

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2364

September Term, 2013

EUGENE CLARK

v.

ROSENBERG & ASSOCIATES, ET AL.

Graeff,
Kehoe,
Sonner, Andrew L.
(Retired, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: July 9, 2015

*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.

Eugene Clark, appellant, challenges the foreclosure sale of his home, 4 Kentbury Court in Owings Mills, Maryland (the “Property”). After the Property was sold by Rosenberg and Associates (“Rosenberg”), one of the appellees, Mr. Clark filed exceptions to the sale. The Circuit Court for Baltimore County denied the exceptions and ratified the sale.

On appeal, Mr. Clark raises several issues for our review,¹ which we have consolidated and rephrased, as follows:

Did the circuit court err in denying Mr. Clark’s post-sale exceptions?

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

¹ Mr. Clark lists his questions presented as follows:

- (1) Whether the Circuit Court erred by ratifying the foreclosure where improper notice is shown[.]
- (2) Whether the Circuit Court erred by not holding a hearing prior to ratifying the foreclosure and subsequently the foreclosure sale[.]
- (3) Whether the Circuit Court erred by denying Appellant[’s] motion for a stay prior to ratifying the foreclosure sale[.]
- (4) Whether the Circuit Court erred when it did not grant Appellant[’s] motion to stay, or amend the judgment of the foreclosure sale[.]
- (5) Whether the Appellees denied Mr. Clark the opportunity to refinance his homestead, by engaging in deficient mortgage servicing via negligent misrepresentations and promissory estoppel.

Mr. Clark submits no argument in support of many of these questions presented, and we address only the issues on which argument is presented. *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)); Md. Rule 8-504(a) (brief shall contain an “[a]rgument in support of the party’s position on each issue”).

FACTUAL AND PROCEDURAL BACKGROUND

On May 20, 2004, Mr. Clark executed a promissory note (the “Note”), in the amount of \$269,500, secured by a Deed of Trust on the Property, in favor of National City Mortgage Co dba Accubanc Mortgage (“National City”). The loan he received in exchange was to be repaid in monthly installments of \$1,385.61. Rosenberg states in its brief, and Mr. Clark does not dispute, that National City merged with PNC Bank, N.A. (“PNC”) between 2008 and 2009, and PNC obtained National City’s interest in the Note.

On June 7, 2011, Rosenberg sent Mr. Clark a letter notifying him that it intended to foreclose on the Property based on Mr. Clark’s default in repaying the loan. On May 10, 2012, Rosenberg filed an Order to Docket Suit, attaching the necessary documents to initiate foreclosure proceedings against Mr. Clark. Mr. Clark was personally served with these documents on May 16, 2012.²

On August 27, 2013, Rosenberg sent a notice to Mr. Clark and other interested parties by both certified and regular mail that it intended to sell the Property at a sale on September 12, 2013. Rosenberg also published notice of the sale in the Baltimore Sun once a week for three consecutive weeks, beginning on August 27, 2013.

² Rosenberg provided an affidavit from Mark Carr, Jr. that he personally served

a true copy of the Notice of Foreclosure Action– Appendix I on yellow paper (1st document in sequence), Request for Foreclosure Mediation (2nd document in sequence), Final Loss Mitigation Affidavit (3rd document in sequence) and the Order to Docket w/Attachments filed with the Baltimore County Clerk’s office upon EUGENE CLARK at the address of: 4 KENTBURY COURT OWINGS MILLS, MD 21117.

The Property subsequently was sold at the September 12, 2013, sale. Rosenberg filed a Report of Sale on October 4, 2013.

On November 4, 2013, Mr. Clark filed exceptions to the sale. He alleged that, on April 19, 2013, he was “advised of a settlement between federal banking regulators and PNC Mortgage . . . related to deficient mortgage servicing and foreclosure processes” and given \$400 in settlement. He argued that this settlement “negated deficient mortgage foreclosure actions prior to the settlement,” and therefore, Rosenberg was precluded from pursuing this action, which was filed in 2012. Mr. Clark also stated that the settlement encouraged him to continue to “work with PNC to resolve any foreclosure issues,” and he did so. In particular, he supplied PNC with numerous documents relating to his income, requested mortgage assistance and/or modification, and requested an entirely new mortgage via a form titled “Uniform Borrowers Assistance Form” in July 2013.

Mr. Clark also alleged that, in the first week of August 2013, Rosenberg informed him that “a review of [his] income showed that the minimum for mortgage mitigation had been met,” and as soon as Rosenberg received the Uniform Borrowers Assistance Form, it “could begin to process [his] application.” Finally, Mr. Clark stated that he was “never served with an Order to Docket.” He requested, for all of these reasons, that the court set aside the foreclosure sale, order Rosenberg to participate in mediation with him, and “[p]rocess [his] mortgage modification application based on the standards of the federal HAMP program.” Mr. Clark did not request a hearing on his exceptions.

Rosenberg responded to Mr. Clark’s exceptions. It noted that, in Maryland, after a foreclosure sale has occurred, a borrower may only challenge irregularities in the conduct

of the sale itself, and Mr. Clark’s exceptions did not constitute such irregularities. Furthermore, it argued that “the pendency of a loan modification request” was not grounds to set aside a foreclosure sale, and there was no support for the contention that the case “should have been dismissed as a result of a settlement between PNC and federal banking regulators.” Finally, it asserted that Mr. Clark’s “contention that he ‘was never served with an Order to Docket’ [was] conclusory, unsupported, and directly contradicted by the documents filed in this case,” which included an affidavit that Mr. Clark was served with the order to docket on May 16, 2012. Because Mr. Clark’s exceptions did not relate to irregularities in the conduct of the sale and were “legally and factually baseless,” Rosenberg requested that the court deny the exceptions.

On November 22, 2013, the circuit court ratified the sale. On December 17, 2013, the circuit court denied Mr. Clark’s exceptions. This appeal followed.

DISCUSSION

As indicated, although Mr. Clark raises several questions presented, his argument does not track these questions presented or, in most respects, cite any authority in support of a contention that the court erred. *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 *Klaunberg v. State*, 355 Md. 528, 552 (1999)); *Benway v. Md. Port Admin.*, 191 Md. App. 22, 32 (2010) (court is not required to seek out law to support appellant’s contentions).

I.

Standard of Review

As this Court has stated, “[i]n ruling on exceptions to a foreclosure sale and whether to ratify the sale, trial courts may consider both questions of fact and law.” *Johnson v. Nadel*, 217 Md. App. 455, 465 (2014) (quoting *Jones v. Rosenberg*, 178 Md. App. 54, 68 (2008)). “[A] court shall ratify the sale if the court is satisfied that the sale was ‘fairly and properly made.’” *Fagnani v. Fisher*, 418 Md. 371, 391 (2011) (quoting Md. Rule 14-305(e)). In reviewing a court’s ratification of a foreclosure sale, “‘we will disturb the circuit court’s findings of fact only when they are clearly erroneous.’” *Burson v. Capps*, 440 Md. 328, 343 (2014) (quoting *Fagnani*, 418 Md. at 391). We review the circuit court’s legal determinations de novo. *Johnson*, 217 Md. App. at 465.

II.

Challenges to Foreclosure

An individual or entity that owns property subject to foreclosure possesses three means of challenging the foreclosure: (1) “‘obtaining a pre-sale injunction’”; (2) “‘filing post-sale exceptions to the ratification of the sale under Maryland Rule 14-305(d)’”; and (3) “‘filing of post-sale ratification exceptions to the auditor’s statement of account.’” *Jones*, 178 Md. App. at 65 (quoting *Wells Fargo Home Mortg., Inc. v. Neal*, 398 Md. 705, 726 (2007)). “[O]nce a sale occurs, a homeowner no longer raises ‘defenses’ that challenge the lender’s right to foreclose; rather, he or she files ‘exceptions’ to the sale itself.” *Bates v. Cohn*, 417 Md. 309, 319 n.9 (2010) (quoting Md. Rule 14-305). A lender’s failure to

comply with pre-sale loss mitigation requests is one such defense, which must be raised ordinarily pre-sale in an effort to prevent the sale from occurring. *Bates*, 417 Md. at 328.

“[A]fter a foreclosure sale, ‘the debtor’s later filing of exceptions . . . may challenge only procedural irregularities at the sale or . . . the statement of indebtedness.’” *Id.* at 327 (quoting *Greenbriar Condo. v. Brooks*, 387 Md. 683, 688 (2005)). An irregularity is defined as “an act or practice that varies from the normal conduct of an action.” BLACK’S LAW DICTIONARY 906 (9th ed. 2009). This Court has explained that “procedural irregularities might include: ‘allegations such as the advertisement of sale was insufficient or misdescribed the property, the creditor committed a fraud by preventing someone from bidding or by chilling the bidding, challenging the price as unconscionable’” or allegations that the creditor failed to provide proper notice. *Jones*, 178 Md. App. at 69-71 (quoting *Greenbriar*, 387 Md. at 741).

Here, aside from the notice issue, the arguments asserted in Mr. Clark’s exceptions did not deal with “procedural irregularities at the sale or . . . the statement of indebtedness.” *Bates*, 417 Md. at 327.³ Rather, the exceptions constituted defenses to Rosenberg’s authority to proceed with the foreclosure process. To that extent, they were not proper arguments to raise in exceptions to a foreclosure sale, and therefore, the circuit court therefore did not err in denying Mr. Clark’s exceptions.

³ Mr. Clark’s contentions were: (1) that PNC represented to him that he would likely be approved for a loan modification and induced him to believe that the notices sent to him related to the foreclosure of his home were “routine or automatic”; and (2) that PNC was precluded from pursuing this foreclosure because of the settlement in entered into with federal regulators regarding its foreclosure practices.

III.

Right to a Hearing

Mr. Clark argues that he was denied due process because he was not afforded his right to be heard on the merits of the foreclosure action. He notes that both the United States Constitution and the Maryland Constitution guarantee him the right to be heard when there is a property interest at stake, as there was in this case.

Rosenberg argues that, pursuant to Md. Rule 14-305(d)(2), a hearing was not required. It notes that Mr. Clark did not request a hearing, and it argues that, because Mr. Clark's exceptions were improper and irrelevant, the circuit court did not err in failing to hold a hearing.

Maryland Rule 14-305(d), which governs exceptions to foreclosure sales, provides as follows:

(1) How Taken. A party, and, in an action to foreclose a lien, the holder of a subordinate interest in the property subject to the lien, may file exceptions to the sale. Exceptions shall be in writing, shall set forth the alleged irregularity with particularity, and shall be filed within 30 days after the date of a notice issued pursuant to section (c) of this Rule or the filing of the report of sale if no notice is issued. Any matter not specifically set forth in the exceptions is waived unless the court finds that justice requires otherwise.

(2) Ruling on Exceptions; hearing. The court shall determine whether to hold a hearing on the exceptions but it may not set aside a sale without a hearing. The court shall hold a hearing if a hearing is requested and the exceptions or any response clearly show a need to take evidence. The clerk shall send a notice of the hearing to all parties and, in an action to foreclose a lien, to all persons to whom notice of the sale was given pursuant to Rule 14-206(b).

We have explained that where a party does not request a hearing on the exceptions, the circuit court is not required to hold a hearing. *Four Star Enters. Ltd. P'ship v. Council*

of *Unit Owners of Carousel Ctr. Condominium, Inc.*, 132 Md. App. 551, 567 (2000). Mr. Clark had the opportunity to request a hearing, but he did not do so. Under these circumstances, he was not denied due process.⁴

IV.

Notice

Mr. Clark next argues that he was denied due process in this proceeding due to “constitutionally defective notice procedures.” He states that Rosenberg “did not follow Maryland Rule 14-210” because it did not notify him prior to proceeding with the foreclosure sale.

Rosenberg responds in two ways. First it notes that, “[o]ther than a single unexplained statement about the order to docket, [Mr. Clark] never raised any claim before the [c]ircuit [c]ourt that notice had been defective.” Second, it asserts that the record belies Mr. Clark’s assertions, as Rosenberg filed both an affidavit indicating that Mr. Clark was served with the order to docket and an affidavit certifying that it complied with Md. Rule 14-210.

⁴ In *McDermott v. BB&T Bankcard Corp.*, 185 Md. App. 156, 170 (2009), this Court emphasized that the essence of due process “‘is the *opportunity* to be heard.’” (Quoting *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)). In that case, the appellant argued that he was denied due process because the circuit court struck his request for a jury trial without a hearing. *Id.* We noted that the Maryland Rules permitted him to request a hearing, but he never requested one. *Id.* at 169-70. Because he was afforded the opportunity to request a hearing, we held that he was not denied due process. *Id.* at 170.

In his exceptions, Mr. Clark stated that he had never been served with the order to docket. We consider this sufficient to preserve his argument that he did not receive notice, but not sufficient to prevail on the merits of his claim.

In *Griffin v. Bierman*, 403 Md. 186 (2008), the Court of Appeals considered a due process challenge to the notice procedures in Md. Rule 14-210. The Court noted:

The “constitutionality of a particular procedure for notice is assessed *ex ante*, rather than *post hoc*.” *Jones v. Flowers*, 547 U.S. 220, 231 (2006). “The proper inquiry is whether the state acted reasonably in selecting means likely to inform persons affected, not whether each property owner actually received notice.” *Weigner v. City of New York*, 852 F.2d 646, 649 (2d Cir. 1988).

Id. at 197. It held that Rule 14-210 was constitutionally sound. *Id.* at 206. As long as a party complies with the procedures in Rule 14-210, the due process requirement of notice is satisfied. *Id.* at 201-02.

Rule 14-210 provides, in part, as follows:

(a) **By publication.** Before selling property in an action to foreclose a lien, the individual authorized to make the sale shall publish notice of the time, place, and terms of the sale in a newspaper of general circulation in the county in which the action is pending. Notice of the sale of an interest in real property shall be published at least once a week for three successive weeks, the first publication to be not less than 15 days before the sale and the last publication to be not more than one week before the sale. Notice of the sale of personal property shall be published not less than five days nor more than 12 days before the sale.

(b) **By certified and first-class mail.** Before selling the property subject to the lien, the individual authorized to make the sale shall also send notice of the time, place, and terms of sale (1) by certified mail and by first-class mail to (A) the borrower, (B) the record owner of the property, and (C) the holder of any subordinate interest in the property subject to the lien and (2) by first-class mail to “All Occupants” at the address of the property. The notice to “All occupants” shall be in the form and contain the information required by Code, Real Property Article, § 7-105.9(c). Except for the notice to “All Occupants,” the mailings shall be sent to the last known address of

all such persons, including to the last address reasonably ascertainable from a document recorded, indexed, and available for public inspection 30 days before the date of the sale. The mailings shall be sent not more than 30 days and not less than ten days before the date of the sale.

(e) **Affidavit of notice by mail.** An individual who is required by this Rule to give notice by mail shall file an affidavit stating that (1) the individual has complied with the mailing provisions of this Rule or (2) the identity or address of the borrower, record owner, or holder of a subordinate interest is not reasonably ascertainable. If the affidavit states that an identity or address is not reasonably ascertainable, the affidavit shall state in detail the reasonable, good faith efforts that were made to ascertain the identity or address. If notice was given to the holder of a subordinate interest in the property, the affidavit shall state the date, manner, and content of the notice.

Here, Rosenberg submitted an affidavit stating that, “not earlier than 30 days and not later than 10 days” prior to the sale, it had notified Mr. Clark by both certified and regular mail that his home would be sold at a foreclosure sale on September 12, 2013. It attached the receipt for the certified mail sent to Mr. Clark. It also certified that it had published the appropriate advertisement for the sale in the Baltimore Sun for three consecutive weeks. Rosenberg thus satisfied the requirements of Rule 14-210. Mr. Clark did not adduce any evidence disputing these facts. Because Rosenberg complied with the notice requirements in Md. Rule 14-211, Mr. Clark was not denied due process.

**JUDGMENT OF THE CIRCUIT
COURT FOR BALTIMORE
COUNTY AFFIRMED. COSTS TO
BE PAID BY APPELLANT.**