UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2420

September Term, 2015

EDWIN COLEMAN,

v.

MARK S. DEVAN, ET. AL.

Woodward,
Arthur,
Raker, Irma S.
(Senior Judge, specially assigned),

JJ.

Opinion by Raker, J.

Filed: February 21, 2017

Appellant, Edwin C. Coleman, appeals from the orders of the Circuit Court for Baltimore City denying his motions to dismiss foreclosure proceedings and to stay the sale of his property, and to alter or amend these adverse judgments. Appellant raises twelve questions for our review,[1] which we have rephrased as follows:

[1] The questions as presented by Coleman, which we recount *verbatim*, are:

> "1. Whether appellees had standing to foreclose on a property through a supposed chain of title not written, or recorded, as by State and Federal mandate?
> 2. Whether Circuit Court Judges in this matter issued orders according to the laws and mandates of State and Federal Statutes?
> 3. Whether the Circuit Court was ethical in this proceeding as defined by its Judicial Rules of Conduct?
> 4. Whether the requested Hearing in this cause should have been scheduled to hear more evidence of standing from each party?
> 5. Did the Circuit Court Judges [sic] actions in this case reach the level of violation of Maryland Real Property Code 7-318 (a) and (b)?
> 6. Whether the appellees in this case are / were obligated under Federal Rules and Guidelines, Under the Making Home Affordable Act, as participants in the Federal Government's program, to explore all options available under that program before a foreclosure action could begin?
> 7. Did the Circuit Court Judges err in making decisions about, and failing to recuse themselves from matters that they did not have a comprehensive Knowledge of?
> 8. Whether 'HELOC' loans (home equity lines of credit) come under the guidelines of the HAMP Program?
> 9. Whether the servicer were participants [sic] in this government funded program and violated the mandates thereof and its' [sic] agreement therewith?
> 10. Whether there are enough irregularities and improprieties in this case to warrant it as a miscarriage of justice?
> 11. Whether there is even default in this case, since appellant was eligible for and in the modification of the loan, [sic] process at the time of the initiation of the foreclosure?
> 12. Whether the Circuit Court Judges erred in denying the appellant's Motions to Alter or Amend Judgments filed in that Court on November 12, 2015; October 5, 2015; September 30, 2015, and August 21, 2015?"

"Was appellant timely in filing his notice of appeal?"

We shall hold that appellant's appeal was untimely and shall dismiss accordingly.

I.

This case arises out of an action to foreclose on real property owned by appellant. On June 5, 2001, appellant executed a deed of trust on his home at 856 Whitmore Avenue, Baltimore, Maryland 21216, in favor of Provident Bank of Maryland (hereinafter "Provident"), and executed a promissory note payable to Provident for an original principal sum of $23,000.00. The sum was thereafter increased on three subsequent occasions to a total sum of $70,000.00. M&T Bank is the current holder of the promissory note secured by a deed of trust.

On February 10, 2014, appellant defaulted by failing to make payments in accordance with the terms of the promissory note and the deed of trust. On July 8, 2014, a Notice of Intent to Foreclose was sent to appellant. On May 13, 2015, appellees initiated this suit by filing the Order to Docket.[2]

[2] Following default by a borrower, a lender may commence an action to foreclose a lien pursuant to a power of sale by filing an order to docket. Md. Rule 14-207(a)(1).

> "[A]n action to foreclose a lien on residential property may not be filed until the later of (1) 90 days after a default for which the lien instrument lawfully allows a sale, or (2) 45 days after the notice of intent to foreclose required by Code, Real Property Article, § 7-105.1(c), together with all items required by that section to accompany the notice, has been sent in the manner required by that section."

Md. Rule 14-205(b).

From the Order to Docket to this appeal, appellant filed a total of seven motions: three motions to stay and dismiss, and four motions to alter or amend judgments. All seven motions were based upon appellant's belief that he was not in default because he was entitled to a loan modification. On June 2, 2015, appellant filed his first Emergency Motion to Dismiss Foreclosure and Request for Hearing. On June 22, 2015, appellees responded to that motion. On July 16, 2015, the circuit court denied the motion to dismiss, finding that the motion was not submitted under oath or supported by affidavit, that appellant failed to set forth good cause why loss mitigation should have been granted, and that the motion did not on its face state a valid defense to the validity of the lien or the lien instrument or to the right of appellees to foreclose in the action.

After the first motion to dismiss was denied, appellant filed a request for foreclosure mediation on July 31, 2015. The foreclosure mediation was held on September 14, 2015, but no agreement was reached. Based on the Office of Administrative Hearings (OAH) report stating that the foreclosure mediation did not result in an agreement, the circuit court, on September 22, 2015, ordered that the secured party may schedule the foreclosure sale.

On August 3, 2015, appellant filed his second Emergency Motion to Dismiss Foreclosure and Request for Hearing. On August 11, 2015, the circuit court denied the motion without stating specific findings.[3]

[3] It is clear from the record that appellant did not remedy any of the deficiencies indicated by the court in the July 16, 2015 Order, which denied his first motion to dismiss.

On August 21, 2015, appellant filed his first Motion to Alter or Amend Judgment in response to the circuit court order of August 11, 2015. On September 8, 2015, appellees responded. On September 22, 2015, the circuit court denied the motion, noting that the court may deny the motion without a hearing if it concludes that the motion was not timely filed, did not substantially comply with the requirements of Md. Rule 14-211, or did not on its face state a valid defense to the validity of the lien or the lien instrument, or to the right of appellees to foreclose in the action.[4]

On September 30, 2015, appellant filed his second Motion to Alter or Amend Judgment in response to the circuit court order of September 22, 2015. On October 13, 2015, appellees responded. On November 2, 2015, the circuit court denied the motion without stating specific findings.

On October 5, 2015, appellant filed his third Motion to Alter or Amend Order in response to the circuit court order of September 22, 2015. On October 14, 2015, appellees responded. On November 13, 2015, the circuit court denied the motion without stating specific findings.

On October 7, 2015, appellant filed his third Motion to Dismiss the Action and to Stay the Sale. On October 22, 2015, appellees responded. On November 2, 2015, the

[4] The circuit court also found that the court is not required to exercise revisory power in addition to the fact that the order in question is not a judgment. Although the order in question was an appealable interlocutory order, it was a harmless error that would not have affected the disposition of this case.

circuit court denied the motion, finding that appellant failed to raise any new issues from his previous motions.

On November 12, 2015, appellant filed his fourth and final Motion to Alter or Amend Order in response to the circuit court order of November 2, 2015. On November 30, 2015, appellees responded to appellant's fourth motion to alter or amend judgment. On December 16, 2015, the circuit court denied the motion without stating specific findings.

Following the denial of the motions above, appellant filed his notice of appeal on January 12, 2016.

II.

In this appeal, appellant contends that there was no default in the case, and thus appellees lacked the requisite standing to foreclose. Appellant also asserts that the circuit court judges were unethical in failing to recuse themselves, despite their lack of knowledge of the pertinent laws, and making rulings inconsistent with the Home Affordable Modification Program (HAMP). Lastly, appellant alleges that the circuit court judges abused their discretion in denying his four motions to alter or amend judgments.

In their motion to dismiss, appellees argue that all of appellant's motions were premised on the arguments raised in appellant's first motion to dismiss, and thus appellant has no right to an appeal, as he was untimely in appealing the first motion. On the merits, appellees assert that, even if appellant was timely in bringing this appeal, the circuit court

did not abuse its discretion in denying appellant's motions to stay and dismiss, because appellant's motions to dismiss failed to meet the requirements under Md. Rule 14-211.[5]

III.

[5] Md. Rule 14-211, "Stay of the sale; dismissal of action," provides in relevant part:

"(a) Motion to Stay and Dismiss.

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(3) Contents. A motion to stay and dismiss shall:
(A) be under oath or supported by affidavit;
(B) state with particularity the factual and legal basis of each defense that the moving party has to the validity of the lien or the lien instrument or to the right of the plaintiff to foreclose in the pending action;

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(b) Initial Determination by Court.
(1) Denial of Motion. The court shall deny the motion, with or without a hearing, if the court concludes from the record before it that the motion:
(A) was not timely filed and does not show good cause for excusing non-compliance with subsection (a)(2) of this Rule;
(B) does not substantially comply with the requirements of this Rule; or
(C) does not on its face state a valid defense to the validity of the lien or the lien instrument or to the right of the plaintiff to foreclose in the pending action.
(2) Hearing on the Merits. If the court concludes from the record before it that the motion:
(A) was timely filed or there is good cause for excusing non-compliance with subsection (a)(2) of this Rule,
(B) substantially complies with the requirements of this Rule, and
(C) states on its face a defense to the validity of the lien or the lien instrument or to the right of the plaintiff to foreclose in the pending action, the court shall set the matter for a hearing on the merits of the alleged defense. The hearing shall be scheduled for a time prior to the date of sale, if practicable, otherwise within 60 days after the originally scheduled date of sale."

Before we analyze appellant's numerous contentions, we address first appellees' motion to dismiss and determine whether this appeal is timely; this is a jurisdictional issue. Md. Rule 8-202(a) provides that a "notice of appeal shall be filed within 30 days after entry of the judgment or order from which the appeal is taken." The requirement "that an order of appeal be filed within thirty days of a final judgment, is jurisdictional; if the requirement is not met, the appellate court acquires no jurisdiction and the appeal must be dismissed." *HIYAB, Inc. v. Ocean Petroleum, LLC.*, 183 Md. App. 1, 8 (2008). This 30-day deadline applies to interlocutory appeals.

> "[W]hen interlocutory appeals are permitted, however, such an appeal must be filed within thirty days of the entry of the order from which the appeal is taken. 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."

In re Guardianship of Zealand W., 220 Md. App. 66, 78-79 (2014).

The circuit court orders denying appellant's motions to stay and dismiss under Md. Rule 14-211 are proper for interlocutory appeal, as the nature of relief requested in the motions are that of an injunction. *See* Md. Code, Cts. & Jud. Proc. § 12-303(3); *Fishman v. Murphy ex rel. Estate of Urban*, 433 Md. 534, 540 n.2 (2013) ("The Estate had the right to appeal the Circuit Court's interlocutory order denying the Motion to Stay and Dismiss because the motion was made under Rule 14-211 and contemplated injunctive relief as a remedy."). Thus, the same 30-day deadline in the Rule applies to appellant's motions to stay and dismiss.

This 30-day deadline to file a notice of appeal is tolled, however, when a motion to alter or amend judgment under Md. Rule 2-534[6] is filed within ten days of the entry of judgment. Md. Rule 8-202(c) ("[W]hen a timely motion is filed pursuant to Rule . . . 2-534, the notice of appeal shall be filed within 30 days after entry of . . . an order . . . disposing of a motion pursuant to Rule . . . 2-534."); *Kamara v. Edison Bros. Apparel Stores*, 136 Md. App. 333, 336 (2001) ("[A]ppellant filed a motion to alter or amend judgment under Rule 2-534 within ten days of the entry of judgment, thus extending the time for appeal until 30 days after the court ruled on the motion to alter or amend . . . .").

For the purpose of tolling, a motion filed timely under Md. Rule 2-535(a)[7] will also have the same effect as a motion filed pursuant to Md. Rule 2-534. *See* Committee Note

[6] Md. Rule 2-534, "Motion to alter or amend a judgment – Court decision," provides:

> "In an action decided by the court, on motion of any party filed within ten days after entry of judgment, the court may open the judgment to receive additional evidence, may amend its findings or its statement of reasons for the decision, may set forth additional findings or reasons, may enter new findings or new reasons, may amend the judgment, or (footnote continued…) may enter a new judgment. A motion to alter or amend a judgment may be joined with a motion for new trial. A motion to alter or amend a judgment filed after the announcement or signing by the trial court of a judgment but before entry of the judgment on the docket shall be treated as filed on the same day as, but after, the entry on the docket."

[7] Md. Rule 2-535(a) provides:

> "(a) Generally. On motion of any party filed within 30 days after entry of judgment, the court may exercise revisory power and control over the judgment and, if the action was tried before the court, may take any action that it could have taken under Rule 2-534. A motion filed after the announcement or signing by the trial court of a judgment or the return of a verdict but before entry of the judgment on the docket shall be treated as filed on the same day as, but after, the entry on the docket."

to Md. Rule 8-202(c) ("A motion filed pursuant to Rule 2-535, if filed within ten days after entry of judgment, will have the same effect as a motion filed pursuant to Rule 2-534, for purposes of this Rule."); *Unnamed Att'y v. Att'y Grievance Comm'n*, 303 Md. 473, 486 (1985) ("A motion filed more than ten days after a judgment but within thirty days of the judgment, under Rule 2-535(a), would still have no effect upon the running of the thirty-day appeal period."); *Pickett v. Noba, Inc.*, 114 Md. App. 552, 557 (1997) ("If [a motion under Rule 2-535] is filed within ten days of judgment, it stays the time for filing the appeal; if it is filed more than ten days after judgment, it does not stay the time for filing the appeal.").

This tolling, however, cannot occur one after another; one cannot continuously file motions to alter or amend judgments that deny a previous motion to alter or amend judgment, thereby renewing the 30-day deadline *ad infinitum*. As the Court of Appeals explained:

> "Underlying this long settled rule is the principle that, once parties have had the opportunity to present before a court a matter for investigation and determination, and once the decision has been rendered and the litigants, if they so choose, have exhausted every means of reviewing it, the public policy of this State demands that there be an end to that litigation."

Schwartz v. Merchants Mortg. Co., 272 Md. 305, 308 (1974). "To interpret the rule in that manner would permit a party to extend the time for appeal *ad infinitum* based on the filing of successive motions within ten days after denial of the immediately preceding motion." *Leese v. Dep't of Labor, Licensing and Regulation*, 115 Md. App. 442, 445 (1997); *see also Office of People's Counsel v. Advance Mobilehome Corp.*, 75 Md. App. 39, 45-46

(1988) (denying Intervenors' argument that as long as their motion was filed within 30 days of the order denying appellee's motion to alter or amend, they may file a second motion to alter or amend the denial, as it would permit a succession of motions *ad infinitum*).

In the case *sub judice*, appellant filed three motions to stay and dismiss, and four motions to alter or amend judgment. The first motion to dismiss ("Motion #1") was filed on June 2, 2015, and denied on July 16, 2015. The third motion to stay and dismiss ("Motion #6") was filed on October 7, 2015, and denied on November 2, 2015. No subsequent actions were taken regarding either of these motions.

The second motion to dismiss ("Motion #2"), however, was followed by four subsequent motions to alter or amend judgment. After Motion #2 was filed on August 3, 2015, and denied on August 11, 2015, appellant filed his first motion to alter or amend ("Motion #3") on August 21, 2015, which was denied on September 22, 2015. Appellant then filed two motions to alter or amend ("Motion #4" and "Motion #5") the denial of Motion #3 on September 30, 2015, and October 5, 2015, respectively. Motion #4 was denied on November 2, 2015, and Motion #5 was denied on November 13, 2015, respectively. Lastly, appellant filed his fourth motion to alter or amend ("Motion #7") the denial of Motion #4 on November 12, 2015, which was denied on December 16, 2015.

Because appellant had filed his notice of appeal on January 12, 2016, he was well past the 30-day deadline to appeal the denial of his first and third motions to stay and dismiss (Motions ##1, 6). Next, the 30-day deadline to appeal the denial of his second

motion to dismiss (Motion #2) was tolled when appellant filed timely his first motion to alter or amend (Motion #3). Since Motion #3 was filed timely, within 10 days of the denial of Motion #2, the new deadline to appeal was 30 days from the denial of Motion #3, which occurred on September 22, 2015. Undeterred, appellant filed three more motions to alter or amend judgment (Motions ##4, 5, 7) instead of filing a notice of appeal within the 30 days. As discussed above, one cannot extend the appeal time *ad infinitum* by subsequently filing such motions. *See Leese*, 115 Md. App. at 445; *Office of People's Counsel*, 75 Md. App. at 45-46.

Indeed, this Court may treat a motion as a "motion to revise under Md. Rule 2-535 even if it is not labeled as such." *Pickett*, 114 Md. App. at 557. Even if this Court does treat the successive motions as revisory motions under Md. Rule 2-535, however, the subsequent motions would not have stayed the 30-day period for noting an appeal, as they were not filed in a timely manner within 10 days of the judgment. *See* Committee Note to Md. Rule 8-202(c); *Unnamed Att'y*, 303 Md. at 486; *Pickett*, 114 Md. App. at 557.

Appellant's time to appeal has long since expired. It seems, then, that appellant's only lifeboat would be "fraud, mistake, or irregularity," which would trigger a longer revisory deadline under Md. Rule 2-535(b). That Rule provides that "[o]n motion of any party filed at any time, the court may exercise revisory power and control over the judgment in case of fraud, mistake, or irregularity." In the event of fraud, mistake, or irregularity, "parties can file timely a Rule 2-535 motion more than thirty days after judgment." *Pickett*,

114 Md. App. at 557; *see also* Md. Code, Cts. & Jud. Proc. § 6-408. Fraud, mistake, or irregularity is not applicable here.

Although appellant decries in all of his motions to alter or amend judgment that the circuit court repeatedly made mistakes in reaching its determinations, the record does not support these allegations. Appellant's sole argument for arguing that the circuit court erred is based upon his belief that he was entitled to HAMP modifications. What the record does reflect, in fact, is that appellant did not submit the financial documents necessary for the loss mitigation analysis, which ultimately resulted in the denial of his relief under HAMP.[8]

We hold that appellant's notice of appeal was untimely. For the reasons stated above, we shall dismiss this appeal.[9]

APPELLEES' MOTION TO DISMISS APPEAL GRANTED. COSTS TO BE PAID BY APPELLANT.

[8] The Final Loss Mitigation Affidavit provides:

> "A loan workout packet was sent to the borrower on 6/1/2015. The packet was returned on 6/15/2015 but was missing necessary financial documents. A 'missing document' letter was sent to the borrower on 6/17/2015. Customer did not submit required information which was due back by 7/1/2015. The LWO was denied for failure to return on 7/3/2015 and a denial letter was sent on 7/6/2015."

[9] An alternative analysis, (that appellant's sequential motions to stay and dismiss, are at best, motions for reconsideration,) leads to the same result. Because appellant's gaggle of motions merely restate his first pleadings, which the court denied and he did not appeal, any appeal is unauthorized and untimely. *See* Rules 2-534 and 2-535.