Circuit Court for Caroline County
Case No.: 05-C-14-017803

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2148

September Term, 2017

DERRICK M. COMFORT, ET UX.

v.

JAMES E. CLARKE, ET AL.

Reed,
Beachley,
Salmon, James P.
(Senior Judge, Specially Assigned),
JJ.

Opinion by Salmon, J.

Filed: October 21, 2019

The appellants in this appeal are Derrick M. Comfort and his wife, Catherine A. Comfort. On October 25, 2006, Derrick Comfort executed a promissory note ("Note"). On that same date, both Mr. Comfort and his wife executed a deed of trust. The Note was in the amount of $640,000 and was secured by the aforementioned deed of trust, which encumbered the Comforts' property located at 22192 Hillsboro Road, Denton, MD ("the Property"). The Comforts thereafter failed to make the required monthly payments on the Note. As a consequence, on December 12, 2014, several substitute trustees, who alleged that they were appointed by the holder of the Note to institute a foreclosure action against the Property, filed an order to docket foreclosure in the Circuit Court for Caroline County.

Mr. and Mrs. Comfort filed a motion to dismiss the foreclosure action on several grounds. One of those grounds was that the substitute trustees failed to attach the original Note and "mortgage," to the order to docket even though those documents contained the key terms and conditions of the underlying agreement as well as possible notations and/or amendments identified solely in the original Note and "mortgage." The Comforts also contended that the substitute trustees had not been validly appointed. Thereafter, numerous pleadings were filed by the Comforts many of which concerned the fact that the substitute trustees had not filed an accurate copy of the Note with their initial order to docket.

On September 15, 2016, the appellees, who are James E. Clarke and four other substitute trustees, filed an amended order to docket. This time they attached a different copy of the Note, which they claimed was a correct copy. Thereafter, Mr. and Mrs. Comfort, by counsel, filed a series of pleadings including a motion for default judgment.

Those pleadings all attempted, in one way or another, to have the amended order to docket dismissed. On October 7, 2016, the circuit court denied the appellants' motion for default and for dismissal.

The Property was scheduled to be sold on January 25, 2017. The Comforts, on January 25, 2017, filed a motion for contempt, sanctions, and for a merits hearing. They also filed, on that same date, an emergency motion for temporary restraining order, a motion to shorten time to respond to the emergency motion and a request for a waiver of bond. Despite those filings, the sale went forward as scheduled.

The substitute trustees, on February 13, 2017, filed a report of sale in which they reported that the property had been sold on January 25, 2017 for the sum of $802,687.33.

The Comforts, on March 16, 2017, filed a pleading entitled "Motion to Stay Ratification of Foreclosure Sale Upon Exceptions, Counter-Claim for Quiet Title, Extrinsic Fraud and Other Relief[.]" The substitute trustees filed an opposition to the aforementioned motion along with a motion to strike and/or dismiss the counter-claims. On August 30, 2017, the circuit court held a hearing on the exceptions filed by appellants, as well as on all pending motions. The Comforts objected to the hearing itself, claiming that they were entitled to a jury trial on all "issues triable," including the claim that the substitute trustees lacked a sufficient chain of title and that the substitute trustees were guilty of extrinsic fraud. After voicing those objections, counsel for the Comforts chose to present no evidence.

The circuit court, on October 10, 2017, filed a memorandum explaining why the exceptions were denied and why the counter-claim was being dismissed. The judge concluded his opinion by stating:

> Defendants include two Counter-Claims in their Motion to Stay Ratification of the Foreclosure Sale. These claims are untimely and are, therefore, dismissed.
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> * * *
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> UPON CONSIDERATION of the filings in the above referenced matter and the Exceptions Hearing that took place on August 30, 2017, it is this 10th day of October, 2017, in the Circuit Court for Caroline County hereby:
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> ORDERED that the allegations that the Foreclosure Sale was held in violation of a Stay of Sale are DENIED as MOOT, in light of the Court's October 7, 2016 Order; and it is further
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> ORDERED that Defendants' outstanding Emergency Motion for Temporary Restraining Order is DENIED as MOOT, in light of the untimeliness of the Motion and the scheduled Sale having taken place; and it is further
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> ORDERED that all exceptions, other than exception number 4, are outside the Scope of Rule 14-305(d), and are therefore DENIED; and it is further
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> ORDERED that exception number 4 is DENIED; and it is further
>
> ORDERED that Defendants' Counter-Claims are DISMISSED as untimely, and it is further
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> ORDERED that Defendants' Motion to Stay Ratification of Foreclosure Sale Upon Exceptions, Counter-Claim for Quiet Title, Extrinsic Fraud and Other Relief, and Memorandum of Law in Support Thereof is DENIED.

Mr. and Mrs. Comfort filed a notice of appeal on November 9, 2017. The notice stated that their appeal was from "the final judgment of the Circuit Court dated October 10, 2017 and each interlocutory judgment in this matter." On the same date that they filed their appeal notice, the Comforts also filed a motion to reconsider the October 10, 2017 order. The circuit court reserved ruling on the motion to reconsider until the subject appeal "was resolved."

The appellants filed this appeal even though no order ratifying the sale had been filed. The substitute trustees filed a motion to dismiss the appeal, on the grounds that no final order existed in this case. For the reasons that follow we shall grant the appellees' motion to dismiss.[1]

[1] Based on the issues raised by appellants in their brief, it is likely that appellants will file a new notice of appeal after the circuit court enters a final order in this matter. Therefore, although we do not dismiss the appeal on this basis, we feel compelled to point out that appellants' brief violates numerous rules of appellate practice as prescribed by the Maryland Rules. For example, Rule 8-504(a)(2) requires an appellant's brief to contain a "brief statement of the case, indicating the nature of the case, the course of the proceedings, and the disposition in the lower court[.]" But other than noting that this is an appeal from a foreclosure case, appellants' "Statement of the Case" does not provide a history of the proceedings or the current procedural posture of the case. In fact, it does not even identify the order or orders being appealed. Instead, the "Statement of the Case" is mostly a series of allegations of misconduct by appellees, including assertions that appellees failed "to disclose [their] breach in chain of title," filed "false foreclosure documents with the court," and "ignored expert forensic proof of [appellants'] qualification for [the Home Affordable Modification Program.]" These argumentative claims, which are not supported by reference to specific pages in the record extract, are wholly inappropriate in a "Statement of the Case."

Appellants' "Statement of the Facts" is equally problematic in that it also reads like an argument rather than a recitation of the relevant facts. Moreover, the facts that are set forth in appellants' brief are neither "clear" nor "concise," as required by Rule 8-504(a)(4).

(continued . . .)

DISCUSSION

All the relevant law necessary to resolve this case is set forth in *McLaughlin v. Ward*, 240 Md. App. 76 (2019). In *McLaughlin*, a foreclosure action was filed in the Circuit Court for Baltimore County. Thereafter, the circuit court denied exceptions to the sale of the property on October 27, 2017. One of the parties to the foreclosure action, Dominion Rental Holdings, LLC ("Dominion"), filed an immediate appeal without waiting for the sale to be ratified. We dismissed the appeal. *Id*. at 89. Judge Arthur, speaking for this Court, explained why dismissal was necessary:

> In a foreclosure case, a court does not enter a final judgment at least until it has ratified the foreclosure sale. *See Balt. Home Alliance, LLC v.*

(. . . continued)
On several occasions appellants discuss events that occurred in the circuit court without providing adequate background information. For example, on page 13 of their brief, appellants reference a statement by the trial judge at a May 9, 2017, motions hearing but do not explain what was being litigated at that hearing or the eventual outcome. Even more concerning is that the "Statement of the Facts" contains no relevant information regarding what occurred at the August 30, 2017, hearing on appellants' exceptions to the foreclosure sale, despite the fact that they are appealing the court's order denying those exceptions.

Finally, Rules 8-504(a)(5) and (6) require that for each issue raised, an appellant shall set forth a "concise statement of the applicable standard of review" and "[a]rgument in support of the party's position[.]" Appellants' brief does not provide a standard of review for any of their questions presented. Moreover, it is difficult for us to even understand precisely what appellants are arguing in regard to many of their contentions set forth in the "Argument" section of their brief. For instance, appellants' brief includes argument that appellees violated the Maryland Consumer Protection Act, the Fair Debt Collection Practices Act, and the Truth in Lending Act, but made no showing as to how such alleged violations relate to any of their "Questions Presented."

These deficiencies are not exhaustive but are meant to provide guidance to appellants in the event that they file a new notice of appeal following the entry of a final judgment. In that case, we expect that their brief will fully comply with the Maryland Rules and note that any failure to do so could result in that appeal being dismissed.

> *Geesing*, 218 Md. App. 375, 383 & n.5, 97 A.3d 220 (2014); Md. Rule 14-305(e); *see also Hughes v. Beltway Homes, Inc.*, 276 Md. 382, 384, 347 A.2d 837 (1975) (stating that an order ratifying a foreclosure sale is a judgment because it is an order of the court final in its nature). Moreover, if the court refers the matter to an auditor to state an account, as it may under Rule 14-305(f), it may not enter a final judgment until it has adjudicated any exceptions to the auditor's report. *See Balt. Home Alliance, LLC v. Geesing*, 218 Md. App. at 383 n.5, 97 A.3d 220.
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> This case illustrates why the final judgment in a foreclosure proceeding does not occur at least until the court ratifies the sale. Here, Dominion acquired an inchoate equitable interest in the property in the first foreclosure sale, and there were either no exceptions or no successful exceptions to that sale. Yet the court declined to ratify the first sale because of defects unrelated to the sale itself – problems with service at the outset of the case, which the trustees determined to be incurable. Had the court declined to ratify the second sale after Dominion appealed from the denial of its exceptions, the appeal would have become completely superfluous: it would make no difference whether the court erred or abused its discretion in denying Dominion's exceptions if the court ultimately declined to ratify the sale on other, different grounds.
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> Furthermore, if the final judgment in a foreclosure proceeding could occur before the court ratifies the sale, there could be more than one final judgment in a single proceeding. It is conceivable that more than one party could file exceptions to the foreclosure sale: for example, both a homeowner and a junior lienholder might file exceptions. Yet, if the court ruled separately on each exception, and if the denial of each of the exceptions were considered to be a final, appealable judgment, then both of the exceptants could take their own, separate appeal. That result would obviously be in some tension with "Maryland's long-established policy against piecemeal appeals." *Waterkeeper Alliance, Inc. v. Md. Dep't of Agric.*, 439 Md. [262] at 278, 96 A.3d 105 [(2014)].

Id. at 83-84.

There are three exceptions to the general rule that an appeal may be taken only from a final judgment. *Id*. at 85. Appellants rely on one of those exceptions, i.e., the exception set forth in Md. Rule 2-602(b). As explained in *McLaughlin*:

> The second possible basis for an appeal, Rule 2-602(b), is an exception to the general rule that an order that adjudicates less than an entire claim, or that adjudicates the rights and liabilities of fewer than all the parties to the action, is not a final judgment; does not terminate the action as to any of the claims or any of the parties; and is subject to revision at any time before the entry of a judgment that adjudicates all of the claims by and against all of the parties. *See* Md. Rule 2-602(a). Under Rule 2-602(b):
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> > If the court expressly determines in a written order that there is no just reason for delay, it may direct in the order the entry of a final judgment:
> >
> > (1) as to one or more but fewer than all of the claims or parties; or (2) pursuant to Rule 2-501(f)(3), for some but less than all of the amount requested in a claim seeking money relief only.

Id. at 86-87.

The appellants claim that the circuit court, in this case, directed the entry of a final judgment pursuant to Md. Rule 2-602(b). In support of that argument, appellants rely on the language set forth in part of the court's October 10, 2017 order, which we have quoted in full at page 3, *supra*. More specifically, appellants rely on the language in the order denying appellants' motion to delay ratification of sale. Although appellants' argument is somewhat unclear, they apparently contend that the ruling by the court that there was no reason to delay consideration of whether the sale should be ratified, is the functional equivalent of ruling that the sale was ratified. That argument is invalid on its face. But even if that argument was valid, Rule 2-602(b) is plainly inapplicable because the court did not "expressly determine[] in a written order" that a final judgment should be entered as to any claim or any party, nor did the court determine in a written order that there was no just reason to delay entry of such an order.

Finally, it probably would have been an abuse of discretion to enter a Md. Rule 2-602(b) order in this case. The *McLaughlin* Court explained why:

> [E]ven if the court had made the required certification, it would probably have abused its discretion, because a court could not find the absence of any "just reason" to delay the entry of a final judgment as to one party when the ratification of the sale, and thus the end of the case for all parties, was close at hand. It would be completely inconsistent with Maryland's strong policy against piecemeal appeals to delay the imminent conclusion of this foreclosure proceeding to allow Dominion to pursue an immediate appeal of the order denying its exceptions and its motion to abate the purchase price. It would also be inconsistent with the policy against piecemeal appeals to allow Dominion to take an appeal that might become moot if the court, for some other reason, ultimately declined to ratify the sale. *See Canterbury Riding Condo. v. Chesapeake Investors, Inc.*, 66 Md. App. 635, 653, 505 A.2d 858 (1986) (in reviewing the propriety of certification under Rule 2-602(b), "[a] factor to be considered is that the determination of the remaining count before the trial court might utterly moot the need for the review now being sought"). Dominion, therefore, cannot rely on Rule 2-602(b) as a basis for its interlocutory appeal.

240 Md. App. at 87-88 (footnote omitted).

Appellants also argue that even if there is no final order in this case, appellees waived any objection to jurisdiction because at no time prior to filing their brief did the appellees raise any objection to this Court hearing this appeal. The short answer to this contention is that parties to an action may not confer jurisdiction on an appellate court by inaction or even by consent. *Department of Public Safety v. LeVan*, 288 Md. 533, 540 n.2 (1980).

APPEAL DISMISSED; COSTS TO BE PAID BY APPELLANTS.