

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1683

September Term, 2013

KATHERINE WILLSON

v.

DEUTSCHE BANK NATIONAL TRUST
COMPANY

Meredith,
Zarnoch,
Reed,

JJ.

Opinion by Reed, J.

Filed: June 22, 2015

*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 out of a declaratory judgment action related to the attempted foreclosure of a farm belonging to appellant, Katherine Willson, and her husband that is located in Howard County, Maryland. Appellee, Deutsche Bank National Trust Company, serving as the trustee for mortgagee Quest Trust 2006-X1, sought to foreclose on the property because the Willsons defaulted on the promissory note secured by the property.

Mrs. Willson sought to prevent the foreclosure, claiming that the Willsons' signatures on the promissory note were forgeries, rendering the note void. Deutsche Bank filed a declaratory judgment action in the Circuit Court for Howard County to obtain a declaration on the forgery issue, but Mrs. Willson failed to answer the complaint and defaulted. Deutsche Bank obtained a default judgment against Mrs. Willson, who appeared during the default judgment hearing and claimed to have never received notice that a default was entered against her. Mrs. Willson thereafter appealed to this Court and has presented two questions for our review, which we have rephrased¹ as follows:

¹ Appellant originally presented the following questions:

- I. Was the clerical error of the failure to notify Willson of the entry of the order of default basis for vacating the order of default and to prevent the court from entering a default judgment?
- II. Did the court err or abuse its discretion in not permitting Willson, or her counsel to testify to oppose the entry of the default judgment or to postpone the hearing for Willson to retain counsel, when the court allowed counsel to strike his appearance o[n] the day of the hearing?

- I. Whether the clerk of the circuit court failed to issue a notice of order of default, thereby precluding the entry of a default judgment;
- II. Whether the circuit court abused its discretion where it did not permit appellant to speak at the default judgment hearing, and did not grant a continuance for appellant to seek new counsel.

We shall affirm the judgments of the circuit court and explain.

FACTUAL AND PROCEDURAL BACKGROUND

Appellant, Katherine Willson, and her husband, George Willson, (the “Willsons”) were the owners of a farm in Howard County, Maryland. The property was originally conveyed to them in fee simple, and they held the property as tenants by the entirety. The Willsons obtained a refinance mortgage on the property from Ameriquest Mortgage Company. That loan was subsequently assigned to appellee, Deutsche Bank National Trust Company (“Deutsche Bank”), who was acting as Trustee for Ameriquest Securities Inc., Asset Backed Pass-Through Certificates, Quest Trust Series 2006-X1.² The deed of trust the Willsons originally executed in favor of Ameriquest was transferred to Deutsche Bank as security for the loan.

In September 2011, the Willsons defaulted on the loan and Deutsche Bank filed a foreclosure action in the circuit court. Mrs. Willson sought to stay the foreclosure and filed a Motion to Stay Sale and Dismiss Action for Fraud on the Court. In her motion,

² Quest Trust Series 2006-X1 is a pool of mortgage-backed securities. *See* MOODY’S, *Quest Trust 2006-X1*, <https://www.moodys.com/credit-ratings/Quest-Trust-2006-X1-credit-rating-400041681> (last visited Apr. 30, 2015).

Mrs. Willson alleged, via an expert witness designation, that her and her husband's signatures on the promissory note and deed of trust executed in favor of Deutsche Bank were forgeries, therefore rendering the instrument void *ab initio*. In response, Deutsche Bank sought to establish the invalidity of Mrs. Willson's allegations and filed a complaint for declaratory judgment on September 21, 2012, and contemporaneously sought to stay the foreclosure action via motion.

The Willsons did not file their answer to the complaint within the thirty days prescribed by Maryland Rule 2-321(a) and, accordingly, Deutsche Bank moved the circuit court for orders of default per Maryland Rule 2-613(b). In support of its motion, Deutsche Bank also filed affidavits of service demonstrating that Mr. and Mrs. Willson were served with process on November 21, 2012, and December 20, 2012, respectively. The Willsons never filed a response to the motion and on February 25, 2013, the orders of default were entered onto the docket.

According to Rule 2-613(c), the clerk issued notice to the Willsons that the orders of default had been entered against them, and that they had thirty days to file motions to vacate the default. The Willsons failed to respond to the notices and Deutsche Bank filed a motion for default judgment per Rule 2-613(f) on June 7, 2013. Mrs. Willson requested a hearing on the motion for default judgment, which the circuit court scheduled for August 7, 2013. That hearing was later continued to September 12, 2013, upon Mrs. Willson's request.

At that hearing, the circuit court stated that a hearing was unwarranted and another judge of the circuit court had erroneously set the matter for hearing. Furthermore, Mrs. Willson’s counsel in the circuit court sought to withdraw on grounds of “irreconcilable differences,” and had his oral motion to strike his appearance granted. The circuit court also granted Deutsche Bank’s motion for default judgment, and explained to Mrs. Willson that a default was issued originally because she had not sought to vacate the order of default.

On October 7, 2013, Mrs. Willson timely noted her appeal.

DISCUSSION

A. Parties’ Contentions

Mrs. Willson argues that the circuit court committed an abuse of discretion in permitting the default judgment to be granted. She contends the clerk of the circuit court failed to send her the notice that an order of default was entered, and accordingly, the circuit court could not consider, let alone grant, Deutsche Bank’s motion for a default judgment. Moreover, Mrs. Willson argues that court committed an abuse of discretion where, first, she was not permitted to present a statement regarding her failure to engage the litigation, and, second, where she was denied a continuance to obtain new counsel.

Deutsche Bank contends that the clerk properly issued notice of the order of default per Maryland Rule 2-613. It further argues that the circuit court’s decision not to conduct a hearing on the default judgment was proper because Mrs. Willson had ample opportunities to engage the litigation, but she did not take advantage of them. Moreover,

Deutsche Bank explains that a continuance was properly denied because the circuit court deemed that a hearing was improperly scheduled and that the motion for a default judgment was to be decided upon the written submissions. Accordingly, the trial court’s decision on holding a hearing rendered moot Mrs. Willson’s need for new counsel.

B. Standards of Review

“[A]n order of default[] [is] an interlocutory order subject to [the] broad general discretion of the [trial] court.” *Holly Hall Publ’ns, Inc. v. Cnty. Banking & Trust Co.*, 147 Md. App. 251, 261 (2002), *cert. denied*, 371 Md. 614 (2002) (citation omitted). The trial court is afforded this broad discretion in deciding whether to vacate orders of default in order to prevent “technicality [from] triumph[ing] over justice.” *Id.* at 262 (citations and internal quotation marks omitted). We review the discretionary decisions of the trial court only for an abuse of that discretion. *See Goodman v. Commercial Credit Corp.*, 364 Md. 483, 491–92 (2001). We determine an abuse of discretion has occurred “where no reasonable person would take the view adopted by the [trial] court [] . . . or when the court acts without reference to any guiding principles, and the ruling under consideration is clearly against the logic and effect of facts and inferences before the court[] . . . or when the ruling is violative of fact and logic.” *Beyond Sys., Inc. v. Realtime Gaming Holding Co., LLC*, 388 Md. 1, 28 (2005) (alterations in original) (citations and internal quotation marks omitted).

Rule 2-613(f) vests discretion with the circuit court in how it wishes to proceed with the entry of default judgments. Specifically, the Rule states that “[i]f, in order to

enable the court to enter judgment, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any matter, the court *may* rely on affidavits, *conduct hearings*, or order references as appropriate” Md. Rule 2-613(f) (emphasis added). Similarly, Rule 2-508 vests discretion with the circuit court as to the grant of a continuance. *Id.* 2-508(a) (“On motion of any party or on its own initiative, the court *may* continue a trial or other proceeding as justice may require.” (emphasis added)); *see also Touzeau v. Deffinbaugh*, 394 Md. 654, 669 (2006) (“Absent an abuse of . . . discretion we historically have not disturbed the decision to deny a motion for continuance.”). Both of these Rules employ the discretionary auxiliary verb “may.” We have previously stated that this term connotes discretion in the statutory context. *See Wells v. Wells*, 168 Md. App. 382, 393 (2006).

C. Analysis

i. Notice of Order of Default

Mrs. Willson contends that the clerk failed to send her notice that an order of default was entered. This failure meant that the circuit court was precluded from entertaining and granting Deutsche Bank’s motion for a default judgment. We do not agree and explain that the record in this case clearly refutes Mrs. Willson’s argument.

Maryland Rule 2-613(c) states that the clerk of the circuit court “shall issue a notice informing the defendant that the order of default has been entered” and that “[t]he notice shall be mailed to the defendant at the address stated in the request and to the defendant’s attorney of record, if any.” Subsection (d) of the Rule allows a defendant to

submit a motion to vacate the default within thirty days after the order’s entry; the order must provide reasons for defendant’s failure to file a responsive pleading and set forth the legal and factual bases for defense of the claim. *Id.* 2-613(d). Subsection (f), however, provides that

[i]f a motion was not filed under section (d) of this Rule or was filed and denied, the court, upon request, may enter a judgment by default that includes a determination as to liability and all relief sought, if it is satisfied (1) that it has jurisdiction to enter the judgment and (2) that the notice required by section (c) of this Rule was mailed.

Id. 2-613(f). The circuit court’s ability to enter a default judgment in the absence of a motion to vacate, therefore, is contingent on the court’s satisfaction that the clerk sent notice to the defendant.

The circuit court here did not abuse its discretion in proceeding with the default judgment process because Mrs. Willson was adequately notified of the entry of a default. Mrs. Willson contends that the clerk did not send a copy of the order of default to her home address at 3676 Jennings Chapel Road, Woodbine, Maryland 21797. This is a patently false assertion. First, the copy of the docket in the record demonstrates that two notices of default were issued to the Willsons on February 25, 2013. Second, the record also demonstrates that the notice of default issued to Mrs. Willson lists her address as 3676 Jennings Chapel Road, Woodbine, Maryland 21797—in direct contradiction to the assertion in her brief. Last, at the hearing on the default, Mrs. Willson confirmed the

3676 Jennings Chapel Road address was her home address.³

We have previously stated that Rule 2-613 does not require the circuit court to ensure that notice of a default was properly mailed to a defendant. *Smith-Myers Corp. v. Sherill*, 209 Md. App. 494, 506 (2013), *cert. denied*, 431 Md. 447 (2013). A court must only satisfy itself that the clerk has mailed notice of the default to the defendant’s last known address. *Id.* at 510. It is incumbent upon the party requesting the entry of default to provide the defaulting party’s last known address.

The circuit court was under no obligation to do independent verification of Mrs. Willson’s address, nor ensure she received the notice. *Id.* at 506 (stating that “It is the duty of a party, *not the court*, to ensure that the court has the parties’ current and correct mailing address” and “Rule 2-613 *does not require* the circuit court to ensure that notice was properly mailed to [appellant] prior to entering a judgment.” (emphasis added) (internal quotation marks omitted)). The only thing required was that the circuit court satisfy itself that the notice was issued to the last known address. *Id.* This is, in fact, what happened. Deutsche Bank’s motion requesting the orders of default listed 3676 Jennings Chapel Road as the last known address for Mrs. Willson. This is the address that Mrs. Willson confirmed was her present address and the address to which the notice was

³ The transcript of the hearing appears to have a typographical error. Mrs. Willson is quoted as saying her address is “3676 Jones Chapel Road, Woodbine, Maryland, 21797.” A Google Maps inquiry reveals there is no Jones Chapel Road in Woodbine, let alone Howard County. The only Jones Chapel Road in Maryland is located in Cecil County. Accordingly, we presume the court reporter that day made a typographical error in transcribing Mrs. Willson’s address.

issued. We believe there was ample basis for the circuit court to be satisfied that the notices went to Mrs. Willson’s present address.

Accordingly, we find the circuit court committed no abuse of discretion in proceeding with Deutsche Bank’s motion for default judgment.

ii. Conduct of Hearing

Mrs. Willson contends that the circuit court committed an abuse of discretion where, first, she was denied the opportunity to present a statement regarding her failure to engage the litigation, and, second, where she was denied a continuance to obtain new counsel. The conduct of hearings and the decision to grant continuances are well within the discretion of the circuit court judge, and we are unable to discern any abuse of that discretion in the present matter. *See* Rule 2-508

To reiterate what we stated in our standards of review section *supra*, Rule 2-613 vests discretion with the circuit court in how it wishes to proceed with the entry of default judgments. Specifically, the Rule states that “[i]f, in order to enable the court to enter judgment, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any matter, the court *may* rely on affidavits, *conduct hearings*, or order references as appropriate” Md. Rule 2-613(f) (emphasis added). Similarly, Rule 2-508 vests discretion with the circuit court as to the grant of a continuance. *Id.* 2-508(a) (“On motion of any party or on its own initiative, the court *may* continue a trial or other proceeding as justice may require.” (emphasis added)); *see also Touzeau*, 394 Md. at 669 (“Absent an abuse of . . .

discretion we historically have not disturbed the decision to deny a motion for continuance.”). Both of these Rules employ the discretionary auxiliary verb “may.” We have previously stated that this term connotes discretion in the statutory context. *See Wells*, 168 Md. App. at 393. Because of the discretion conferred upon the circuit court, we shall question neither the trial court’s conduct of the hearing nor its decision to grant or deny a continuance unless the court abuses its discretion.

Mrs. Willson believes that the circuit court acted beyond the bounds of its discretion because she was not permitted to explain her opposition to the entry of a default judgment. We do not agree. The Rule provides ample opportunity for a defaulting defendant to engage the litigation prior to the entry of a default judgment. *See* Rule 2-613(d) (“The defendant may move to vacate the order of default within 30 days after its entry. The motion shall state the reasons for the failure to plead and the legal and factual basis for the defense to the claim.”). This is because the default judgment is not meant as a punitive measure for breaches of procedural rules, but more as a tacit admission of liability. *Holly Hall*, 147 Md. App. at 262 (quoting *Royal Ins. Co. of Am. v. Miles & Stockbridge, P.C.*, 133 F. Supp. 2d 747, 768 (D. Md. 2001)). Accordingly, courts will typically exercise their discretion in favor of those defendants who seek to vacate the default and, in doing so, provide a meritorious defense and demonstrate excusable fault. *See Holly Hall*, 147 Md. App. at 262–63 (quoting *Royal Ins. Co.*, 133 F. Supp. 2d at 768). This liberal exercise of discretion is to prevent “technicality [from] triumph[ing] over justice.” *Holly Hall*, 147 Md. App. at 262 (quoting *Royal Ins. Co.*, 133 F. Supp. 2d at 768

(internal quotation marks omitted)). On motion of any party filed within 30 days, the trial court has liberal revisory power during those 30 days after the default judgment is entered. *See Wells*, 168 Md. App. at 393 (citing Rule 2-535). It follows that a court will be less receptive to a defendant who seeks to explain herself or vacate a default *after* the thirty-day period prescribed in the rule has passed.

Such is the case in the present matter. The default order was entered against Mrs. Willson on February 25, 2013, yet there is nothing in the record that demonstrates she attempted to engage the matter in the ensuing thirty-day period. Moreover, it appears the circuit court sent the notice of default to her correct address; she verified that address on the record at the hearing. Certainly, Mrs. Willson was aware at this point of both the action and the fact that a default was issued. Nevertheless, she did not act promptly to vacate the default. Had she done so and provided her explanation at that time, we would be more receptive to her arguments. Rather, she sought to take advantage of the court’s liberal discretion when it was too late, and we cannot find that the circuit court erred by not allowing her to offer her arguments at that time.

Moreover, the circuit court’s decision to deny Mrs. Willson’s request for postponement was not an abuse of discretion. As stated above, the decision to grant a continuance is well within the discretion of the circuit court. The Court of Appeals has emphasized that it has “consistently affirmed” the denial of motions to continue in instances where parties have made untimely requests or where procedural rules are ignored. *See Neustadter v. Holy Cross Hosp. of Silver Spring, Inc.*, 418 Md. 231, 242–43

(2011) (citing *Dart Drug Corp. v. Hechinger Co., Inc.*, 272 Md. 15, 28 (1974) (untimely request) and *Abrams v. Gay Inv. Co.*, 253 Md. 121, 124 (1969) (failure to follow procedural rules)).

Mrs. Willson’s counsel at the default judgment hearing sought to withdraw from representing her and did so via a line granted on the day of that hearing. Among the reasons provided by her former counsel for withdrawing was that she was a particularly difficult client who regularly sought an unfeasible course of conduct in this litigation. Furthermore, he stated that he was her ninth attorney in the present litigation. He also explained that she frequently focused on perceived issues and claims, often to the detriment of actual issues that needed to be addressed. The line paints a picture of an attorney who was making the best efforts to work with a challenging client, but was often frustrated. We think it may be inferred that Mrs. Willson’s diligent defense of this matter was obstructed by the conduct described in the line.

The line indicates that Mrs. Willson, in the meeting she had with her attorney in the days prior to the hearing, expressed not only her dissatisfaction with his representation, but also her intent to sue him and report him to Bar Counsel. Given that she clearly wished to engage new counsel earlier in the week, her decision to wait until the day of the hearing to express this concern (among others) and to request representation strikes us as problematic. There was time for her to seek a postponement for new counsel *before* the hearing. Given that she had failed to engage this matter until the day of the hearing, despite proper notice, and that she knew that she would need new

counsel, we are unable to see how the circuit court abused its discretion in denying the request for a continuance.

We hold the circuit court committed no abuse of discretion in proceeding with the motion for a default hearing, or in its conduct of the hearing and the denial of the request for a continuance.

**JUDGMENTS OF THE CIRCUIT COURT
FOR HOWARD COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**