Circuit Court for Prince George's County
Case No. CAEF15-16453

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 3466

September Term, 2018

DARYL GREEN

v.

DIANE S. ROSENBERG, et al.

Arthur,
Beachley,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: September 10, 2020

In this appeal from a foreclosure action in the Circuit Court for Prince George's County, Daryl Green, appellant, challenges the denial of his (1) motion to alter or amend the judgment denying a "Motion/Request to Issue Summons for Counter Complaint;" and a "Motion to Raise Violations of MD Rule 1-324(a) and 2-311(f)," and (2) December 16, 2018 motion to issue summons and motion for relief. For the reasons that follow, we shall affirm the judgments of the circuit court.

BACKGROUND

The following pertinent facts are taken from the previous opinion of this Court involving the same parties and the same underlying dispute.

> On August 24, 2007, Green executed a promissory note ("note"), secured by a deed of trust on [a] property, promising to repay $417,000 to C&F Mortgage Corporation ("C&F"). In October 2009, Green executed a loan modification agreement, the loan being in default at that time. Green then allegedly defaulted on the modified loan agreement. The note was then transferred several times, from C&F to Franklin American Mortgage Company to Wells Fargo Bank, N.A. ("Wells Fargo"). Wells Fargo then endorsed the note in blank, and, at the time of the order to docket, Wilmington Savings Fund Society, FSB, not in its individual capacity but solely as Trustee for the PrimeStar-H Fund I Trust, was the holder of the note, and Statebridge Company, LLC, was the loan servicer. Subsequent to the filing of the order to docket, the note was transferred to "PROF-2014-S2 Legal Title Trust, by U.S. Bank National Association, as Legal Title Trustee," with Fay Servicing, LLC, as the loan servicer.
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> On June 11, 2015, [appellees as] substitute trustees[1]filed an order to docket foreclosure. Green responded with a motion to stay and dismiss, as well as a counter-complaint and prayer for a jury trial. On August 22, 2016, the court entered an order permitting [appellees] to schedule a foreclosure sale, subject to Green's right to file a motion pursuant to Rule 14-211 to stay the sale and dismiss. [Appellees] scheduled a foreclosure sale for April 11, 2017. On March 23, 2017, Green filed an emergency motion to stay, which

[1] Appellees are Diane S. Rosenberg, Mark D. Meyer, John A. Ansell, III, Kenneth Savitz, Caroline Fields, and Jennifer Rochino.

> the court granted on April 13th, staying the matter until May 12, 2017. Green then filed a "Motion to Alter or Amend Judgment and Order for Emergency Stay Rule 2-534," requesting the court to modify its order granting the temporary stay and to enter a permanent stay and to dismiss the case. The circuit court denied this motion without a hearing.
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> On May 12, 2017, the court held a hearing, which Green did not attend. Following that hearing, the court denied Green's motion to compel discovery and for sanctions, denied his motion to stay, dismissed his counter-complaint, and granted [appellees'] motion to strike Green's discovery request.

Green v. Rosenberg & Associates, LLC, et al., No. 724, September Term 2017 (filed October 2, 2018), slip op. at 1-3 (footnotes omitted).[2]

While the first appeal was pending, Mr. Green filed a "Motion/Request to Issue Summons for Counter Complaint," in which he contended that his "counter-claim must by law[] proceed first before the foreclosure action can proceed" and requested the issuance of certain summonses (first motion to issue summons). After our mandate issued, he then filed a "Motion to Raise Violations of MD Rule 1-324(a) and 2-311(f)," wherein he claimed that the May 12, 2017 hearing was held "without notifying [him] of such proceeding in violation of . . . Rule 1-324(a)" ("[u]pon entry on the docket of . . . the scheduling of a hearing, trial, or other court proceeding not announced on the record in the course of a hearing or trial, the clerk shall send a copy of the . . . notice of the scheduled proceeding to all parties entitled to service under Rule 1-321") (first motion for relief). In that motion, Mr. Green requested, among other relief, "that all of [the court's] prior orders be . . . void[ed] and . . . stricken from the record." On November 2, 2018, the court entered

[2] In that appeal we affirmed "the only issue that [was] properly before us," specifically the denial of the "emergency motion to stay the foreclosure sale." *Id.* at 1, 7.

an order in which it deemed the first motion to issue summons moot "as the counter complaint was dismissed on May 12, 2017." The court also denied the first motion for relief. Mr. Green did not file a timely notice of appeal from either order.

Instead, on December 16, 2018, after the appeal period had expired, Mr. Green filed a motion to alter or amend the order denying of the first motion to issue summons and the first motion for relief (the motion to alter or amend the judgment). He also filed a new motion to issue summons and motion for relief (the second motions to issue summons and for relief). Those motions were identical to the first motion to issue summons and the first motion for relief. On January 18, 2019, the court denied the motion to alter or amend, the second motion to issue summons, and the second motion for relief. This appeal followed.

DISCUSSION

Mr. Green first contends that "[b]ecause of its improper actions, the trial court has lost subject matter jurisdiction." But Mr. Green does not cite any authority that supports his contention,[3] and "except where by law jurisdiction has been limited or conferred exclusively upon another tribunal," a circuit court "has full common-law and equity powers and jurisdiction in all civil and criminal cases within its county[.]" Md. Code (1974, 2013 Repl. Vol., 2017 Supp.), § 1-501 of the Courts and Judicial Proceedings Article. Hence, the court has jurisdiction over the parties' dispute.

[3] Mr. Green claims that in *Yates v. Village of Hoffman Estates, Illinois*, 209 F.Supp. 757 (N.D.Ill. 1962), the United States District Court for the Northern District of Illinois held that "[w]hen a judge acts as a trespasser of the law, when a judge does not follow the law, the judge loses subject-matter jurisdiction and the judges' orders are void, of no legal force or effect." The opinion contains no such holding.

Mr. Green next contends that, for numerous reasons, the court erred in denying the motion to alter or amend and the second motions to issue summons and for relief. We disagree. First, with respect to the motion to alter or amend, we note that it was filed more than 30 days after the court's order denying the first motion to issue summons and the first motion for relief. We therefore construe it as a motion to vacate the judgment pursuant to Maryland Rule 2-535(b), as that is the only possible avenue under which he could have obtained relief from those judgments. *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)). However, the claims raised in the motion to alter or amend, even if true, did not establish the existence of fraud, mistake, or irregularity within the meaning of Rule 2-535(b), such that the court could have vacated its enrolled judgment. Consequently, the court did not abuse its discretion in denying that motion.

Finally, with respect to the second motions to issue summons and for relief, the claims made by Mr. Green in those motions are the same as the claims made in the first motions to issue summons and for relief. Because Mr. Green did not appeal from the denial of the first motions, the claims made in the second motions are barred by the doctrine of res judicata. *See Board of Ed. v. Norville*, 390 Md. 93, 106 (2005) (the "doctrine of res judicata bars the relitigation of a claim if there is a final judgment in a previous litigation where the parties, the subject matter and causes of action are identical or substantially identical as to issues actually litigated"). Moreover, even if the claims made in the second motion for relief were not barred by the doctrine of res judicata, Mr. Green would not

prevail. We have stated that when a party "appeal[s] from the denial of a motion asking the court to exercise its revisory power," the "scope of review is limited to whether the trial judge abused his or her discretion in declining to reconsider the judgment," and "[i]t is hard to imagine a more deferential standard than this one." *Estate of Vess*, 234 Md. App. 173, 204-05 (2017) (internal citations, quotations, and brackets omitted). We conclude that the court's judgment was not so egregiously wrong as to constitute a clear abuse of discretion. *See Stuples v. Baltimore Police*, 119 Md. App. 221, 232 (1998) (the denial of a motion to revise a judgment should be reversed only if the decision "was *so far wrong* – to wit, *so egregiously wrong* – as to constitute a clear abuse of discretion" (citations omitted) (emphasis in original)).

JUDGMENTS OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.