Circuit Court for Baltimore County
Case No. C14-11507

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

Nos. 1018 and 1776

September Term, 2016

HARRIETTE ELIZABETH BELL

v.

JOHN DRISCOLL, III, *et al*.
SUBSTITUTE TRUSTEES

Woodward, C.J.,
Kehoe,
Moylan, Charles, E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: December 27, 2017

*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.

After Harriette Bell, appellant, defaulted on a deed of trust loan on her home, appellees, acting as substitute trustees, filed a foreclosure action in the Circuit Court for Baltimore County.[1] Bell's home was ultimately sold at a foreclosure sale to the Federal National Mortgage Association (Fannie Mae). On February 11, 2016, the circuit court ratified the sale and referred the case to an auditor. Bell did not appeal from the ratification order.

On May 24, 2016, Fannie Mae filed a motion for a judgment awarding possession of the property. Bell filed an opposition on May 26, 2016, and Fannie Mae filed a response to her opposition on June 17, 2016 (Fannie Mae's response). Fannie Mae's response included a certificate of service indicating that Bell had been served with the response via first-class mail on June 14, 2016. Neither party requested a hearing. On July 1, 2016, the circuit court signed an order granting Fannie Mae's motion (possession order). The possession order was subsequently entered on the docket on July 13, 2016.

On July 5 and July 25, 2016, Bell filed motions to dismiss the foreclosure action and vacate the possession order on the grounds that: (1) the auditor's report had not been ratified, and (2) she had not been properly served with Fannie Mae's response. The trial court denied those motions without a hearing. Thereafter, Bell filed: (1) a motion to vacate the circuit court's order denying her motion to dismiss, and (2) two motions to stay the

[1] Appellees are John E. Driscoll, III; Jana M. Gantt; Kimberly Lane; Arnold Hillman; and Deena L. Reynolds.

possession order, again raising the same claims. Those motions were also denied without a hearing.

On September 12, 2016, Fannie Mae filed a "Request for Writ of Possession" and, thereafter, the clerk of court issued a writ directing the Sheriff to evict Bell. Bell then filed two "Emergency Motions to Set Aside Execution of Writ of Possession," claiming that the clerk had illegally issued the writ because the circuit court had not yet ruled on Fannie Mae's "Request for Writ of Possession." The circuit court denied those motions but the writ was later recalled when appellant filed a petition for Chapter 13 bankruptcy.

Bell filed numerous notices of appeal from the circuit court's orders, which we have consolidated. Although Bell raises twenty-one issues, they reduce to four: (1) whether the circuit court erred in issuing the possession order before the auditor's report was ratified; (2) whether the circuit court erred in denying Bell's motions to dismiss the foreclosure action and to vacate or stay the possession order because, she claims, she was not properly served with Fannie Mae's response; (3) whether the circuit court erred in not holding a hearing on her motions to dismiss the foreclosure action and to vacate or stay the possession order; and (4) whether the clerk illegally issued Fannie Mae a writ of possession because the circuit court had not yet ruled on its "Request for Writ of Possession." For the reasons that follow, we affirm.

First, Bell only raises a single challenge to the merits of the possession order. Specifically, she asserts that it was prematurely issued because the auditor's report had not been ratified. However, a purchaser of property at a foreclosure sale is generally entitled to seek possession of that property "when the sale is ratified by the Circuit Court." *Empire*

Properties v. Hardy, LLC, 386 Md. 628, 651 (2005). "To invoke [Rule 14-102], the purchaser must show that (1) the property was purchased at a foreclosure sale, (2) the purchaser is entitled to possession, and (3) the person in possession fails or refuses to relinquish possession." *G.E. Capital Mortgage Servs., Inc.,* 144 Md. App. 449, 457 (2002). Here, Fannie Mae purchased the property at the foreclosure sale, the circuit court ratified that sale, and Bell did not appeal. Moreover, Bell does not claim on appeal that Fannie Mae otherwise failed to meet the requirements of Rule 14-102. Consequently, the trial court did not err in issuing the possession order prior to the auditor's report being filed.

Bell alternatively contends that the possession order should have been vacated, and the foreclosure case dismissed, because she was not properly served with Fannie Mae's response. As an initial matter, Bell claims that Fannie Mae was required to serve her in person or via certified mail. However, Maryland Rule 14-102(d)(2)(A) provides that, when seeking a judgment awarding possession, a person who was a party to the underlying foreclosure action only needs to be served in accordance with Rule 1-321. In turn, Rule 1-321 provides that, other than original service, service shall be made "by mailing it to the address most recently stated in a pleading or paper filed by the . . . party."

Having determined that service by first-class mail was appropriate, we next address Bell's claim that she was not properly served because she did not receive Fannie Mae's response until after the circuit court issued the possession order. Here, the certificate of service attached to Fannie Mae's response indicates that it was mailed to Bell on June 14, 2016, sixteen days before the court issued its order. Although Bell claimed not to have received the response until approximately one month later, something more than a mere

denial of receipt is necessary to rebut the presumption of service that arises for a certificate of service. *Murnan v. Joseph J. Hock, Inc.*, 274 Md. 528, 531-32 (1975). Moreover, Bell's motions to vacate were unsupported by an affidavit, as required by Maryland Rule 2-311(d), and also included exhibits that confirmed that Fannie Mae had mailed the response via first-class mail on the date indicated in the certificate of service. Finally, even assuming that Bell did not actually receive Fannie Mae's response until after the court had ruled on its original motion, service was proper, because "[s]ervice by mail is complete upon mailing." Md. Rule 1-321. Further, Bell's motions did not indicate how she was prejudiced by the alleged delay in receiving Fannie Mae's response or indicate what issues she would have raised if she had received the response at an earlier date. Consequently, the trial court did not err in denying her motions to vacate the judgment awarding possession and dismiss the foreclosure case based on insufficient service.

Bell also asserts that the court erred in denying her motions to vacate or stay the possession order without a hearing.[2] Because those motions sought to revise or amend the possession order, we construe them as having been filed pursuant to either Maryland Rule 2-534(b) or Maryland Rule 2-535(b). Consequently, no hearing was required. *See* Md. Rule 2-311(e) (stating that unless the trial court grants a motion to amend the judgment, no hearing is required); *see also Pelletier v. Burson*, 213 Md. App. 284, 293 (2013) (holding

[2] To the extent Bell also claims that the court was required to hold a hearing on Fannie Mae's motion for judgment of possession, we note that no hearing was required because neither party requested a hearing. *See* Maryland Rule 2-311(f) ("A party desiring a hearing on a motion, other than a motion filed pursuant to Rule 2-532, 2-533, or 2-534, shall request the hearing in the motion or response under the heading "Request for Hearing.").

that the trial court was not required to hold a hearing before denying a Rule 2-535(b) motion because it was not a dispositive motion). Moreover, even assuming that a hearing was required, in light of the fact that Bell's motions did not set forth a valid basis to vacate the judgment of possession, reversal would not be required. *See Express Auction Servs., Inc. v. Conley*, 127 Md. App. 447, 450 (1999) (noting that, although the circuit court committed error in granting summary judgment without holding a hearing, remanding the case to hold a hearing would nonetheless serve no practical purpose).

Finally, Bell asserts that the clerk of court unlawfully issued a writ of possession for her home on September 14, 2016, because the trial court had not yet ruled on Fannie Mae's Request for a Writ of Possession. That writ, however, was recalled on October 17, 2016, after Bell filed her bankruptcy petition, and no new writ has been issued. Consequently, this issue is moot. *See Hill v. Scartascini*, 134 Md. App. 1, 4 (2000) (noting that "[a] question is moot if, at the time it is before the court, there is no longer an existing controversy between the parties, so that there is no longer any effective remedy which the court can provide" (internal quotation marks and citation omitted)).

We note, however, that, even if the issue were not moot, we would find no error. Because the circuit court had previously issued an order awarding Fannie Mae a judgment of possession, it was not required to rule on Fannie Mae's "Request for Writ of Possession" before the clerk of court could issue the writ of possession. *See* Maryland Rule 2-647 ("Upon the written request of the holder of a judgment awarding possession of property,

the clerk shall issue a writ directing the sheriff to place that party in possession of the property.").

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