

Circuit Court for Harford County
Case No. C-12-CV-19-000330

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 815

September Term, 2022

MICHAEL SHRADER

v.

HARFORD COUNTY TAX SALES 2018, ET
AL.

Wells, C.J.,
Kehoe,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: June 20, 2023

* At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

*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 stems from a tax sale foreclosure in the Circuit Court for Harford County regarding real property located at 1303-F Sheridan Place in Bel Air (the “Property”). Following the sale, and after all rights of redemption had been foreclosed, Michael Lee Shrader, acting as Personal Representative of the Estate of the Property’s former owner, filed a “Petition for Payment of Surplus Funds” seeking payment of the proceeds of the tax sale. Shortly thereafter, Taylor Ridge Condominium Council, Inc. (“Taylor Ridge”) filed a separate “Petition for Payment of Surplus Funds” seeking a portion of the proceeds of the tax sale to satisfy a lien it had filed on the Property prior to the tax sale for nonpayment of condominium association dues and related fees. The court subsequently granted both petitions. Mr. Shrader filed a timely appeal.

In this appeal, Mr. Shrader presents two questions, which we have rephrased and consolidated into a single question for clarity:

Did the circuit court err in granting Taylor Ridge’s Petition for Payment of Surplus Funds?

For reasons to follow, we hold that the circuit court did not err. Accordingly, we affirm.

BACKGROUND

The Property was formerly owned by Michael Lynn Shrader (the “Decedent”), who died in 2016. In June 2016, the Property was sold to Tamarack 18, LLC (“Tamarack”) pursuant to a tax sale foreclosure initiated by the Treasurer of Harford County to recover \$2,208.79 in unpaid taxes on the Property. In May 2017, Taylor Ridge, the Property’s

condominium association, filed, in the county’s Land Records Office, a lien against the Property for unpaid association dues and related fees.

In April 2019, Tamarack filed, in the circuit court, a complaint to foreclose the right of redemption, naming, among others, the Decedent and Taylor Ridge as defendants. In November 2019, the court granted Tamarack’s complaint and entered judgment foreclosing the right of redemption to the Property. In August 2020, the Treasurer of Harford County executed a deed conferring all rights to the Property to Tamarack for \$73,670.00.

Petitions for Payment of Surplus Funds

In February 2022, Mr. Shrader, acting as Personal Representative for the Decedent’s estate, filed, in the circuit court, a Petition for Payment of Surplus Funds. Mr. Shrader alleged that the Property had sold for an amount in excess of the taxes owed to the county. Mr. Shrader asked the court to enter an order directing the Treasurer to pay all surplus funds to him.

Around the same time, Taylor Ridge filed its own Petition for Payment of Surplus Funds. Taylor Ridge alleged that the lien it had filed on the Property had not been paid and that, consequently, a portion of the surplus funds should be paid to Taylor Ridge to satisfy that outstanding obligation. The total amount of the obligation was \$21,229.30.

At the hearing on the parties’ petitions, Mr. Shrader argued that Taylor Ridge was not entitled to any of the surplus proceeds because the lien on the Property was extinguished when the court entered judgment foreclosing the right of redemption in November 2019. Mr. Shrader further argued that the statute that governed the payment of

surplus funds did not apply to defunct liens. Taylor Ridge argued that it was not foreclosed from seeking repayment of the lien from the surplus funds despite the fact that the lien had been extinguished.

Ultimately, the court ruled in favor of Taylor Ridge. The court ordered the Treasurer to pay Taylor Ridge \$21,229.30 from the surplus funds and to pay the remaining funds to Mr. Shrader. Mr. Shrader filed this timely appeal.

DISCUSSION

Parties' contentions

Mr. Shrader argues that the circuit court erred in granting Taylor Ridge's petition. He contends that Taylor Ridge's lien became unenforceable upon entry of the judgment foreclosing the right of redemption. He contends that, pursuant to this Court's holding in *Allstate Mortg. & Co. v. Mayor & City Council of Baltimore City*, 214 Md. App. 395 (2013), the holder of a defunct lien has no right of recovery from the surplus proceeds of a tax sale.

Taylor Ridge argues that the court did not err. In so doing, Taylor Ridge concedes that its lien on the Property was extinguished upon entry of the judgment foreclosing the right of redemption. Taylor Ridge maintains, however, that the debt was still owed and that it had the right to seek repayment of that debt from the proceeds of the surplus sale. Taylor Ridge contends that this Court stated as much in *Kona Props., LLC v. W.D.B. Corp., Inc.*, 224 Md. App. 517 (2015), and that Mr. Shrader's reliance on *Allstate* is misplaced.

Analysis

Tax sale foreclosure proceedings are governed by § 14-801, *et. seq.*, of the Tax-Property Article (“TP”) of the Maryland Code. Under that statutory scheme, when property taxes go unpaid, a lien is created on the property, and the property may be sold at auction. *Kona*, 224 Md. App. at 528. Following such a sale, the purchaser pays the taxes owed and receives a certificate of sale for the remainder of the purchase price. *Id.* at 529. The owner of the property may redeem the certificate of sale, and thus retain ownership of the property, by paying the taxes owed. *Id.* After a certain time, if the owner has not redeemed the tax sale certificate, the purchaser may file a complaint asking the court to foreclose the right of redemption. *Id.* Both the purchaser and the court must thereafter comply with several procedural steps, including providing proper notice to the owner and other interested parties. *Id.* at 530; *see also* TP § 14-835. If the owner has not redeemed the property after a certain time, the court must enter judgment foreclosing the right of redemption. TP § 14-844(a). Such a judgment is “final and conclusive on the defendants, their heirs, devisees, and personal representatives and they or any of their heirs, devisees, executors, administrators, assigns, or successors in right, title, or interest, and all defendants are bound by the judgment as if they had been named in the proceedings and personally served with process.” *Id.* In addition, such a judgment vests in the purchaser “an absolute and indefeasible title in fee simple in the property, free and clear of all alienations and descents of the property occurring before the date of the judgment and

encumbrances on the property, except taxes that accrue after the date of sale and easements[.]” TP § 14-844(b).

After the right of redemption has been foreclosed, and after the purchaser pays to the tax collector the balance owed plus any taxes, interest, and penalties that accrued since the date of sale, the collector may issue the deed to the property to the purchaser. TP § 14-818(a). If, following that transaction, there is a balance “over the amount required for the payment of taxes, interest, penalties, and costs of sale[.]” the collector must pay those surplus funds to: “(i) the person entitled to the balance; or (ii) when there is a dispute regarding payment of the balance, a court of competent jurisdiction pending a court order to determine the proper distribution of the balance.” TP § 14-818(a)(4).

Here, it is undisputed that Taylor Ridge’s lien on the Property was extinguished after the court entered judgment foreclosing the right of redemption. The sole question is whether Taylor Ridge nevertheless remained a “person entitled to the balance” of the surplus proceeds. As noted, Mr. Shrader argues that our holding in *Allstate* is dispositive of that question, whereas Taylor Ridge argues that *Allstate* is distinguishable and that our holding in *Kona* controls. Because the question is purely legal, we exercise *de novo* review. *Allstate*, 214 Md. App. at 399-400.

In *Allstate*, the subject property, which was owned by a corporation and was secured by a mortgage, was sold at a tax sale auction. *Id.* at 397-98. After all rights of redemption were foreclosed and the full purchase price was paid to the tax collector, another company, Asset Recovery, acting on behalf of the resident agent of the company that had owned the subject property, filed a claim for the surplus proceeds with the collector. *Id.* at 398. The

collector subsequently granted the claim and issued all surplus proceeds to Asset Recovery. *Id.* Shortly thereafter, the mortgagee filed a petition in the circuit court seeking payment of the surplus proceeds and arguing that the collector had erroneously paid the money to Asset Recovery. *Id.* The court denied the motion. *Id.* On appeal, the mortgagee argued that the resident agent for whom Asset Recovery had been acting was not a “person entitled to the balance” and that, consequently, the collector had failed to adhere to TP § 14-818 in issuing the surplus proceeds to Asset Recovery. *Id.* at 399-400. We disagreed, holding that the collector had fully complied with the requirements of the statute. *Id.* at 406. In so doing, we noted that, based on the legislative history of the statute, “the phrase ‘person entitled to the balance’ was intended to refer primarily to the property owner or owners – not to mortgage lien holders or other creditors.” *Id.* at 403. The Court went on to note that the claim submitted by Asset Recovery to the collector had satisfied all of the statute’s requirements and that the collector was not obligated to investigate further to assess the validity of the claim or to assess any competing priorities between the property owner and potential lien holders. *Id.* at 403-05. We explained that the collector had no reason to doubt the validity of the claim because no other claim had been filed. *Id.* at 405. We further explained that, even if there were competing claims, the statute specifically states that the collector must submit the “dispute” to the circuit court. *Id.*

Two years later, the Court decided *Kona*. In that case, several properties, which were encumbered by a mortgage, were sold at a tax sale, and tax sale certificates were issued to the properties’ respective purchasers. *Kona*, 224 Md. App. at 524-25. The certificate holders thereafter petitioned the court to foreclose the right of redemption on all

the properties, and the court later entered judgments foreclosing the right of redemption for each of the properties. *Id.* at 525. Shortly thereafter, the mortgagees for some of the properties moved to enforce the judgments in order to receive any surplus funds paid to the collector pursuant to the tax sale. *Id.* The tax sale certificate holders opposed the motions because, for whatever reason, they no longer wanted the properties. *Id.* at 525-27. The court eventually granted the motions and ordered the certificate holders to pay the bid surpluses. *Id.* at 526. On appeal, the certificate holders argued that the court was not permitted to “enforce a judgment to obtain the surplus on a bid when that relief is requested by a mortgagee[.]” *Id.* at 558. We disagreed and held that the court had not erred. *Id.* at 558-60. We explained that, where there is a dispute as to the proper allocation of a bid surplus, a court is not limited to awarding the surplus only to property owners; rather, the court’s authority regarding the surplus applied “generally to parties in interest, i.e., the defendants who have an interest in the property and who are entitled to the balance.” *Id.* at 558-59. We explained that, because the mortgagees were defendants in the actions foreclosing the rights of redemption and were “interested parties entitled to the surpluses that would satisfy the property owners’ respective obligations, they could request the circuit court to enter judgments against [the certificate holders].” *Id.* at 559.

Turning back to the instant case, we hold that the circuit court did not err in awarding a portion of the surplus funds to Taylor Ridge. As in *Kona*, Taylor Ridge was a defendant in the action foreclosing the right of redemption and was an interested party entitled to the surplus that would satisfy the Decedent’s obligation to pay the outstanding debt owed to Taylor Ridge. Thus, the court was authorized to enter judgment in favor of Taylor Ridge.

Mr. Shrader’s reliance on *Allstate* is misplaced. That case involved a markedly different set of facts than those presented here. In that case, the issue was whether the collector had complied with TP § 14-818 in granting the apparent owner’s claim for surplus proceeds, where there was no “dispute” over the proceeds at the time of distribution. Here, by contrast, the issue is whether a court has the authority to award surplus proceeds to a mortgagee when there is a dispute as to the proper allocation of those proceeds prior to any distribution of said proceeds by the collector. And, as we explained in *Kona*, a court does have that authority.

To be sure, we did suggest in *Allstate* that the legislature did not intend for the phrase “person entitled to the balance” to apply to mortgagees with defunct liens on the subject property. Nevertheless, we never held that such a mortgagee was foreclosed from recovering the outstanding debt from the surplus funds. To the contrary, we explained that, where there is a dispute as to who should receive the funds, the collector should not assess the priorities between a property owner and various lien holders but rather should submit the dispute to the circuit court for determination. *Allstate*, 214 Md. App. at 405. That is precisely what happened here. In any event, to the extent that *Allstate* created doubt as to whether a mortgagee could recover surplus funds, all doubt was removed by *Kona*, which was decided two years after *Allstate*.

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