

Circuit Court for Baltimore City
Case Nos. 24-C-18-002936

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 1676

September Term, 2021

CLEVELAND GOINGS, ET AL.,

v.

FNA DZ, LLC

Shaw,
Albright,
Zarnoch, Robert A.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: January 5, 2023

*At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 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 case has its origins in a tax sale foreclosure proceeding in the Circuit Court for Baltimore City. Cleveland Goings, Jr. and Gertrude Goings, appellants, are the owners of real property, located at 2723 Mura Street in Baltimore City (“the Property”), that was sold at a tax sale in May 2016. After the sale, the purchaser assigned its tax sale certificate to FNA DZ, LLC, appellee. On July 8, 2019, the circuit court entered a judgment foreclosing the right of redemption. The questions presented by the Goings in this appeal concern a subsequent decision by the circuit court to strike that judgment.

QUESTIONS PRESENTED

The Goings presents the following two questions for our consideration:

I. Did the circuit court abuse its discretion when it only granted the ownership back to interested parties without further charging the defaulting certificate holder’s account for the foreclosure sale costs and penalties associated with their failure to settle the account?

II. Did the circuit court abuse its discretion when it failed to have a hearing to determine defaulting certificate holder’s damages/liability as requested by appellants, therefore denying the appellants’ request for the correct standard of review.

For the reasons set forth below, we shall affirm.

FACTUAL BACKGROUND

In response to a tax delinquency, Baltimore City instituted tax sale proceedings with respect to the Property. After a public auction on May 16, 2016, the Property was sold to FNA Maryland, LLC. Thereafter, FNA Maryland, LLC assigned its tax sale certificate to FNA DZ, LLC, appellee. FNA DZ, LLC filed a complaint to foreclose the right of redemption. On July 8, 2019, the Circuit Court for Baltimore City entered a judgment foreclosing the right of redemption.

More than two years later, on July 21, 2021, the Goings, proceeding without legal counsel, filed a “Motion to Open Case and Request for Summary Judgment Request for Expedited Hearing.” The Goings asserted that FNA DZ, LLC “failed to settle and close case with the City of Baltimore” and had “shown no good cause through pleadings for the reason by which they failed to do so.” The Goings maintained that they had been harmed by the failure to settle, that taxes had accrued, that “substantial water bills accrued due to plumbing issues during the duration[,]” and that “substantial” liens on the property were “stripping equity.” In addition, they argued that they were unable to sell the property because the title was “in limbo due to the tax sale[.]” The Goings requested the court “to enter a summary judgement” in their favor.

In their motion, the Goings argued that *Kona Props., LLC v. W.D.B. Corp., Inc.*, 224 Md. App. 517 (2015), was a case that was similar to theirs, and pointed out that the property owners in that case “prevailed and received judgement.” The Goings argued “that without specific performance being completed, the plaintiff will be subject to judgement as in the Kona case to which was further codified by the Maryland legislature.” They requested a judgment “in the amount pursuant to current law in accordance with current statu[t]es.” They also requested an expedited hearing “to argue the amount of the judgement in the event” that FNA DZ, LLC did not “comply with performance.”

FNA DZ, LLC filed a responsive motion in which it stated that although it received the judgment foreclosing the right of redemption, it had not obtained a deed to the property. It maintained that under the tax sale provisions of the Maryland Annotated Code, “the judgment may be struck if the bid price [is] not paid within 90 days of the judgment.” FNA

DZ, LLC asserted that it did not contest the striking of the judgment foreclosing the right of redemption. The court did not hold a hearing on the Goings’ motion. By order entered November 22, 2021, the circuit court struck the judgment foreclosing the right of redemption pursuant to § 14-847(d) of the Tax Property Article of the Maryland Code. This timely appeal followed.

DISCUSSION

The Goings contend that the circuit court did not have “authority to reverse the enrollment of judgement since the ninety day prescribed time frame to reverse for good cause has passed.” They “do not contest the awarding of the deed or equitable interest back to” them, but they argue that the circuit court erred in failing to award them damages in the amount of “the balance of purchase price plus fees, costs, and penalties[.]” In addition, they assert that the circuit court was required to hold a hearing on their motion but failed to do so.

A. The Tax Sale Process

Before addressing the arguments presented by the Goings, it is helpful to review briefly the tax sale process. The tax sale procedure is set forth in §§ 14-801 *et seq.* of the Tax Property Article (“TP”) of the Maryland Code. Generally, unpaid taxes on real property constitute a lien on that property. TP § 14-804. At the time set by local law, the collector for Baltimore City must sell the land for which taxes are in arrears. TP § 14-808. After required notices are provided and the tax sale is properly advertised, the property is sold at a public auction. TP §§ 14-810, 14-812, 14-813, 14-817, 14-817.1.

Not later than the day after the public sale, the purchaser is required to pay the back taxes due on the property, together with interest and penalties on the taxes. TP § 14-818(a). In return, the purchaser receives an assignable certificate of sale that sets forth, among other things, the time in which an action to foreclose the property owner's right of redemption may be instituted. TP § 14-820. The balance of the purchase price remains on credit and is to be paid after the tax sale certificate holder forecloses the title owner's right of redemption. TP §§ 14-818(a), 14-827, 14-828. "The owner or other person that has an estate or interest in the property sold by the collector may redeem the property at any time until the right of redemption has been finally foreclosed" by paying the required sum to the collector. TP §§ 14-827, 14-828. Upon payment of the required sum, the collector transfers the money to the tax sale purchaser in exchange for the tax sale certificate. TP § 14-828. During the period of redemption, the owner of the property sold may continue in possession of, and "exercise all rights of ownership over the property until the right of redemption has been finally foreclosed[.]" TP § 14-830(a). The property continues to be assessed as though no sale had been made. TP § 14-831.

Procedures pertaining to the foreclosure of the right of redemption are set forth in TP §§ 14-832.1 through 14-848. Those provisions "shall be construed to ensure a balance between: (1) the due process and redemption rights of persons that own or have an interest in property sold at a tax sale; and (2) the public policy of providing marketable title to property that is sold at a tax sale through the foreclosure of the right of redemption." TP § 14-832. A proceeding to foreclose the right of redemption is initiated with the filing of a complaint by the holder of the tax sale certificate after a certain time period as set forth in

TP § 14-833(a). The form of the complaint and required notices are set forth in TP §§ 14-835 through 14-840. The tax sale certificate “is void unless a proceeding to foreclose the right of redemption is filed within 2 years of the date of the certificate of sale.” TP § 14-833(c)(1).

“After the time limit set in the order of publication and in the summons expires, the court shall enter judgment foreclosing the right of redemption.” TP § 14-844(a). If the court finds in favor of the certificate holder-plaintiff, that party is vested with “an absolute and indefeasible title in fee simple in the property, free and clear of all alienations and descents of the property occurring before the date of the judgment and encumbrances on the property, except taxes that accrue after the date of sale and easements of record and any other easement that may be observed by an inspection of the property to which the property is subject.” TP § 14-844(b). The certificate holder-plaintiff “immediately becomes liable for the payment of all taxes due and payable after the judgment.” TP § 14-844(d)(1).¹

B. Post-Judgment Failure to Pay

In *Kona Props., LLC v. W.D.B. Corp., Inc.*, 224 Md. App. 517 (2015), we commented on the situation that arises after the judgment to foreclose the right of redemption is entered, and prior to the time the holder of the certificate makes the required payment, stating:

Notably, even though the owner of the property may not redeem the property after the entry of final judgment, the certificate holder does not receive the

¹ An excellent description of the tax sale practice can also be found in Judge Nazarian’s recently reported opinion in *Al Czervik, LLC v. Mayor & City Council of Baltimore*, ___ Md. App. ___, No. 2026, Sept. Term, 2021 and No. 144, Sept. Term, 2022, slip. op at 1-8 (filed Jan. 3, 2023).

deed, and thus, may not take possession of the property, until the certificate holder pays the collector the surplus bid and all subsequent taxes on the property. § 14-831. If the certificate holder does not pay the taxes in full, the property is left in limbo: the prior owner may not sell the property and knows that, as soon as the certificate holder pays the collector, it will no longer have title to the property, however, the certificate holder *also* does not have full rights to the property because the collector has not issued a deed to the certificate holder.

Kona Props., 224 Md. App. at 530-31.

The issues presented by the Goings in the case at hand involve events that occurred, or did not occur, after the circuit court entered the judgment foreclosing the right of redemption. After the judgment was entered, FNA DZ, LLC did not pay the balance of the purchase price, or the taxes, interest, and penalties that accrued from the date of the sale. TP § 14-845 provides that the judgment foreclosing the right of redemption may be reopened only on the ground of lack of jurisdiction or of fraud in the conduct of the foreclosure proceedings. That section, however, must be read in conjunction with TP § 14-847(d), which provides:

(d)(1) If the holder of the certificate of sale does not comply with the terms of the final judgment of the court within 90 days as to payments to the collector of the balance of the purchase price due on account of the purchase price of the property and of all taxes, interest, and penalties that accrue after the date of sale, that judgment may be stricken by the court on the motion of an interested party for good cause shown.

(2) In Baltimore City, a certificate holder who has been enrolled as the owner of the property under subsection (a) of this section is not an interested party within the meaning of this subsection.

Thus, in cases where a judgment foreclosing the right of redemption has been entered, and the certificate holder failed to make the required payments within 90 days of

the judgment, the property owner(s)-defendant(s)² may request the court to strike the judgment foreclosing their right of redemption. In *Slattery v. Friedman*, 99 Md. App. 106, 123, *cert. denied*, 335 Md. 81 (1994), we held that

during the time that the holder of the certificate has not complied with § 14-847(d), that is, between 90 days after the judgment of foreclosure was entered and payment of the balance due, the owner may petition the court under § 14-847(d) to reopen the judgment, so long as the balance due remains unpaid. After payment of the balance due, however, the judgment may be reopened only pursuant to § 14-845, *i.e.*, on the grounds of fraud or lack of jurisdiction, regardless of whether the payment was made after the petition was filed.

C. Case Law

In support of their arguments, the Goings reference two cases that they maintain involve circumstances similar to the instant case, *Hardisty v. Kay*, 268 Md. 202 (1973), and *Kona Props.*, 224 Md. App. 517. In *Hardisty*, the collector of taxes for Montgomery County instituted tax sale proceedings with regard to several properties, including one owned by Jack Kay and Harold Greenberg. *Hardisty*, 268 Md. at 204. At a public tax sale, Walter R. Hardisty was the successful bidder on the property. *Id.* Within the proper time, Hardisty instituted an action to foreclose the right of redemption. *Id.* at 206. In response, Kay and Greenberg stated that they had no interest in redeeming the property. *Id.*

After obtaining a judgment foreclosing the right of redemption, “Hardisty balked at paying the balance owed.” *Id.* “When more than eight months passed without [Hardisty] paying the balance required, [Kay and Greenberg] filed a petition in the foreclosure case

²The certificate holder, in this case FNA DZ, LLC, is not an interested party permitted to file a motion to strike the judgment. See TP § 14-847(d)(2) (“In Baltimore City, a certificate holder who has been enrolled as the owner of the property under subsection (a) of this section is not an interested party within the meaning of this subsection.”).

to compel payment.” *Id.* Hardisty responded that “he was not required to pay the balance as this was merely a condition precedent to the issuance of the deed by the collector and that he ‘has no wish to acquire said property and does not intend to obtain a deed thereto ... and has elected to forfeit the amount of \$1,139.87 paid on account of the purchase price.” *Id.* Hardisty filed a petition to amend the judgment foreclosing the right of redemption and to strike the portion of the judgment by which Kay and Greenberg had been divested of their title. *Id.* at 207. The court denied Hardisty’s petition on the ground that it was barred by Article 81, § 113 of the Maryland Annotated Code³ from even entertaining it because there was “no allegation or suggestion of lack of jurisdiction or fraud.” *Id.* at 208.

On appeal, Hardisty argued, among other things, that he was not attempting to reopen a final decree. The Supreme Court of Maryland (then Court of Appeals) rejected that argument. The Court held that in seeking to amend the judgment, Hardisty was seeking “to reopen, reconsider and undo the very thing he originally sought. In short, under the guise of amending the decree, he wants it vacated.” *Id.* at 209. The Court found that such action was not permitted by statute and that the circuit court had “revisory power and control of a final and enrolled judgment or decree *only* in case of fraud, mistake, or irregularity.” *Id.* at 210.

³ Article 81, § 113 provided, in relevant part, that “No application shall thereafter be entertained to reopen any final decree rendered under the provisions of this subtitle except on the ground of lack of jurisdiction or fraud in the conduct of the proceedings to foreclose[.]” Section 113 is currently codified at TP § 14-845(a).

Hardisty also argued that the circuit court had no authority to enter a money judgment against him because the payment of a balance by a successful bidder at a tax sale was merely a condition precedent to obtaining the deed to the property and was not mandated by statute. *Id.* Subsequent to the trial in Hardisty’s case, the legislature enacted an amendment to Article 81, § 115,⁴ which became effective July 1, 1972, and provided:

“If the holder of the certificate of sale does not comply with the terms of the final decree of the court within ninety (90) days as to payments to the collector of the balance of the purchase price due on account of the purchase price of the property and of all taxes, interest, and penalties accruing subsequent to the date of sale, that decree may be stricken by the court upon the motion of an interested party for good cause shown.”

Hardisty, 268 Md. at 210.

The Court of Appeals stated that, even assuming that the amendment applied to Hardisty’s appeal, his argument would fail. *Id.* at 210-11. The Court construed the amended statute as providing “an additional, not an exclusive, remedy to a person in the position of” Kay and Greenberg who, “as the real parties in interest” were “entitled, if not obliged, to seek this relief in their own names.” *Id.* at 211. The Court recognized that “once an equity court has acquired jurisdiction, it may, in proper circumstances, render a money decree arising out of the issues litigated.” *Id.* at 212. The Court concluded that Kay and Greenberg “were entitled to have Hardisty compelled, through the entry of a money judgment against him, to make the payments obviously contemplated by the decree that vested title to this property in him.” *Id.* at 213.

⁴ Article 81, § 115 was the predecessor to TP § 14-847(d).

In addition to *Hardisty*, the Goings’s motion in the circuit court referenced the *Kona Properties* case. *Kona Properties* involved appeals from three separate orders that were consolidated on appeal because they presented equivalent and undisputed factual scenarios. *Kona Props.*, 224 Md. App. at 524-25. In each case, the owner of residential property failed to pay property taxes owed to Baltimore City. *Id.* at 525. After a tax sale, the winning bidders paid the delinquent taxes and fees, received tax sale certificates, filed petitions, and obtained judgments foreclosing the property owners’ rights of redemption. *Id.* Each of the certificate holders later decided that they did not want the property and failed to pay the bid price or the outstanding taxes and fees as required. *Id.* at 527. The property owners or mortgage holders for each property filed motions to enforce the judgments foreclosing the right of redemption, “because they each wanted to receive the surplus of the bid purchase on their property.” *Id.* at 525. The circuit court granted the motions to enforce the judgments and ordered the certificate holders to pay the bid surpluses to the respective property owners. *Id.* at 526. The tax sale purchasers appealed. *Id.*

The issues on appeal included whether after a judgment foreclosing the right of redemption has been entered, a property owner can move to enforce the judgment so as to compel the certificate holder to pay the bid surplus. We determined that *Hardisty* remained good law and provided “the vehicle to transfer the bid surplus directly from the tax sale certificate holder to the property owner or mortgagee.” *Id.* at 562. Consistent with TP § 14-847(d)(1), we recognized that “because the certificate holders failed to pay the surplus bid and the taxes that accrued after the tax sale, the court *could have* stricken the judgment

that foreclosed the property owners’ (Appellees’) rights of redemption, for good cause shown.” *Id.* at 547. However, the remedy provided by TP § 14-847(d) is “an optional, but not exclusive, remedy to the property owners . . . and other interested parties.” *Id.* at 556. Further relying on *Hardisty*, we recognized that the “Court of Appeals has interpreted the precursors to §§ 14-818(a)(4)(i) and 14-844(d) as allowing a circuit court to enter a money judgment against certificate holders – requiring them to pay the surplus bids directly to the property owners or other interested parties.” *Id.* at 549-50. We wrote that “Appellees were clearly entitled to petition the court to compel [the certificate holders], through the entry of a judgment against them, to make the payments contemplated by §§ 14-831 and 14-844(d) to the collector.” *Id.* at 555.

Most recently, in *Mayor and City Council of Baltimore v. Thornton Mellon, LLC*, 478 Md. 396 (2022), the Court of Appeals reaffirmed the remedies available to property owners and other interested parties in cases where a certificate holder fails to make the required payments within 90 days after the entry of a judgment foreclosing the right of redemption. The Court wrote:

[W]here the certificate holder does not comply with the terms of the final judgment within 90 days by paying the amounts required for the execution and delivery of the deed, the statute permits the judgment to be stricken on motion of an interested party for good cause shown. TP § 14-847(d). The collector and the owner each have the right to request that the judgment be stricken if the certificate holder fails to pay. *See Hardisty v. Kay*, 268 Md. at 211 (agreeing that the “interested party” mentioned in the predecessor statute, Article 81, § 115, “refers to the owner of the land at the time of the sale or anyone claiming rights through him[]”); *Slattery v. Friedman*, 99 Md. App. 106, 122 (1994); *cert. denied*, 335 Md. 81 (1994) (observing that TP § 14-847(b) permits the collector “to have a judgment set aside if payment is not made as required[]”). As the Court of Special Appeals observed in *Friedman*, TP § 14-847(d) provides a distinct method “for the owners of the

property to have the judgment foreclosing their right of redemption reopened.” 99 Md. App. at 122. The court further explained that “during the time that the holder of the certificate has not complied with [TP] § 14-847(d), that is, between 90 days after the judgment of foreclosure was entered and payment of the balance due, the owner may petition the court under [TP] § 14-847(d) to reopen the judgment, so long as the balance remains unpaid.” *Id.* at 123. After the purchase price is paid, the judgment may only be reopened on the ground of fraud or lack of jurisdiction. *Id.*; TP § 14-845.

In addition to the statutory provision which permits the judgment to be stricken, the owner and tax collector each have additional remedies against a certificate holder for noncompliance with post-judgment statutory obligations. The owner may file suit against the certificate holder to compel the payment of the bid surplus that was to be paid to the owner upon the entry of judgment. *See Hardisty v. Kay*, 268 Md. 202 (1973). The government entity that is owed the taxes may sue the certificate holder in an action under TP § 14-864 to collect all taxes due and payable within 7 years from the date that the taxes were due. And the taxing authority may subject the property to a second tax sale for the delinquent taxes that accrued but remain unpaid after the first sale. *See Prince George’s Homes, Inc. v. Cahn*, 283 Md. 76, 79-80 (1978); *Kona Properties*, 224 Md. App. at 531.

Thornton Mellon, 478 Md. at 426-28 (footnotes omitted).

With this review of the tax sale foreclosure process and the relevant case law in mind, we turn to the arguments presented by the Goings.

C. The Goings’s Contentions

The Goings contend that the circuit court erred in failing to award them damages, including the balance of the purchase price, fees, costs, and penalties. There is no dispute that after the judgment foreclosing the right of redemption was entered, FNA DZ, LLC did not make the required payments and did not obtain a deed to the property. As our discussion of the tax sale process and the case law makes clear, the Goings had two optional forms of relief. Pursuant to TP § 14-847(d)(1), they could request the court to strike the

judgment foreclosing the right of redemption. Alternatively, they could request the court to issue an order compelling FNA DZ, LLC to pay the surplus bid.

In their motion to “Open Case and Request for Summary Judgment,” the Goings, who proceeded without legal counsel, did not indicate clearly the type of relief they were seeking. They requested a summary judgment and also argued “that without specific performance being completed, the plaintiff will be subject to judgement as in the Kona case to which was further codified by the Maryland legislature.” In the last paragraph of their motion, they requested “a judgement against plaintiff in the amount pursuant to current law in accordance with current statu[t]es” and a hearing “to argue the amount of the judgement in the event the plaintiff do not comply with performance.” FNA DZ, LLC interpreted the Goings’s motion as a request to strike the judgment. The circuit court’s ruling indicates that it, too, understood the Goings’s motion to be a request to strike the judgment.

The Goings acknowledge that they were, in fact, seeking to have the circuit court strike the judgment foreclosing the right of redemption. In their brief on appeal, they state that they are not seeking review of the circuit court’s “awarding of title back to [them] since the current owner’s have an undisputed interest in the property and the Certificate holder had filed a ‘no contest[.]’” It is a well-settled principle that the “right to appeal may be lost by acquiescence in, or recognition of, the validity of the decision below from which the appeal is taken or by otherwise taking a position which is inconsistent with the right of appeal.” *Cochran v. Griffith Energy Serv., Inc.*, 191 Md. App. 625, 639-40 (2010) (internal quotation marks and citations omitted). As the Goings do not challenge the circuit court’s

decision to strike the judgment, and in fact have acquiesced to it, the propriety of that decision is not before us.

As for the claim that the court should have compelled FNA DZ, LLC to pay the bid surplus, it is clear that the remedies available to the Goings were alternative remedies. The court could strike the judgment or compel payment of the surplus bid, but the Goings were not entitled to both remedies. By their motion in the circuit court and through acquiescence, the Goings opted to have the court strike the judgment and the circuit court granted that relief. Because the Goings were not entitled to an award of damages, the circuit court did not err in declining to award them.

II.

The Goings contend that the circuit court erred in failing to grant their request for a hearing on their motion as required by Maryland Rule 2-311(f). As we have already noted, the Goings do not contest the circuit court's decision to strike the judgment foreclosing the right of redemption. Even assuming that the circuit court should have granted a hearing on their motion, because the Goings were not entitled to an award of the bid surplus or any other damages in addition to the striking of the judgment, no practical purpose would be served by remanding this case for a hearing.

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