

Circuit Court for Prince George's County
Case No. CAE21-04238

UNREPORTED*
IN THE APPELLATE COURT
OF MARYLAND

No. 1499

September Term, 2023

GEORGE ETAME

v.

PRISCILIA NGUH

Shaw,
Tang,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Shaw, J.

Filed: December 13, 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 persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

In September 2020, George Etame, Appellant, and Priscilia Nguh, Appellee, purchased a parcel of real property located in Bowie, Prince George’s County. One year later, Ms. Nguh petitioned the Circuit Court for Prince George’s County for partition of the property or, alternatively, for a sale in lieu of partition. Following a hearing, the court ordered a sale and appointed a trustee. The trustee sold the property and filed a report of sale, which the circuit court approved.

Mr. Etame noted a timely appeal and presents the following issues, which we have rephrased and consolidated as follows:¹

¹ The issues as presented by Mr. Etame are:

- I. Was the appellant denied due process and was the court in error in failing to consider appellant’s original pleadings of unclean hands and appellee’s on the record admission of fraud where both occurred prior to any discovery issues?
 - II. Was the court wrong in precluding the appellant from providing any evidence or testimony, effectively dismissing [appellant’s] entire case, based on discovery violations where the discovery violations noted by the court concerned financial records such as bank records and tax returns and the source of the down payment and other payments and where the appellant had produced a document relevant to the down payment and whether appellant’s other pleadings and other counter claims had nothing to do with financial matters[?]
 - III. Was the appellant denied due process and was the court wrong when the court held a hearing on a motion concerning the trustee’s report of sale before the time allowed under law for the appellant to reply to the motion?
 - IV. Was the court appointed trustee biased against the appellant in the trustee[’s] multiple communications with the appellee and the trustee[’]s non-communication with the appellee?
 - V. Did the court appointed trustee violate his fiduciary duty where the trustee sold the property in an arms-length transaction to the brother[-]in[-]law of the
- (continued)

1. Whether the circuit court abused its discretion in ordering sanctions for Mr. Etame’s discovery violations, including dismissal of his counterclaims.
2. Whether the circuit court erred by holding a hearing on the distribution of sale proceeds in Mr. Etame’s absence and denying Mr. Etame’s exceptions to the trustee’s report of sale.

For the reasons set forth below, we shall affirm the judgment of the circuit.

FACTUAL AND PROCEDURAL BACKGROUND

On September 10, 2020, Mr. Etame and Ms. Nguh purchased a property, located at 3710 Celeste Bruce Circle in Prince George’s County, Maryland for \$992,124. Mr. Etame and Ms. Nguh financed the purchase of the property with a mortgage in the amount of \$765,600 from United Wholesale Mortgage. On the “Borrower Information” section of the Uniform Residential Loan Application for the mortgage, the parties indicated that they were married, and Ms. Nguh indicated that she would hold title as a “single woman.” The property was conveyed by special warranty deed, which was recorded in the land records of Prince George’s County. The parties signed the special warranty deed as “husband and wife as tenants by the entireties[.]” According to the parties, however, they have never been married.

appellee at below market price and without any due diligence, and without putting the property in question on the open market to see if there were other bids, thus violating his fiduciary duty to obtain the highest possible value for the property[?]

- VI. Were the proceeds of the partition sale distributed without regard to the facts or the law?

The down payment for the property consisted of \$49,000 of Ms. Nguh’s funds and \$127,300 she acquired by private loan from her brother-in-law. Mr. Etame did not contribute funds toward the down payment. He paid five monthly mortgage payments totaling \$23,416.50 between November 2021 and April 2022.

On April 9, 2021, Ms. Nguh filed a petition to partition the property or, in the alternative, order a sale in lieu of partition. Ms. Nguh was represented by counsel. Mr. Etame represented himself.² Mr. Etame filed an answer and counterclaims alleging unclean hands, intentional infliction of emotional distress, fraudulent inducement and/or fraudulent misrepresentation.

Ms. Nguh propounded discovery on January 20, 2022, and noted Mr. Etame’s deposition for March 10, 2022. Ms. Nguh also filed a motion for partial summary judgment. Mr. Etame failed to respond to discovery, and on March 3, 2022, Ms. Nguh filed a motion for discovery sanctions and a motion to deem facts as admitted and documents as genuine. Mr. Etame did not appear for his deposition on March 10, 2022. As a result, Ms. Nguh filed a motion for sanctions for his failure to appear.

On May 3, 2022, the parties appeared for a hearing on Ms. Nguh’s motion for partial summary judgment and her motions for discovery sanctions. The circuit court denied Ms. Nguh’s motion for partial summary judgment and motion to deem facts as admitted and documents as genuine. With respect to Ms. Nguh’s motion for sanctions, the court held

² In the course of the proceedings, Mr. Etame informed the court that he is an attorney licensed in New York, though he stated that he was not experienced in litigation.

the motion in abeyance, ordering that Mr. Etame’s deposition be noticed timely, and, in the event that he failed to appear a second time, the court indicated that it may grant Ms. Nguh’s request for sanctions.

Ms. Nguh noted Mr. Etame’s deposition for May 16, 2022. Mr. Etame responded to the notice, and requested that the deposition be rescheduled for July 15, 2022. In response, Ms. Nguh’s counsel offered to reschedule the deposition to June 9, 2022, provided that Mr. Etame confirmed in advance his attendance, and agreed to bring requested documents to the deposition. Ms. Nguh’s counsel attempted on multiple occasions to confirm the deposition date with Mr. Etame but received no response.

On May 16, 2022, Mr. Etame failed to appear at his deposition. After the deposition was called and suspended, Ms. Nguh returned home to the property, where she found Mr. Etame working on his computer. Ms. Nguh filed a motion to compel discovery and a motion for immediate sanctions for Mr. Etame’s failure to appear at his deposition.

The circuit court held a hearing on Ms. Nguh’s motion for immediate sanctions on August 16, 2022. The court found that Ms. Nguh’s counsel had made good faith efforts to obtain discovery and schedule Mr. Etame’s deposition, and that Mr. Etame had refused to return counsel’s phone calls and emails regarding outstanding discovery requests. The court also noted that Mr. Etame had not filed any objections to the outstanding discovery requests or motions for a protective order. The court ordered Mr. Etame to file any objections to the discovery requests by August 23, 2022, and further ordered that he provide his full and complete discovery responses by August 28, 2022. In response to the

circuit court’s order, Mr. Etame submitted objections and some discovery responses on August 23, 2022.

The court held a sanctions hearing on September 8, 2022. Over the course of the two-hour hearing, the court reviewed a number of Mr. Etame’s responses, which the court found to be non-responsive. At the conclusion of the hearing, the court ordered that Mr. Etame provide specific responses to all outstanding requests by the following day, September 9, 2022. Mr. Etame failed to comply with the court’s order.

On October 6, 2022, the court granted Ms. Nguh’s motion for immediate sanctions and ordered that Mr. Etame was prohibited from presenting any evidence in the case. The court further ordered Mr. Etame’s pleadings stricken, and his counterclaims dismissed. The court granted Ms. Nguh’s petition for sale of the property and ordered that a trustee be appointed to sell the property. The court further ordered both parties to vacate the property and deliver all keys to the trustee.

On January 11, 2023, the court appointed Perry Becker as trustee (the “Trustee”). The Trustee commissioned an appraisal of the property by a certified appraiser, who appraised the property at \$1,175,000. On February 3, 2023, the Trustee filed a motion to approve a contract for the sale of the property, stating that he had received an offer to purchase the property in the amount of \$1,105,000 by a self-represented party. According to the Trustee, the sale of the property to the unrepresented party would avoid payment of the standard 6% real estate commission, which would amount to \$70,500. On February 23, 2023, Mr. Etame filed an opposition to the motion to approve the contract. Over Mr.

Etame’s objection, the court granted the Trustee’s motion and approved the contract for the sale of the property.

The sale of the property occurred on June 7, 2023. On June 29, 2023, the Trustee filed a report of sale and a request for a hearing as to the distribution of the sale proceeds. The court accepted the Trustee’s report of sale and set a hearing regarding the sale proceeds for July 21, 2023. On July 19, 2023, Mr. Etame sent an email to the hearing judge’s chambers, requesting a continuance of the hearing, stating that he was out of the country. Mr. Etame did not file the request with the court. The court denied Mr. Etame’s request for a continuance, noting that Mr. Etame had failed to provide any documentation showing that he was out of the country and the date on which he had left the country.

At the hearing, the court granted Ms. Nguh’s motion for distribution of the sale proceeds and discharged the Trustee, followed by a written opinion and order entered on August 1, 2023. Mr. Etame did not appear at the hearing on July 21, 2023. Following the hearing, Mr. Etame filed “Exceptions to and Motion in Opposition to Trustee’s Report of Sale Due to Trustee’s Breach of Fiduciary Duty in Not Ob[ta]ining Maxim[u]m Possible Value for Property and Selling Property in Arms Length Transaction to Brother-in-Law of [Ms. Nguh] at Well Below Market Value Without Proper Due Di[ll]igence and Distributing Proceeds Contrary to Court Order and others.” Mr. Etame also filed a “Motion to Reconsider Court’s Order and Decision Concer[n]ing Approving Trustee Report of Sale on July 21, 2023 Due to Fact That Trustee Report was Filed June 29, 2023 but Hearing

Was Held July 21, 2023 Not Giving Defendant Enough Time Allowed Under Law of 30 Days to File and Argue Exception[s] to Trustee Report of Sale.”

On August 1, 2023, Ms. Nguh filed an opposition to Mr. Etame’s motion opposing the sale and his motion to reconsider the court order’s approving the Trustee’s report. Ms. Nguh requested that the court strike or deny Mr. Etame’s exceptions and motion to reconsider pursuant to the court’s order of sanctions prohibiting Mr. Etame from presenting evidence in his defense. On August 31, 2023, the court entered an order granting Ms. Nguh’s motion, and denying Mr. Etame’s opposition and motion to reconsider. Mr. Etame noted this timely appeal on September 28, 2023.

DISCUSSION

I.

Mr. Etame argues that the circuit court abused its discretion in ordering discovery sanctions that precluded him from providing any evidence in his defense of the case and in dismissing his counterclaims. He contends that the discovery requests to which he failed to respond concerned financial records that were not relevant to the partition claim.

We review a circuit court’s decision to impose discovery sanctions under an abuse of discretion standard. *Dackman v. Robinson*, 464 Md. 189, 231 (2019); *Att’y Grievance Comm’n v. Kreamer*, 404 Md. 282, 342 (2008). We will only reverse a trial court’s decision regarding discovery sanctions if the trial court abused its discretion. *See Pinsky v. Pikesville Rec. Council*, 214 Md. App. 550, 590 (2013) (stating that a trial court’s exercise of discretion in determining if sanctions should be imposed “is reversed on appeal

only in the presence of an abuse of that discretion”); *Sindler v. Litman*, 166 Md. App. 90, 123 (2005) (noting that “review of the trial court’s resolution of a discovery dispute is quite narrow” and “appellate courts are reluctant to second-guess the decision of a trial judge to impose sanctions for a failure of discovery”). There is an abuse of discretion where “no reasonable person would take the view adopted by the trial court’ or when the court acts ‘without reference to any guiding principles.’” *Santo v. Santo*, 448 Md. 620, 625-26 (2016) (quoting *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997)).

Maryland Rule 2-433(a)(3) provides that a trial judge may, as a sanction for a party’s failure to comply with discovery, impose sanctions. It provides in relevant part:

(a) **For Certain Failures of Discovery.** Upon a motion filed under Rule 2-432(a), the court, if it finds a failure of discovery, may enter such orders in regard to the failure as are just, including one or more of the following:

* * *

(2) An order refusing to allow the failing party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated materials in evidence[.]

(3) An order striking out pleadings or parts thereof

In determining whether to apply discovery sanctions, a trial court must consider the following factors:

“[W]hether the disclosure violation was technical or substantial, the timing of the ultimate disclosure, the reason, if any, for the violation, the degree of prejudice to the parties respectively offering and opposing the evidence, [and] whether any resulting prejudice might be cured by a postponement and, if so, the overall desirability of a continuance.”

Saxon Mortg. Servs, Inc. v. Harrison, 186 Md. App. 228, 252 (2009) (quoting *Taliaferro v. State*, 295 Md. 376, 390-91 (1983)). “Trial judges are vested with great discretion in applying sanctions for discovery failures.” *Rodriguez v. Clarke*, 400 Md. 39, 56 (2007). However, “it is not necessary for the court to go through a checklist and note its consideration for each factor.” *Muffoletto v. Towers*, 244 Md. App. 510, 542 (2020).

Applying the *Taliferro* factors to the facts of the present case, we note that, as to the first factor, the discovery violation here was substantial. Mr. Etame simply refused to cooperate in discovery. The court found that Ms. Nguh’s counsel had attempted to communicate with Mr. Etame numerous times, but Mr. Etame had refused to return counsel’s phone calls or emails, and he failed to provide any responsive answers to Ms. Nguh’s discovery requests, including requests for his address and phone number.

Mr. Etame also refused to be deposed on two occasions, even after the court ordered him to do so. With regard to Mr. Etame’s failure to appear at the noticed depositions, the court found:

Now, with regard to the first deposition, I do not find that there was enough information with regard to the first deposition that was done. But the second deposition, I believe that you should have responded and indicated that that date was not going to work and that you were not going to be present. I find that there is sufficient documentation from [Ms. Nguh’s counsel] that you were present and available for that second deposition date. And in fact, you were at home and there was no reason – that it was sent to him saying that you could not be present that day.

As to the timing of the ultimate disclosure, we note that Mr. Etame failed to provide responsive answers, even after multiple court orders instructing him to do so. Mr. Etame also failed to assert a legitimate reason for his non-disclosure, claiming only that certain

documents and requests for information were “not relevant” or “privileged,” notwithstanding the court’s express instructions that he must fully explain why he was asserting that a request was not relevant.

The court emphasized that it had instructed Mr. Etame on multiple occasions to consult an attorney to assist him with discovery. Though Mr. Etame indicated to the court that he understood the court’s directive, he proceeded to submit inadequate answers and failed to obtain the assistance of counsel. Based on Mr. Etame’s repeated failures to provide a legitimate explanation for his non-responsive answers, there was no reason for the court to believe that a continuance would resolve Mr. Etame’s noncompliance. Had the circuit court permitted Mr. Etame to proceed on his counterclaims alleging unclean hands, mortgage fraud, and intentional infliction of emotional distress, Ms. Nguh would have suffered substantial prejudice in attempting to prepare a defense to those counterclaims without any evidence to review.

Based on Mr. Etame’s repeated failures to cooperate and comply with the court’s discovery orders, we perceive no abuse of discretion in the circuit court’s imposition of the sanction precluding Mr. Etame from presenting evidence in his defense and in dismissing his counterclaims.

II.

Mr. Etame contends that the circuit court denied him due process by holding a hearing in his absence regarding distribution of the sale proceeds. Mr. Etame also challenges the terms of the sale, alleging bias and breach of fiduciary duty on the part of

the Trustee. Because Mr. Etame failed to post a supersedeas bond or alternative security to stay enforcement of the judgment, as required by Md. Rule 8-422, his arguments challenging the sale of the property and the distribution of the sale proceeds are moot, and we decline to address them.

In order to stay the enforcement of a civil judgment, an aggrieved party must file a supersedeas bond or alternative security. *See* Md. Rule 8-422. Where, as here, the judgment relates to the disposition of property, “the amount of the bond shall be the sum that will secure the amount recovered for the use and detention of the property, interest, costs, and damages for delay.” Md. Rule 8-423(b)(2). The general rule is that, in the absence of a supersedeas bond, an appeal becomes moot if the property is sold to a bona fide purchaser. *See Onderdonk v. Onderdonk*, 21 Md. App. 621, 624 (1974) (dismissing as moot an appeal of an order overruling exceptions to a trustee sale of jointly-owned property where the party opposing the sale failed to file a supersedeas bond staying the judgment and the property was sold to a bona fide purchaser); *see also Baltrotsky v. Kugler*, 395 Md. 468, 477 (2006) (holding that an appeal of a foreclosure sale was moot where the petitioner posted neither a supersedeas bond nor an alternative security, concluding “there [was] no basis upon which [p]etitioner may maintain his appeal after the proceeds of the sale have been distributed”).

The only exception to the rule that the rights of a bona fide purchaser to receive property acquired at a judicial sale cannot be invalidated where no bond has been filed, is where there is “manifest unfairness in the sale or evident collusion between the purchaser

and the trustee or trustees.” *Onderdonk*, 21 Md. App. at 621; *see also Herman v. Mondawmin Bldg. & Loan Co.*, 145 Md. 480, 490 (1955) (invalidating sale of property that was sold for an inadequate price and “conduct by the purchaser which obviated the competition of another bidder”).

In this case, the sale of the property occurred on June 7, 2023, and the court accepted the Trustee’s report of sale on July 21, 2023. Mr. Etame took no steps to file a supersedeas bond or otherwise stay enforcement of the judgment. As a result, the sale was consummated, and the proceeds of the sale were distributed.

The sale cannot now be reversed unless there was “manifest unfairness in the sale” or evidence of collusion. *Onderdonk*, 21 Md. App. at 621. Here, the circuit court overruled Mr. Etame’s exceptions to the sale alleging unfairness and collusion on the part of the Trustee. The court found that the offer of an unrepresented party to purchase the property for \$1,105,000 was acceptable, as that amount was equivalent to the appraised value (\$1,175,000), minus the 6% real estate commission (\$70,500). The fact that the purchaser was Ms. Nguh’s brother-in-law did not, without more, demonstrate collusion. Based on the evidence in the record, the sale price accepted by the court was fair and reasonable, and there was no evidence showing collusion on the part of the Trustee and the purchaser.

We also note that Mr. Etame could have challenged the sale during the litigation by filing an interlocutory appeal. Section 12-303(3)(v) of the Courts and Judicial Proceedings Article of the Maryland Code (1973, 2020 Repl. Vol.) permits an appeal from an interlocutory order for the sale of property. “A court . . . enters an order . . . [for] the sale,

conveyance, or delivery of . . . real property’ when it appoints a trustee to conduct a sale in lieu of partition of property owned by tenants in common.” *McLaughlin v. Ward*, 240 Md. App. 76, 85-86 (2019) (quoting *Morgan v. Morgan*, 68 Md App. 85, 92 (1986)). Accordingly, Mr. Etame was not without a remedy to challenge the court’s appointment of the Trustee to sell the property before the sale was consummated.

Because Mr. Etame did not obtain a stay of the enforcement of the judgment, there is no relief this Court can provide and his challenge to the sale of the property is moot. *See Powell v. Md. Dep’t of Health*, 455 Md. 520, 539-40 (2017) (explaining that an issue is moot if “there is no longer an existing controversy between the parties, so that there is no longer any effective remedy which the court can provide”) (quotation marks and citation omitted).

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