

Circuit Court for Prince George's County
Case No. CAEF22-28356

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 0482

September Term, 2023

CHUTER COERBELL

v.

LAURA H.G. O'SULLIVAN, ET AL.,
Substitute Trustees

Shaw,
Albright,
Eyler, Deborah S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Shaw, J.

Filed: July 2, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

This is an appeal from a residential foreclosure action in the Circuit Court for Prince George’s County brought by Appellees, substitute trustees O’Sullivan et al., against Appellant, Chuter Coerbell, mortgagor. Foreclosure proceedings were initiated on September 15, 2022, and the property was sold at auction to a third-party purchaser on February 7, 2023. Appellant filed a motion to stay and vacate the sale, and he, later, refiled his motion and then amended it. His motion was ultimately denied by the court.

Appellant timely noted this appeal and he presents three questions for our review, which we have consolidated into one¹:

1. Did the circuit court err in ratifying the foreclosure sale and denying Appellant’s motion to vacate the sale of his residential property?

We conclude the court did not err, and thus, we affirm the judgment.

BACKGROUND

Appellant was the owner of a townhouse located on Ronald Road in Capitol Heights, Maryland. The Property served as Appellant’s primary residence, and first and

¹ We have rephrased and consolidated Appellant’s questions for clarity. Appellant’s questions verbatim are:

1. Is the circuit court’s Order ratifying the foreclosure sale and denying Coerbell’s motion to vacate the same void for lack of personal jurisdiction arising from insufficient service of the foreclosure documents?
2. Did the court below err when it denied Coerbell’s motion to vacate and stay the foreclosure sale of his residential property on the ground that Coerbell did not receive adequate notice of the foreclosure proceeding?
3. Did the court below err in denying Coerbell’s motion to vacate the foreclosure sale of his residential property on the ground that the sale was legally deficient and, therefore, invalid?

second mortgages secured the property.² On September 15, 2022, Appellees filed a petition for an Order to Docket a foreclosure action in the Circuit Court for Prince George’s County.

In an affidavit later filed with the court, Anthony Lawson, a process server, attested that he went to the Property on September 28, 2022, at 9:28 a.m. and attempted to serve Appellant with copies of the following documents: Notice of Foreclosure Action, Preliminary Loss Mitigation Affidavit, Loss Mitigation Application, and the Order to Docket with attachments, as filed with the Prince George’s County Clerk’s Office. Mr. Lawson was unable to serve Appellant. The following day, September 29, 2022, at 6:30 p.m., he returned to the Property and attempted to serve Appellant. Mr. Lawson was again unable to serve Appellant. Mr. Lawson made a third attempt on October 6, 2022, at 7:30 a.m. Because Appellant did not respond to any of his attempts to effect service, Mr. Lawson posted copies of the foreclosure documents on the front door of the Property. On October 11, 2022, Mr. Lawson attested that he mailed copies of the above-listed documents by both certified mail, return receipt requested, and by first-class mail, postage prepaid, to the Property address. Appellant never responded to the court or Appellees regarding the case.

On January 19, 2023, the Substitute Trustees publicized the sale and a letter from the Law Offices of McCabe, Weisberg & Conaway, LLC, was sent to the property, addressed to “All Occupants[.]” The letter provided “Notice of Impending Foreclosure

² This case involves only the second mortgage. Appellant asserts that he remained current on the first mortgage at all times relevant to this case.

Sale[.]” The letter stated that a foreclosure sale of the Property was scheduled to occur on February 7, 2023, at 9:30 a.m. at the Prince George’s County Courthouse.

On February 7, 2023, the Property was auctioned and sold to a third-party purchaser. Appellant filed a motion to stay and vacate the foreclosure sale on February 17, 2023, arguing that notice of the foreclosure sale was not sent prior to the sale and the sale was not properly advertised. Appellant filed another motion to vacate the foreclosure sale on March 6, 2023, which he later amended and refiled. Appellees filed an opposition to Appellant’s motion and Appellant filed a response. In an affidavit attached to his motion, Appellant stated that on September 10, 2022, he traveled from the Property in Maryland to New York to care for his aging parents. Appellant stated that he did not return to Maryland until December 27, 2022. When he returned, there were no documents on his door, nor he did receive any documents via U.S. mail. Appellant also stated that he did not receive the letter regarding the sale. On May 2, 2023, the court denied Appellant’s motion. Appellant noted this timely appeal.

STANDARD OF REVIEW

When “ruling on exceptions to a foreclosure sale and whether to ratify the sale, trial courts may consider both questions of fact and law.” *Jones v. Rosenberg*, 178 Md. App. 54, 68 (2008). In our review of a “court’s ruling on exceptions to a sale, we apply a de novo standard of review as to questions of law[.]” *Hood v. Driscoll*, 227 Md. App. 689, 697 (2016) (internal citation omitted). This Court will “disturb the circuit court’s findings of fact only when they are clearly erroneous.” *Fagnani v. Fisher*, 190 Md. App. 463, 470 (2010), *aff’d*, 418 Md. 371, 377 (2011); *see also Hobby v. Burson*, 222 Md. App. 1, 13

(2015). The exceptant to a foreclosure sale bears the burden of proving that the sale was invalid and must also demonstrate that “any irregularities caused actual prejudice.” *Fagnani*, 190 Md. App. at 470.

DISCUSSION

I. The court did not err in denying Appellant’s Motion to Vacate.

Appellant argues he was not properly served with foreclosure documents, thus the court lacked personal jurisdiction. He asserts that because he did not know of the foreclosure action pre-sale, he is entitled to raise objections to the foreclosure proceeding post-sale. Appellant also argues there were deficiencies in the sale.

Appellees respond that the court properly denied Appellant’s motion to vacate because Appellant did not raise a proper challenge to the foreclosure sale. Appellees argue that lack of receipt of notice is not a basis for exceptions, nor are pre-sale defenses raised post-sale. Appellees contend there were no deficiencies in the sale.

In Maryland, actual receipt of notice is not the test for compliance with procedural due process requirements. U.S.C.A. CONST. Amend. 14; West’s Ann. Md. CONST. Declaration of Rights, Art. 24. Notice by mail is ordinarily presumed to be constitutionally sufficient. U.S.C.A. CONST. Amend. 14; West’s Ann. Md. CONST. Declaration of Rights, Art. 24; *Griffin v. Bierman*, 403 Md. 186, 198 (2008). Maryland Code, Ann., Real Property § 7-105.1(h) governs the service of foreclosure documents upon residential mortgagors. The statute provides:

(h)

(1) A copy of the order to docket or complaint to foreclose on residential property and all other papers filed with it in the form and

sequence as prescribed by regulations adopted by the Commissioner of Financial Regulation, accompanied by the documents required under paragraphs (2), (3), and (4) of this subsection, shall be served on the mortgagor or grantor by:

- (i) Personal delivery of the papers to the mortgagor or grantor;
or
- (ii) Leaving the papers with a resident of suitable age and discretion at the mortgagor’s or grantor’s dwelling house or usual place of abode

(5) If at least two good faith efforts to serve the mortgagor or grantor under paragraph (1) of this subsection on different days have not succeeded, the plaintiff may effect service by:

- (i) *filing an affidavit* with the court describing the good faith efforts to serve the mortgagor or grantor; and
- (ii)
 1. *Mailing a copy* of all the documents required to be served under paragraph (1) of this subsection by *certified mail, return receipt requested, and first-class mail* to the mortgagor’s or grantor’s last known address and, if different, to the address of the residential property subject to the mortgage or deed of trust; and
 2. *Posting a copy* of all the documents required to be served under paragraph (1) of this subsection in a conspicuous place *on the residential property* subject to the mortgage or deed of trust.

Md. Code, Ann., Real Property § 7-105.1(h) (emphasis added).

As the Supreme Court of Maryland has emphasized, “[t]he Maryland foreclosure scheme requires that the Trustees send notice by both certified and first-class mail, two ‘efficient and inexpensive means of communication’ that we conclude are calculated

reasonably to inform interested parties of the pending foreclosure action.” *Griffin v. Bierman*, 403 Md. 186, 212 (2008) (quoting *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 319 (1950)). Certified mailings that contain foreclosure documents that are returned as “unclaimed,” relieve the plaintiffs from having to take “reasonable follow-up measures to attempt to give notice.” *Griffin*, 403 Md. at 202 n. 11.

After a foreclosure sale on a lien, a debtor’s right to redemption normally ends. *Jones v. Rosenberg*, 178 Md. App. 54, 69 (2008). However, a party may file exceptions. The procedure for filing exceptions following a foreclosure sale and prior to the sale’s ratification is outlined in Maryland Rule 14-305(d). It states:

Rule 14-305. Procedure following sale.

(d) Exceptions to sale. (1) How taken. 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) Ruling on exceptions; hearing. 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) [i.e., Procedure prior to the sale—Notice].” [Alteration added.]

Md. Rule 14-305 (emphasis added).

The excepting party must prove the substance of his contentions regarding the sale’s irregularity. *Jones*, 178 Md. App. at 69. “The invalidity of a mortgage sale, like other

judicial sales, is not presumed, and the burden of proving the contrary is on the one attacking the sale.” *Butler v. Daum*, 245 Md. 447, 453 (1967). Procedural irregularities that can be challenged include allegations that the advertisement of sale was insufficient or misdescribed the property, the creditor committed a fraud by preventing someone from bidding or by chilling the bidding, and the price as unconscionable. Md. Rule 14-305(d)(1); *Jones*, 178 Md. App. at 69. Unawareness of sale is not a procedural irregularity of the sale itself. *Greenbriar Condo., Phase I Council of Unit Owners, Inc. v. Brooks*, 387 Md. 683, 741 (2005). Further, receipt of notice is not required to validate a sale. *Griffin*, 403 Md. at 208.

Here, the process server, as stated in his affidavit, attempted but was unable to personally serve the foreclosure documents on Appellant on three separate days. He then posted the foreclosure documents on the front door of the Property and mailed the foreclosure documents to the Property address by certified mail, return receipt requested, and by first-class mail, postage prepaid. As noted by Appellees, the tracking information for the certified mail was listed in the process server’s affidavit. According to the tracking information, the foreclosure documents were “unclaimed” and returned to sender after two failed delivery attempts and a failure by the recipient to claim the mail from the post office. There is no evidence in the record to suggest that the mailings were sent to an inaccurate address. While Appellant is correct that defective service is a jurisdictional defect, the service of foreclosure documents on Appellant fully complied with Maryland statutory requirements, thus the court properly obtained jurisdiction over Appellant. We hold, therefore, that Appellant’s jurisdiction and notice arguments lack merit.

Appellant also argues that the sale was not properly advertised, however, he provides no detail, no “particularity” in argument or evidence as to why the advertisement of the sale was insufficient. It is, clearly, the debtor’s obligation to establish defects in the sale and in our review, we found no evidence to suggest that the sale was not proper. Based on the record before us, we hold that the court did not err in denying Appellant’s motion to vacate the foreclosure sale.

**JUDGMENT OF THE CIRCUIT COURT
FOR PRINCE GEORGE’S COUNTY
AFFIRMED; COSTS TO BE PAID BY
APPELLANT.**