UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0606

September Term, 2015

PEGASUS HOME CORPORATION

v.

CARRIE M. WARD, ET AL.
SUBSTITUTE TRUSTEES

Woodward,
Kehoe,
Nazarian,

JJ.

Opinion by Woodward, J.

Filed: June 23, 2016

Appellees and substitute trustees, Carrie M. Ward, Howard N. Bierman, Jacob Geesing, Pratima Lele, Tayyaba C. Monto, and Joshua Coleman filed a foreclosure action in the Circuit Court for Prince George's County on real property owned by appellant, Pegasus Home Corporation. After the property was sold at public auction, appellant filed exceptions to the sale on the grounds that appellees failed to provide notice to the borrower and former property owner, Geeriee Lewis. The court overruled appellant's exceptions and ratified the sale.

On appeal to this Court, appellant raises one issue for our review, which we have rephrased as a question:[1]

> Did the circuit court err in overruling appellant's exceptions to the foreclosure sale?

For reasons set forth herein, we answer this question in the negative and affirm the judgment of the circuit court.

BACKGROUND

At a sheriff's sale in 2009, appellant acquired real property located at 6843 Red Maple Court, District Heights, Maryland ("the Property"), subject to a Deed of Trust with Lewis as the borrower ("the Deed of Trust"). Lewis did not remain on the Property.

[1] Appellant's issue, as presented in its brief, is as follows:

> Whether the Circuit Court properly overruled exceptions to the foreclosure sale below and ratified the sale where notice to the borrower was not given to an address ascertainable from the Judiciary Case Search website under a slightly different spelling of the borrower's name?

On August 4, 2014, appellees filed in the circuit court an order to docket a foreclosure action against the Property pursuant to the Deed of Trust. On October 21, 2014, the Property was sold at public auction. Prior to the sale, appellees sent by certified mail a notice of sale to Lewis at the Property's address, as well as to an address listed for Lewis in her 2011 bankruptcy proceeding.[2] Appellees also sent a notice of sale to appellant at the property's address, as well as to two alternate addresses. On November 5, 2014, appellees filed a report of sale.

On December 4, 2014, appellant filed exceptions to the sale on the grounds that appellees failed to notify Lewis at her "most recent address . . . from public records." Appellees filed their opposition to appellant's exceptions on December 24, 2014. On January 26, 2015, the circuit court issued a memorandum and order overruling appellant's exceptions. On May 4, 2015, the court entered an order of ratification for the foreclosure sale. Appellant filed its notice of appeal on May 28, 2015.

Additional facts will be set forth below as necessary to resolve the question presented.

STANDARD OF REVIEW

The Court of Appeals has set forth the following standard of review of a court's denial of a party's exceptions to a foreclosure sale:

> A foreclosure sale is governed by Md. Code (1974, 1996 Repl. Vol. 1999 Supp.), § 7-105 of the Real Property Article, and the

[2] Appellees also sent notice to Lewis at another address, which was not valid.

> Maryland Rules. Maryland Rule 14-305(d) provides that if a party perceives an irregularity in the foreclosure sale, it may file exceptions to the sale of the property. **The ratification of a foreclosure sale is, however, presumed to be valid.** It is settled law that, "there is a presumption that the sale was fairly made, and that the antecedent proceedings, if regular on the face of the record, were adequate and proper, and the burden is upon one attacking the sale to prove the contrary." **The party excepting to the sale bears the burden of showing that the sale was invalid, and must show that any claimed errors caused prejudice.** Additionally, "[i]n reviewing a court's ratification of a foreclosure sale, we will disturb the circuit court's findings of fact only when they are clearly erroneous." Further, "if a mortgagee or his assignee complies with the terms of the power of sale in the mortgage, and conducts the foreclosure sale properly, the court will not set aside the sale merely because it brings loss and hardship upon the mortgagor."

Fagnani v. Fisher, 418 Md. 371, 383-84 (2011) (emphasis added) (citations omitted).

DISCUSSION

Appellant argues that appellees failed to give proper notice of the foreclosure sale to Lewis, because appellees did not send notice to the address associated with a different spelling of Lewis's name, "Geerie Lewis," as listed on the Maryland Judiciary Case Search website. According to appellant, due process requires that appellees closely examine public records, including the Maryland Judiciary Case Search website, to determine service addresses, and such duty was heightened in this case, because appellees' previous attempts to serve Lewis at her last known address were unsuccessful. Appellant contends that, because "the alternate spelling of [ ] Lewis's first name was readily ascertainable," such duty required appellees to search "partial names—e.g., 'Geer'—to generate more complete

information." Finally, appellant argues that it has the right to "assert[] any cognizable error in the foreclosure sale procedure" in order to protect its ownership interest in the Property.

Appellees respond that the "circuit court properly denied [a]ppellant's exceptions to the foreclosure sale, as [a]ppellant failed to prove that an irregularity occurred, or that if an irregularity occurred that it was prejudiced in any way." First, appellees note that appellant "has not offered any proof that 'Geerie Lewis' and 'Geeriee Lewis' are the same person." Next, appellees argue that they complied with Md. Rule 14-210(b) by searching public records for an address associated with Geeriee Lewis, "the only spelling of her name of which they had notice," and sending notice to that address. According to appellees, the "Rule does not require [a]ppellees to search every potential iteration of an interested party's name, or variable spellings not identified in recorded instruments or other record sources." Furthermore, appellees argue that Lewis was not deprived of due process, because, as the former owner whose debt secured by the Property had been discharged in bankruptcy, she no longer had a cognizable interest in the Property and thus "remains unaffected by the foreclosure." Finally, appellees contend that appellant did not claim below and fails to claim on appeal that it was prejudiced by appellees' failure to send notice to the address associated with a different spelling of Lewis's name.

A. Notice

Maryland Rule 14-210(b) provides:

> **Before selling the property subject to the lien, the individual authorized to make the sale shall also send notice of the time, place, and terms of sale (1) by certified mail and by first-class mail to (A) the borrower**, (B) the record owner of the property, and (C) the holder of any subordinate interest in the property subject to the lien and (2) by first-class mail to "All Occupants" at the address of the property. The notice to "All occupants" shall be in the form and contain the information required by Code, Real Property Article, § 7-105.9(c). Except for the notice to "All Occupants," **the mailings shall be sent to the last known address of all such persons, including to the last address reasonably ascertainable from a document recorded, indexed, and available for public inspection 30 days before the date of the sale.** The mailings shall be sent not more than 30 days and not less than ten days before the date of the sale.

(Emphasis added).

1. Determination of Last Known Address

In the instant case, appellees complied with the Rule by sending notice to Lewis at the address of the Property and the address listed in Lewis's 2011 bankruptcy proceeding. Appellees conducted a search of public records, including Maryland and federal court databases, and the only address listed for a "Geeriee Lewis" was an address at 6616 Ronald Road, Apt. 1, Capitol Heights, MD, 20743 that was associated with a 2011 bankruptcy proceeding. Accordingly, appellees complied with Rule 14-210(b) when they sent notice of the foreclosure sale to Lewis at her Capitol Heights address.

2. Heightened Duty Upon Return of Notice

Appellant alleges, but points to no evidence in the record, that the notice mailed to Lewis at the Capitol Heights address was returned to appellees as undeliverable prior to the foreclosure sale.[3] The only evidence in the record regarding service to the Capitol Heights address is an Affidavit of Process Server, which states that, after two attempts of personal service were unsuccessful, the notice of foreclosure sale was mailed to Lewis "via first class mail postage prepaid and by certified mail return receipt requested" at the Capitol Heights address. No return receipt or other postal documentation are in the record. Even if we assume *arguendo* that appellees received a return receipt that notice to Lewis at the Capitol Heights address was undeliverable prior to the foreclosure sale, we still conclude that appellees satisfied due process requirements. We shall explain.

According to appellant, the Maryland public records associate a "Geerie Lewis" with an address at 9508 Vermell Place, Upper Marlboro, MD 20774. There is, however, no evidence in the record—including the deed of trust and the promissory note—that (1) "Geeriee Lewis" and "Geerie Lewis" are the same person; (2) "Geerie" is an alternate spelling of "Geeriee"; or (3) appellees were on notice of such alternate spelling. Rather,

[3] At oral argument before this Court, appellant's counsel contended that, because appellees' opposition to appellant's exceptions stated that appellees "attempted service" rather than "accomplished service," such statement implied that appellees' service to Lewis was unsuccessful. Again, such implication does not indicate when appellees learned that service was unsuccessful.

"Geeriee Lewis" is the name on all recorded documents in appellees' possession. Appellant cites no authority, and we have found none, that states that Rule 14-210(b) requires that appellees conduct searches of public records with alternate spellings of the borrower's name where appellees have no notice of such alternate spelling in the record. Such a mandate would be unworkable in practice, because every name—first, middle, and last—has a limitless potential of alternate spellings.[4]

Appellant argues that, regardless of the text of the Rule, due process required appellees to search public records with alternate spellings of the borrower's name. Appellant relies on two cases, *Mennonite Board of Missions v. Adams*, 462 U.S. 791 (1983), and *St. George Antiochian Orthodox Christian Church v. Aggarwal*, 326 Md. 90 (1992). Neither case, however, states that, under due process, once service is unsuccessful, appellees have a heightened duty to search public records with alternate spellings of a borrower's name.

Before going into the facts of these two cases, it is important to note that the Court of Appeals has already concluded that the foreclosure notice process satisfies due process requirements. In *Griffin v. Bierman*, the former owner of the property filed exceptions to the

[4] We note that Rule 14-210(b) only requires that notice be sent to "the last address reasonably ascertainable" from public records. In its brief, appellant alludes to the fact that the notice sent to Lewis was returned as undeliverable. Nevertheless, nothing in the Rule or the case law requires that further searches of public records be conducted *absent additional information that would put appellees on notice of an additional address or alternate name*. Here, nothing in the record indicates such additional information was present to put appellees on notice.

foreclosure sale on the grounds that her failure to receive advance notice of the sale violated her right to due process. 403 Md. 186, 195-96 (2008). In that case, the substitute trustees sent notice to the former owner via both certified and first class mail, but the former owner never received notice until after the property was sold. *Id*. at 193-94. The Court "conclude[d] that the Maryland foreclosure notice process passes constitutional muster," because "[t]he Maryland scheme assumes a worst case scenario, that the certified mail would be undeliverable, therefore first-class mail notice is necessary in conjunction with the certified mail, even if the certified mail is delivered successfully." *Id*. at 200-01. The Court continued:

> The only substantive difference between the Maryland scheme and the satisfactory schemes inventoried by the Supreme Court in *Jones* [*v. Flowers*, 547 U.S. 220 (2006),] is that Maryland requires first-class mail to be sent in all cases, whereas the Supreme Court suggested that it was necessary only in cases where the certified mail is returned to the sender undelivered.

Id. at 201-02. In other words, the Maryland foreclosure notice scheme already goes above and beyond what is required by the federal due process standard. *See id.* Most importantly, the Court of Appeals concluded that "requiring that mortgagees personally serve property owners with notice of foreclosure . . . is not, however, required to satisfy the constitutional requirements of due process." *Id*. at 206.

Turning to *Mennonite*, the Supreme Court held that an Indiana state statute regarding notice of a tax sale violated due process. 462 U.S. at 800. The subject statute required the

county auditor to post in the county courthouse notice of the sale of the property due to nonpayment of property taxes, and to publish notice once a week for three consecutive weeks. *Id*. at 792-93. Notice was also required to be given by certified mail to the property owner, but notice via mail or personal service was not required to the mortgagees of the property. *Id.* at 793. The Court held that the manner of notice provided to the mortgagee of a property who was no longer the owner of the property violated due process, because the mortgagee had a legally protected property interest, and thus was "entitled to notice reasonably calculated to apprise him of [the] pending tax sale." *Id*. at 798, 800. The Court determined that constructive notice to a mortgagee who is identified in the public record did not satisfy due process, and that personal or mail service was required. *Id.* at 798.

In *Aggarwal*, the County sold at a tax sale a vacant lot owned by the St. George Antiochian Orthodox Christian Church ("the Church") after the Church failed to pay property taxes on that lot. 326 Md. at 92-93. The Church failed to pay property taxes because the tax bills were sent to the vacant lot, not to the Church's physical address. *Id*. The tax sale purchaser, Aggarwal, filed a complaint to foreclose on the Church's right of redemption, and sent notice, as required by the property tax appeals statute, to the address associated with the vacant lot. *Id*. at 93. The Church received no notice of the tax sale or of the proceeding to foreclose its right of redemption. *Id.* When the Church discovered the tax sale, it filed a

motion to set aside the sale on the grounds that it had been deprived of due process. *Id.* at 93-94.

The Court of Appeals held that, although Maryland's statute for property tax appeals satisfied due process, *id*. at 98-99,

> Aggarwal's failure to obtain the [C]hurch's address from a title company, whose name and address appeared on the binder of a deed in the chain of title, precluded the circuit court from having jurisdiction over the [C]hurch in light of Aggarwal's knowledge that the address to which it was sending notice was a 'bad address.'[5]

[5] The Court concluded that Aggarwal must have known that the address he was using would not provide actual notice:

> The Church points out, with convincing force, that Aggarwal knew the address he was using for the Church was a "bad address," *i.e.*, one that would not serve to accomplish actual notice. The address corresponds to the location of the property, which is a vacant lot. The Church notes that Aggarwal must have known the property was unimproved because: 1) the tax in arrears for the property was only $226.17; 2) Aggarwal's search of the assessment rolls would have shown an assessment for land only; and 3) in his complaint to foreclose the right of redemption, which also involved another property Aggarwal had purchased at the tax sale, Aggarwal described the Church's property only as a parcel of land, while describing the other property as a lot "and improvements." Moreover, a summons issued to the Church at that address was returned "non est" on 10 June 1986, and the sheriff included in his return the notation "per fire board bad address."

St. George Antiochian Orthodox Christian Church v. Aggarwal, 326 Md. 90, 99-100 (1992) (footnote omitted).

Nichol v. Howard, 112 Md. App. 163, 168-69 (1996). As this Court explained in *Nichol*,

> the *Aggarwal* Court sent a message to those persons involved in the tax sale process. **If the tax sale purchaser or his attorney is aware that the address to which notice was sent was, or might be, "bad" and if the purchaser's search**, *i.e.*, title examination of the records expressly required to be examined by statute, **discloses an entity that might reasonably know the owner's correct address, the purchaser is deemed to know also of that address, and failure to send notice to that address will constitute grounds for setting the tax sale aside**.

Id. at 169-70 (emphasis added).

Returning to the instant case, nothing in the mortgage documents or in a search of public records alerted appellees that Lewis (1) had an address other than the one in Capitol Heights, or (2) used an alternative spelling for her name. Furthermore, neither the mortgage documents nor the public records "disclose[d] an entity that might reasonably know the owner's correct address." *See id.* at 169. Therefore, appellees complied with the holdings in *Aggarwal* and *Mennonite*. *See id.* Accordingly, due process did not require appellees to take any action other than that required by Rule 14-210(b) to notify Lewis of the foreclosure sale.

B. Prejudice

Assuming, *arguendo*, that appellees violated Rule 14-210(b), appellant not only has failed to articulate how the alleged error in appellees' notice prejudiced appellant, but appellant also has failed to explain how such error prejudiced Lewis. Nowhere in its

pleadings in the trial court, nor in its brief before this Court, does appellant assert that it suffered actual prejudice as a result of the failure of Lewis to receive notice of the foreclosure sale.

In addition, appellant claims that it, not Lewis, is the current owner of the Property, and does not dispute that Lewis's obligations under the promissory note secured by the Deed of Trust, including any deficiency, were discharged in bankruptcy in 2011. As a result, Lewis was not prejudiced by not receiving proper notice. In other words, even if appellees had sent notice to the address associated with "Geerie Lewis," and Lewis had received actual notice of the foreclosure sale, the outcome would have been the same, because Lewis no longer had any personal or financial interest in the property.

Under Maryland law, a court will not interfere with a foreclosure sale absent a showing of actual prejudice. *See Ten Hills Co. v. Ten Hills Corp.*, 176 Md. 444, 449 (1939); *see also Fagnani v. Fisher*, 418 Md. at 384 (noting that the "party excepting to the sale . . . must show that any claimed errors caused prejudice"). Because neither appellant nor Lewis suffered actual prejudice as a result of the lack of notice to Lewis, the trial court correctly overruled appellant's exceptions to the foreclosure sale.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.