Circuit Court for Prince George's County
Case No. CAEF22-25430

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1987

September Term, 2022

JOANNA WIGGINS

v.

CARRIE WARD, *ET AL.*

Nazarian,
Zic,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: August 21, 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 Maryland Rule 1-104(a)(2)(B).

After Joanna Wiggins defaulted on her home mortgage payment in November 2020, the lender, through substitute trustees, commenced foreclosure proceedings in August 2022. A few days before the house was due to be sold at auction, Ms. Wiggins sought to challenge the foreclosure. Although her response was late by thirty-five days, Ms. Wiggins contended that she was never served the Order to Docket and was unaware of the foreclosure proceedings. The Circuit Court for Prince George's County dismissed Ms. Wiggins's motions and her home was sold. Ms. Wiggins appeals, arguing that the circuit court should have held an evidentiary hearing to determine whether Ms. Wiggins was served. We find no error and affirm.

I. BACKGROUND

In 2009, Ms. Wiggins borrowed $230,000 and executed a mortgage against her home at 1200 Pine Lane in Accokeek (the "Property"). The mortgage was secured by a promissory note and deed of trust owned by Bank of America, and the loan was serviced by Fay Servicing, LLC ("Fay"). In November 2020, Ms. Wiggins defaulted on her mortgage. For the next year, Ms. Wiggins traded emails, appeals, and phone calls with Fay to discuss alternatives to foreclosure. Fay denied all substitutes to foreclosure on November 29, 2021.[1] On December 24, 2021, Ms. Wiggins sent an email appealing Fay's determination that she was ineligible for loan modification and claiming that Fay had

[1] The rejected alternatives included deferment (because Ms. Wiggins's delinquent balance of $19,022.82 was too large), short sale (because the value of the Property exceeded the loan balance), and loan modification (because Ms. Wiggins's income was too little).

undercalculated her income.

Sometime after Ms. Wiggins's email, Bank of America appointed Carrie M. Ward and nine others as substitute trustees ("substitute trustees") to initiate foreclosure proceedings. On August 17, 2022, the substitute trustees filed an Order to Docket Foreclosure in the circuit court. The same day, Fay filed a Final Loss Mitigation Affidavit ("FLMA"), that stated that it had considered and denied Ms. Wiggins for all loss mitigation alternatives to foreclosure. The circuit court found that on August 25, 2022, the process server, William Reed of Trio Services, LLC, had served Ms. Wiggins with the Order to Docket and the FLMA. The process server's log sheet contained Ms. Wiggins's signature and a physical description of Ms. Wiggins, estimating that she was thirty-five years old, 5'6" tall, 150 pounds, and an African-American woman. Mr. Reed executed an affidavit containing this information on September 2, 2022. The substitute trustees notified Ms. Wiggins of the date scheduled for the foreclosure sale.

Three days before the house was to be sold, Ms. Wiggins filed an Emergency Motion to Stay and/or Dismiss Foreclosure Proceedings pursuant to Maryland Rule 14-211. In the motion, Ms. Wiggins conceded that her motion was untimely,[2] but argued that she had never been served with the Order to Docket or FLMA. She alleged that she became aware of the foreclosure proceedings only when the substitute trustees notified her

[2] Under Maryland Rule 14-211, Ms. Wiggins had fifteen days to file her motion to stay the foreclosure proceedings after she was served with the Order to Docket. Based on the finding that Mr. Reed served Ms. Wiggins on August 25, 2022, Ms. Wiggins had until September 9, 2022 to file a motion to stay. Md. Rule 14-211(a)(2)(A).

that her house was scheduled for auction on November 1, 2022. She contended that loss mitigation was still ongoing and that Fay committed numerous violations of the Real Estate Settlement Procedures Act ("RESPA").

The circuit court denied this motion on November 1, finding that the motion to stay was too late and that Ms. Wiggins had not demonstrated good cause to justify an untimely filing. The court reasoned that Mr. Reed's signed log sheet and affidavit created a presumption that Ms. Wiggins had been served and that Ms. Wiggins had not rebutted that presumption. That same day, the Property was purchased for $290,000.

On November 18, Ms. Wiggins filed another motion in which she claimed to have evidence that would rebut the presumption of service. In response to the portion of Mr. Reed's affidavit of service that estimated her height and weight at 5'6" and 150 pounds, Ms. Wiggins attached her own affidavit stating that she was 5'2" tall and weighed 200 pounds. Ms. Wiggins argued that this four-inch and fifty-pound discrepancy entitled her to an evidentiary hearing on the question of whether she had been served. The circuit court denied the motion, finding that Ms. Wiggins's affidavit did not rebut the presumption that she had been served, and ratified the sale. Ms. Wiggins timely appealed.

II. DISCUSSION

Ms. Wiggins raises three issues on appeal,[3] which we condense into one: whether

[3] Ms. Wiggins phrased the Questions Presented in her brief as follows:

> (1) Did the lower court abuse its discretion by failing to hold an evidentiary hearing where the defendant asserted she was

Continued . . .

the circuit court erred when it denied Ms. Wiggins a hearing on the question of whether she had been served. Her counsel conceded at oral argument that this question drives the outcome of this appeal—if we conclude that she had been served, the motion to dismiss was untimely and properly denied. We do, and it was.

Motions to stay foreclosure sales are governed by Maryland Rule 14-211, which allows a "borrower, a record owner, a party to the lien instrument, a person who claims under the borrower a right to or interest in the property that is subordinate to the lien being foreclosed, or a person who claims an equitable interest in the property" to "file in [a foreclosure] action a motion to stay the sale of the property and dismiss the foreclosure action." In proposing Rule 14-211, the Rules Committee described this motion as an opportunity for borrowers with legitimate defenses to the debt to raise them up front:

> A number of significant changes are recommended to the Rule governing a stay of the sale (proposed Rule 14-211). The Rules Committee proposes to detach that procedure from the Rules governing injunctions and to deal with it in a *Rule specific to foreclosure sales*. The Rule attempts to strike a fair balance by providing borrowers and others with sufficient standing, who have a legitimate defense to the foreclosure, a reasonable and practical opportunity to raise the defense, but not allowing for frivolous motions intended solely to delay the proceeding.

> never served with the order to docket?
>
> (2) Did the lower court err as a matter of law in its ruling to reject [Ms. Wiggins'] other contentions?
>
> (3) Did the lower court err by not holding [Substitute Trustees] have unclean hands?

The Substitute Trustees phrased their Question Presented as: "Did the circuit court err in denying Appellant's Motion to Stay and Dismiss?"

Buckingham v. Fisher, 223 Md. App. 82, 88 (2015) (emphasis added) (*quoting Bechamps v. 1190 Augustine Hernan, LC*, 202 Md. App. 455, 461-62 (2011)).

A. The Circuit Court Had Discretion To Grant Or Deny Ms. Wiggins's Request For A Hearing.

We review a decision to grant or deny injunctive relief in a foreclosure action for abuse of discretion. *Anderson v. Burson*, 424 Md. 232, 243 (2011). We review legal conclusions, including whether or not a circuit court has discretion to deny a hearing, *de novo*. *Wincopia Farm*, 188 Md. App. 519, 528 (2009).

The parties dispute which Maryland Rule governs Ms. Wiggins's request for a hearing in her Rule 14-211 motion to stay foreclosure. Ms. Wiggins argues that Rule 2-311, a general Rule that applies to civil cases, requires courts to hold hearings on dispositive issues:

> Except when a rule expressly provides for a hearing, the court shall determine in each case whether a hearing will be held, but the court may not render a decision that is *dispositive* of a claim or defense without a hearing if one was requested as provided in this section.

(Emphasis added.) She contends that the circuit court's order resolved her objections to the foreclosure and because she had requested a hearing, the circuit court had no discretion to deny the motion without a hearing.

The substitute trustees respond that the text of Rule 14-211(b)(1) itself defined the circuit court's discretion to hold a hearing or rule without one, including the discretion to rule without a hearing if a motion is untimely:

> (1) The court shall deny the motion, *with or without a hearing*, *if the court concludes from the record before it* that the motion:

> (A) *was not timely filed and does not show good cause for excusing non-compliance* with subsection (a)(2) of this Rule;
>
> (B) does not substantially comply with the requirements of this Rule; or
>
> (C) does not on its face state a valid defense to the validity of the lien or the lien instrument or to the right of the plaintiff to foreclose in the pending action.

(Emphasis added.)

We agree with the trustees that Rule 14-211 controls. We appear never to have said in so many words that Rule 2-311(f) doesn't apply to Rule 14-211 motions, but we have decided irreconcilable conflicts between general and specific statutes in favor of the specific one. *See Dorsey v. State*, 185 Md. App. 82, 119 (2009) ("when there is an irreconcilable conflict between two statutory provisions, the more specific statute controls."). Rules 14-211 and 2-311(f) conflict because they prescribe different standards for rejecting requested hearings. And although Rule 2-311(f) provides a trial court no discretion to reject a hearing if a party requests one, the plain text of Rule 14-211 grants the circuit court the discretion to deny an untimely motion to stay foreclosure without any hearing. Under Rule 14-211(b)(1), the circuit court can choose to deny a motion to stay foreclosure without holding a hearing if (1) the motion was filed late and (2) the moving party does not show good cause for excusing noncompliance with the filing deadline. Considering that Rule 14-211 was adopted to prescribe a specific standard for foreclosure objections, and this Rule specifically contemplates a court ruling on a motion without a hearing, Rule 2-311 does not supersede it and compel a hearing.

B. The Circuit Court Did Not Abuse Its Discretion When It Denied Ms. Wiggins's Request For A Hearing.

In this case, the parties agree that Ms. Wiggins's motion to stay was untimely. Ms. Wiggins argues, however, that there was good cause to excuse her untimely filing because, she says, she was never served. To be sure, Ms. Wiggins's offered justification, if true, would excuse an untimely filing. The circuit court found, though, that Ms. Wiggins hadn't presented enough evidence to rebut the presumption of service.

As a matter of evidential weight, "proper return[s] of service" are considered "*prima facie* evidence of valid service of process" *Wilson v. Dep't of Env't*, 217 Md. App. 271, 285 (2014). Although a party contesting service can rebut this presumption, the party must produce evidence from an "independent, disinterested" source. *Id.* A party's "mere denial of service is not sufficient." *Id.* Under the abuse of discretion standard, "a ruling will be reversed when that ruling 'does not logically follow from the findings from which it supposedly rests or has no reasonable relationship to its announced objective.'" *Anderson*, 424 Md. at 243 (*quoting Eastside Vending Distrib. v. Pepsi Bottling Grp.*, 396 Md. 219, 240 (2006)).

The circuit court found that Ms. Wiggins didn't offer sufficient evidence to rebut the presumption, and we can't say it erred in doing so. Mr. Reed's affidavit established that on a specific date, he served a woman identified as Joanna Wiggins, at the home where Ms. Wiggins lived. Mr. Reed also collected Ms. Wiggins's own signature, which the court could compare to other verified signatures of hers and that, in any event, she doesn't dispute signing explicitly. In contrast, Ms. Wiggins simply denies that she was served and points

to differences between Mr. Reed's description and her actual height and weight. But she doesn't dispute that she was living in the house on that day, that she is an African-American woman, that she was in her mid-thirties, or that she signed Mr. Reed's log sheet. As the circuit court explained, Ms. Wiggins could have strengthened these bare assertions to the point of requiring a hearing to make a credibility determination, for example, by including a redacted driver's license to her motion or providing other evidence from an independent source, and she didn't.

There undoubtedly is a difference between someone who is 5'2" 200 pounds and a someone who is 5'6" 150 pounds. But a process server estimates the height, weight, and age of the person served, and courts have recognized that discrepancies in height, alone, are not sufficient in themselves to prove a person was not served. *See Lanford v. Prince George's County*, 175 F. Supp. 2d 797, 801 (D. Md. 2001) (finding that defendant was served with process despite a discrepancy between the process server's description and the defendant's actual height). We cannot say that the circuit court abused its discretion in finding that Ms. Wiggins failed to rebut the presumption of service in this instance.

Ms. Wiggins argues as well, for the first time on appeal, that the evidence of her signature on Mr. Reed's log sheet may be attributable to fraud on the part of the substitute trustees. At oral argument, we asked Ms. Wiggins's counsel about the fact that Ms. Wiggins's signature—which was substantively similar to the verified signature on other documents—appeared on Mr. Reed's log sheet. Counsel responded that it was possible that the substitute trustees obtained her signature from another document and forged it on the

log sheet. Whether it is or not—counsel offered no basis on which we could have assessed it in any event—issues not "raised in or decided by the trial court" may not be raised for the first time on appeal. Md. Rule 8-131(a). *See also Estate of Brown v. Ward*, 261 Md. App. 385, 441 (2024) (personal representative in a foreclosure action did not preserve an issue for appeal when he did not cite any part of the record in which he made such an assertion "in support of his motion to stay or dismiss the foreclosure action.").

Because Ms. Wiggins didn't rebut the presumption of service, the circuit court didn't err in finding that she had not demonstrated good cause to justify an untimely filing. As a result, the circuit court did not err in denying Ms. Wiggins's motion to stay foreclosure. And because Ms. Wiggins's motion to stay foreclosure was denied properly for untimeliness, we need not address the merits of Ms. Wiggins's untimely objections to the foreclosure proceedings.

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