

Circuit Court for Montgomery County
Case No. 382477V

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1984

September Term, 2014

KAMAL MUSTAFA, et. al.

v.

CARRIE M. WARD, et. al.

Fader, C.J.
Leahy,
Reed,

JJ.

Opinion by Reed J.

Filed: February 15, 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.

This case arises from an order being issued by the Circuit Court for Montgomery County that prohibits Kamal and Fatima Mustafa from filing as self-represented litigants, any new pleadings or requests for subpoenas in the Circuit Court for Montgomery County, without obtaining written leave of the Administrative Judge. The order was issued *sua sponte* and without a hearing on the matter. Appellants present the following questions for our review, which we have rephrased¹:

1. Whether the trial court erred when it issued an order prohibiting *pro se* Defendants from filing future motions or pleadings, without first providing Defendants with a hearing?

For the reasons discussed below, we conclude that the question Appellants present is not properly raised in this appeal. Thus, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Kamal and Fatima Mustafa (hereinafter, “Appellants”), were *pro se* defendants in a foreclosure action² against their property, 14406 Autumn Branch Terrace, Boyds, MD 20841 (hereinafter, “the Property”). The action originated when Appellants defaulted under the terms of a note and deed of trust. Upon default, Appellants were issued a notice of default and Carrie Ward, Howard N. Bierman, and Jacob Geesing (hereinafter “Appellees”) were appointed substitute trustees by JPMorgan Chase Bank. Appellants were served on October 21, 2013 and on December 9, 2013, they requested a foreclosure

¹ Appellants present their question as follows: “Whether an order is issued without any hearing in which a *pro se* Defendant is prohibited from filing motions or pleadings in a different case violates Maryland law?”

² The Appellants have additional foreclosure actions regarding the same Property, on appeal.

mediation. The parties unsuccessfully engaged in mediation, and on April 7, 2014, Appellants filed a motion to stay and/or dismiss the foreclosure proceedings. Appellees filed an opposition to this motion on April 18, 2014. Before there was a ruling on the motion, Appellants filed an interlocutory appeal with the Court of Special Appeals on April 21, 2014³. The Property was sold at a public auction on May 14, 2014 for \$760,000. The trial court then denied Appellants' Motion to Stay the foreclosure proceedings. Following the sale and denial of the Motion to Stay, Appellants filed several exceptions to the ratification of the sale, which were all denied on August 11, 2014, following a two hour hearing.

While all these filings were taking place, Appellants were also making numerous requests for the issuance of subpoenas. All of the requests except one came after the Motion to Stay was denied and no order was granted permitting Appellants to conduct discovery. The trial court found on examination of the requests for subpoenas that none of the subpoenas were proper. In addition to the subpoenas, Appellants also filed for sanctions against the parties affiliated with the case and made numerous appeals and motions to reconsider, many of which contradicted each other.

On September 9, 2014, Appellants issued subpoenas to the lender in order to obtain information regarding possible fraudulent activity. In response to these subpoenas, Appellees filed a Motion to Quash. In the Motion to Quash, Appellees requested several forms of relief but never sought a prohibition on any filings to be placed on Appellants.

³ The interlocutory appeal was denied on May 19, 2014.

The issue was examined by the trial court and on October 14, 2014, the court issued an order which stated:

THE DEFENDANTS ARE PREVENTED, AND PRECLUDED FROM FILING AS SELF-REPRESENTED LITIGANTS ANY NEW PLEADINGS OR REQUESTS FOR SUBPOENAS IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND, OR THE DISTRICT COURT OF MARYLAND FOR MONTGOMERY COUNTY, MARYLAND, WITHOUT FIRST OBTAINING WRITTEN LEAVE OF THE ADMINISTRATIVE JUDGE OF THOSE COURTS; THAT IN SEEKING LEAVE OF THE ADMINISTRATIVE... AND IT IS FURTHER ORDERED THAT IN SEEKING LEAVE OF THE ADMINISTRATIVE JUDGE TO FILE ANY NEW PLEADINGS, THE DEFENDANTS MUST CERTIFY UNDER PENALTY OF PERJURY THAT THE PLEADING IS NOT FRIVOLOUS, IN BAD FAITH, OR INTENDED TO HARASS OR VEX THE NAMED PLAINTIFFS.

The trial court reasoned that the order was proper because before the case was a year old, there were close to 100 entries and almost 50 of those entries came after the Motion to Stay was denied. The trial court found Appellants to be “vexatious litigants” that were trying to harass Appellees and that they were a burden on the judicial system. Therefore, the trial court, *sua sponte*, granted injunctive relief against Appellants.

DISCUSSION

A. Parties’ Contentions

Appellants contend the trial court abused its discretion when it gave a restrictive Order, without having a hearing, denying Appellants the ability to exercise their due process rights. Appellants argue that because the restrictive order involves all future filings, it was too broad and restrictive, and therefore the order should be stricken or, in the

alternative, stricken from any matter not heard before Judge McCally.

Appellees filed a line regarding the absence of their brief in this matter. In so doing, Appellees contend that Appellants have limited their appeal to the propriety of the pre-filing injunction entered in another matter. Furthermore, Appellees contend that Appellants' direct appeal of that Order in the case was recently dismissed by this Court.⁴

B. Standard of Review

Under Maryland Rule 8–131(a), this Court “[o]rdinarily ... will not decide any ... issue unless it plainly appears by the record to have been raised in or decided by the trial court....” Use of the word “ordinarily” connotes that the appellate court has discretion to consider issues that were not preserved. This discretion is exercisable by each appellate court, independently. *Squire v. State*, 280 Md. 132, 134–35 (1977). However, “the Court may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal.” Md. Rule 8-131(a).

C. Analysis

As provided by Maryland Rule 8-131(a), this Court will not decide any issue unless it plainly appears by the record to have been raised in or decided by the trial court. “In other words, if a party fails to raise a particular issue in the trial court, or fails to make a contemporaneous objection, the general rule is that he or she waives that issue on appeal.” *Nail v. State*, 437 Md. 674, 691 (2014). Here, Appellants noted an appeal for Case No.

⁴ This Court entered an Order dismissing Appellants' appeal in Case No. 01984, September Term 2014, for Appellants' failure to timely file the required brief. However, the Order was incorrectly filed under Case No. 01948.

382477V, which was decided in the Circuit Court for Montgomery County. As such, this Court's first step is to determine whether the issues raised by Appellants in this appeal were properly preserved during the adjudication of Case No. 382477V.

Appellants' present appeal is in regard to an Order prohibiting Appellants from filing motions and pleadings with the circuit court. However, that Order arises in a different case, Case No. 382518V, than the one presently before this court on appeal. Furthermore, the burden is on Appellants to show that any potential error committed by the trial court was accompanied by prejudice. *Crane v. Dunn*, 382 Md. 83, 91-91(2004). Prejudice exists when the particular error is determined likely to have affected the ruling of the trial court. *Id.* at 91. "It is not the possibility, but the probability of prejudice which is the object of the appellate inquiry." *Id.* Here, Appellants fail to identify any prejudice in this case that exists due to the Order entered in Case No. 382518V. Also, clearly as drawn up, the Order is not overly broad and would not have any affect outside the case it was issued in. As such, Appellants have failed to identify any grounds that warrant a reversal in this case.

Simply put, Appellants are attempting to use the present case as a vehicle to appeal the circuit court's Order in a completely different matter. As a result, having raised no issue with the judgment from which Appellants appealed and failing to show any prejudice, the judgment of the circuit court must stand. This Court need not address Appellants' appeal any further.

Accordingly, the judgment of the Circuit Court for Montgomery County is affirmed.

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