson*, 213 Md. App. 284, 292-93 (2013) (noting that the court is not required to hold a hearing before denying a motion for reconsideration filed more than ten days after the entry of judgment because the denial of such a motion is not dispositive of a claim or defense). Finally, McCray’s claim that the lack of a hearing violated her due process rights lacks merit. McCray received notice of the foreclosure proceeding and had a sufficient opportunity to make known to the court, in her motions, the grounds on which she maintained that she was entitled to have the proceeding stayed or dismissed. It was not a violation of her due process right to be heard when, after being heard in writing, the court did not give her an opportunity for an oral hearing when she did not file her fifth motion to stay in a timely manner and her motion to vacate failed to allege a sufficient basis for the court to reconsider its prior orders pursuant to Maryland Rule 2-535(b). *See generally Elliot v. Kupferman*, 58 Md. App. 510, 521 (1984) (noting that the process that is due is “created and [its] dimensions are defined by existing rules or understandings that stem from an independent source such as state law – rules or

understandings that secure certain benefits and that support claims of entitlement to those benefits” (internal quotation marks and citation omitted)).

**JUDGMENTS OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**