Circuit Court for Prince George's County
Case No. CAE12-31118

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2230

September Term, 2016

GLADSTONE DAINTY

v.

THOMAS P. DORE, *et al.*

Meredith,
Arthur,
Eyler, James R.
(Senior Judge, Specially Assigned),
JJ.

Opinion by Arthur, J.

Filed: November 20, 2017

The substitute trustees under a deed of trust scheduled a foreclosure sale. The circuit court denied the homeowner's motion to stay the sale and to dismiss the foreclosure action. Months later, after the sale had occurred, but before it had been ratified, the court overruled the homeowner's exceptions to the sale. The homeowner noted this appeal, purportedly as to both rulings. However, because the appeal is too late to challenge the denial of the motion to stay the sale and too early to challenge anything else, we are unable to reach the merits.

FACTUAL AND PROCEDURAL HISTORY

On September 25, 2012, the substitute trustees, Thomas Dore, *et al.*, on behalf of U.S. Bank N.A., initiated a foreclosure proceeding against Mr. Gladstone Dainty in the Circuit Court for Prince George's County. On July 12, 2013, Mr. Dainty filed for protection from his creditors under Chapter 11 of the United States Bankruptcy Code. As a consequence, the foreclosure proceeding was stayed. *See* 11 U.S.C. § 362.

In an order that was docketed on July 7, 2015, the bankruptcy court confirmed Mr. Dainty's Chapter 11 plan of reorganization. By some point in early 2016, the automatic stay had been lifted, and the foreclosure proceeding could go forward.

The substitute trustees set a foreclosure sale for June 17, 2016. A day before the scheduled sale, Mr. Dainty filed what he called a "Motion to Stay and Dismiss" the foreclosure proceedings, as well as a separate complaint against the servicer of the mortgage loan.

Despite Mr. Dainty's motion to stay, the foreclosure sale took place the following day, and the property was sold to U.S. Bank N.A. On July 5, 2016, Mr. Dainty filed exceptions to the foreclosure sale, raising, as he puts it, "the same arguments asserted in the motion to stay and dismiss."

On August 1, 2016, the circuit court denied Mr. Dainty's motion to stay and dismiss. Mr. Dainty did not note an appeal within 30 days of that ruling.

On November 29, 2016, the circuit court denied Mr. Dainty's exceptions to the foreclosure sale. Twenty-eight days later, Mr. Dainty filed a notice of appeal.

DISCUSSION

Mr. Dainty poses four questions for appellate review. But because his appeal is both too late to challenge the denial of the motion to stay and dismiss and too early to challenge the foreclosure sale, we lack jurisdiction to decide those questions.

I. FINAL ORDERS

Generally, parties may appeal only upon the entry of a final judgment. Md. Code (1974, 2013 Repl. Vol.), § 12-301 of the Courts and Judicial Proceedings Article ("a party may appeal from a final judgment entered in a civil or criminal case by a circuit court"). One of the necessary elements of a final judgment is that the order must adjudicate or complete the adjudication of all claims against all parties. *See*, *e.g.*, *Waterkeeper All., Inc. v. Maryland Dep't of Agric.*, 439 Md. 262, 278 (2014) (citing *Rohrbeck v. Rohrbeck*, 318 Md. 28, 41 (1989)); *Zilichikhis v. Montgomery County*, 223 Md. App. 158, 171-72 (2015).

"[A] ruling must ordinarily have the following three attributes to be a final judgment: (1) it must be intended by the court as an unqualified, final disposition of the matter in controversy, (2) unless the court acts pursuant to Maryland Rule 2-602(b) to direct the entry of a final judgment as to less than all of the claims or all of the parties, it must adjudicate or complete the adjudication of all claims against all parties; [and] (3) it must be set forth and recorded in accordance with Rule 2-601." *Metro Maint. Sys. South, Inc. v. Milburn*, 442 Md. 289, 298 (2015) (citing *Rohrbeck v. Rohrbeck*, 318 Md. at 41); *Maryland Bd. of Physicians v. Geier*, 225 Md. App. 114, 129-30 (2015). In addition, under Rule 2-601(a), "[e]ach judgment" must "be set forth on a separate document." *See Hiob v. Progressive American Ins. Co*., 440 Md. 466, 497 (2014).

"This Court has jurisdiction over an appeal when the appeal is taken from a final judgment or is otherwise permitted by law, and a timely notice of appeal was filed." *Doe v. Sovereign Grace Ministries, Inc*., 217 Md. App. 650, 661 (2014). We have the duty to ask, on our own motion, whether we lack appellate jurisdiction. Md. Rule 8-602(a); *see Zilichikhis v. Montgomery County*, 223 Md. App. at 172 ("[b]ecause the absence of a final judgment may deprive a court of appellate jurisdiction, we can raise the issue of finality on our own motion").

In a foreclosure action, a court does not enter a final judgment at least until it has ratified the foreclosure sale. *See Balt. Home All., LLC v. Geesing*, 218 Md. App. 375, 383 & n.5 (2014); Md. Rule 14-305(e). Moreover, if the court refers the matter to an auditor to state an account, as it may under Rule 14-305(f), it will not enter a final

judgment until it has adjudicated any exceptions to the auditor's report. *See Balt. Home All., LLC v. Geesing*, 218 Md. App. at 383 n.5.

As of the date of Mr. Dainty's appeal in this case, the circuit court had neither ratified the foreclosure sale, nor referred the matter to an auditor, nor adjudicated any exceptions to an auditor's report. In fact, in the order in which it rejected Mr. Dainty's exceptions to the foreclosure sale, the court specifically ordered that the case "shall continue in due course." Mr. Dainty, therefore, has taken a premature appeal, before the entry of a final judgment. Because we acquire no appellate jurisdiction over a premature appeal, we must dismiss the appeal insofar as Mr. Dainty seeks review of the order that was entered on November 29, 2016.[1]

II. APPEALABLE INTERLOCUTORY ORDERS

"In general, '[a]n order that is not a final judgment is considered to be an interlocutory order and ordinarily is not appealable unless it falls within one of the statutory exceptions set forth in [§ 12-303 of the Courts and Judicial Proceedings

[1] Although the final judgment rule has exceptions, none apply. Rule 2-602(b) does not apply, because the court did not adjudicate one or more but fewer than all of the claims in the action, and because the court did not certify in a written order that there was no just reason for delay. The collateral order doctrine does not apply, because the rulings at issue are not separate from the merits. *See Maryland Bd. of Physicians v. Geier*, 225 Md. App. at 611. Nor can Mr. Dainty invoke the benefit of any of the provisions in the Maryland Rules that save certain premature appeals. Rule 8-602(d) does not apply, because Mr. Dainty did not note an appeal after the court had announced a ruling that would terminate the action, but before the ruling was entered on the docket. Rule 8-602(e) does not apply, because the circuit could not have certified its ruling as a final judgment under Rule 2-602(b).

Article].'" *Balt. Home All., LLC v. Geesing*, 218 Md. App. at 383 (alterations in original) (quoting *In re Samone H.*, 385 Md. 282, 298 (2005)).

Section 12-303(c)(3)(iii) allows a party to appeal from an order "[r]efusing to grant an injunction." Because Mr. Dainty's motion to stay and dismiss "contemplated injunctive relief as a remedy" (*Fishman v. Murphy ex rel. Estate of Urban*, 433 Md. 534, 540 n.2 (2013)), he had the right, under 12-303(c)(3)(iii), to take an immediate appeal from the interlocutory order by which the circuit court denied that motion. *Id.*; *see Tower Oaks Blvd., LLC v. Procida*, 219 Md. App. 376, 390 n.1 (2014); *see also Bates v. Cohn*, 417 Md. 309, 328-29 (2010).[2]

Nonetheless, if Mr. Dainty wanted to take an interlocutory appeal from the order denying his motion to stay and dismiss, he had to note his appeal within thirty days of the entry of the order. *In re Guardianship of Zealand W.*, 220 Md. App. 66, 78 (2014). "If the appeal is not filed within thirty days after the entry of an appealable interlocutory order, this Court lacks jurisdiction to entertain the interlocutory appeal." *Id.* (citing Md. Rule 8-202(a)).

Here, the circuit court denied Mr. Dainty's motion to stay and dismiss on August 1, 2016. He failed to note this appeal until December 27, 2016—nearly five months later.

[2] Mr. Dainty did not, however, have the right to take an interlocutory appeal under § 12-303(3)(v) from an order "[f]or the sale, conveyance, or delivery of real or personal property." *Balt. Home All., LLC v. Geesing*, 218 Md. App. at 383 n.5.

Thus, his appeal from the appealable interlocutory order was untimely, and we lack jurisdiction to entertain it.

APPEAL DISMISSED. COSTS TO BE PAID BY APPELLANT.