

UNREPORTED
IN THE APPELLATE COURT OF
MARYLAND

No. 1564

September Term, 2021

THERESA ROYAL BROWN, *et al.*

v.

CSMB INVESTMENTS, LLC

Wells, C.J.,
Ripken,
Battaglia, Lynne A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Ripken, J.

Filed: December 15, 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.

This appeal arises from an order granting possession of real property to CSMB Investments, LLC (“CSMB”), following a sale of foreclosure. We discern no abuse of discretion in the court’s ruling and shall affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Foreclosure Action

In April of 2015, an order to docket foreclosure of a deed of trust was filed, in the Circuit Court for Prince George’s County, against Theresa Royal, the appellant in this case.¹ On October 1, 2019, the plaintiffs/substitute trustees filed a report of sale, stating that the property known as 12305 Quilt Patch Lane, Bowie, Maryland (the “Property”) was sold to CSMB at a public sale. On February 13, 2020, the court ratified the sale and referred the matter to a court auditor to determine the distribution of funds at settlement.

On March 3, 2020, CSMB paid the purchase price of the Property, and a deed transferring the Property to CSMB was executed. The deed was recorded on June 25, 2020. On October 1, 2020, the court ratified the report of the auditor and the case was closed statistically.

CSMB’s Action for Possession

On March 5, 2020, two days after CSMB paid the purchase price and received a deed to the Property, CSMB filed a wrongful detainer action, in the District Court of Maryland for Prince George’s County, against appellant and “all occupants” of the

¹ Appellant filed this appeal using a different last name. For consistency, we refer to appellant as her name appears in the record of the circuit court.

Property.² CSMB alleged that the named defendants held possession of the Property without legal entitlement, and requested that the court issue an order to show cause why possession of the Property should not be restored to CSMB. Appellant, representing herself, filed a request for a jury trial, and the case was transferred to the circuit court.

On August 28, 2020, after the matter was transferred to the circuit court, CSMB filed a motion for judgment of possession of the Property, pursuant to Maryland Rule 14-102. CSMB alleged that appellant was in possession of and occupying the Property and was not a bona fide tenant pursuant to section 7-105.8 of the Real Property Article.³ The motion was supported by the affidavit of Michael D. Bowman, an authorized agent of CSMB, stating that CSMB had purchased the Property at a public sale on October 1, 2019; the sale was ratified by the court on February 13, 2020; the purchase price had been paid; and the deed granting legal title to CSMB had been recorded. A copy of the recorded deed was attached as an exhibit to the affidavit.

² A wrongful detainer action is one option that a party asserting legal possession to property may pursue when attempting to remove someone not legally on that property. *See Uthus v. Valley Mill Camp, Inc.*, 472 Md. 378, 395 (2021). The District Court has exclusive jurisdiction over wrongful detainer actions. *Id.* at 386. A party to a wrongful detainer action may demand a jury trial. Md. Code Ann., Real Prop. § 14-132(g). Where a jury trial is requested, jurisdiction of the District Court is divested as a matter of law, and jurisdiction is immediately vested in the circuit court. *See Pickett v. Sears, Roebuck & Co.*, 365 Md. 67, 92 (2001).

³ In general, section 7-105.8 provides that “bona fide” tenants have the same rights and remedies against a purchaser at a foreclosure sale as the tenants would have against the mortgagor or grantor. A lease or tenancy is considered “bona fide” only if: (1) the mortgagor or grantor is not the tenant; (2) the lease or tenancy was the result of an arm’s length transaction; and (3) the lease or tenancy requires the receipt of rent that is not substantially less than fair market rent for the property. Real Prop. § 7-105.8(b)(1).

A hearing on the motion for judgment was held on September 7, 2021. The record includes the exhibits that were introduced at the hearing by both parties. The circuit court was unable to locate a recording of the hearing. Therefore, a transcript of the hearing is not available for our review.

On November 17, 2021, the court entered an order granting CSMB’s motion for an order of possession of the Property. Appellant noted this timely appeal.

ISSUE PRESENTED

Appellant presents five questions for review, which we combine and rephrase into a single question: did the circuit court abuse its discretion in granting CSMB’s motion for judgment of possession?⁴

⁴ The questions presented in appellant’s brief are set forth below, without alteration:

1. Is the statewide printed “RP 14-132” form appropriate or relevant to eviction claims in the District Court raised under *Empire v. Hardy*, 386 Md. 628, 873 A.2nd 1187 (2005), or was the plaintiff required to proceed under **RP 14-102**?
2. Is “summary judgment” exclusive to the defendant being the final demurrer against the plaintiff claim, and were there any “material disputes” in the record?
3. Did the trial court plaintiff (appellee) state a well pleaded claim for relief such that judgment could be entered if they were to prevail on all their contentions?
4. Was it manifest abuse of discretion to ignore the defendant’s equities and omit any decision on the plea to impose a “consecutive trust” despite rule 2-311(f)? Did the defendant state any claims that could be dismissed by judgment?
5. Did the trial court defendant (appellant) raise several good and valid defenses to any claim for the immediate recovery of possession?

STANDARD OF REVIEW

This Court reviews the circuit court’s ruling on a motion for judgment of possession for abuse of discretion. *G.E. Capital Mortg. Servs., Inc. v. Edwards*, 144 Md. App. 449, 456 (2002). “Abuse of discretion occurs where the trial court’s decision is ‘well removed from any center mark imagined by the reviewing court and beyond the fringe of what the court deems minimally acceptable.’” *Jones v. Ward*, 254 Md. App. 126, 137 (2022), *cert. denied*, 478 Md. 520 (2022) (quoting *Eastside Vend Distribs., Inc. v. Pepsi Bottling Grp., Inc.*, 396 Md. 219, 239 (2006)). “Factual findings are reviewed for clear error, and ‘we will not disturb the factual findings of the trial court if there is any competent evidence to support those factual findings.’” *Id.* at 138 (quoting *Dickerson v. Longoria*, 414 Md. 419, 433 (2010)) (additional citation omitted). “The trial court’s legal conclusions are reviewed without deference, subject to the *de novo* standard.” *Id.* at 137-38.

DISCUSSION

Appellate review of an order granting or denying possession is limited in scope. “The appeal must pertain to the issue of possession, [] and may not be an attempt to relitigate issues that were finally resolved in a prior proceeding.” *Manigan v. Burson*, 160 Md. App. 114, 119 (2004). After a circuit court has ratified a foreclosure sale, “objections to the propriety of the foreclosure will no longer be entertained.” *Id.* at 120.

The arguments in appellant’s brief are difficult to follow. We have read appellant’s brief as broadly as possible and will address any discernable contentions that relate to the issue of possession. Because a transcript of the hearing is unavailable, through no fault of appellant, we shall presume that any issue within the scope of our review was raised and

decided by the circuit court and therefore preserved for appellate review.⁵ *See* Md. Rule 8-131(a) (the appellate court ordinarily will not decide an issue “unless it plainly appears by the record to have been raised in or decided by the trial court[.]”)

When, as in this case, “a mortgagor loses the right to possess foreclosed property but fails to vacate the premises, the purchaser of that property, in lieu of actually taking possession, may seek a court order to remove the holdover mortgagor.” *Laney v. State*, 379 Md. 522, 541 (2004). The right to possession depends on whether the purchaser holds equitable or legal title, as the Supreme Court⁶ has explained:

[P]rior to ratification in the Circuit Court, a purchaser at a foreclosure sale has an inchoate equitable title to the property. Generally at this early stage a purchaser is not yet entitled to possession of the property absent sufficient reasons otherwise (*e.g.*, waste, deed of trust provides for possession before judicial sale or court ratification, *i.e.*, upon default, etc.). When the foreclosure sale is thereafter ratified by the Circuit Court (if it is ratified at all) and complete equitable title accrues to the purchaser, the purchaser may *then* be entitled to seek possession of the property and an equity court, on a case-by-case basis, and upon proper notice, has the discretion, unless the circumstances warrant otherwise, to grant possession. The legal title to the property is not conveyed, however, until the purchase price is paid and other terms of sale, if any, are met and a deed of conveyance delivered.

Empire Properties, LLC v. Hardy, 386 Md. 628, 650 (2005) (footnote omitted, emphasis in original). The purchaser becomes entitled to possession as a matter of law upon acquiring legal title, *see Legacy Funding LLC v. Cohn*, 396 Md. 511, 516 (2007), subject to the

⁵ CSMB does not raise any preservation issues on appeal.

⁶ On December 14, 2022, the name of the Court of Appeals was changed to the Supreme Court of Maryland.

provisions protecting bona fide tenants of properties sold at foreclosure.⁷ *See* Real Prop. § 7-105.8.

In this case, CSMB acquired complete equitable title on February 13, 2020, when the sale was ratified. Legal title was subsequently conveyed to CSMB on March 3, 2020, at which time the purchase price was paid and the deed conveying a fee simple interest in the Property to CSMB was executed.

Appellant asserts that it was improper for CSMB to seek an order of possession by filing an action for wrongful detainer. Under the facts of this case, this assertion is incorrect. A purchaser who has acquired legal title and “seeks *only* an order for possession may do so in the District Court,” by filing an action for wrongful detainer, pursuant to Real Prop. § 14-132. *Legacy Funding*, 396 Md. at 517 n.4 (emphasis in original).⁸ If, however, a purchaser with legal title “intends to seek *not just possession but a share of any surplus*

⁷ In *Legacy Funding*, the Court explained:

[T]he purchaser becomes entitled to possession only when it has either paid the full purchase price in conformance with the terms of sale and received a conveyance of legal title to the property, or, following ratification of the sale but prior to settlement, has received an order for possession from the court.

396 Md. at 516.

⁸ A wrongful detainer action cannot be brought, however, by a purchaser of property at a foreclosure sale who has not paid the purchase price and does not yet have legal title to the property. *Empire Properties, LLC v. Hardy*, 386 Md. 628, 651 (2005). “[T]he method for a purchaser at a foreclosure sale to acquire actual possession from a holdover mortgagor prior to the approval of the audit, the payment of the purchase price[,] and the delivery of the conveyancing documents, if the purchaser chooses to use the judicial process, is the method provided for in Maryland Rule 14–102[.]” *Id.* at 641.

funds as compensation for wrongful detainer, the relief, for very practical reasons, should be sought in the foreclosure proceeding,” pursuant to Maryland Rule 14–102. *Id.* (emphasis added). As the Supreme Court explained, “[a]part from the fact that a parallel proceeding in the District Court seeking anything more than mere possession is likely a waste of judicial resources and vexatious as to the mortgagor, it would raise a number of practical problems in terms of enforcing a District Court money judgment against surplus proceeds within the jurisdiction of the Circuit Court.” *Id.* Another reason for requiring motions for possession to be filed in the circuit court in the foreclosure action is to avoid confusion that may result from the District Court and the circuit court “taking actions independent of each other without knowledge of the status of the case in the other court.” *Empire*, 386 Md. at 641 n.5.

Here, legal title had been conveyed, and no compensatory damages were requested in the District Court.⁹ Consequently, CSMB had the option of bringing a wrongful detainer action.

Following the transfer of the matter to the circuit court, upon appellant’s request for a jury trial, CSMB had the option of filing, and the court had jurisdiction to consider, a motion for judgment of possession pursuant to Rule 14-102, which is “a judicial action within the exclusive province of the circuit court[.]” *Empire*, 386 Md. at 632. Under that Rule, the court may issue an order for possession upon a showing that “(1) the property

⁹ After the case was transferred to the circuit court upon appellant’s request for a jury trial, CSMB included a claim for \$45,000 in damages, representing unpaid rent from April 1, 2020 through September 31, 2021. The court declined to award damages.

was purchased at a foreclosure sale, (2) the purchaser is entitled to possession, and (3) the person in possession fails or refuses to relinquish possession.” *G.E. Capital*, 144 Md. App. at 457.

Appellant appears to contend that the court could only consider a motion for possession in the context of the foreclosure case. We disagree with such a contention. Given the procedural posture of the foreclosure case, the “practical reasons” for seeking relief in that case were not present. The auditor’s report showed no surplus from the sale of the Property, the report was ratified, no appeal was filed, and the case was closed. The court’s ruling did not “waste” judicial resources but instead promoted judicial efficiency by resolving the matter of possession in the pending wrongful detainer case. It was not an abuse of the court’s discretion to rule on CSMB’s motion for judgment of possession in the context of the wrongful detainer action.

Appellant contends that the complaint for wrongful detainer, which was prepared and filed using a District Court form entitled “Complaint for Wrongful Detainer,”¹⁰ is insufficient to state a cause of action and/or required her to “guess[] at the basis” of the claim, thereby depriving her of notice and opportunity to prepare a defense. We disagree. “A complaint is sufficient to state a cause of action even if it relates ‘just the facts’ necessary to establish its elements.” *Tavakoli-Nouri v. State*, 139 Md. App. 716, 730 (2001); *see also* Md. Rules 2-303(b) and 3-303(b) (“A pleading shall contain only such

¹⁰ Maryland Rule 3-303 provides that “[a]s far as practicable, pleadings shall be prepared on District Court forms prescribed by the Chief Judge of the District Court.”

statements of fact” that are necessary to show that the plaintiff is entitled to relief, and “shall not include argument, unnecessary recitals of law, evidence, or documents[.]”) The complaint filed by CSMB stated the facts necessary to establish the elements of wrongful detainer in that it described the Property and alleged that appellant held possession of the Property without entitlement under law. *See Uthus v. Valley Mill Camp, Inc.* 472 Md. 378, 393 (2021) (“To hold possession of real property without having the right of possession is a ‘wrongful detainer[.]’”) (citing Real Prop. § 14-132(a)). No more was needed to state a cause of action for wrongful detainer.¹¹

Appellant asserts that CSMB “needed to post the [Property] with written ‘90 day’s Notice to Quit’” to “perfect[.]” its claim for possession. We assume appellant is referring to Real Prop. section 7-105.8(b)(2)(i), which provides that in the case of a foreclosure on any residential property, the purchaser of the property must provide a 90-day “notice to vacate to any bona fide tenant[.]” That statute is not applicable here, however, as appellant could not be considered a bona fide tenant. *See* Real Prop. § 7-105.8(b)(1)(i) (a lease or tenancy is not considered “bona fide” if the defaulting mortgagor (or the child, spouse, or parent of the mortgagor) is the tenant).

Appellant argues that, in granting CSMB’s motion, the court deprived her of her right to a trial by jury. As an initial matter, it is unclear whether appellant’s right to a jury trial was perfected. Pursuant to Real Prop. section 8-118.1, where a jury trial is requested

¹¹ If, as appellant contends, further information was needed to prepare a defense, the rules regarding discovery provide litigants with the right to request information from another party prior to trial. *See generally* Md. Rules 2-401 through 2-433.

in an action for wrongful detainer, the person in possession must pay the monthly fair rental value of the premises, starting as of the date the action was filed, either into an escrow fund or directly to the plaintiff. It does not appear that the District Court ever ordered such payment, or that appellant otherwise paid rent to CSMB in accordance with the statute.

Even assuming appellant fulfilled the statutory requirements to be entitled to a jury trial, this Court has explained that the right to a trial by jury in civil proceedings “applies, specifically, to *all issues of fact*.” *Jackson v. Dackman Co.*, 181 Md. App. 546, 565 (2008), *rev’d on other grounds*, 422 Md. 357 (2011) (emphasis in original); *see also* Md. Const. Decl. of Rts. art. 23 (“The right of trial by Jury of *all issues of fact* in civil proceedings in the several Courts of Law in this State, where the amount in controversy exceeds the sum of \$15,000, shall be inviolably preserved.” (emphasis added)).¹² Here, however, there were no issues of fact for a jury to decide.

CSMB filed a motion, in accordance with Rule 14-102, requesting an order of possession of the Property, which, under the facts of this case, was based on an assertion of legal title. The court held a hearing on CSMB’s motion, at which CSMB was required to submit proof demonstrating that it was entitled to possession, and appellant had the opportunity to introduce evidence to the contrary.

The record before the circuit court included Mr. Bowman’s affidavit, which established that the Property was purchased by CSMB at a foreclosure sale, that CSMB

¹² Effective as of December 8, 2022, Article 23 of the Maryland Declaration of Rights was amended to reflect the amount in controversy now exceeds the sum of \$25,000. *See* Md. Const. Decl. of Rts. art. 23. At the time that appellant requested a jury trial, the amount in controversy was \$15,000.

had acquired legal title to the Property, and that appellant and her family were in actual possession of the Property. A copy of the recorded deed conveying a fee simple interest in the Property to CSMB was admitted into evidence at the hearing.

Appellant successfully moved to admit 10 exhibits into evidence and, according to the hearing sheet, called three witnesses, including herself. We have carefully reviewed appellant’s exhibits and find nothing that would have generated an issue of fact to submit to a jury. Indeed, one of appellant’s exhibits was the order ratifying the sale of foreclosure, which demonstrated that appellant’s own right of possession was extinguished. *See Laney*, 379 Md. at 539 (“[F]oreclosure, sale, and ratification [] cause the mortgagor to lose the right of possession in the property.”). And, although we do not have the benefit of a transcript of the hearing, appellant does not claim that there was any witness testimony that would have created a factual issue regarding CSMB’s right of possession.

As the Supreme Court has noted, “[t]here is no constitutional right to have twelve [jurors] sit idle and functionless in a jury-box.” *Sandler v. Exec. Mgmt. Plus*, 203 Md. App. 399, 423 (2012) (quoting *United States v. 243.22 Acres of Land*, 129 F.2d 678, 684 (2d Cir. 1942)).¹³ Based on our review of the record, we conclude that the court did not abuse its discretion in granting CSMB’s motion for judgment of possession.

**JUDGMENT OF THE CIRCUIT COURT
FOR PRINCE GEORGE’S COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**

¹³ Although this quote from *Sandler* relates to the grant of a directed verdict at trial, and not a pre-trial motion the general logic would appear to apply equally to a pre-trial motion.