

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0004

September Term, 2015

CONNIE VANDIEST

v.

JEFFREY NADEL, ET AL.

Krauser, C.J.,
Berger,
Reed,

JJ.

Opinion by Berger, J.

Filed: February 2, 2016

*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.

This case arises out of a foreclosure action initiated in the Circuit Court for Anne Arundel County by substitute trustees Jeffrey Nadel and Scott Nadel (collectively, the “Substitute Trustees”), appellees, against mortgagor Connie Vandiest (“Vandiest”), appellant. Vandiest’s residential property located at 1427 Harvey Avenue, Severn, Maryland, 21144 (“the Property”) was sold at foreclosure by the Substitute Trustees. The foreclosing lender, Appellee Wells Fargo Bank, N.A. (as Trustee for the Pooling and Servicing Agreement dated as of September 1, 2004 Park Place Securities, Inc. Asset-Backed Pass-Through Certificates Series 2004-WHQ1) (“Wells Fargo”), purchased the Property at public auction. The foreclosure sale was ratified by the circuit court.

Following the ratification of the foreclosure sale, Vandiest failed to relinquish possession of the Property. Wells Fargo filed a motion for possession in the circuit court, which was granted on February 20, 2015. This appeal arises solely from the order of the Circuit Court for Anne Arundel County awarding possession of the Property to Wells Fargo. Accordingly, the sole issue before us is whether the circuit court erred by awarding possession of the Property to Wells Fargo.¹ Perceiving no error, we shall affirm.

¹ The issues, as presented by Vandiest, are:

1. Was the trial court erroneously [sic] to allowing the sale on Appellant’s property without held a hearing [sic] on Appellant [sic] Motion to Stay The Sale and dismiss the foreclosure, challenging the validity of mortgage and Appellees’ standing under Maryland Rule 14-211, when Maryland Rule 2-311(f) requires the trial court to hold a hearing before rendering a decision disposing of a claim or a defense?

(continued...)

FACTS AND PROCEEDINGS

In May of 2004, Vandiest refinanced her home mortgage. Vandiest obtained a loan in the amount of \$279,000.00, which was secured by a lien on the Property. The loan was evidenced by a note and secured by a deed of trust in favor of Argent Mortgage Company, LLC. The mortgage was ultimately assigned to Wells Fargo. Vandiest defaulted on the loan by failing to remit required payments, and, by September of 2004, Vandiest was in default.

On March 23, 2010, the Substitute Trustees, on behalf of the secured party, Wells Fargo, filed a foreclosure action in the circuit court.² On March 30, 2010, Vandiest filed a

¹ (...continued)

2. Was the trial court erroneously [sic] ratified the sale on Appellant's property without held a hearing [sic] on Appellant's Motion Challenging Procedural Irregularities in the Sale with exhibit of witness' affidavit, when Maryland Rule 14-305(d)(1), (d)(2) set our the prescribed "Procedure Following Sale" requires a hearing before ratified [sic] the sale?

3. Was the trial court erroneously [sic] to rewarding Wells Fargo Bank, National Association for possession on Appellant' [sic] property as Trustee in Pooling and Servicing Agreement (PSA), Park Place Securities, Inc., Asset-Backed Pass-Through Certificates, Series 2004-WHQ1 dated as September 1, 2004 without held a hearing [sic] to identify the Pooling and Servicing Agreement (PSA) does exist [sic], when Maryland Rule 2-311(f) requires to trial court to hold a hearing before rendering a decision disposing of a claim or a defense?

² Vandiest filed over fifty pleadings in this case, as well as two complaints and two prior notices of appeal. We summarize here the factual and procedural history relevant to the particular issues raised in this appeal.

Notice of Appeal to this Court. This Court, on its own motion, dismissed Vandiest’s appeal on August 31, 2010.

Over the following three years, Vandiest filed various pleadings, all of which were addressed by the circuit court.³ A public auction was ultimately held on August 1, 2013. The Property was sold back to Wells Fargo at auction. The Substitute Trustees filed a Report of Sale on August 1, 2013.

On August 7, 2013, Vandiest filed exceptions to the sale.⁴ On September 4, 2013, the circuit court denied Vandiest’s exceptions for failure to comply with Maryland Rules 2-311(c) and 14-305(d).⁵ Vandiest did not appeal the court’s order denying her

³ Vandiest did not note an appeal of any of the circuit court’s orders between March 2010 and August 2013.

⁴ On August 9, 2013, Vandiest filed a Notice of Appeal to this Court. Vandiest failed to file a brief, and, after Vandiest filed a “Notice to Leave to Court of Appeals,” the appeal was dismissed by this Court on its own initiative. *Vandiest v. Nadel, et al.*, No. 1134, Sept. Term 2013.

⁵ Maryland Rule 2-311(c) provides:

A written motion and a response to a motion shall state with particularity the grounds and the authorities in support of each ground. A party shall attach as an exhibit to a written motion or response any document that the party wishes the court to consider in ruling on the motion or response unless the document is adopted by reference as permitted by Rule 2-303 (d) or set forth as permitted by Rule 2-432 (b).

Maryland Rule 14-305(d) sets forth the required procedures for exceptions to foreclosure sales and provides:

(continued...)

exceptions. The circuit court ratified and confirmed the foreclosure sale on November 21, 2013.

Following the ratification of the sale, the Substitute Trustees and Wells Fargo executed a foreclosure deed which conveyed the Property to Wells Fargo. Wells Fargo determined that an occupant remained in possession of the Property and failed to deliver possession to Wells Fargo. In October of 2014, Wells Fargo sent a Notice of Demand for Possession to Vandiest and “All Occupant(s)” of the Property.

On December 23, 2014, Wells Fargo filed a Motion for Judgment of Possession Pursuant to Maryland Rule 14-102. Wells Fargo complied with the requirements of Maryland Rule 14-102 and Md. Code (1974, 2010 Repl. Vol.), § 7-105.6 of the Real Property

⁵ (...continued)

(1) A party, and, in an action to foreclose a lien, the holder of a subordinate interest in the property subject to the lien, may file exceptions to the sale. Exceptions shall be in writing, shall set forth the alleged irregularity with particularity, and shall be filed within 30 days after the date of a notice issued pursuant to section (c) of this Rule or the filing of the report of sale if no notice is issued. Any matter not specifically set forth in the exceptions is waived unless the court finds that justice requires otherwise.

(2) The court shall determine whether to hold a hearing on the exceptions but it may not set aside a sale without a hearing. The court shall hold a hearing if a hearing is requested and the exceptions or any response clearly show a need to take evidence. The clerk shall send a notice of the hearing to all parties and, in an action to foreclose a lien, to all persons to whom notice of the sale was given pursuant to Rule 14-206(b).

Article (“RP”).⁶ Wells Fargo served Vandiest with the Motion for Possession. Vandiest did not respond or otherwise contest the motion for possession. On February 20, 2015, the circuit court entered an order awarding possession of the Property to Wells Fargo. Vandiest noted a timely appeal of the order awarding possession to Wells Fargo.

DISCUSSION

An order granting possession of property is an appealable interlocutory order pursuant to Md. Code (1974, 2013 Repl. Vol.), § 12-303(1) of the Courts and Judicial Proceedings Article (“A party may appeal from . . . [a]n order entered with regard to the possession of property with which the action is concerned”). We review a circuit court’s order granting or denying a motion for judgment of possession applying an abuse of discretion standard. *G.E. Capital Mortg. Servs., Inc. v. Edwards*, 144 Md. App. 449, 456 (2002) (citing *Billingsley v. Lawson*, 43 Md. App. 713, 726-27 (1979)).

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 resolved in a prior proceeding.” *Id.* A party may not raise issues in an appeal of an order granting possession which could have been properly raised in a motion to stay or dismiss a foreclosure or in timely filed exceptions. *Id.* We have explained that, in general, after a circuit court has

⁶ RP § 7-105.6 sets forth the effect of a sale upon bona fide tenants of a property and sets forth the circumstances under which a successor in interest may terminate an existing lease.

ratified a foreclosure sale, “objections to the propriety of the foreclosure will no longer be entertained.” *Id.* at 120. In *Manigan*, we commented that a party could challenge the legality of a foreclosure in two separate ways:

“Under Maryland foreclosure procedures, plaintiffs are afforded two separate opportunities in which they may challenge in a state court the legality of the foreclosure. First, under Rule [14-209(b)], plaintiffs may move prior to sale to enjoin foreclosure. Secondly, after the sale but before ratification, plaintiffs have the opportunity to file objections to the sale.”

Id. at 119 (quoting *Billingsley v. Lawson*, 43 Md. App. 713, 723-24 (1979)).

In *Manigan*, a foreclosure defendant argued “that the trial court erred in issuing the writ of possession without first conducting a full evidentiary hearing into the propriety of the foreclosure.” *Id.* at 118. We held that the issues regarding the propriety of the foreclosure were not properly before us because they had not been raised at the proper time. *Id.* We further commented that “[t]he law is firmly established in Maryland that the final ratification of the sale of property in foreclosure is *res judicata* as to the validity of such sale, except in case of fraud or illegality, and hence its regularity cannot be attacked in collateral proceedings.” *Id.* at 120 (citing *Ed Jacobsen, Jr., Inc. v. Barrick*, 252 Md. 507, 511 (1969)). Accordingly, the scope of our review is limited to the issue of possession and the issues raised by Vandiest which relate to the propriety of the underlying foreclosure are not properly before us.

We turn our attention next to the circuit court’s award of possession to Wells Fargo. Pursuant to Maryland Rule 14-102(a), “[i]f the purchaser of an interest in real property at a

sale conducted pursuant to the Rules in this Title is entitled to possession and the person in actual possession fails or refuses to deliver possession, the purchaser or a successor in interest who claims the right of immediate possession may file a motion for judgment awarding possession of the property.” We have explained:

To invoke [Rule 14-102], the purchaser must show that (1) the property was purchased at a foreclosure sale, (2) the purchaser is entitled to possession, and (3) the person in possession fails or refuses to relinquish possession.

G.E. Capital Mortgage Servs., Inc., supra, 144 Md. App. at 457.

In the instant case, Wells Fargo, as the foreclosing lender and purchaser at public auction, had the right to immediate possession of the Property pursuant to Maryland Rule 14-102. Wells Fargo became the purchaser of the Property following the public auction on August 1, 2013. The circuit court ratified the foreclosure sale on November 21, 2013. Wells Fargo paid the full purchase price for the Property and the Substitute Trustees conveyed legal title to the Property to Wells Fargo on May 20, 2014. Vandiest did not contest Wells Fargo’s Motion for Possession, nor did Vandiest request a hearing on the Motion for Possession.⁷

⁷ Vandiest raises various other arguments with respect to hearings which she alleges the circuit court was required to hold relating to various filings, motions, and exceptions. None of these issues are properly before us in this appeal.

Accordingly, the circuit court did not err by granting Wells Fargo's Motion for Possession and awarding Wells Fargo possession of the Property.

**JUDGMENT OF THE CIRCUIT COURT FOR
ANNE ARUNDEL COUNTY AFFIRMED. COSTS
TO BE PAID BY APPELLANT.**