

Circuit Court for Prince George's County
Case No. CAEF16-43753

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1915

September Term, 2017

EVERAL CAMPBELL

v.

JAMES E. CLARKE, et al.

Berger,
Friedman,
Shaw Geter,

JJ.

Opinion by Shaw Geter, J.

Filed: January 10, 2019

*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.

On December 13, 2016, appellees, James E. Clarke, Renee Dyson, Hugh J. Green, Patrick M. A. Decker, Khalid Walker, and Christine M. Drexel (substitute trustees), filed a Residential Foreclosure action against appellant, Everal Campbell, in the Circuit Court for Prince George’s County. Nine days later, on December 22, 2016, appellees filed a Return of Service with the court indicating that after unsuccessful attempts, they posted a Notice of Foreclosure Action and left other vital documents in a “conspicuous place at [appellant’s] address” at 6:01 a.m. on December 16, 2016. Appellant did not respond to the filing and the property was subsequently sold at a foreclosure sale on March 30, 2017.

In May 2017, appellant filed a Motion to Set Aside/Vacate [the] Foreclosure Sale and an Objection to Ratification and Confirmation of Foreclosure Sale—which the court treated as an exception. Appellees filed an opposition motion and on June 26, 2017, the trial court overruled the exceptions lodged by appellant. On September 11, 2017, appellant filed a Motion to Vacate Order of Ratification that was subsequently denied by the trial court. Appellant then filed a Notice of Appeal.

Appellant presents the following questions for our review, which have been reworded for clarity¹:

¹ Appellant’s questions as he presented them in full:

1. Did the [c]ircuit [c]ourt err in denying the Motion to Set Aside/Vacate Foreclosure Sale or at least holding a hearing on the Motion, when the Return of Service was clearly false on its face, and as alleged, appears to have been designed to deprive the homeowner of the opportunity to participate in his case?

1. Did the trial court abuse its discretion when it denied appellant's request for a hearing on the Motion to Set Aside/Vacate [the] Foreclosure Sale?
2. Did the trial court err when it denied the Motion to Set Aside/Vacate [the] Foreclosure Sale?

For reasons to follow we shall affirm the judgment of the Circuit Court for Prince George's County.

BACKGROUND

On April 19, 2010, appellant executed a promissory note and deed of trust in the amount of \$245,471.00 for property located at 10807 Westwood Drive, Cheltenham, Maryland 20623. Appellant failed to make his required payments and on December 13, 2017, appellees initiated foreclosure proceedings. Appellees filed a Final Loss Mitigation Affidavit, which was docketed with the court on January 30, 2017. Appellant did not file a response. On February 1, 2017, a Notice of Foreclosure Action Affidavit and Foreclosure Bond was filed and, again, no response was filed by appellant. Resultantly, the property was sold at a foreclosure sale on March 30, 2017.

On May 11, 2017, appellant filed a Motion to Set Aside/Vacate [the] Foreclosure Sale, which was treated by the court as an exception to the sale. Appellant alleged that the Final Loss Affidavit propounded by appellees fraudulently asserted that appellant had not

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2. Did the [c]ircuit [c]ourt err in its determination that, despite [a]ppellant raising Extrinsic Fraud, supported by clear and convincing evidence of a fraudulent Return of Service, it ruled that [a]ppellant failed to identify any legitimate procedural irregularity?

requested or received “modification assistance.” Appellant attached a document, that was addressed to him at 10807 Westwood Drive Cheltenham, Maryland 20623, suggesting that he was approved for a loan modification. He further argued, to the trial court, that he reasonably believed that he had successfully applied for and received a loan modification and, thus, had no reason to know his home was being foreclosed upon by appellees.

Appellant also claimed the Return of Service was fraudulent because the notice stated that the posting on appellant’s property coincided with the posting of notice on a separate distant residence. Appellant asserted that the other property is located about thirty minutes away from the Cheltenham residence, at 4925 56th Place, Bladensburg, Maryland 20710. The record indicates that appellees sent correspondence to appellant at both 10807 Westwood Drive Cheltenham, Maryland 20623 and at 4925 56th Place Bladensburg, Maryland 20710. Appellant maintained he never received any correspondence from appellees until March 31, 2017.

In response, appellees submitted an opposition motion and on June 28, 2017, the court issued its Memorandum and Order denying appellant’s request for relief. Appellant then filed a Motion for Reconsideration on July 27, 2017, followed by a Motion to Vacate submitted on September 11, 2017. Both motions were denied by the court’s October 17, 2017, Memorandum and Order.

STANDARD OF REVIEW

When conducting a review of a “trial court’s ruling on exceptions to a [foreclosure] 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) quoting from *Jones v. Rosenberg*, 178 Md. App. 54, 68 (2008)). In addition, “[w]e review [a trial] court’s decision to deny a request to revise its final judgment under the abuse of discretion standard.” *Jones v. Rosenberg*, 178 Md. App. 54, 72 (2008) (citing *Mullaney v. Aude*, 126 Md. App. 639, 665–67 (1999)). More specifically, we review a trial court’s decision to grant or deny a foreclosure sale exceptions hearing for an abuse of discretion. See *Four Star Enterprises Ltd. Partnership v. Council of Unit Owners of Carousel Center Condominium, Inc.*, 132 Md. App. 551, 567 (2000) (finding that it is not an abuse of discretion for a trial court to decline to hold an exceptions hearing).

DISCUSSION

I. The court did not abuse its discretion when it denied appellant’s request for a hearing on the Motion to Set Aside/Vacate [the] Foreclosure Sale.

Appellant argues the court erred when it failed to hold a hearing on his Motion to Set Aside/Vacate [the] Foreclosure Sale. In opposition, appellee maintains that the court considered ample evidence before making its ruling from chambers.

Maryland Rule 14-305(d)(2) states in relevant part “[that a] court shall determine whether to hold a hearing on the exceptions” and “[that a] court shall hold a hearing if a hearing is requested and the exceptions or any response clearly show a need to take evidence.” On its face, the statute gives trial courts the discretion to hold a hearing and only requires courts to conduct them in limited circumstances.

The trial court’s June 26, 2017, Memorandum and Order, stated that it “review[ed]” the “filings” and found it was “apparent” that appellant “was legally and timely notified of the pending foreclosure as well as the sale date.” The court’s records include filings submitted by appellees to initiate the foreclosure proceeding and within those documents, are certified mail receipts indicating that the contents of the packet were sent to appellant at 10807 Westwood Drive Cheltenham, Maryland 20623 and at 4925 56th Place Bladensburg, Maryland 20710. Subsequent filings also contained exhibits and photographic evidence of notice and service. We therefore hold the trial court did not abuse its discretion in denying appellant’s request for an exceptions hearing as the court determined there was “clearly” no need to take evidence.

II. The court did not err when it denied the Motion to Set Aside/Vacate [the] Foreclosure Sale.

Appellant argues that he was effectively prevented from participating in this case as a result of extrinsic fraud and, as a result, the foreclosure sale should be set aside. He argues the alleged fraud is evidenced by an error on the face of the Return of Service filed with the trial court, which states in the text that the notice was posted on appellant’s home and at a distant separate residence at the same time. Furthermore, he claims that he had no indication his home was being foreclosed upon because he believed he had secured a loan modification. In opposition, appellee avers that appellant must overcome the presumption “that the sale was fairly made” and “that the alleged error in the sale caused prejudice.” Moreover, appellee states that Maryland Rule 14-305 governs the exceptions process and that appellant failed to sufficiently allege extrinsic fraud.

“In ruling on exceptions . . . [and] reviewing a trial court’s finding of fact, we do not substitute our judgment for that of the lower court unless it was clearly erroneous.” *Jones v. Rosenberg*, 178 Md. App. 54, 68 (internal citations and quotations omitted). However, we review all questions of law *de novo*. *Id.* Pursuant to *Bates v. Cohn*, Maryland courts “limit . . . the scope of review to exceptions alleging ‘irregularity,’ . . . permit[ing] only those challenges to ‘procedural irregularities at the sale or . . . the statement of indebtedness’” 417 Md. 309, 326 (2010) (internal citations omitted). A party seeking to raise procedural issues at the time of foreclosure “may charge that ‘the advertisement of sale was insufficient or misdescribed the property, [or that] the creditor committed fraud by preventing someone from bidding or by chilling the bidding.’” *Id.* at 327. However, we generally adhere to the rule that, “no court shall set aside a foreclosure sale merely because of harmless error or irregularities committed in connection with the exercise of the power of sale, or any slight frivolous reasons not affecting the substantial rights of the parties.” *Hurlock Food Processors, Inv. Associates v. Mercantile-Safe Deposit and Trust Co.*, 98 Md. App. 314, 329 (1993) (quoting *Bachrach v. Washington United Cooperative*, 181 Md. 315, 321–22 (1943)) (internal quotations omitted).

Furthermore, under Maryland Rule 2-535(b), courts may “exercise revisory power and control over [] judgment[s] [only] in case[s] of fraud, mistake or irregularity.” Accordingly, the only circumstance, in the context of foreclosure, that allows a party to avail themselves of Maryland Rule 2-535(b) occurs when there is an allegation of fraud because “the final ratification of the sale of property in foreclosure is *res judicata* as to the

validity of such sale, except in the case of fraud.” *Ed Jacobsen, Jr., Inc. v. Barrick*, 252 Md. 507, 511 (1969) (internal citation omitted). In an exception, the only type of fraud that may be alleged is extrinsic fraud. See *Billingsley v. Lawson*, 43 Md. App. 713, 718–19 (1979) (holding that “a litigant seeking to set aside an enrolled decree must prove extrinsic fraud”). A party that seeks to establish extrinsic fraud must prove that the fraud “actually prevents an adversarial trial.” *Pelletier v. Burson*, 213 Md. App. 284, 291 (2013) (internal citations and quotations omitted). Either through mailings or postings, “assertions of fraud [that] relate to what [a party] believes to have been fraudulent signatures and affidavits do[es] not rise to the level of extrinsic fraud.” *Id.* Moreover, a singular alleged procedural irregularity in a foreclosure sale, including a “fail[ure] to send notice by registered or certified mail,” does not constitute extrinsic fraud. *Jones v. Rosenberg*, 178 Md. App. 54, 69 (2008).

Appellant contends that he was deprived of an opportunity to participate in the sale because he did not receive any notice and that he had no reason to anticipate being foreclosed upon because he believed he had received a loan modification. However, lack of pre-sale notice does not constitute extrinsic fraud. 178 Md. App. 54, 69 (2008). We hold the trial court did not erroneously deny appellant’s request to revise its final judgment because the issues raised by appellant did not constitute extrinsic fraud and could not be addressed post-sale.

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