

Circuit Court for Montgomery County
Case No. 382477V

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 731

September Term, 2015

KAMAL MUSTAFA, et al.,

v.

CARRIE M. WARD, et al.

Fader, C.J.
Leahy,
Reed,

JJ.

Opinion by Reed, J.

Filed: February 15, 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.

Kamal and Fatima Mustafa (hereinafter “Appellants”) borrowed \$600,000.00 (the “Loan”) evidenced by a promissory note and secured by a deed of trust encumbering Appellants’ home. After Appellants defaulted on the Loan, Appellants were served with a Notice of Intent to Foreclose. Appellants then filed a Motion to Dismiss the Foreclosure Action. During a hearing in which the motion to dismiss was heard and opposed, the Honorable Joan Ryon verbally denied the motion. Apparently due to a clerical mistake, the motion was later presented as unopposed and still awaiting a ruling to the Honorable Andrew L. Sonner, who granted it. Subsequently, the Honorable Debelius entered an Order vacating that dismissal citing that the dismissal was signed in error. It is from this decision that Appellants file this timely appeal. In doing so, Appellants bring the following question for our review, which we have rephrased for clarity:¹

- I. Did the circuit court err by vacating Appellants’ Motion to Dismiss the Foreclosure Action?

For the foregoing reasons, we answer in the negative and affirm the decision of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

On May 16, 2005, Appellants borrowed \$600,000.00 (hereinafter the “Loan”) from Washington Mutual Bank, which is evidenced by a promissory note and secured by a deed of trust. JP Morgan Chase, later bought the Loan from Washington Mutual Bank.

¹ Appellants present the following questions:

1. Whether the Administrative Judge for a Circuit Court has the Authority Under Maryland Law to Vacate an Order issued by trial Judge in a matter before the Court?

Appellants failed to pay their monthly mortgage payments and defaulted on June 1, 2008. In response, Carrie M. Ward, Howard N. Bierman, and Jacob Geesing, named Substitute Trustees by JPMorgan Chase Bank, (hereinafter, “Appellees”), filed an Order to Docket in the Circuit Court for Montgomery County, thereby initiating a foreclosure action against Appellants’ property, located at 18306 Bubbling Spring Terrace, Boyds, MD 20841² (hereinafter, the “Property”).

On January 24, 2014, and February 18, 2014, Appellants filed successive motions to stay and a Motion to Dismiss the Foreclosure Action. After a hearing held on April 3, 2014, the trial court denied their motions. Following the denial of their motions, Appellees sold the property at a foreclosure auction for \$605,000.00. Appellants then filed exceptions to the foreclosure sale on December 9, 2014, followed by another Motion to Dismiss the Foreclosure Action, filed on January 23, 2015. Appellants’ exceptions and motions were both heard in front of the Honorable Joan Ryon on January 26, 2015. Judge Ryon delivered the following judgment from the bench:

Okay. All right. During the break I took the opportunity to read the defendant’s motion to dismiss and I took into consideration the arguments of counsel before I took the break, as well as the attachments to the defendant’s reply to the exceptions to modifications and I am going to deny the motion to dismiss.

² Appellants filed multiple appeals to this Court regarding two of their properties: one located at 18306 Bubbling Spring Terrace, Boyds, MD 20841; and the other located at 14406 Autumn Branch Terrace, Boyds, MD 20841. After a detailed search into the docket entries, there is confusion between which case pertains to which property. For example, Appellants list 18306 Bubbling Spring Terrace, Boyds, MD 20841 as the property in question. However, the trial court order corresponding to this case lists 14406 Autumn Branch Terrace, Boyds, MD 20841 as the property at issue. We rely on the trial court’s filing of this case regarding the 18306 Bubbling Spring Terrace property. This court would be remiss not to discuss the discrepancies in the docket.

However, after the hearing, a written order was never entered on the docket indicating the motion to dismiss was denied. Four months after the January 26, 2015, hearing, the Honorable Andrew L. Sonner granted Appellants’ motion to dismiss as unopposed and dismissed the case with prejudice. Subsequently, Appellees filed a Motion to Alter or Amend Judgment on June 8, 2015. However, on that same day, Judge Debelius ordered *sua sponte*, Judge Sonner’s Order be vacated and the denial of Appellants’ motion to dismiss be restored.

DISCUSSION

A. Parties’ Contentions

Appellants argue that Administrative Judges who sit on circuit courts lack authority under Maryland law to vacate orders issued by trial judges. Appellants contend the Court of Appeals held that an Administrative Judge has “the authority to make administrative decisions concerning the day-to-day management of the Circuit Court’ but this authority does not allow the Administrative Judge to ‘either review and vacate’ decisions of other judges or ‘unilaterally take the discretion’ over rulings away from judges in Montgomery County Circuit Court.” Appellants maintain that the Administrative Judge acted as an appellate judge by reviewing and vacating the order of a trial judge and therefore, Judge Sonner’s Order should be reinstated.

Appellees respond that Appellants cannot dispute that their Motion to Dismiss the Foreclosure action was denied on January 26, 2015. Appellees further argue that the circuit court made a clear error when it subsequently granted that same motion. As such, the circuit

court vacating the dismissal of the foreclosure action was proper. Appellees assert that the circuit court subsequently granting Appellants’ Motion to Dismiss the Foreclosure Action was a clerical error. Moreover, “[b]y Rule, the circuit court has the power to correct clerical errors in its own records, even in final judgments and decrees, at any time either on its own initiative or on the motion of any party.” Appellees maintain that this Court by examination of the transcript can find that on January 26, 2015, Appellants’ Motion to Dismiss the Foreclosure Action was denied. We agree.

B. Standard of Review

“In general, the denial of a motion to alter or amend a judgment or for reconsideration is reviewed by appellate courts for abuse of discretion.” *Miller v. Mathias*, 428 Md. 419, 438 (2012). Additionally, “unless fettered by a Rule or statute, a court ordinarily may take any action *sua sponte* that it can take in response to a motion, including dismissal of an action.” *Fischer v. Longest*, 99 Md. App. 368, 381 (1994) (citing *Goins v. State*, 293 Md. 97, 111 (1982)).

A court abuses its discretion “where no reasonable person would take the view adopted by the trial court, or when the court acts without reference to any guiding rules or principles.” *Wilson v. John Crane, Inc.*, 385 Md. 185, 198 (2005) (internal citations and quotations omitted). There may also be an abuse of discretion when “the ruling under consideration is clearly against the logic and effect of facts and inferences before the court or when the ruling is violative of fact and logic.” *Id.*

C. Analysis

Appellants argues that Administrative Judges who sit on circuit courts lack authority

under Maryland law to vacate orders issued by trial judges.

Maryland Rule 2-535 (d) states “[c]lerical mistakes in judgments, orders, or other parts of the record may be corrected by the court at any time on its own initiative, or on motion of any party after such notice, if any, as the court orders.” In *Prince George’s County v. Commonwealth Land Title Ins. Co.*, this Court stated “[t]he test to be applied in determining whether an error in a judgment is of a judicial character, or a mere clerical mistake which may be corrected in the court where it was made at any time” is:

[w]hether the error relates to something that the trial court erroneously omitted to pass upon or considered and passed upon erroneously, or a mere omission to preserve of record, correctly in all respects, the actual decision of the court, which in itself was free from error. If the difficulty is found to be of the latter character, it may be remedied as a mere clerical mistake, which will not have the effect to change the judgment pronounced in the slightest degree, but merely to correct the record evidence of such judgment.

Prince George’s County v. Commonwealth Land Title Ins. Co., 47 Md. App. 380, 386 (1980). This Court in *Fuller v. Horvath*, 42 Md. App. 671, 673 (1979) (internal citations and omitted) has stated, “[t]he transcript of the trial, unless shown to be in error, takes precedence over the docket entries.” *Id.* See also *Waller v. Maryland Nat. Bank*, 332 Md. 375, 379 (1993).

Here, Appellants assert Judge Debelius’ Order should be struck down because he acted as an appellate judge in vacating Judge Sonner’s Order. We disagree. The transcript on January 26, 2015, clearly states that Appellants’ Motion to Dismiss the Foreclosure Action was denied. However, four months after the January 26, 2015, hearing Judge Sonner granted Appellants’ Motion to Dismiss the Foreclosure Action on the basis that the motion

was unopposed and still extant. But in reality the motion was opposed, argued, and denied during the hearing that took place on January 26, 2015, before Judge Ryon. The motion had never been renewed nor was it pending when Judge Sonner signed his Order. Moreover, the premise on which Judge Sonner ruled was based on a clerical error. Thus, Judge Debelius acted well within his authority when he vacated Judge Sonner's Order.

Pursuant to Md. Rule 2-535, Judge Debelius has the authority to vacate *sua sponte* Judge Sonner's Order, thus correcting the record to reflect the court's original decision. As noted above, the hearing transcripts clearly establish that Judge Ryon denied Appellants' motion to dismiss. We also agree with Appellees that Appellants' reliance on *St. Joseph Medical Center, Inc. v. Turnball*, 432 Md. 259 (2013) is misplaced. *St. Joseph's Medical* involved the overturning of a trial judge's ruling by the administrative judge, and the present case involves the administrative judge correcting a clerical mistake, i.e. a failure to enter a ruling and judgment of the court. It is also noted that Appellants' Motion to Dismiss the Foreclosure Action did not allege any irregularities of the sale procedures, and therefore did not allege any appropriate basis to vacate the already conducted foreclosure. *Bates v. Cohn*, 417 Md. 309, 328 (2010). Thus, we conclude that there was not a judicial error, but a clerical one, which was ameliorated by Judge Debelius. Accordingly, we hold that the circuit court did not err when it vacated Judge Sonner's Order.

**JUDGMENT OF THE CIRCUIT
COURT FOR MONTGOMERY
COUNTY AFFIRMED; COSTS TO
BE PAID BY APPELLANTS.**