Circuit Court for Anne Arundel County
Case No. 02-C-13-178786

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1487

September Term, 2017

DONALD CONOVER, *et al.*

v.

JEFFREY B. FISHER, *et al.*

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

JJ.

PER CURIAM

Filed: November 26, 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 October 2013, appellees, acting as substitute trustees,[1] filed an Order to Docket, in the Circuit Court for Anne Arundel County, seeking to foreclose on real property owned by Donald Conover and Deborah McGlaufin, appellants. Appellants filed a counterclaim and third-party complaint against appellees and Navy Federal Credit Union (NFCU), the secured party, claiming, *inter alia*, that NFCU had no right to foreclose on the property. The property was eventually sold at a foreclosure auction and the court overruled appellants exceptions to the sale.

On December 9, 2014, the court granted appellees' motion for summary judgment and dismissed appellants' counterclaim and third-party complaint. Appellants appealed from that order and, thereafter, filed a motion to stay enforcement of the foreclosure case in the circuit court. The circuit court granted appellants' motion and ordered that the "ratification and enforcement of the foreclosure sale is stayed pending appeal . . . and a temporary injunction is granted against plaintiffs/counter-defendants and third-party defendants denying them the right to proceed further with the foreclosure process before a trial on the merits of this entire case can be conducted." This Court subsequently affirmed the dismissal of appellants' counterclaim and third-party complaint, holding that, appellants had produced "no facts indicating that NFCU was not entitled to enforce the note." *See Conover v. Fisher*, No. 2122, Sept. Term 2014 (filed Aug. 3, 2016).

[1] Appellees are Jeffrey Fisher, William Smart, Carletta Grier, Laura H.G. O'Sullivan, Rachel Kiefer, Chastity Brown, Virginia Inzer, and Michael Cantrell.

After the mandate issued, appellees filed a line to reopen the foreclosure case. Appellants objected to re-opening the case, noting that the court had previously issued a temporary injunction pending a trial on the merits. They also filed a motion to dismiss the foreclosure action, again arguing that NFCU was not entitled to enforce the note because they had sold the note to a third-party. On September 28, 2017, the court issued orders re-opening the case, denying appellants' motion to dismiss, and ratifying the foreclosure sale. Appellants now raise four issues on appeal, which reduce to two: (1) whether the court abused its discretion in re-opening the foreclosure case, and (2) whether the court erred in denying their motion to dismiss and ratifying the foreclosure case. For the reasons that follow, we affirm.

Appellants first contend that the trial court abused its discretion in re-opening the foreclosure case. Specifically, they appear to claim that the previously issued temporary injunction guaranteed them a trial on the merits, thus preventing the case from proceeding until such a trial was held. However, that order was not a final judgment and, therefore, it was subject to modification at any time at the court's discretion. *See Franklin Credit Management Corp. v. Nefflen*, 436 Md. 300, 323 (2013) (noting that an "interlocutory order [is] subject to revision within the general discretion of the trial court until a final judgment [is] entered on the claim." (citation omitted)). By re-opening the foreclosure case, ordering the case to "proceed in the normal course" and ratifying the sale, the court implicitly

dissolved the temporary injunction and lifted the stay.[2] Although appellants argue that the sale should not have been ratified because of the temporary injunction, they offer no specific arguments as to why it could not or should not have been dissolved. In any event, we perceive no abuse of discretion in the court's decision to dissolve the injunction and lift the stay because appellants no longer had a right to a trial on the merits following their previous appeal. Appellants were not entitled to a trial on the Order to Docket because it is not a pleading. *See Wells Fargo Home Mort., Inc. v. Neal*, 398 Md. 705, 726 (2007) (noting that a "power of sale" foreclosure is a "summary, *in rem* proceeding"). And to the extent they would have been entitled to a trial on their counter-claim and third-party complaint, both have now been dismissed and their dismissal was affirmed by this Court.

Appellants also assert that the court erred in denying their motion to dismiss and ratifying the sale because, they claim, NFCU lacked standing to foreclose on the property. In their brief, appellants' only argument in support of this contention is that "[i]t has now been established all of the way to the United States Supreme Court that [NFCU] sold its rights to the note on or before January 14, 2004 'without recourse,' as an established matter of fact, thereby already being paid in its ordinary course of business[.]" At no point do appellants demonstrate how those facts have "been established." Moreover, other than their own conclusory statements, they offer no legal support for their contention that NFCU

[2] There is no indication that the court was somehow unaware of the stay because the order re-opening the case indicated that it was based "upon review of the case file" and "in consideration of . . . [appellants'] opposition" which expressly argued that the injunction should remain in place.

lacked standing because it sold the note. Consequently, this contention is not properly before us on appeal. *See Diallo v. State*, 413 Md. 678, 692-93 (2010) (stating that "arguments not presented in a brief or not presented with particularity will not be considered on appeal") (citation omitted).[3]

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[3] In any event, we rejected appellants' claim that NFCU lacked standing to foreclose in their previous appeal to this Court, noting that appellees had presented sworn affidavits to the circuit court demonstrating that they had maintained the right to enforce the Note after it was sold and that appellants had produced no facts indicating that NFCU was not entitled to enforce the Note. *See Conover v. Fisher*, No. 2122, Sept. Term 2014 (filed Aug. 3, 2016). Consequently, this claim was barred by the law of the case doctrine. *See Baltimore County v. Fraternal Order of Police*, 449 Md. 713, 729 (2016) ("[O]nce an appellate court rules upon a question presented on appeal, litigants and lower courts become bound by the ruling, which is considered to be the law of the case." (internal quotation marks and citation omitted)). Appellants' motion to dismiss was also subject to dismissal on the grounds of untimeliness because it was filed well after the mandatory time limits for filing such motion set forth in Maryland Rule 14-211.