

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 2447

September Term, 2019

JASWANT BAWA, *et al.*

v.

CARRIE WARD, *et al.*

Reed,
Ripken,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: June 29, 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.

Jaswant and Harmeet Bawa, appellants, appeal from an order issued by the Circuit Court for Montgomery County denying their motion to stay or dismiss the foreclosure sale of their property. On appeal, they claim that the court erred in denying the motion to stay or dismiss because appellees,¹ the substitute trustees, “had no legal standing” to file the foreclosure action. For the reasons that follow, we shall affirm.

In 2006, appellant Jaswant Bawa executed a promissory note in her individual capacity in the amount of \$681,180.00. The same day appellants, who are husband and wife, both executed a Deed of Trust, which secured the loan with a mortgage lien against their home. Notably, in the Deed of Trust appellants agreed that Jaswant Bawa could modify the loan in the future without Harmeet Bawa’s consent.

In 2016, Ms. Bawa entered into a Home Affordable Modification Agreement with the lender, which among other things lowered the interest rate on the loan and deferred a portion of the loan’s principle balance. As part of the modification agreement, Ms. Bawa agreed that “all terms and provisions of the [original] Loan Documents, except as expressly modified . . . [would] remain in full force and effect” and that nothing in the modification agreement would be “construed to be a satisfaction or release in whole or in part of the obligations contained in the Loan Documents[.]”

¹ Appellees are Carrie Ward, Howard N. Bierman, Andrew J. Brenner, Joshua P. Coleman, Angela M. Dawkins, Nicholas Derdock, George J. Geesing, Richard R. Goldsmith, Jr., Wayne Anthony Holman, Elizabeth C. Jones, Michael Leeb, Pratima Lele, Megh Milan Mittra, Christopher Robert Selig, and Philip Shriver.

After Ms. Bawa defaulted on the modified loan, appellees filed an Order to Docket seeking to foreclose on the property. A foreclosure mediation was held on July 8, 2019, but no agreement was reached. On July 22, 2019, appellants filed a motion to dismiss pursuant to Maryland Rule 14-211, claiming that: (1) the foreclosure action was barred by the statute of limitations, and (2) the Affidavit of Debt was inconsistent with the payment history of the loan. Appellees filed an opposition on July 31, 2019.

In January 2020, more than six months after filing their motion to dismiss, and two days before the scheduled hearing on that motion, appellants filed a response to appellees' opposition. In that response, they claimed for the first time that the Deed of Trust was no longer enforceable. Specifically, they asserted that the Modification Agreement was an unsecured instrument because it was "not signed by the other record owner Harmeet Bawa" and that "without a signature, no liability is created, nor a lien can be created against the collateral." Following a hearing, the court entered an order: (1) striking the response for failure to comply with Md. Rules 2-311 and 14-211, and (2) denying the motion to dismiss. This appeal followed.

In claiming that the court erred in denying their motion to dismiss, appellants' sole contention is that the Modification Agreement "destroyed the original Note and Deed of Trust" and created "an unsecured personal liability" because they owned the property as tenants by the entirety, and the Modification Agreement was only signed by Ms. Bawa. As such, they assert that appellees lacked standing to foreclose on the property under the original Deed of Trust. This claim, however, was not raised in their original motion to stay or dismiss the foreclosure sale. Rather, it was raised for the first time in their response to

appellees’ opposition to their motion to dismiss, which the circuit court struck for failure to comply with Md. Rules 2-311 and 14-211. And because that response was stricken, the merits of any claims raised therein were not addressed by the circuit court and are not preserved for appellate review. *See* Maryland Rule 8-131(a) (providing that “[o]rdinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court”).² Moreover, appellants do not contend that the court erred in either striking the response, or in denying the other claims that they raised in their original motion to dismiss, the only issues that are before us. Consequently, we will not consider those issues on appeal. *See Diallo v. State*, 413 Md. 678, 692 (2010) (“[A]rguments not presented in a brief or not presented with particularity will not be considered on appeal.”) (quoting *Klauenberg v. State*, 355 Md. 528, 552 (1999)).

It is ultimately appellants’ burden on appeal to demonstrate that the circuit court erred in striking their response and denying their motion to dismiss. Because they have not met that burden, we shall affirm.

**JUDGMENT OF THE CIRCUIT
COURT FOR MONTGOMERY
COUNTY AFFIRMED. COSTS TO
BE PAID BY APPELLANTS.**

² We also note that appellants have not provided a copy of the transcript of the January 29, 2020, hearing on their motion to dismiss, which would be necessary for appellate review as the court’s order denying the motion to dismiss and striking the response indicates that it was entered “for the reasons stated on the record” at that hearing. Thus, even if the issue raised by appellants was properly before us, we would reject it. *See Kovacs v. Kovacs*, 98 Md. App. 289, 303 (1993) (“The failure to provide the court with a transcript warrants summary rejection of the claim of error.”).