UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1692

September Term, 2013

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RONNIE LEE ALSTON

v.

THOMAS P. DORE, ET AL.
SUBSTITUTE TRUSTEES

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Eyler, Deborah S.,
Hotten,
Nazarian,

JJ.

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Opinion by Nazarian, J.

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Filed: July 14, 2015

Ronnie Lee Alston's parents owned a home in Prince George's County. When they died, the house passed to the children, who apparently stopped making mortgage payments. They tried to negotiate a loan modification, and then to stop foreclosure, but their efforts came too late and failed to follow the required procedure. The Circuit Court for Prince George's County denied a motion Mr. Alston filed to "halt" the foreclosure and compel mediation, and he sought reconsideration that was also denied. That is the only order before us here, and although we sympathize with Mr. Alston's situation, we affirm the circuit court's judgment.

## I. FACTS

Mr. Alston's parents, Ellis and Lizzie Alston (to whom we refer by first name solely for clarity), purchased the property located at 2514 Kirkland Avenue in Forestville (the "Property") in 2002 with a mortgage held by Wells Fargo Home Mortgage Inc. ("Wells Fargo"). Ellis died sometime later and Lizzie became owner of the property individually and as the surviving tenant by the entirety of Ellis. (It's not clear from the record when Ellis died, but we know from the record that the foreclosure documents reference only Lizzie. She died on December 30, 2011, even though she continued to be listed on loan documentation well after that time.)

Mr. Alston was not appointed special administrator of Lizzie's estate until August 20, 2013. This matters because it means Mr. Alston's efforts on behalf of the Property began before he had any legal authority to act on behalf of the estate, at least as far as the record reflects, and the story had started eight months earlier. On January 20, 2013, Mr. Alston (according to his brief) contacted Wells Fargo to inform its agents of his

father's death. Whether Wells Fargo responded to his efforts is not clear; on February 4, 2013, it sent a notice of intent to foreclose via certified mail to Lizzie at the Property. A preliminary loss mitigation affidavit dated February 7, 2013 and later filed with the circuit court states that as of that time, Wells Fargo had "not been able to establish communication with the borrower." The record contains a "hardship letter" that Mr. Alston says he sent to Wells Fargo on February 13, 2013, in which he asked that the company contact him to discuss modification options. There is nothing suggesting what, if any, information Mr. Alston submitted to Wells Fargo at the time, other than the implication in the hardship letter that he had become the owner of the Property by virtue of Lizzie's death.

On April 1, 2013, the Substitute Trustees filed an Order to Docket that attached the February 7, 2013 loss mitigation affidavit, a final loss mitigation affidavit, and documentation corroborating that the information had been posted on the Property on April 4, 2013. On June 26, 2013, Mr. Alston filed a Request for Mediation (he had not done anything else to respond to the foreclosure action, such as seeking to intervene in the court proceeding or providing information to Wells Fargo about his status relative to the Property). The next day, Mr. Alston filed a motion "requesting 'halt' of scheduled Foreclosure Sale and/or 90 day Extension to allow Mediation Process to go forth to allow defendant to retain property under 'hardship' status." (As the circuit court did, we will refer to that motion as the "Motion to Halt.")

On June 28, 2013, though, the Substitute Trustees (who had waited the appropriate time and filed the necessary pleadings) sold the Property at a public auction. That same day (it is unclear whether this took place before, or after, or was precipitated by the

auction), the court denied the "Motion to Halt" on what appears to be a form; the court selected the boxes as we indicate here:

> UPON CONSIDERATION of defendant's Motion to "halt" Foreclosure Sale, it is this 28th day of June 2013, by the Circuit Court of Prince George's County, Maryland, for the following reasons:
>
> ☒ Does not state a valid defense or present meritorious argument
>
> ☒ Request not timely filed/not excused for good cause, pursuant to MD Rule 14-211(a)(2) and (a)(3)(F)
>
> ☒ Not submitted under oath, or supported by affidavit per MD Rule 14-211(a)(3)(A)
>
> ☒ Fails to state factual and legal basis per MD Rule 14-211(a)(3)(B)
>
> ☒ No supporting documents per MD Rule 14-211(a)(3)(C)
>
> ☒ Does not state date action served, or when party became aware of action per MD Rule 14-211(a)(3)(E)
>
> ☐ No certificate of service or statement that opposing party was notified of this motion
>
> ☐ OTHER:
>
> **ORDERED**, that Defendant's Motion to "Halt" is hereby DENIED.

It appears that Mr. Alston's Request for Mediation triggered an automatic scheduling order to issue from the Office of Administrative Hearings on July 1, 2013, which scheduled the case for mediation on Friday, August 9, 2013. On July 8, 2013, the Substitute Trustees moved to strike the Request for Mediation as untimely, and the court

granted the Motion to Strike on August 2, 2013. Two days later, Mr. Alston moved to reconsider, and the court denied the Motion for Reconsideration on September 12, 2013. Mr. Alston filed a timely Notice of Appeal.

## II. DISCUSSION

Although the backstory to this appeal is a compelling one from Mr. Alston's side, we must decide this case from the record before us and the order on appeal, which had its origins not in the circumstances surrounding the foreclosure itself, but in the Motion to Strike. That motion, properly supported, explained why Mr. Alston was not entitled to mediation, and the circuit court properly granted it, along with the subsequent Motion for Reconsideration. Mr. Alston filed the Notice of Appeal on October 12, 2013, which brings only that Motion for Reconsideration before us to review. *See* Md. Rule 2-534. Our standard for a motion to reconsider is more deferential to the trial court: "[a] ruling on a motion for reconsideration is ordinarily discretionary, and . . . the standard of review in such a circumstance is whether the court abused its discretion in denying the motion." *Wilson-X v. Dep't of Human Res.*, 403 Md. 667, 674-75 (2008).

Mr. Alston argues generally that he was denied due process, but does not offer any particulars as to how the circuit court erred in denying his Motion for Reconsideration.[1]

[1] Mr. Alston listed the following, broader question in his brief:

> Was the Court's denial of a mediation hearing and motion for reconsideration, without service to Appellant, when MD Rule 14-209(a) and 14-209(c) requires service and mediation, allowing "due process" before rendering a decision allowing for separation of property legally correct?

The Substitute Trustees counter by arguing that we lack jurisdiction, that Mr. Alston does not have standing, and that the circuit court's ruling was correct.[2] Although we will, in light of Mr. Alston's *pro se* status, read his motion in a way that tends to support appellate jurisdiction,[3] we agree that Mr. Alston may have fallen well short in establishing that he had standing: he never presented evidence to the court to establish (1) his father's death; (2) his interest in the Property; or (3) that he timely asserted that interest. *See Crysopt Corp. v. Board of Savings & Loan Ass'n. Comm'rs*, 324 Md. 315, 320 (1991). Even so, his assertions (and some documentation filed in the circuit court) suggest that he was the rightful heir to the Property, and the circuit court certainly treated him that way in light of its orders addressing him as a defendant in the action. And the outcome is the same regardless, because Mr. Alston did not file a timely request for mediation. So we skip

[2] They phrased the Questions Presented as follows:

> 1. Whether The Present Appeal Should Be Dismissed Because It Does Not Seek The Review Of A Final Judgment Or An Order That Is Otherwise Reviewable.
>
> 2. Whether Ronnie Alston Has Standing.
>
> 3. Whether The Circuit Court Was Correct In Granting Appellees' Motion To Strike Request For Mediation And Denying Ronnie Alston's Request For Reconsideration.

[3] There is some question whether a court's denial of a motion to stay under Rule 14-211 (which the court considered in denying the "Motion to Halt") is more in the nature of a motion to dismiss, in which case its denial is not a final judgment, or instead constitutes simple denial of a motion to stay that is more in the nature of denial of injunctive relief and therefore interlocutory. Because we would reach the same result either way, we will construe Mr. Alston's initial "Motion to Halt" in a manner that supports our ability to review it on the merits.

ahead to the Substitute Trustees' final argument, and agree that the circuit court properly denied Mr. Alston additional opportunities to relitigate his motion to compel mediation.

*First*, as a matter of law, the time for *any* interested party to seek mediation had passed by the time Mr. Alston requested it. The Affidavit of Service for the Order to Docket certifies that the Order to Docket was posted on the Property, and mailed there via certified mail. The notice required under Md. Code (1974, 2010 Repl. Vol.), § 7-105.9(b)(1) of the Real Property Article, was mailed to the occupants of the Property. Indeed, Mr. Alston conceded that he got notice of the foreclosure filing when he included it in his own filing to the court. The Notice specifically explains the right to request foreclosure mediation within twenty-five days. Nonetheless, his request for mediation came not within the required time—*i.e.*, by June 3, 2013[4]—but three weeks later (and only two days before the sale).

*Second*, Mr. Alston claims that the Substitute Trustees did not properly serve him when they filed the Response to Motion for Reconsideration. He points out, correctly, that the certificate of service attached to the Response states it was sent via email, and we do not doubt his representation that he does not have an email account. But what follows the phrase "delivered via email" is the full, written address of the Property, first with Lizzie listed as the addressee, and then with Mr. Alston listed as the addressee. Based on that certificate of service, the circuit court could easily have inferred that the Substitute Trustees

[4] The Final Loss Mitigation Affidavit was mailed on May 9, 2013. Counting twenty-five days out puts his deadline at June 3, and his June 26, 2013 filing wasn't close.

made a typographical error when saying the document was sent "via email" rather than via first-class mail, rather than inferring what Mr. Alston suggests, *i.e.*, perjury on the part of the Substitute Trustees. We will not substitute our judgment for that of the circuit court, whose discretion on a motion for reconsideration is broad.

*Finally*, we note that even if the court had not considered the Response to Motion for Reconsideration (*i.e.*, if it had concluded the certificate of service did not adequately substantiate the notice to Mr. Alston), the Motion for Reconsideration, standing alone, did not give the circuit court an adequate basis to reconsider the initial Order denying the Motion to Halt. That Order listed a handful of reasons that the court denied the Motion to Halt, largely having to do with the Motion's failure to comply with the requirements of Maryland Rule 14-211 governing a property owner's remedies when seeking to stay or dismiss a foreclosure action, all of which properly supported denial of the Motion to Halt.

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