

Circuit Court for Carroll County
Case No. C-06-CV-19-000268

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2037

September Term, 2021

TERENCE J. MCGRATH, *et al.*

v.

EDWARD S. COHN, *et al.*

Nazarian,
Ripken,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: October 27, 2022

*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.

In 2019, appellees,¹ acting as substitute trustees, filed an Order to Docket in the Circuit Court for Carroll County, seeking to foreclose on real property owned by Terence J. McGrath, appellant, and Lynn McGrath.² The property was ultimately sold at a foreclosure auction and the court entered an order ratifying the sale on December 7, 2021. The foreclosure purchaser filed a motion for judgment of possession on February 16, 2022. Eight days later, appellant filed an opposition wherein, for the first time, he asserted that the court had “not render[ed] a judgement [sic]” on a motion to stay that he had filed prior to the foreclosure sale (the motion to stay). The court entered an order on March 22, 2022 awarding possession of the property to the foreclosure purchaser. Thereafter, appellant filed several motions raising the same claim regarding the motion to stay, including an “Emergency Motion to Stay Judgment Awarding Possession and Writ of Possession;” a “Motion to Request Court to Enter a Judgment from Hearing on 02/12/2021;” and an “Emergency Motion to Reconsider” (collectively the post-judgment motions). The court denied all those motions without a hearing. This appeal followed.

On appeal, appellant raises three issues: (1) whether the court erred in not entering a judgment in a separate docket entry addressing the motion to stay; (2) whether the court erred in not allowing him to submit exhibits at the hearing on the motion to stay; and (3)

¹ Appellees are Edward S. Cohn, Stephen N. Goldberg, Christianna J. Kersey, Michael J. McKeefery, Richard J. Rogers, and Richard E. Solomon.

² Lynn McGrath did not sign the notice of appeal or the brief. Consequently, she is not a party to this appeal.

whether the court erred in not granting the motion to stay. For the reasons that follow, we shall affirm.

All of appellant’s claims on appeal relate to the court’s handling of the motion to stay, which he filed prior to the foreclosure sale. However, the court ratified the foreclosure sale in December 2021. And in a foreclosure action, an order ratifying a foreclosure sale represents the “final judgment as to any rights in the real property[.]” *Huertas v. Ward*, 248 Md. App. 187, 205 (2020).³ Appellant did not file a timely notice of appeal following the entry of ratification order. *See* Maryland Rule 8-202(a) (stating that a “notice of appeal shall [generally] be filed within 30 days after entry of the judgment or order from which the appeal is taken”). Consequently, the validity of the ratification order is not properly before us in this appeal.

To be sure, in his opposition to the motion for judgment to possession, appellant claimed that the court had failed to resolve his motion to stay. And his notice of appeal was timely as to the court’s order awarding possession to the foreclosure purchaser. However, the scope of an appeal of an order granting or denying possession is quite limited. *Manigan v. Burson*, 160 Md. App. 114, 119 (2004). “The appeal must pertain to the issue of possession . . . and may not be an attempt to relitigate issues that were finally

³ In his brief, appellant contends that the court’s resolution of the motion to stay would have constituted a final judgment. He thus asserts that no final judgment was entered in this case because the court did not enter an order addressing the motion to stay in a separate docket entry, as required by Maryland Rule 2-601. Although orders granting or denying preliminary injunctive relief can be immediately appealed, they still are interlocutory orders, not final judgments. Consequently, appellant’s reliance on Rule 2-601 is misplaced.

resolved in a prior proceeding.” *Id.* Because appellant’s claim that the court failed to rule on his motion to stay involved the propriety of the foreclosure sale, which had already been ratified, and not the issue of possession, it was not a proper defense to the motion for judgment of possession. Therefore, the court did not err in awarding possession of the property to the foreclosure purchaser.

Appellant also raised the issues relating to his motion to stay in his post-judgment motions, the denial of which he also timely appealed. But those motions were filed more than 30 days after the entry of the ratification order. Thus, the court only had revisory power over the ratification order pursuant to Maryland Rule 2-535(b). *See Kent Island, LLC v. DiNapoli*, 430 Md. 348, 366 (2013) (noting that after 30 days have passed after the entry of a final judgment, a court may only modify its judgment upon a motion filed pursuant to Rule 2-535(b)). To vacate or modify an enrolled judgment pursuant to Rule 2-535(b), a movant must establish the existence of either fraud, mistake, or irregularity. But appellant’s post-judgment motions did not mention Rule 2-535(b). Moreover, none of appellant’s claims raised in those motions demonstrated the existence of fraud, mistake, or irregularity, as those terms are used in Rule 2-535(b). *See generally Peay v. Barnett*, 236 Md. App. 306, 321 (2018) (“Maryland courts have narrowly defined and strictly applied the terms fraud, mistake, [and] irregularity, in order to ensure finality of judgments.” (quotation marks and citation omitted)). Consequently, the court also did not abuse its discretion in denying appellant’s post-judgment motions.

Finally, we note that even if appellant had raised his claims regarding the motion to stay in a timely appeal from the ratification order, we would still affirm. Although

appellant asserts that the court erred in not rendering a judgment following the February 12, 2021, hearing on his motion to stay, a hearing sheet entered on the docket the same day indicates that the motion was denied by docket entry.⁴ Moreover, even if the court did not rule on his motion, as appellant claims, he failed to bring that issue to the court’s attention at any point prior to the court’s order ratifying the sale, which was not entered on the docket until approximately 10 months after the hearing on his motion to stay. Consequently, he waived the right to raise this issue on appeal. *See Malarkey v. State*, 188 Md. App. 126, 156 (2009) (“A party cannot complain about the court’s failure to rule on a pending motion unless it has brought [it] to the attention of the trial court.” (internal quotation marks and citation omitted)).

Finally, and most importantly, appellant’s claim that the court should have granted the motion to stay lacks merit. Because appellant’s motion to stay was filed more than 15 days after the date foreclosure mediation was held, it was not timely. *See* Maryland Rule 14-211(a)(2)(A)(iii)(a). And the motion did not state with particularity why it was not timely filed. Thus, the circuit court was required to deny the motion. *See* Rule 14-211(b)(1)(a) (providing that the court “shall” deny a motion to stay or dismiss when it was not timely filed and does not show good cause for excusing noncompliance).

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

⁴ The hearing sheet contains a statement that the motion was being held under advisement. However, that statement is crossed out.