

Circuit Court for Baltimore County
Case No. C-03-CV-19-005065

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1875

September Term, 2021

FUNMILAYO A. KAYODE

v.

EDWARD S. COHN, *et al.*

Kehoe,
Beachley,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: September 2, 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.

In this foreclosure case, Funmilayo A. Kayode, appellant, appeals from orders issued by the Circuit Court for Baltimore County ratifying the foreclosure sale of her property and denying her motion to alter or amend that judgment. She raises a single issue on appeal: whether the court abused its discretion in denying her motion to alter or amend the judgment. For the reasons that follow, we shall affirm.

In 2019, appellees,¹ acting as substitute trustees, filed an Order to Docket in the Circuit Court for Baltimore County, seeking to foreclose on real property owned by appellant and her husband Omotayo O. Kayode.² The Kayodes did not request foreclosure mediation or file a motion to stay or dismiss the sale pursuant to Maryland Rule 14-211. The property was sold at a foreclosure auction, and the report of sale was filed on March 4, 2020. No exceptions were filed.

In August 2021, appellees filed a “Declaration of Exemption from [Foreclosure] Moratorium” and subsequently filed a line requesting the court to ratify the foreclosure sale. On September 29, 2021, the court denied the request to ratify the sale and issued a deficiency notice pursuant to Maryland Rule 14-207.1, indicating that it had reviewed the court file and found certain deficiencies that it believed needed to be corrected. Relevant to this appeal, the letter alleged that the final loss mitigation affidavit that had been filed

¹ Appellees are Edward S. Cohn, Stephen N. Goldberg, Kevin Hildebeidel, Esq., Christianna Kersey, Michael McKeefery, Richard J. Rogers, and Richard E. Solomon.

² Based on a review of the record it appears that appellant and her husband were in the midst of divorce proceedings at the time the foreclosure sale was ratified. Mr. Kayode is not a party to this appeal.

with the Order to Docket did not comply with Section 7-105.1(e)(2)(x) of the Real Property Article because it did not specifically address each loss mitigation program that had been made available to appellant, whether appellant had submitted a loss mitigation application for those programs, and, if so, the reason for the denial of such programs.³

On November 24, 2021, appellees filed a response to the deficiency notice indicating that at the time the final loss mitigation affidavit was filed, appellant and her husband had been offered a loan modification option, but subsequently requested to have the loan modification review cancelled. This assertion was also set forth in the final loss mitigation affidavit that was filed with the Order to Docket. Appellees' response further stated that appellant and her husband had been offered the opportunity to file a loss mitigation application post-sale, but that appellant had not yet returned the loss mitigation application; that even if she did, she would not be able to assume the loan by herself without a final divorce decree; and that the parties had indicated they were not interested in pursuing non-retention options. After receiving appellees' response, the court entered an order ratifying the sale on December 6, 2021.

Nine days later, appellant filed her first pleading in the case, a motion to alter or amend the judgment pursuant to Maryland Rule 2-534. In that motion, she claimed that: (1) appellees' response was "largely non-responsive to the concerns expressed by the Court

³ Notably, the deficiency notice did not allege that appellees had failed to make any pre-sale loss mitigation options available to appellant or that any particular loss mitigation options should have been granted. Rather, it simply indicated that the final loss mitigation affidavit did not document that information. Similarly, appellant has never alleged that she was eligible for any particular pre-sale loss mitigation program that should have been granted.

in its deficiency letter” and “constitute[d] an *ad hominem* attack on [appellant]”; (2) appellees’ disclosure of their post-sale settlement negotiations with appellant violated Maryland Rule 5-408; and (3) appellees had acted in bad faith during the post-sale settlement negotiations by requesting that they “surrender their rights under the deficiency letter as a condition precedent to any negotiation without any assurance of success[.]” Appellant also attached an affidavit from her attorney which generally outlined a history of his communications with appellees regarding possible post-sale loss mitigation options. The court denied the motion to alter or amend the judgment without a hearing. This appeal followed.

On appeal, appellant contends that the court abused its discretion in denying her motion to alter or amend the judgment. We review a circuit court’s denial of “a request to revise its final judgment under the abuse of discretion standard.” *Pelletier v. Burson*, 213 Md. App. 284, 289 (2013) (quotation marks and citation omitted). An abuse of discretion occurs “where no reasonable person would take the view adopted by the [trial] court[.]” *Sibley v. Doe*, 227 Md. App. 645, 658 (2016) (alteration in original) (quotation marks omitted) (quoting *Bacon v. Arey*, 203 Md. App. 606, 667 (2012)). A denial of a motion to revise a judgment should be reversed “only if the decision ‘was *so far wrong*—to wit, *so egregiously wrong*—as to constitute a clear abuse of discretion[.]’” *Est. of Vess*, 234 Md. App. 173, 205 (2017) (emphasis in original) (quoting *Stuples v. Baltimore City Police Dep’t*, 119 Md. App. 221, 232 (1998)).

Appellant first contends that under Rule 2-311(b) of the Maryland Rules, the court should have given her 15 days to file a reply to appellees’ response to the deficiency notice

before it entered the ratification order. However, this claim is not preserved for appellate review as appellant did not raise it in her motion to alter or amend the judgment. *See* Maryland Rule 8-131(a) (“Ordinarily, the appellate court will not decide any . . . issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]”). But even if preserved, this contention lacks merit. By its plain language, Rule 2-311(b) only applies when a party files a motion that is directed to another party. However, appellees’ response to the court’s deficiency notice was not a motion directed at appellant. Moreover, Rule 14-207.1 does not specifically allow for a defendant to file an opposition or reply to a substitute trustee’s response. Consequently, the court was not required to afford appellant 15 days to respond to appellees’ filing.⁴

Appellant next contends that, in their response, appellees offered “no support” for the assertion that she had been offered a loan modification at the time the final loss mitigation affidavit was filed but later requested to have the loan modification review cancelled. She also claims that this was “certainly not true.” Again, however, this issue is not preserved as it was not raised in her motion to alter or amend the judgment. In any event, this exact assertion was also set forth in the final loss mitigation affidavit that was filed by appellees with the Order to Docket. Thus, appellant could have challenged its

⁴ Appellant also briefly asserts that the court “failed to afford [her] an opportunity for a hearing on whether Appellees had complied with the Deficiency Notice.” To the extent appellant is claiming that the court should have held a hearing prior to ratifying the sale, neither the deficiency notice nor appellees’ response was a dispositive motion for which a hearing was required. To the extent appellant is claiming that the court should have held a hearing on her motion to alter or amend the judgment, Maryland Rule 2-311(e) provides that a hearing is only required on such a motion, if the motion is granted.

accuracy prior to the sale. Yet she chose not to do so. A motion to alter or amend under Rule 2-534 is not an occasion for a party to make arguments that it neglected to make initially. *See Morton v. Scholtzhauer*, 449 Md. 217, 232 n.10 (2016) (“A circuit court does not abuse its discretion when it declines to entertain a legal argument made for the first time in a motion for reconsideration that could have, and should have, been made earlier, and consequently was waived.”). Therefore, even had appellant raised this issue in her motion to alter or amend the judgment, the court would not have abused its discretion in declining to consider it.

Finally, appellant briefly asserts that the appellees’ response “did not comply with the requirements of the Deficiency Notice” because they “did not demonstrate why the Kayodes were not eligible for other forms of foreclosure relief[.]” However, appellant provides no further argument or legal authority indicating why appellees’ failure to fully address the issues raised in a deficiency notice required the court to grant her motion to alter or amend the judgment and vacate the ratification order. And it is not this Court’s responsibility to “attempt to fashion coherent legal theories to support” appellant’s claim of error. *Konover Prop. Tr., Inc. v. WHE Assocs., Inc.*, 142 Md. App. 476, 494 (2002). Consequently, we need not consider this contention on appeal. *See Diallo v. State*, 413 Md. 678, 692 (2010) (noting that arguments that are “not presented with particularity will not be considered on appeal” (quotation marks and citation omitted)).

Nevertheless, even if we assume that appellees did not fully and adequately respond to the deficiency notice, the court was not required to take any action as a result. Rule 14-207.1(a) is a discretionary rule that permits the court to give notice to the parties when

pleadings or papers in a foreclosure proceeding do not comply with all statutory and Rule requirements. The rule does not mandate that courts issue such notices to the parties, nor does the rule require the dismissal of foreclosure actions when deficiencies are not cured within thirty days of the notice. In fact, the deficiency notice in this case only stated that the court could take action if the deficiencies were not cured. Here, appellant did not raise any defenses to the foreclosure action or exceptions to the sale. Thus, it was entirely within the circuit court's discretion to ratify the sale regardless of the response filed by appellees.⁵ Having properly exercised its discretion to ratify the sale, it was therefore not an abuse of discretion to deny the motion to alter or amend the judgment. Consequently, we shall affirm the judgment of the circuit court.

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

⁵ This is especially true in this case where the alleged deficiency identified by the court did not necessarily mandate dismissal of the foreclosure action. Although Section 7-105.1 of the Real Property Article sets forth various rules with respect to what must be included in the Order to Docket it does not set forth a specific remedy for defects or require dismissal for failure to comply with its requirements. *See Shepherd v. Burson*, 427 Md. 541, 559 (2012).