

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 01535

September Term, 2017

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CLARENCE JONES

v.

ROBERT FRAZIER, et al.

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Meredith,  
Kehoe,  
Friedman,

JJ.

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Opinion by Meredith, J.

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Filed: October 19, 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.

This is an appeal from the denial of exceptions to a foreclosure sale. Clarence Jones, appellant, owned the property at issue located at 6515 Gilmore Street, Gwynn Oak, MD 21207 (“the property”). Keith M. Yacko, Robert E. Frazier, Thomas J. Gartner, Jason L. Hamlin, and Gene Jung, serve as substitute trustees (“Substitute Trustees”), appellees, who prosecuted the foreclosure action in the Circuit Court for Baltimore County.

### **FACTS AND PROCEDURAL BACKGROUND**

Prior to foreclosure, Mr. Jones resided at the property. On or about January 29, 2016, the Substitute Trustees filed an order to docket foreclosure against the property pursuant to the power of sale in a deed of trust encumbering the property. The property was sold at a public auction on April 28, 2017, to the holder of the deed of trust, and a report of sale was filed on May 26, 2017.

On June 26, 2017, Mr. Jones filed a written exception to the foreclosure sale, stating: “. . . because [Mr. Jones] did not receive notice of the sale, the prerequisites to a sale under [Real Property Article] Section 7-105.2(c) have not been met, and the sale must be vacated.” The exception was accompanied by a “Declaration of Clarence Jones,” in which he “verif[ied] under penalty of perjury that the [following] is true and correct”:

2. I am the owner of the property located at 6515 Gilmore Street, Gwynn Oak, MD 21207 (the “Property”).
3. I reside at the Property.

4. No notice of this foreclosure e [sic] auction was ever sent to my address in either by [sic] regular mail or certified mail.

5. I only became aware of the foreclosure sale when I notified of the sale [sic] by a company called Guidewell Financial, when I contacted the company about retaining them to negotiate a loan modification.

The Substitute Trustees opposed the exception, and filed an affidavit affirming that they used WALZ Postal Solutions to mail the notice of sale to both of Mr. Jones's confirmed addresses --- "6515 Gilmore Street, Gwynn Oak, MD 21207" and "6515 Gilmore Street, Baltimore, MD 21207" --- on April 18, 2017. They submitted photocopies of the notice of sale letter, the envelopes addressed to Mr. Jones at both mailing addresses with assigned tracking numbers, and printouts of the United States Postal Service ("USPS") website tracking details.

Neither party requested a hearing, and the Substitute Trustees asserted in their opposition that "it is appropriate for the court to rule on this matter without a hearing."

On July 19, 2017, the circuit court "overruled" Mr. Jones's exception to the sale without further explanation. The circuit court ratified the foreclosure sale on August 18, 2017. Jones noted this appeal and challenged only the circuit court's order denying his exception to the sale.

### **QUESTION PRESENTED**

On appeal, Mr. Jones presents the following question for our review:

Did the circuit court err in denying Appellant's Exceptions because the Notice of Sale was not properly sent?

We shall affirm the circuit court's judgment.

## STANDARD OF REVIEW

The only case cited in Mr. Jones’s brief is *Bierman v. Hunter*, 190 Md. App. 250, 259 (2010), which is cited for its statement regarding the standard of review: “Questions of law decided by the trial court are subject to a *de novo* standard of review.” We have also explained: “In reviewing the trial court’s ruling on exceptions to a sale, we apply a *de novo* standard of review as to questions of law but do not substitute our judgment for that of the trial court as to findings of fact unless we find them to be clearly erroneous.” *Hood v. Driscoll*, 227 Md. App. 689, 697 (2016) (citing *Burson v. Capps*, 440 Md. 328, 342-43 (2014)). “A finding of a trial court is not clearly erroneous if there is competent or material evidence in the record to support the court’s conclusion.” *Lemley v. Lemley*, 109 Md. App. 620, 628 (1996). “[W]e view all the evidence ‘in a light most favorable to the prevailing party.’” *Goss v. C.A.N. Wildlife Tr., Inc.*, 157 Md. App. 447, 456 (2004) (citation omitted).

“There is a presumption in favor of the validity of a judicial sale, and the burden is on the exceptant to establish to the contrary.” *Jones v. Rosenberg*, 178 Md. App. 54, 69 (2008) (citing *Jackson v. Townsend*, 249 Md. 8, 13-14 (1968)). “The party excepting to the sale has the twin burden of showing that the sale was invalid and that any claimed errors caused prejudice.” *Hood*, 227 Md. App at 697. Prejudice will not presumed and cannot be based on pure speculation, but must be supported by evidence. *Id.* at 697-98.

## DISCUSSION

In his exception, Mr. Jones’s legal argument, in its entirety, read as follows:

Under Maryland Rule 14-305(a), a property owner may file exceptions to the sale of his property at foreclosure within 30 days of the date of filing of the Report of Sale. The Report of Sale was docketed on September 28, 2016, [sic] making these exceptions timely.

Pursuant to Maryland, Real Property Article, § 7-105.2(c), a homeowner must receive notice of sale by certified mail not later than 10 days before the scheduled sale.

In this case, Mr. Jones *never* received any notice whatsoever of the sale. As such, because the Defendant did not receive notice of the sale, the prerequisites to a sale under Section 7-105.2(c) have not been met, and the sale must be vacated.

Mr. Jones's only exception properly before this Court is that he never received any notice of the sale, in violation of § 7-105.2(c).

The notice requirements set forth in Maryland Code (1974, 2015 Repl Vol.), Real Property Article § 7-105.2(c) state:

(c)(1) The written notice *shall be sent*:

(i) By certified mail, postage prepaid, return receipt requested, bearing a postmark from the United States Postal Service, to the record owner and, if applicable, to a condominium or homeowners association at the address shown on the statement of lien; and

(ii) By first-class mail.

(Emphasis added.)

The purpose of the notice requirement under §7-105 is to give notice “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.” *Griffin v. Bierman*, 403 Md. 186, 197 (2008). The Court of Appeals has held that the “proper inquiry” is whether the sender “acted reasonably in selecting means likely to inform

persons affected, not whether each property owner actually received notice.” *Id.* at 197 (quoting *Weigner v. City of New York*, 852 F.2d 646, 649 (2d Cir. 1988)). Mr. Jones’s assertion that notice must be *received* within ten days of the foreclosure sale is an incorrect statement of Maryland law.

But Mr. Jones argues that, even if the rule requires only that notice be *sent*, the Substitute Trustees were still in violation because they did not send any notice at all. In support of his exception, Mr. Jones presented the trial court with only one piece of evidence: his written declaration that no notice of the auction “was ever sent to [his] address” by regular mail or certified mail. In response, the Substitute Trustees presented the trial court with copies of (1) the notice of sale dated April 18, 2017; (2) two envelopes addressed to the Property with two separate USPS tracking numbers; (3) two printouts of USPS website tracking details showing that those tracking numbers were in fact processed through the USPS mailing system; and (4) an Affidavit of Notice in Compliance with the applicable statutes and saying that the notice was sent on April 18, 2017. Neither party asked for an opportunity to be heard further or to present further evidence. After reviewing the information filed by the parties, the trial court “overruled” Mr. Jones’s exception.<sup>1</sup>

As noted above, there is a presumption of validity of a foreclosure sale, and the party who files an exception bears the burden of overcoming that presumption. The

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<sup>1</sup> It would have been helpful if the motion court had provided a brief statement explaining why it was overruling this exception.

Substitute Trustees filed evidence from which the court could rationally conclude that they sent notice of the sale on April 18, 2017. Even though Mr. Jones declared that it was his belief that nothing was ever sent to his home by either certified or regular mail, the circuit court judge found that Mr. Jones's denial was insufficient to carry his burden of overcoming the presumption of validity and the affidavit filed by the Substitute Trustees confirming that they had caused the requisite notice to be sent.

Mr. Jones argues in this Court that the USPS tracking report for the certified letter addressed to 6515 Gilmore Street, Baltimore, MD, proves that the notice of sale was not received by the USPS until May 28, 2017. What the report actually shows is that that piece of mail arrived at the San Bernardino hub on May 28, and was delivered back "to the original sender" on May 30. One inference that could be drawn from this is that the notice had been originally mailed earlier than May 28, and was being returned to sender, which suggests that the certified mail was never claimed. The same inferences could be drawn from the USPS report for the other notice of sale addressed to 6515 Gilmore Street, Gwynn Oak, MD, which arrived at the San Bernardino hub on May 14, 2017, and was delivered to "the original sender" on May 15, 2017. This printout does not prove that notice was sent on April 18, 2017, but neither does it prove that the notice was sent in May as Mr. Jones asserts. Without anything more in the record, we can only say that these printouts do not disprove the statements made in the affidavit filed by the Substitute Trustees affirming that the notices of sale were timely mailed to Mr. Jones, and that the USPS processed the packages.

Furthermore, Mr. Jones never filed any evidence in the circuit court that he suffered any prejudice due to the alleged error in the foreclosure sale. Given the presumption of validity, we cannot say that the motion court erred in ruling that Mr. Jones failed to meet his burden of demonstrating “that the sale was invalid and that any claimed errors caused prejudice.” *Hood*, 227 Md. App at 697.

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