

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0301

September Term, 2015

CIBEL LAMMOND, et al.

v.

CARMEN COVELLI a/k/a CARMEN
COVELLI-INGWELL, et al.

Meredith,
Nazarian,
Arthur,

JJ.

Opinion by Arthur, J.

Filed: April 26, 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 concerns conflicting claims to the surplus proceeds of a tax sale. The claimants are sisters: Cibel Lammond (née Covelli) and Carmen Covelli-Ingwell. For ease of reference, we shall refer to the parties, and to other family members, by their first names.

Carmen, who owned a tiny fractional interest in the property that was sold at the tax sale, was named as a defendant in the complaint to foreclose rights of redemption; Cibel, the owner of the largest interest in the property, was not. Because Carmen was named as a defendant but Cibel was not, the order foreclosing rights of redemption extinguished Carmen’s interest, but had no effect on Cibel’s. *See* Md. Code (2001, 2012 Repl. Vol.), § 14-836(b)(2) of the Tax-Property Article (“Tax-Prop.”). On these facts, the Circuit Court for Prince George’s County ruled that Carmen alone was entitled to the surplus.

Cibel appealed.¹

QUESTIONS PRESENTED

Cibel presents three questions, which we restate and consolidate as follows:

- I. Did the circuit court err in awarding Carmen the entire tax-sale surplus, and awarding Cibel no share thereof?

¹ In the circuit court, Cibel’s husband, Tom Lammond, was her co-claimant, as was Paramar Corp., the tax-sale purchaser. Although Cibel’s husband joined in the appeal, Cibel concedes that he never owned an interest in the Property in his own name and, hence, has no right to the proceeds. Consequently, Cibel’s brief states that she is the only appellant who is making a claim to the surplus. Similarly, although the tax-sale purchaser also joined in the appeal, that appeal “has since been abandoned.”

- II. Did the circuit court err in awarding Carmen the tax-sale surplus without providing oral or written findings of fact or conclusions of law, or otherwise providing a stated basis for its decision?²

We shall affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

This appeal is the culmination of more than 20 years of intra-family litigation involving real property (“the Property”) in Upper Marlboro. The Property consists of two adjoining parcels and additional interests, comprising roughly 27 acres.³

A. Original Ownership

Henry Covelli and his wife Marilea had two children: Cibel and Carmen. In addition, it appears that Henry had another daughter from another marriage, Nicole Covelli Wentworth.

In 1980 Henry and Marilea acquired the Property as tenants by the entireties. In 1987 Henry and Marilea were divorced. The divorce severed their joint interests and

² Cibel originally phrased her questions for review as follows:

- I. Whether the trial court erred by ordering that appellee, who owned only one-twelfth of the subject property, was entitled to 100% of the tax sale surplus?
- II. Whether the trial court erred by failing to award a portion of the tax sale surplus to appellant, who owned eleven-twelfths of the subject property and who’s [*sic*] ownership interest in the subject property was foreclosed on?
- III. Whether the trial court’s “Order Awarding Claim for Surplus” should be reversed for failing to issue findings of fact and conclusions of law or otherwise provide the basis for its decision?

³ In related litigation in 1998, the circuit court wrote that the Property “consists of two parcels, one of which is 13.523 acres and the other 11.771, plus an interest in a 20-foot right of way, and additional parcels of 0.300 acres and 1.442 acres.”

created two one-half interests in the Property, which they held as tenants-in-common.

In 1988 Henry executed a deed purporting to transfer his one-half interest to Carmen. On May 30, 1990, Marilea properly transferred her one-half interest to Cibel.

B. Henry's Death, Intestacy, and the Quiet Title Action

Henry died intestate in 1992, and Cibel was appointed as personal representative of his estate. At the time of his death, Henry was married to his third wife, Maria Covelli.

The record suggests that, after Henry's death, Cibel and her husband, Tom Lammond, maintained control of the Property, paid the property taxes, and occasionally leased it to tenants.

In 1994 one of Henry's daughters, Nicole, filed suit against her half-sisters, Cibel and Carmen, to quiet title in the Property. Nicole asserted that Henry's 1988 deed to Carmen was invalid and that at the time of his death Henry retained his one-half interest in the Property. According to Nicole, Henry's interest had passed under the laws of intestate succession to Henry's third wife, Maria, and to his three daughters, Carmen, Cibel, and Nicole herself. Nicole claimed a one-sixth interest in Henry's one-half interest in the Property as a whole.

In July 1998, the circuit court agreed with Nicole. It set aside Henry's deed to Carmen, confirmed that Henry's interest passed to his heirs under the laws of intestate succession, and ordered that the "property in question" be sold.

Because of the court's decision that Henry's interest had passed by intestate succession, Maria (Henry's wife at the time of his death) received half of his interest, and

the remaining half was divided equally among his three children, Nicole, Carmen, and Cibel. Because Henry had owned a one-half (or six-twelfths) interest in the Property at his death, Maria received a one-quarter (or three-twelfths) interest in the Property as a whole (representing half of Henry's half). Each of the three daughters, in turn, received a one-twelfth interest in the Property as a whole (in each instance, representing one-sixth of Henry's half). Because Cibel had already acquired a one-half (or six-twelfths) interest in the property as a result of the conveyance from her mother, Marilea, in 1990, she owned a seven-twelfths interest in the property after her receipt of the additional one-twelfth interest from Henry.

C. Tax Sale and Foreclosure of Rights of Redemption

Meanwhile, Cibel and her husband, who had been paying the property taxes on the Property, intentionally stopped making the tax payments and let the Property go to a tax sale. The sale occurred on May 12, 1997, and Paramar Corp. purchased the Property for \$47,500.00, more than \$37,000.00 more than the amount of unpaid taxes. Cibel and her husband were Paramar's sole owners.

On April 5, 1999, Paramar filed a complaint to foreclose rights of redemption. As defendants, the complaint named Henry (who was dead); his ex-wife, Marilea (who had conveyed her interest to Cibel nine years earlier); Carmen; and an assortment of other lienholders and interested parties. Even though Cibel owned a seven-twelfths interest in the Property, her corporation's complaint did not name her as a defendant. Nor did the original complaint name Maria (Henry's wife at the time of his death) or Nicole.

According to the docket entries, however, the pleading was later amended to add Maria and Nicole as defendants.

In an order dated August 25, 2000, the circuit court foreclosed rights of redemption in the Property. By its express terms, the order “barred and foreclosed” the rights of redemption belonging to Marilea (who had conveyed her interest to Cibel years before the tax sale), Henry (who was dead), Carmen, and several other lienholders and interested parties. The order did not expressly address the rights of Maria, Nicole, or Cibel, but it did purport to apply generally to “all owners” of the Property and to “any and all persons having or claiming to have an interest” in it.

D. Subsequent Proceedings in the Quiet Title Action

Three months later, for reasons that are unclear from the record or from any explanation that the parties have offered, the circuit court entered an order in the litigation that Nicole had commenced in 1994 to quiet title to the Property. The order, which is dated November 16, 2000, and signed by the same judge who signed the order foreclosing the rights of redemption, required Cibel to pay damages to Nicole, Maria, and Carmen. The damages represented their proportional interests in the Property (one-twelfth, one-quarter, and one-twelfth, respectively) as well as their proportional interests in certain undefined profits.⁴

In a settlement agreement dated July 12, 2001, Nicole agreed to sell her one-twelfth interest in the Property to Cibel and to dismiss any “further claims” for profits

⁴ In addition, the order compensated Nicole for her attorneys’ fees and expenses, apparently including fees that she had incurred in obtaining a recovery for Maria and Carmen.

and attorneys' fees in exchange for \$10,000. In a deed dated September 5, 2002, Nicole conveyed her interest in the Property to Cibel.

Similarly, in a settlement agreement dated August 8, 2001, Maria agreed to sell her one-quarter interest in the Property to Cibel and to dismiss any "further claims" for profits and attorneys' fees in exchange for \$10,000.00. The record does not disclose whether Maria formally conveyed whatever interest she owned in the Property to Cibel, but it does contain a document reflecting that Maria's judgment against Cibel had been satisfied.

E. The Conveyances from the County to Paramar and from Paramar to the Lammonds

Several years later, on March 21, 2003, Prince George's County issued a deed to the Property, in fee simple, to Paramar. The deed acknowledged payment in full of the bid price of \$47,500.00. On April 16, 2004, Paramar conveyed the Property to Cibel and Tom Lammond.

F. The Petition for Tax-Sale Surplus

For reasons that are again unclear, nine more years passed without any further developments. Finally, on October 25, 2013, Cibel and Tom Lammond filed a petition, under Tax-Prop. section 14-818, for the \$37,614.80 in surplus proceeds that remained following the judgment foreclosing rights of redemption in the Property. On November 4, 2013, Carmen filed a similar petition for the tax-sale surplus. Almost a year later, on October 22, 2014, the circuit court held a hearing on the competing petitions.

Cibel argued that she had owned eleven-twelfths of the entire Property (the remainder residing with Carmen) and that she therefore was entitled to eleven-twelfths of the surplus. Carmen countered that, whatever Cibel's interest had been, she was not entitled to claim any surplus amount, because Paramar had failed to name Cibel as a defendant or to serve her in the action to foreclose rights of redemption. Carmen concluded that Cibel's interest had not been extinguished by the judgment foreclosing equities of redemption and that Cibel, therefore, could not claim to be a prior owner who was entitled to any surplus.

E. The Court's Ruling

After an evidentiary hearing, the circuit court stated that it would issue "a written opinion." On March 19, 2015, however, the court issued only a two-paragraph order requiring the County's Director of Finance to issue a check for \$37,614.80 to Carmen, "representing the balance of the surplus proceeds retained as a result of the tax sale of the [Property.]" The court did not explain the basis for its decision.

DISCUSSION

A. Statutory Framework

"In Maryland, when an owner fails to pay *ad valorem* taxes levied upon real property, the taxing authority for the political subdivision within which the property is located must sell the property at auction." *PNC Bank, N.A. v. Braddock Props.*, 215 Md. App. 315, 322 (2013) (citing Tax-Prop. § 14-808). Within one day of the sale, the purchaser must pay the county "collector" the full amount of the taxes due, together with

interest and penalties, the expenses of the sale, and any high-bid premium. Tax-Prop. § 14-818(a). The “residue of the purchase price” is not due at the time of the sale. *Id.*

“After a period of six months, the tax sale purchaser has the right to acquire fee simple title by filing a complaint in the circuit court to ‘foreclose all rights of redemption of the property’” *Braddock*, 215 Md. App. at 323 (quoting Tax-Prop. § 14-833). In that complaint, the tax-sale purchaser must identify, among others, “the record title holder of the property as disclosed by a search performed in accordance with generally accepted standards of title examination of the land records of the county, of the records of the register of wills of the county, and of the records of the circuit court for the county.” Tax-Prop. § 14-836(b)(1)(i). The tax-sale purchaser must also serve these “necessary defendants,” *see Royal Plaza Cmty. Ass’n, Inc. v. Bonds*, 389 Md. 187, 199 (2005), “with a summons and a copy of the complaint and other papers filed in the case in the same manner as in other civil actions, that is, by personal service or by certified mail, restricted delivery.” *Braddock*, 215 Md. App. at 324 (citing Tax-Prop. § 14-839(a)). “[T]he rights of any person not included as a defendant are not affected by the proceedings.” Tax-Prop. § 14-836(b)(2).

The action to foreclose rights of redemption “serves as a means to give [the record owner and any other interest holders in the property] one last opportunity to redeem to property” (*Braddock*, 215 Md. App. at 323), by paying the unpaid taxes, interest, penalties, and other costs to the collector, for the benefit of the tax-sale purchaser. *See* Tax-Prop. § 14-827. “The right to redeem is effective until the circuit court enters final

judgment” in the action to foreclose rights of redemption. *Braddock*, 215 Md. App. at 322-23.

When the court enters a judgment finally foreclosing an owner’s right of redemption, the tax-sale purchaser must pay the unpaid balance of the purchase price to the collector, who must, in turn, execute a deed transferring title to the property to the plaintiff. Tax-Prop. § 14-818(a)(3). “Any balance over the amount required for payment for payment of taxes, interest, penalties, and costs of sale shall be paid by the collector to . . . the person entitled to the balance[.]” Tax-Prop. § 14-818(a)(4)(i); see *Kona Props., LLC v. W.D.B. Corp, Inc.*, 224 Md. App. 517, 543 (2015) (“to receive the bid surplus, the former property owner requests the surplus funds from the collector”). In case of a dispute about who is entitled to this surplus, the collector must pay the amount to “a court of competent jurisdiction pending a court order to determine the proper distribution of the balance” between or among the parties. Tax-Prop. § 14-818(a)(4)(ii).

The statute is, however, is silent on precisely how a circuit court is to decide the “proper distribution” of any tax surplus when two or more parties claim an interest in the surplus.

B. Cibel’s Entitlement to the Surplus

Carmen insists that Cibel is entitled to no part of the tax-sale surplus. She argues that the tax-sale purchaser, Cibel’s corporation, did not name her as a defendant in the foreclosure complaint or serve her with the summons and complaint. Therefore, because Cibel’s rights were “not affected by the proceedings” (Tax-Prop. § 14-836(b)(2)), Carmen argues that her sister has no claim to the surplus. In substance, Carmen contends

that the proceeds are available only for those, like her, whose rights were extinguished in the foreclosure proceedings.

Cibel maintains that the circuit court erred because, as the majority owner of the Property at the time the court foreclosed equities of redemption, she was statutorily entitled to a majority (eleven-twelfths, she says) of the surplus.⁵ Cibel dismisses the contention that Paramar was required to name her as a defendant and serve her with a summons and complaint. She insists that those procedures were superfluous because (1) she knew of the foreclosure proceedings and saw no need to challenge them, as her and her husband’s corporation had filed the complaint; and (2) the court’s order, by its terms, extinguished *all* interests in the Property, regardless of who had actually been named and served.

We disagree with Cibel’s reading of the law. As previously stated, the complaint to foreclose rights of redemption must identify, among others, “the record title holder of the property as disclosed by a search performed in accordance with generally accepted standards of title examination of the land records of the county, of the records of the register of wills of the county, and of the records of the circuit court for the county.” Tax-Prop. § 14-836(b)(1)(i). In addition, the tax-sale purchaser must serve these “necessary defendants” “with a summons and a copy of the complaint and other papers filed in the case in the same manner as in other civil actions, that is, by personal service

⁵ Cibel arrives at this fraction by adding the one-half interest (or six-twelfths) interest that she received from her mother, Marilea; the one-twelfth interest she received from Henry through intestate succession; and the four-twelfths interests that she acquired or claims to have acquired by buying Maria’s and Nicole’s putative interests in the Property after the judgment foreclosing rights of redemption.

or by certified mail, restricted delivery.” *Braddock*, 215 Md. App. at 506 (citing Tax-Prop. § 14-839(a)). At the time of the complaint to foreclose the rights of redemption on April 5, 1999, Cibel was a record title owner at least by way of the one-half interest that she had acquired from her mother, Marilea, in 1990, if not also by way of the 1998 circuit court decision that set aside the conveyance from Henry to Carmen and determined that a portion of Henry’s one-half interest had passed to Cibel by operation of law under the rules of intestate succession.

Under Tax-Prop. section 14-836(b)(2), “[t]he plaintiff may choose not to include as a defendant any of the [necessary defendants] enumerated in [Tax-Prop. section 14-836(b)(1)].” “However, the rights of any person not included as a defendant are not affected by the proceedings.” Tax-Prop. § 14-836(b)(2); *see Smith v. Lawler*, 93 Md. App. 540, 551-52 (1992). In other words, if a plaintiff-purchaser fails to name a necessary defendant, “the court is without jurisdiction over such a party, and any tax sale judgment *does not affect its property interest.*” *Braddock*, 215 Md. App. at 328 (citing *Royal Plaza*, 389 Md. at 193-94) (emphasis added); *see also Braddock*, 215 Md. App. at 324 (“[u]nless a necessary defendant is specifically identified in the complaint in the manner required by § 14-836(b)(1), that party’s interest in the property is not affected by the redemption foreclosure proceeding”).

A party’s prior interest is equally unaffected where the plaintiff does not properly serve any necessary defendants according to the requirements of Tax-Prop. section 14-839(a). *See Braddock*, 215 Md. App. at 325 (“a judgment foreclosing the equity of redemption does not apply to a necessary defendant unless the party has been properly

identified in the complaint and properly served”); *Smith v. Lawler*, 93 Md. App. at 551 (stating that, where plaintiffs failed to serve two defendants, a mortgagee and substitute trustee, they “created a situation where they obtained the [p]roperty subject to the rights of [the defendants]”); *see also Bonds v. Royal Plaza Cmty. Assocs. Inc.*, 160 Md. App. 445, 455 (2004), *aff’d*, 389 Md. 187 (2005) (collecting cases showing that “when notice is not properly sent to a necessary party defendant, the court lacks personal jurisdiction to proceed against that defendant’s interest in the subject property”) (citations omitted).

In short, a judgment foreclosing rights of redemption has no effect on the property rights of owners of record, such as Cibel, who are neither named as defendants in the complaint nor properly served. *See, e.g., Braddock*, 215 Md. App. at 325. The tax-sale purchaser, Paramar, obtained the Property subject to Cibel’s seven-twelfths interest (*see Smith v. Lawler*, 93 Md. App. at 551), and she remains a co-owner despite the judgment foreclosing rights of redemption.⁶

Although no previous case specifically addresses an owner’s right to the surplus proceeds of a tax sale, the implications for this case are clear. On the basis of the legislative history of Tax-Prop. section 14-818, this Court has stated that “[t]he statutory provisions governing the disposition of surplus proceeds were drafted and intended to

⁶ The judgment foreclosing rights of redemption may have extinguished the interests of the other co-owners, Maria and Nicole, because the docket entries indicate that they became parties to the proceeding. For reasons that are not explained by the record, however, Cibel purchased Maria’s and Nicole’s putative interests in the Property after the judgment in the foreclosure proceeding may have extinguished those rights. Maria and Nicole did not purport to assign any interest in the surplus to Cibel, and Cibel does not claim to be asserting any such interest. Rather, she claims eleventh-twelfths of the surplus on the theory that “at the time relevant to the distribution of” the surplus she owned eleventh-twelfths of the Property.

provide some relief to *former* property owners” (*Allstate Mortg. & Co. v. Mayor & City Council of Baltimore*, 214 Md. App. 395, 402 (2013) (emphasis added)), *i.e.*, to the owners whose rights were extinguished in the action to foreclose rights of redemption. Carmen’s rights were extinguished in the action to foreclose rights of redemption, but Cibel’s rights were not, because she was neither named as a defendant nor served with the complaint and summons. Tax-Prop. § 14-836(b)(2); *Smith v. Lawler*, 93 Md. App. at 551-52. It follows that Carmen, as a “former property owner,” has a right to the proceeds, but that Cibel, who remains a co-owner, has no such right. *See Allstate Mortg.*, 214 Md. App. at 402.

Cibel agrees that under Tax-Prop. section 14-836 she was a necessary party in the foreclosure proceeding. (“It is true that the statute dictates that Ms. Lammond was a necessary party to the suit seeking to foreclose the right of redemption of the owners of the Property”). Cibel also agrees that “Paramar’s foreclosure proceedings did not strictly comply with the letter of the statute.” According to Cibel, however, none of this matters because she had actual notice.

We disagree. The Tax-Property Article makes no allowance for owners who have notice of a foreclosure proceeding, but are neither named nor served. Because Cibel was neither named as a defendant nor served with the summons and complaint, the foreclosure proceeding did not affect her rights notwithstanding her knowledge of the proceedings. The tax-sale purchaser took subject to Cibel’s interest.⁷

⁷ In regard to the impact of notice on an unnamed and unserved necessary defendant, this case is a bit like *Braddock*. There, the tax-sale purchaser (continued...)

It makes no difference that in the order foreclosing rights of redemption, after expressly extinguishing the rights of Marilea, Henry, Carmen, and the other named defendants, the court added catch-all language that purported to extinguish the interests of “all owners of the [Property].” Simply put, the court had no authority to issue an order that extended more broadly than the Tax-Property Article allowed. In any event, the catch-all language does not appear to apply to necessary defendants like Cibil; rather, it appears to apply to the “universe of other possible persons who may have interests in the property, *e.g.*, judgment creditors, other lien holders *etc.*” *Braddock*, 215 Md. App. at 507. A court may extinguish the rights of those persons even if they are not named as defendants and served with the complaint, as long as they receive actual notice of the proceedings or, if they cannot be identified, constructive notice by publication. *Id.*

In summary, the tax sale did not extinguish Cibel’s interest; Cibel remains a co-owner of the Property; and as a co-owner, she has no right to share in the surplus.

Although Carmen owned only a one-twelfth interest in the Property before the

failed to name or serve the substitute trustees under a deed of trust (*Braddock*, 215 Md. App. at 319) even though they are necessary defendants under Tax-Prop. section 14-836(b)(1)(iv). The beneficiary of the deed of trust, however, had actual notice of the foreclosure proceedings. *Braddock*, 215 Md. App. at 337. Still, this Court held that the failure to join the substitute trustees meant that the tax-purchaser took subject to their rights. *Id.* at 338. “To hold otherwise,” we stated, would be inconsistent with “the plain meaning of § 14-836(b)(2),” that if a plaintiff chooses not to include a necessary defendant, that person’s rights “are not affected by the proceedings.” *Braddock*, 215 Md. App. at 338 (quoting Tax-Prop. § 14-836(b)(2)).

foreclosure, she was the only valid claimant to the surplus. Consequently, the circuit court correctly awarded the entire surplus to her.⁸

C. The Failure to Write an Opinion

Cibel complains that the circuit court failed to follow through with its representation that it would give a written explanation for its ruling. Although a written explanation might have assisted the parties and this Court in evaluating the circuit court’s decision, a written decision was not essential in the circumstances of this case. Here, the battle lines were clearly drawn: Cibel and Carmen debated whether the judgment foreclosing rights of redemption had extinguished Cibel’s interest and, if it did not, what the consequences were for Cibel’s right to the surplus. The bases for their respective arguments were reasonably clear, and it is equally clear that the court simply accepted Carmen’s arguments and rejected Cibel’s.

Cibel likens this case to an action for a declaratory judgment, in which a court must prepare a written document that defines the parties’ rights and obligations. Suffice it to say that this was not an action for a declaratory judgment and that the circuit court had no obligation to act as though it were.

Finally, Cibel relies on Md. Rule 2-522(a), which states that, “[i]n a contested court trial, the judge, before or at the time judgment is entered, shall prepare and file or dictate into the record a brief statement of the reasons for the decision and the basis of

⁸ In the proceedings below, Cibel did not argue that, by extinguishing Henry’s interest in the property, the order extinguished the one-twelfth interest that she received from Henry by way of intestate succession. Consequently, we do not consider the effect of that potential argument on appeal. *See* Md. Rule 8-131(a).

determining any damages.” Cibel admits, however, that “a hearing on dueling petitions for [a] tax sale surplus is not a trial in the literal sense.” We agree. The court did not conduct a “trial” within the meaning of Rule 2-522(a), and hence it had no obligation to provide “a brief statement of the reasons for the decision.”

**JUDGMENT OF THE CIRCUIT
COURT FOR PRINCE GEORGE’S
COUNTY AFFIRMED.
APPELLANT TO PAY COSTS.**