

Circuit Court for Prince George's County
Case No. CAEF16-40193

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 2245

September Term, 2022

MICHELLE QUARLES

v.

BROWN, SAVAGE, BRITTO, STITELY AND
CALLAHAN

Graeff,
Friedman,
Eyler, Deborah S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: June 14, 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 MD. R. 1-104(a)(2)(B).

In 2022, appellants Michelle Quarles and Donald Quarles appealed the Order of the Circuit Court for Prince George’s County denying their attempts to challenge a foreclosure proceeding initiated by appellees Kristine D. Brown, *et al.*, substitute trustees acting for Wells Fargo Bank, N.A. After this Court affirmed the circuit court’s ratification of the foreclosure sale of the Quarles’ property,¹ the foreclosure action continued to the filing and ratification of the auditor’s report relating to the proceeds of the sale.

In this, their second appeal, the Quarleses seek review of the circuit court’s ratification of the auditor’s report and ask us to consider whether the court erred (1) by implicitly denying their exceptions to the auditor’s report, and (2) by doing so without a hearing. Because the Quarleses timely filed exceptions to the auditor’s report and requested a hearing, we conclude that the circuit court erred in ratifying the auditor’s report in the absence of an exceptions hearing. We therefore vacate the order ratifying the auditor’s report and remand the matter to the circuit court with instructions to conduct a hearing on the Quarles’ exceptions to the auditor’s report.

BACKGROUND

In 2010, the Quarleses defaulted on a note secured by a refinance deed of trust encumbering their primary residence. As a result, Wells Fargo Bank, N.A., the noteholder, through the substitute trustees, initiated foreclosure proceedings upon the property. After numerous motions and other efforts to delay the sale, the Quarles’ property was ultimately

¹ See *Michelle Quarles, et al. v. Kristine D. Brown, et al.*, No. 958, Sept. Term, 2020, slip op. at 2 (unreported opinion) (filed May 5, 2022).

sold at a public auction in January 2020. Following a flurry of unsuccessful post-sale motions by the Quarleses, the circuit court ratified the foreclosure sale by order entered on December 28, 2020. We affirmed the ratification of the foreclosure sale in an unreported opinion.²

The circuit court’s ratification order, among other things, referred the matter to the court auditor to complete an audit of the sale and render an account. The substitute trustees filed a suggested account with supporting documentation on May 6, 2021, showing a deficiency of \$271,432.14 in the Quarles’ mortgage debt, after the sale proceeds were applied to the outstanding mortgage debt and other expenses.

The court auditor filed his report with the court on January 25, 2023. The report showed a deficiency in the Quarles’ mortgage debt in the amount of \$275,442.17. The Quarleses timely filed exceptions to the auditor’s report on February 6, 2023.³ Under the title of their pleading, there is a separate title heading that reads, “HEARING REQUESTED.”

In their exceptions, the Quarleses asserted that the suggested account had not been filed within 60 days from the ratification of sale order, as required by the court. They also

² The Quarleses acknowledge that because we have affirmed the ratification of the foreclosure sale, there can be no further attack upon the ratification order. *See Stokes v. Am. Airlines, Inc.*, 142 Md. App. 440, 446 (2002) (citations omitted) (“Once an appellate court has answered a question of law in a given case, the issue is settled for all future proceedings.”).

³ Maryland Rule 2-543(g) requires that any exceptions be filed within ten days of the entry of the auditor’s report. MD. R. 2-543(g). Because the tenth day after January 25, 2023, was Saturday, February 4, 2023, the exceptions filed on Monday, February 6, 2023, were timely. *See* MD. R. 1-203(A).

asserted that the auditor’s report overstated the amounts due for property taxes, interest on the principal debt, and insurance premiums, setting forth specific examples, along with 34 pages of supporting documentation, to support their position. The Quarleses further argued that the auditor’s report failed to consider that their obligation for the mortgage debt had been discharged in bankruptcy in 2015. As requested relief, the Quarleses asked the circuit court to deny ratification of the auditor’s report, set the matter for hearing, and grant “such other relief as the Court deems just and proper.” The electronic record does not identify any deficiency with the exceptions as filed. *See* MD. R. 20-203 (requiring, among other things, striking or issuing notices of deficiency as to certain noncompliant electronic filings).

The circuit court, incorrectly stating that “no exceptions thereto having been filed within the period prescribed by Rule,” ratified the auditor’s report by order entered on February 14, 2023 and closed the case statistically. The court’s ratification of the auditor’s report comprised a second final judgment (the first being the ratification of the foreclosure sale). *See Huertas v. Ward*, 248 Md. App. 187, 206 (2020) (noting that the ratification of an auditor’s report is “a second judgment, from which any party aggrieved by that ruling can appeal”). The Quarleses, representing themselves, noted an appeal from the ratification of the auditor’s report on February 22, 2023.

Notwithstanding that the ratification of the auditor’s report was a final judgment, the circuit court entered a subsequent order on February 23, 2023, acknowledging that the Quarleses had filed exceptions and finding that they had failed to include the required

certificate of service.⁴ The circuit court stated that it would reserve ruling on the Quarles’ exceptions until all parties were served and the time to file a response had passed. The Quarleses filed the required certificate of service on February 28, 2023.

The substitute trustees opposed the exceptions on May 4, 2023, asserting that the Quarleses had made no specific challenges to the creditor’s statement of debt and that there were no surplus funds from the foreclosure sale to be disbursed. Thus, according to the substitute trustees, the circuit court should deny the exceptions because the Quarleses could not be prejudiced by the auditor’s report.

The Quarleses moved to strike the substitute trustees’ opposition on the grounds that it failed to rebut the accounting inaccuracies they had raised in their exceptions, it was “vague and ambiguous,” it was moot, and it had been filed 45 days past the due date for a

⁴ The Maryland Rules require that “every pleading and other paper filed after the original pleading shall be served upon each of the parties. MD. R. 1-321(a). If service is required or permitted to be made upon a party represented by an attorney, service shall be made upon the attorney” MD. R. 1-321(a). The clerk of court is to accept “pleading[s] or other paper[s] requiring service” only if they are accompanied by “an admission or waiver of service or a signed certificate showing the date and manner of making service.” MD. R. 1-323.

The Quarles’ original exceptions included a certificate of service showing service upon “Cabana Properties III LLC c/o MTG LLC,” the purchaser of the property at the foreclosure sale. On February 10, 2023, however, the Quarleses filed a supplement to their certificate of service stating that “[d]ue to inadvertence and failure of counsel for Plaintiff, Arthur J. Horne, to serve Defendant with a ‘NOTICE OF APPEARANCE,’ Defendants’ ‘Certificate of Service’ accompanying ‘DEFENDANT’S EXCEPTION TO REPORT OF AUDITOR HEARING REQUESTED’ did not list counsel for Plaintiff, Arthur J. Horne. The attached ‘Certificate of Service’ corrects the error.” The supplemental certificate of service indicates that the exceptions were mailed to Arthur J. Horne and Cabana Properties III LLC c/o MTG LLC. Arthur J. Horne, Esq., however, is not an attorney for the substitute trustees; he is, instead, the auditor.

response. On June 23, 2023, the circuit court entered an order denying the Quarles’ exceptions and ordered the case to proceed in its normal course.

DISCUSSION

The Maryland Rules provide that upon ratification of a foreclosure sale, the court may refer the matter to an auditor to state an account. MD. R. 14-305(g). “The function of an auditor is that of a calculator and accountant for the court.” *Walker v. Ward*, 65 Md. App. 443, 448 (1985) (citations omitted). “The auditor must, of necessity, determine the amount that is due and owing under the mortgage in stating the account. If the auditor’s determination of the amount due is disputed, exceptions may be filed pursuant to Rule 2-543(g).” *Pacific Mortg. & Inv. Grp., Ltd. v. LaGuerre*, 81 Md. App. 28, 33-34 (1989). “Exceptions to the auditor’s report are ‘directed not at the right to sell the property or to the conduct of the sale itself, but to the allowance or disallowance of expenses of the sale or the distribution of net proceeds.’” *Huertas*, 248 Md. App. at 206 (quoting *Hood v. Driscoll*, 227 Md. App. 689, 694 n.1 (2016)). Asserted errors in the exceptions must be set forth “with particularity.” MD. R. 2-543(g).

The circuit court may ratify the auditor’s report if exceptions are not timely filed within ten days of the filing of the auditor’s report. MD. R. 2-543(f); MD. R. 2-543(g). If exceptions are filed, the court may decide them without a hearing only if, as pertinent to this matter, no hearing is requested with the exceptions.⁵ MD. R. 2-543(h)

⁵ We do not address the merits of the Quarles’ assertion that the circuit court’s ratification of the auditor’s report was an implicit denial of their exceptions. Without clarification in the record, we cannot say whether the court mistakenly believed that no

Here, the Quarles timely filed their exceptions in accordance with Rule 2-453(g).⁶ In a separate heading under the title to their submission, they also clearly indicated a request for a hearing. They also requested a hearing as relief at the conclusion of the exceptions. The exceptions pointed to alleged errors in the auditor’s accounting with sufficient particularity. Thus, under Rule 2-543, the circuit court should have conducted a hearing on the exceptions before ratifying the auditor’s report. For reasons not apparent in the record, however, the court ratified the auditor’s report without a hearing, on the erroneous understanding that no exceptions had been filed.⁷ MD. R. 2-543(h). In the interest of

exceptions had been filed or whether it determined a deficiency in the filing relating to the certificate of service but neglected to take any immediate action to cure the deficiency.

We do note, however, that the circuit court should not have ruled on the exceptions to the auditor’s report *after* the Quarles had noted an appeal from the ratification of the same report because the court’s belated denial of exceptions to the auditor’s report it had already ratified confused the record and could have affected the subject matter of the appeal. *See Brethren Mutual Ins. Co. v. Suchoza*, 212 Md. App. 43, 66 (2013) (“[W]hen an appeal is pending, the trial court retains its fundamental jurisdiction over the case, but its right to exercise such power is limited.... [T]he trial court can not exercise its jurisdiction in a manner affecting the subject matter or justiciability of the appeal [or] ... in a manner that, in effect, precludes or hampers the appellate court from acting on the matter before it[.]” (cleaned up)).

⁶ Because the tenth day after January 25, 2023, the filing date of the auditor’s report, was Saturday, February 4, 2023, the exceptions filed on Monday, February 6, 2023, were timely. *See* MD. R. 1-203(A).

⁷ Although the Quarles’ exceptions initially did not comply with Rules 1-321 and 1-323 because they did not contain a certificate of service upon the attorneys for the substitute trustees, that does not mean that the exceptions were not accepted properly for filing by the court clerk or were void. Rather, the circuit court should have issued its order reserving ruling on the exceptions until all parties and/or their attorneys were properly served *before* ratifying the auditor’s report.

justice, the Quarleses should therefore be granted the opportunity to be heard on their exceptions.⁸ Of course, we take no position on the merits of those exceptions.

**ORDER OF THE CIRCUIT COURT FOR
PRINCE GEORGE’S COUNTY
RATIFYING THE AUDITOR’S REPORT
VACATED; MATTER REMANDED TO
THE CIRCUIT COURT TO CONDUCT
HEARING ON APPELLANTS’
EXCEPTIONS TO THE AUDITOR’S
REPORT; COSTS TO BE PAID BY
APPELLEES.**

⁸ Despite the substitute trustees’ contention that the denial of the exceptions could not have harmed the Quarleses because there was no surplus from the foreclosure sale to which they could make claim, and they were not subject to a deficiency judgment as a result of their discharge of the debt in bankruptcy, if the Quarleses are correct in their assertion that they still might be subject to tax consequences as a result of an inflated deficiency debt, then they arguably were prejudiced by the lack of a hearing on their exceptions. *See Sumpter v. Sumpter*, 436 Md. 74, 82 (2013) (“[A]ppellate courts of this State will not reverse a lower court judgment for harmless error: the complaining party must show prejudice as well as error.” (cleaned up)).