Circuit Court for Calvert County
Case No. 04-C-15-001428

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1993

September Term, 2016

RYDELL ORLANDO GRAY

v.

LAURA O'SULLIVAN, ET AL.
SUBSTITUTE TRUSTEES

Eyler, Deborah S.,
Berger,
Leahy,

JJ.

Opinion by Eyler, Deborah S., J.

Filed: January 3, 2018

This case arises out of a foreclosure proceeding in the Circuit Court for Calvert County. Rydell Orlando Gray, the appellant, noted this appeal after the circuit court ratified the foreclosure sale of real property that had belonged to him. He presents two questions for review, which we have rephrased as three:[1]

I. Did the circuit court err by denying Gray's second motion to stay and dismiss without holding a hearing?

II. Did the circuit court err by denying Gray's motion to reconsider ratification of the foreclosure sale without holding a hearing?

III. Did the circuit court err by denying Gray's motion to join the estate of his deceased father as a party to the foreclosure proceeding?

We answer each question in the negative and shall affirm the judgment of the circuit court.

FACTS AND PROCEEDINGS

On March 14, 2002, Gray's father, Reynold Jerome Gray ("Reynold"), conveyed to Gray in fee simple residential real property located in Sunderland, Maryland ("the Property"). One year later, on March 28, 2003, Gray executed a deed ("2003 Deed")

[1] Gray phrased the questions as:

1. Were Appellant Rydell Gray's due process rights violated when the lower court denied Appellant Rydell Gray's Second Motion to Stay Foreclosure Sale and when it denied his Motion for Reconsideration of the Ratification of the Foreclosure Sale without hearings?

2. Did the lower court err in denying Appellant Rydell Gray's request that the Estate of Reynold Jerome Gray be included as a necessary party in the foreclosure proceeding?

granting Reynold a life estate in the Property. The 2003 Deed granted the remainder interest in the Property to Gray in fee simple. On February 7, 2005, Gray conveyed his interest in the Property to himself and Angel Veal ("Veal"), his then fiancée, as joint tenants.

On July 26, 2006, Veal obtained a $250,000 loan from Novastar Mortgage, Inc. She executed a note ("the Note") promising to pay back the money on the loan plus interest. The Note was secured by a deed of trust ("Deed of Trust") encumbering the Property. The Deed of Trust was signed by both Veal and Gray. In 2008, Veal stopped paying the loan, thereby defaulting on the Note.

In October 2010, Reynold died. Upon his death, his life estate in the Property extinguished and fee simple title vested in Gray and Veal.

In 2015, the Note was assigned to Deutsche Bank National Trust Company ("Deutsche"). Deutsche appointed substitute trustees,[2] the appellees in this appeal, to initiate foreclosure proceedings pursuant to a power of sale clause in the Deed of Trust. On November 24, 2015, the substitute trustees filed an Order to Docket. On December 2, 2015, Gray was personally served with the Order to Docket. By this point, Gray and Veal had broken up and had been out of contact "for a couple of years." Veal was not personally served with the Order to Docket despite multiple good faith attempts to do so;

[2] The substitute trustees are Laura O'Sullivan, Erin Shaffer, Diana Theologou, Laura Curry, Chasity Brown, Lauren Bush, Kelly Lynn Howard, Christianna Kersey, and Para Noh.

she was, however, served by posting and mailing in accordance with Rule 14-209(b) and Md. Code (1974, 2015 Repl. Vol.) section 7-105.1(h)(5) of the Real Property Article.

On March 14, 2016, Gray filed an emergency motion to stay and dismiss the foreclosure proceeding, asserting that he was not properly served and that the substitute trustees did not state a claim upon which relief could be granted. The substitute trustees filed an opposition to the motion and requested a hearing. On April 13, 2016, the court held a hearing on the motion. The court denied the motion the following day.

The foreclosure sale of the Property was scheduled to take place on July 26, 2016. On July 21, 2016, Gray filed a second emergency motion to stay and dismiss, under Rule 14-211. He requested a hearing. In his second motion, Gray argued that the substitute trustees had failed to join Reynold's estate ("the Estate") as a necessary party. The substitute trustees opposed the motion, arguing that the Estate was not a necessary party because Reynold only had a life estate in the property and it had ended upon his death. The substitute trustees also argued that Gray's second motion was not timely filed. On July 25, 2016, the court denied Gray's second motion without a hearing.

The next day, the Property was sold at auction. The substitute trustees filed a Report of Sale with the court on August 8, 2016. No exceptions were filed and the trial court entered an order of final ratification on September 14, 2016.

On September 22, 2016, Gray filed a motion to reconsider the ratification of the foreclosure sale and requested a hearing. In the motion, Gray again argued that the substitute trustees had failed to join the Estate as a necessary party. The substitute

trustees opposed the motion for reconsideration, arguing again that the Estate was not a necessary party. On November 4, 2016, the court denied Gray's motion for reconsideration without a hearing. Gray thereafter noted this timely appeal.

DISCUSSION

I.

Gray contends the circuit court erred by denying his second motion to stay and dismiss without holding a hearing. He maintains that the court's failure to hold a hearing violated the Maryland Rules and deprived him of due process.

Under Rule 14-211, a property owner may file a motion to stay the sale of property that is the subject of the foreclosure action and dismiss the action entirely. Md. Rule 14-211(a)(1). Such a motion must be timely filed (Md. Rule 14-211(a)(2)) and must include specified requirements, including a statement made with particularity of the factual and legal basis giving rise to each defense (Md. Rule 14-211(a)(3)).[3]

[3] In full, Rule 14-211(a)(3) states:

(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;
>
> . . .

(Continued…)

Rule 14-211(b)(1) provides that a motion to stay and dismiss may be denied with or without a hearing:

> *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.

(…continued)

> (C) be accompanied by any supporting documents or other material in the possession or control of the moving party and any request for the discovery of any specific supporting documents in the possession or control of the plaintiff or the secured party;
>
> (D) state whether there are any collateral actions involving the property and, to the extent known, the nature of each action, the name of the court in which it is pending, and the caption and docket number of the case;
>
> (E) state the date the moving party was served or, if not served, when and how the moving party first became aware of the action; and
>
> (F) if the motion was not filed within the time set forth in subsection (a)(2) of this Rule, state with particularity the reasons why the motion was not filed timely.
>
> To the extent permitted in Rule 14-212, the motion may include a request for referral to alternative dispute resolution pursuant to Rule 14-212.

Thus, if the court concludes that at least one of the three grounds for denial is present, the court shall deny the motion and may do so "with or without a hearing." On the other hand, if the court concludes that none of the three grounds for denial is present, a hearing on the merits is required by subsection (b)(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.

Gray argues that Rule 14-211(b)(2) applied and that he was entitled to a hearing on his motion to stay and dismiss. He states that his motion "raised the fundamental issue of the lack of necessary parties to the foreclosure proceeding" and that he "presented good cause for its filing and demonstrated his basis for the requested relief with exhibits and sworn statements." The substitute trustees counter that Gray's second motion was not timely filed and did not present a valid defense on its face.

Regardless of whether Gray's second motion to stay and dismiss was timely filed, it is clear that a hearing on that motion was not required because it did not present "a valid defense to the validity of the lien or the lien instrument or to the right of [the

substitute trustees] to foreclose in the pending action." Md. Rule 14-211(b)(1)(C). In *Buckingham v. Fisher*, 223 Md. App. 82 (2015), this Court considered what must be alleged in a Rule 14-211 motion for a defense to be deemed valid. Noting that Rule 14-211(a)(3)(B) and (C) require that defenses be stated "with particularity" and "be accompanied by any supporting documents or other material in the possession or control of the moving party," we opined that "under Rule 14-211, the pleading standard is more exacting than the pleading standard for an initial complaint." *Id.* at 91. We held that "each element of a defense must be accompanied by some level of factual and legal support." *Id.* at 91–92.

In his second motion to stay and dismiss, Gray argued that the foreclosure proceeding should have been dismissed because the Estate had an interest in the action and should have been joined as a necessary party under Rule 2-211. Rule 2-211 does not apply to foreclosure proceedings under Title 14 of the Maryland Rules, however. Rule 2-211(a) provides:

> **(a) Persons to Be Joined.** Except as otherwise provided by law, a person who is subject to service of process shall be joined as a party in the action if in the person's absence
>
> > (1) complete relief cannot be accorded among those already parties, or
> >
> > (2) disposition of the action may impair or impede the person's ability to protect a claimed interest relating to the subject of the action or may leave persons already parties subject to a substantial risk of incurring multiple or inconsistent obligations by reason of the person's claimed interest.

> The court shall order that the person be made a party if not joined as required by this section. If the person should join as a plaintiff but refuses to do so, the person shall be made either a defendant or, in a proper case, an involuntary plaintiff.

Thus, for a person to be joined as a necessary party under Rule 2-211, that person must be "subject to service of process." Process does not issue in foreclosure proceedings initiated pursuant to a power of sale (as happened here). *See* Md. Rule 14-207(a)(1) ("An action to foreclose a lien pursuant to a power of sale shall be commenced by filing an order to docket. *No process shall issue*.") (emphasis added).

Title 14 creates a unique procedure for foreclosure proceedings. *See Saunders v. Stradley*, 25 Md. App. 85, 95 (1975). When a person seeks to foreclose on residential real property, he or she must "serve on the borrower and the record owner a copy of all papers filed to commence the action[.]"[4] Md. Rule 14-209(a). The plaintiff does not serve process (which would be impossible as no process is issued), nor does the plaintiff serve persons other than the borrower and the record owner.

[4] The papers must also be

> accompanied (1) by the documents required by Code, Real Property Article, § 7-105.1 (h) and (2) if the action to foreclose is based on a certificate of vacancy or a certificate of property unfit for human habitation issued pursuant to Code, Real Property Article, § 7-105.11, by a copy of the certificate and a description of the procedure to challenge the certificate.

Md. Rule 14-209(a).

Gray does not assert that the Estate was a borrower or a record owner, and it is clear that it was not (nor had Reynold been).[5] Veal borrowed the money, and Veal and Gray executed the Deed of Trust. Accordingly, they were borrowers. Nor was the Estate a record owner, which is "a person who as of 30 days before the date of providing a required notice holds record title to the property or is the record holder of the rights of a purchaser under a land installment contract." Md. Rule 14-202(o). Reynold died more than five years before the substitute trustees filed the Order to Docket. Upon his death, his life estate in the Property extinguished and ownership vested in Gray and Veal in fee simple. *See* Karon J. Powell, 10 Maryland Law Encyclopedia, Estates § 16 ("A life estate terminates on the death of the person . . . on whose life the estate is limited.").

[5] "'Borrower' means:

(1) a mortgagor;

(2) a grantor of a deed of trust;

(3) any person liable for the debt secured by the lien;

(4) a maker of a note secured by an indemnity deed of trust;

(5) a purchaser under a land installment contract;

(6) a person whose property is subject to a lien under Code, Real Property Article, Title 14, Subtitle 2 (Maryland Contract Lien Act); and

(7) a leasehold tenant under a ground lease, as defined in Code, Real Property Article, § 8-402.3 (a)(6)."

Md. Rule 14-202(b).

Because Gray's second motion to stay and dismiss did not present any valid defense, it was within the court's discretion to deny the motion without a hearing. Md. Rule 14-211(b)(1); *Buckingham*, 223 Md. App. at 84 n.1 ("We note that Rule 14-211(b)(1) gives a trial court the discretion to deny a motion based on the record, without first holding an initial hearing."). There is no basis on which to hold that the court abused its discretion by denying Gray's non-meritorious motion without a hearing.[6]

Gray also argues that even if he was not entitled to a hearing under Rule 14-211, he nevertheless was entitled to a hearing under Rule 2-311(f). That rule provides:

> 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." The title of the motion or response shall state that a hearing is requested. *Except when a rule*

[6] For the first time on appeal, Gray argues that the State of Maryland should have been joined as a necessary party and that is another reason why his second motion to stay and dismiss should not have been denied without a hearing. The substitute trustees argue that this issue is not preserved for review and therefore is not properly before us. Gray responds that the want of a necessary party may be raised at any time, even for the first time on appeal. *See Southern Mgmt. Corp. v. Kevin Willes Constr. Co., Inc.*, 382 Md. 524, 548 n. 14 (2004) ("'Failure to join a necessary party . . . *may be raised at any time, including for the first time on appeal*.'" (quoting *Mahan v. Mahan*, 320 Md. 262, 272–73 (1990))) (emphasis in original). Of course, because Gray did not raise the issue of the State's being a necessary party in his motion to stay and dismiss, the court could not ascertain whether that was a valid defense in deciding whether to deny the motion and, if so, whether to hold a hearing. In any event, it is clear that even if Gray had raised the issue, it would not have been a valid defense.

The 2003 Deed granting Reynold a life estate was executed so Reynold could obtain medical assistance through the State. The State asserted a lien against the Property "during the period of [Reynold's] natural life and for a period not to exceed six (6) months beyond the death of" Reynold. That was the State's only interest, and the interest expired long before the foreclosure action was brought.

> *expressly provides for a hearing*, the court shall determine in each case whether a hearing will be held, but the court may not render a decision that is dispositive of a claim or defense without a hearing if one was requested as provided in this section.

(Emphasis added.) Because Gray's second motion to stay and dismiss was made pursuant to Rule 14-211, which expressly provides for a hearing and sets forth the criteria for when a hearing is appropriate, Gray was not entitled a hearing under Rule 2-311(f).

Finally, Gray complains that the denial of his second motion to stay and dismiss without a hearing violated his due process rights under Article 24 of the Maryland Declaration of Rights.[7] Specifically, he was deprived of his property (his house) without a meaningful opportunity to be heard.[8] There is no merit to this argument.

"'An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all circumstances, to apprize interested parties of the pendency of the action and afford them an opportunity to present their objections.'" *Griffin v. Bierman*, 403 Md. 186, 197 (2008) (quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)). And, as we have explained, the scope of property rights protected and the process that is due is "'created and [its] dimensions are defined by existing rules or understandings that stem

[7] Article 24 states "[t]hat no man ought to be taken or imprisoned or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or, in any manner, destroyed, or deprived of his life, liberty or property, but by the judgment of his peers, or by the Law of the land."

[8] Gray avers that had a hearing been held, he could have presented additional evidence, but does not identify what that additional evidence would have been.

from an independent source such as state law—rules or understandings that secure certain benefits and that support claims of entitlement to those benefits.'" *Elliott v. Kupferman*, 58 Md. App. 510, 521 (1984) (quoting *Bd. of Regents v. Roth*, 408 U.S. 564, 577 (1972)).

The circuit court acted within the authority granted to it by Rule 14-211 in denying Gray's request for a hearing on his second motion to stay and dismiss. Gray received notice of the foreclosure proceeding and had a sufficient opportunity to make known to the court, in his motion, the grounds on which he maintained that he was entitled to have the proceeding dismissed. It was not a violation of his due process right to be heard when, after being heard in writing, the court did not give him an opportunity for an oral hearing in the absence of his having put forth a valid defense.

II.

Gray next contends the court abused its discretion by denying his motion for reconsideration without a hearing. In the motion, he relied upon Rules 2-534 and 2-535.[9,10] On appeal, he relies on Rule 2-311(f), which we have quoted above.

[9] Md. Rule 2-534 provides, in relevant part:

> 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 may enter a new judgment.

[10] Rule 2-535(a) provides, in relevant part:

(Continued…)

Whether Gray's motion for reconsideration is considered under Rule 2-534 or 2-535 (both of which apply), he was not entitled to a hearing under Rule 2-311(f). Rule 2-311(e) plainly states that "[w]hen a motion is filed pursuant to Rule . . . 2-534, the court shall determine in each case whether a hearing will be held, but it may not *grant* the motion without a hearing." (Emphasis added.) In other words, it is within the court's discretion to hold a hearing on a Rule 2-534 motion if it denies that motion. It is only required to hold a hearing if it grants the motion. *See In re Adoption/Guardianship of Joshua M.*, 166 Md. App. 341, 357 (2005) ("[A] court is not required to hold a hearing prior to denying a motion under Rule 2-534.").

Moreover, Rule 2-311(f) only requires a hearing on a motion when a decision on that motion "is dispositive of a claim or defense[.]" A motion for reconsideration under Rule 2-535 is not a dispositive motion. "By denying [a] motion for reconsideration, the court merely refuse[s] to change its original ruling which had disposed of [the] claims. That ruling [is] not 'dispositive of a claim or defense,' and thus no hearing [is] mandated under Rule 2-311(f) even though a hearing was requested." *Lowman v. Consol. Rail Corp.*, 68 Md. App. 64, 75 (1986); *see also Pelletier v. Burson*, 213 Md. App. 284, 292–93 (2014) (explaining that a hearing on a Rule 2-535 motion was not required in a

(…continued)

> 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.

foreclosure proceeding because the "dispositive action . . . was the ratification of the sale," rather than the denial of the post-judgment motion). Accordingly, the circuit court was not required to hold a hearing on Gray's motion to reconsider, and did not abuse its discretion by declining to do so. His due process argument fails for the reasons we already have explained.

III.

Finally, in discussing the reasons why the court did not err or abuse its discretion in ruling on Gray's second motion to stay and dismiss without holding a hearing, we have explained why there is no merit in his substantive argument that the Estate (or the State) were necessary parties to this foreclosure action.

JUDGMENT OF THE CIRCUIT COURT FOR CALVERT COUNTY AFFIRMED. COSTS TO BE PAID BY THE APPELLANT.