Circuit Court for Charles County
Case No. C-08-CV-22-000365

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1496

September Term, 2023

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DIANA THEOLOGOU, ET AL.

v.

BENJAMIN WILLIAMS

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Graeff,
Arthur,
Battaglia, Lynne A.
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Arthur, J.

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Filed: October 2, 2024

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

This an appeal from an interlocutory order that vacated a foreclosure sale before the court had ratified the sale. Because we lack appellate jurisdiction, we must dismiss the appeal.

## PROCEDURAL BACKGROUND

Appellant Diana Theologou and others, as substitute trustees under a deed of trust, commenced this foreclosure proceeding on June 9, 2022, by filing an order to docket in the Circuit Court for Charles County. The proceeding concerns a property owned by appellee Benjamin Williams. Mr. Williams did not file a timely motion to stay or dismiss the foreclosure proceeding.

On September 1, 2022, the substitute trustees sent a notice of sale to Mr. Williams. The notice of sale informed Mr. Williams that his property would be sold at a foreclosure auction on September 20, 2022.

On October 10, 2022, Ms. Theologou filed a report of sale. The report disclosed that Mr. Williams's property had been sold at a foreclosure auction on September 20, 2022.

On the following day, October 11, 2022, the clerk of the circuit court issued a notice directing that the sale "be ratified and confirmed, unless cause to the contrary . . . be shown on or before" November 11, 2022.[1] The notice required that a copy of the

[1] Despite the language of the notice, a foreclosure sale is not automatically "ratified and confirmed, unless cause to the contrary" is shown before a specified date. Under Maryland Rule 14-305(f)(2), ratification can occur only if (among other things) "the court is satisfied that the sale was fairly and properly made." If "the court is not

notice "be inserted in some newspaper published in [the] County once in each of [the] three successive weeks before" November 10, 2022. Mr. Williams failed to show cause why the sale should not be ratified or confirmed before November 11, 2022, but it is unclear whether the substitute trustees complied with the publication requirement in the notice.

On December 6, 2022, Mr. Williams, representing himself, filed a handwritten motion to stay the foreclosure. The substitute trustees opposed the motion on the grounds that it was moot, that it was untimely, that it did not comply with the governing rules, and that Mr. Williams had not filed timely post-sale exceptions. On February 1, 2023, the court denied the motion to stay the foreclosure.

Meanwhile, on January 18, 2023, the clerk of the circuit court, at the substitute trustees' request, issued a second order directing that the sale "be ratified and confirmed, unless cause to the contrary . . . be shown," in this instance, "on or before" February 21, 2023. The notice required that a copy of the notice "be inserted in some newspaper published in [the] County once in each of [the] three successive weeks before" February 20, 2023. On February 8, 2023, the substitute trustees filed a document attesting that they had complied with the publication requirement.

Nothing more occurred in the foreclosure case until May 25, 2023, when Mr. Williams, through counsel, moved the court to vacate the foreclosure sale and to refrain

satisfied that the sale was fairly and properly made, it may enter any order that it deems appropriate." *Id.*

from ratifying the sale. In brief, Mr. Williams alleged that the substitute trustees had made false statements in the June 9, 2022, order to docket. The substitute trustees opposed the motion to vacate the foreclosure sale.[2]

The circuit court granted the motion to vacate in an order docketed on September 27, 2023. The substitute trustees noted an appeal the following day.

The court had not ratified the foreclosure sale at the time it vacated the sale.

## ANALYSIS

Our power to decide appeals is derived solely from statute—principally, section 12-301 of the Courts and Judicial Proceedings Article of the Maryland Code (1974, 2020 Repl. Vol.) ("CJP"). Under CJP section 12-301, "a party may appeal from a final judgment entered in a civil or criminal case by a circuit court."

Section 12-301 expresses "a long-standing bedrock rule of appellate jurisdiction, practice, and procedure that, unless otherwise provided by law, the right to seek appellate review in [the Maryland appellate courts] ordinarily must await the entry of a final judgment that disposes of all claims against all parties." *Silbersack v. ACandS, Inc.*, 402 Md. 673, 678 (2008); *accord Carver v. RBS Citizens, N.A.*, 462 Md. 626, 633 (2019); *Miller Metal Fabrication, Inc. v. Wall*, 415 Md. 210, 220-21 (2010); *Grier v.*

[2] As the legal basis for the motion, Mr. Williams cited Maryland Rule 2-535, which concerns a circuit court's revisory power over judgments. Rule 2-535 did not apply to Mr. Williams's motion, because the circuit court had yet to issue a judgment of any kind. The motion is better understood as a request that the court reconsider an interlocutory ruling, which it is generally free to do at any time before the entry of a final judgment. *See, e.g.*, *Bennett v. Ashcraft & Gerel, LLP*, 259 Md. App. 403, 457 (2023) (citing Md. Rule 2-602(a)), *cert. denied*, 487 Md. 51 (2024).

*Heidenberg*, 255 Md. App. 506, 516 (2022). "The purpose of requiring parties to await [the entry of a] final judgment before taking an appeal is to avoid 'piecemeal appeals,' which may result in disruption and inefficiency." *Huertas v. Ward*, 248 Md. App. 187, 200 (2020) (citing *Monarch Acad. Baltimore Campus, Inc. v. Baltimore City Bd. of Sch. Comm'rs*, 457 Md. 1, 42-43 (2017)).

"In general, an order is not a final judgment unless it fully adjudicates all claims in the case by and against all parties to the case." *Huertas v. Ward*, 248 Md. App. at 200 (citing Md. Rule 2-602(a)). "An interlocutory order, i.e. any order that is not a final judgment, ordinarily is not appealable." *Id.* (citing *Baltimore Home Alliance, LLC v. Geesing*, 218 Md. App. 375, 383 (2014)).

"[A]n order ratifying a foreclosure sale is a final judgment as to any rights in the real property, even if the order refers the matter to an auditor to state an account." *Id.* at 205. In this case, however, the circuit court has not ratified the sale. Consequently, we have no final judgment. *See McLaughlin v. Ward*, 240 Md. App. 76, 84 (2019).

Had the court vacated an *enrolled* order ratifying a foreclosure sale, the substitute trustees would have the right to appeal. *See O'Sullivan v. Kimmett*, 252 Md. App. 653, 673 (2021) (citing *Bank of New York Mellon v. Nagaraj*, 220 Md. App. 698 (2014)).[3]

[3] Under Md. Rule 2-535(a), a circuit court has "'unrestricted discretion'" to revise a judgment within 30 days after the entry of judgment. *See, e.g.*, *Platt v. Platt*, 302 Md. 9, 13 (1984) (quoting *Maryland Lumber Co. v. Savoy Constr. Co.*, 286 Md. 98, 102 (1979)). After 30 days, however, the judgment becomes "enrolled." Thereafter, a circuit court can revise the judgment only upon a showing of "fraud, mistake, or irregularity," as those terms are "'narrowly defined and strictly applied'" in the case law. *Pelletier v.*

"The rationale for that well-established principle is that the person who benefitted from the now-vacated enrolled judgment has lost an important right, and therefore an appeal of the ruling is necessary to vindicate that right, if it was wrongfully lost." *Davis v. Attorney General*, 187 Md. App. 110, 122 (2009) (citing *Ventresca v. Weaver Bros., Inc.*, 266 Md. 398, 403 (1972)). As previously stated, however, the court had yet even to ratify the foreclosure sale when it issued the order vacating the sale in this case. In other words, not only was there no *enrolled* order ratifying the sale in this case, but there was no order ratifying the sale at all.

In *O'Sullivan v. Kimmett*, 252 Md. App. at 674, this Court held that the substitute trustees did not have the right to appeal an order striking an *unenrolled* order ratifying a foreclosure sale. Yet if a trustee has no right to appeal when a court strikes an unenrolled order ratifying a foreclosure sale, the substitute trustees in this case certainly have no right to appeal when the court vacates a sale that has never been ratified. The order vacating an unratified foreclosure sale was not a final judgment or an order otherwise appealable.

Maryland recognizes three limited exceptions to the statutory "final judgment" rule of section 12-301 of the Courts and Judicial Proceedings Article. The exceptions are: (1) appeals from interlocutory rulings specifically allowed by statute; (2) immediate appeals permitted under Maryland Rule 2-602(b); and (3) appeals from interlocutory

*Burson*, 213 Md. App. 284, 290 (2013) (quoting *Thacker v. Hale*, 146 Md. App. 203, 217 (2002)); *accord Early v. Early*, 338 Md. 639, 652 (1995).

rulings allowed under the collateral order doctrine. *See, e.g.*, *County Comm'rs for St. Mary's County v. Lacer*, 393 Md. 415, 424-25 (2006).

The substitute trustees do not contend that they have a statutory right to appeal or that their appeal is permitted under Rule 2-602(b). They do, however, contend that they have the right to appeal under the collateral order doctrine. They are incorrect. The collateral order doctrine does not apply in this case, because the order vacating the sale requires the consideration of the merits of the case—i.e., it is not "collateral" to or entirely separate from the merits. *See Waterkeeper Alliance, Inc. v. Maryland Dep't of Agric.*, 439 Md. 262, 286-87 (2014). The circuit court vacated the foreclosure sale because it concluded, on the merits, that the substitute trustees might not have the right to foreclose.

This Court has the right and duty to examine whether it has jurisdiction to decide an appeal. *See, e.g.*, *Johnson v. Johnson*, 423 Md. 602, 606 (2011) (collecting authorities). We lack appellate jurisdiction over this appeal. Consequently, we must dismiss the appeal. Md. Rule 8-602(b)(1).[4]

[4] When it vacated the foreclosure sale, the court ordered that the case would "proceed in the normal course pending further motion." On October 25, 2023, Mr. Williams moved to dismiss the foreclosure proceeding under Maryland Rule 14-211 and Maryland Rule 14-209.1. The substitute trustees responded, but the court appears to have held the motion in abeyance during the pendency of this appeal, as it is required to do. *See, e.g.*, *In re Emileigh F.*, 355 Md. 198, 202-03 (1999) (stating that, "[a]fter an appeal is filed, a trial court may not act to frustrate the actions of an appellate court[]" and that "[p]ost-appeal orders which affect the subject matter of the appeal are prohibited[]"). On remand, if the court denies the motion to dismiss the foreclosure sale, Mr. Williams will have the right to take an interlocutory appeal, because the order would be in the nature of

**APPEAL DISMISSED; APPELLANTS TO PAY ALL COSTS.**

an order refusing to grant an injunction, which is immediately appealable under CJP § 12-303(3)(iii). *See, e.g.*, *Huertas v. Ward*, 248 Md. App. at 202. If the court grants the motion to dismiss, the substitute trustees will have the right to appeal, because the order would be a final judgment. If the court stays the foreclosure proceedings, the substitute trustees would presumably have the right to an interlocutory appeal on the premise that the order is in the nature of an injunction issued after the trustees had "answered" by opposing the motion. *See* CJP § 12-303(3)(i); *see also Bechamps v. 1190 Augustine Herman, LC*, 202 Md. App. 455 (2011) (entertaining an appeal from an order staying a foreclosure sale, but without specifying the basis for appellate jurisdiction). For these reasons, the decision vacating the foreclosure sale is not effectively unreviewable on appeal from a final judgment, another requirement for an appeal under the collateral order doctrine. *See O'Sullivan v. Kimmett*, 252 Md. App. at 675-76.