

Circuit Court for Montgomery County
Case No. 382477V

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2368

September Term, 2018

KAMAL MUSTAFA, *et al.*

v.

CARRIE M. WARD, *et al.*

Kehoe,
Gould,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: December 30, 2019

*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 2013, appellees, acting as substitute trustees,¹ filed an Order to Docket in the Circuit Court for Montgomery County, seeking to foreclose on real property owned by Kamal and Fatima Mustafa, appellants. The property was sold at a foreclosure auction and the circuit court denied the Mustafas' exceptions to the sale in February 2015.

On August 27, 2018, the clerk entered an order dismissing the foreclosure action without prejudice for want of prosecution pursuant to Maryland Rule 2-507. Appellees filed a motion to vacate the dismissal order on September 10, 2018, noting that they had been unable to proceed with the foreclosure action because the court had not yet ratified the foreclosure sale. The circuit court granted the motion to vacate on September 17, 2018 and ordered that the case be reinstated for 90 days. On December 18, 2018, appellees filed a motion to defer dismissal, again asserting that they could not take further action to prosecute the case because the court had not ratified the sale. The court granted that motion on December 18, 2018, and deferred dismissal of the case for another 90 days.

The Mustafas now appeal from the September 17 order vacating the dismissal order and the December 18 order deferring dismissal of the foreclosure action.² On appeal, they claim that the court erred in entering both orders because PennyMac Corp., the current noteholder, is not a licensed mortgage lender in Maryland. Appellees disagree and have also filed a motion to dismiss the appeal as having been taken from a non-final order. For the reasons that follow, we shall grant appellees' motion to dismiss the appeal.

¹ Appellees are Carrie M. Ward, Howard N. Bierman, and Jacob Geesing.

² The appeals were consolidated on February 22, 2019.

Generally, “a party may appeal only from a final judgment.” *St. Joseph Med. Ctr., Inc. v. Cardiac Surgery Assocs.*, 392 Md. 75, 84 (2006) (internal quotation marks and citation omitted). To constitute a final judgment, a ruling of the court must have various attributes, among them that the judgment must be intended by the court to be an unqualified, final disposition of the matter in controversy and it must adjudicate all claims against all parties. *Rohrbeck v. Rohrbeck*, 318 Md. 28, 41 (1989). Here, the foreclosure case is still pending in the circuit court and the court has not yet ratified the sale. Consequently, no final judgment has been entered. *See McLaughlin v. Ward*, 240 Md. App. 76, 83 (2019) (“In a foreclosure case, a court does not enter a final judgment at least until it has ratified the foreclosure sale.”).

Moreover, no exception to the final judgment rule applies. The dismissal order never became an enrolled judgment because it was vacated within 30 days of it having been entered. And this Court has held that an order striking a judgment prior to it becoming enrolled is a non-appealable interlocutory order. *See Eastgate Associates v. Apper*, 34 Md. App. 384, 388-89 (1977).

The court’s order deferring dismissal of the foreclosure action is also not an appealable interlocutory order. First, it is not one of the limited types of interlocutory orders that may be immediately appealed pursuant to Section 12-303 of the Courts and Judicial Proceedings Article. Second, it may not be appealed pursuant to the collateral order doctrine as it does not conclusively resolve a disputed question and it may be reviewed following the entry of a final judgment. *See Maryland Bd. of Physicians v. Geier*, 451 Md. 526, 546 (2017) (noting that the collateral order doctrine is a “narrow exception”

to the final judgment rule that requires the interlocutory order being appealed to conclusively determine a disputed question, resolve an important issue, be completely separate from the merits of the action, and be effectively unreviewable on appeal from a final judgment).

Because no final judgment has been entered in this case and no exception to the final judgment rule applies, the appeal must be dismissed.

**MOTION TO DISMISS APPEAL
GRANTED. COSTS TO BE PAID BY
APPELLANTS.**