

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 2522

September Term, 2014

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MASSOUD HEIDARY

v.

PARADISE POINT, LLC

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Woodward,  
Friedman,  
Zarnoch, Robert A.  
(Retired, Specially Assigned),

JJ.

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Opinion by Zarnoch, J.

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Filed: December 23, 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.

Appellant Massoud Heidary failed to pay his 2012 taxes on property located in Gaithersburg. The tax collector for Montgomery County listed the property at a tax sale on June 11, 2012. Appellee Paradise Point, LLC, bid \$113,000 for the property, the taxes due in the amount of \$4,134.58, and received a certificate of tax sale from the collector. Approximately two years later, Paradise Point filed a petition to foreclose Heidary's right of redemption. Intending to redeem the property, Heidary contacted Paradise Point and subsequently paid \$2,225.28 for the fees and costs that Paradise Point incurred for successfully bidding on the property.

When Heidary attempted to redeem his property with the collector on or about July 5, 2014, he was informed that he would have to pay the delinquent taxes for 2011, 2013, and 2014, in addition to the 2012 tax assessment that precipitated the tax sale. After spending several months corresponding with the State Department of Assessments & Taxation ("SDAT") and the Montgomery County, Heidary failed to pay the amount due to the collector in order to redeem his property. The Circuit Court for Montgomery County ordered foreclosure of his right of redemption on October 16, 2014. Heidary filed a motion to revise, which the circuit court denied on January 14, 2015. Heidary then noted this appeal on January 27, 2015, and presents one question for our review:

Did the trial court abuse its discretion by refusing to grant the Appellant's Motion to Revise, Vacate and Set Aside Judgment?

Finding no abuse of discretion, we affirm the circuit court.

## BACKGROUND

It is appropriate to review the tax sale procedure, as set forth in Maryland Code (1985, 2012 Repl. Vol., 2014 Supp.), Tax–Property Article (“T.P.”) §§ 14-801 through -870, before moving to the specifics of this case. The Court of Appeals described the basic steps of the tax sale process in *Scheve v. Shudder, Inc.*:

Unpaid taxes on real estate constitute a lien on that property. [T.P. § 14–804]. Generally, within two years from the date taxes become in arrears the jurisdiction's collector must sell the land. [T.P. § 14–808]. Notice of the proposed sale must be given to the owner at least thirty days before the property is advertised for sale and the owner is notified that if he does not pay the taxes within thirty days, the property will be sold. [T.P. § 14–812]. After the sale is properly advertised, the property is sold at public auction. [T.P. § 14–817].

328 Md. 363, 369-70 (1992) (quoting *Simms v. Scheve*, 298 Md. 1, 3-4 (1983)) (Citations omitted). At the public auction, the purchaser pays the back taxes due on the property and is in turn “given a certificate of sale which includes a description of the property, the amount for which the property was sold, and information as to the time in which an action to foreclose the owner's right of redemption must be brought.” *Id.*; see T.P. § 14-820.

“The title owner of the property may redeem the property at any time until the right of redemption has been finally foreclosed by paying the required sum to the collector, who transfers the money to the tax sale purchaser in exchange for the tax sale certificate.” *Kona Properties, LLC v. W.D.B. Corp.*, 224 Md. App. 517, 529 (2015) (citing *Shudder*, 328 Md. at 370); see §§ 14-827 to 14-833. Pursuant to T.P. § 14-828(a), the person redeeming shall pay the collector:

- (1) the total lien amount paid at the tax sale for the property together with interest;
- (2) any taxes, interest, and penalties paid by any holder of the certificate of sale;
- (3) any taxes, interest, and penalties accruing after the date of the tax sale;
- (4) in the manner and by the terms required by the collector, any expenses or fees for which the plaintiff or the holder of a certificate of sale is entitled to reimbursement under § 14-843 of this subtitle. . .

Until a judgment foreclosing the title owner’s right of redemption is issued by the circuit court, “the property shall continue to be assessed as though no sale had been made, whether the governing body of the county or some other person holds the certificate of sale.” T.P. § 14-831. We now turn to the tax sale in the present case.

Heidary owned an investment property in Gaithersburg for over 15 years before the instant proceedings. In 2012, he failed to pay his property taxes, and the property was subsequently listed by the Montgomery County collector at a tax sale on June 11, 2012. Paradise Point bid \$113,000 for the property and paid high bid premium in the amount of \$551.60, as well as the taxes due in the amount of \$4,134.58.<sup>1</sup> The remainder was due upon the foreclosure of the right of redemption and the transfer of the deed pursuant to T.P. § 14-847 of the Tax–Property Article. The certificate of tax sale that Paradise Point

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<sup>1</sup> The high-bid premium is equal to “20% of the amount by which the highest bid exceeds 40% of the property’s full cash value.” T.P. § 14-817(b)(2)(ii). Upon redemption, the county refunds the high-bid premium, but without interest. T.P. § 14-817(b)(2)(vi). “This required interest-free posting has the effect of significantly reducing the investor’s overall rate of return, while providing the County with additional capital at no cost, which the County either employs in its operations or reinvests.” *Heartwood 88, Inc. v. Montgomery County*, 156 Md. App. 333, 351 (2004).

received stated that “[o]n redemption, the holder of this certificate will be refunded the sums paid on account of the purchase price together with interest at the rate of 20% per year from the date of the sale to the date of redemption, together with all other amounts specified by Section 14-813.”<sup>2</sup>

Paradise Point filed a petition to foreclose Heidary’s right of redemption on June 2, 2014. The court issued orders of publication and posting, which set a deadline of August 12, 2014 for Heidary to redeem the property. Heidary was notified by posting on the property and attempted to exercise his right to redeem the property. On July 3, 2014 he paid Paradise Point \$2,225.28 representing the amount due for fees and costs incurred in tax sale. In return, Paradise Point executed a release, which expired later that month on July 31, 2014, notifying the Montgomery County tax collector that Heidary had paid the redemption amount. Paradise Point sent this release to the collector and also sent a letter to Heidary’s attorney, reminding him that Heidary was required to pay all taxes due on the property.

When Heidary attempted to redeem his property on or about July 5, 2014, he was informed that he would have to satisfy the delinquent taxes for 2011, 2013, and 2014 in addition to the 2012 taxes, totaling \$17,396. Heidary, under the impression that he had previously paid his 2011 taxes, contested the fact that he owed back taxes for that year.

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<sup>2</sup> Section 14-813 of the Tax–Property Article details the costs associated with selling the property, including: the expense of publication of all notices; the cost of the county surveyor's description and plat, if necessary; in Montgomery County, a \$30 fee to the attorney representing the county treasurer for services, the auctioneer’s fee; and title examinations fees that do not exceed \$150.

He was also told that he may have been entitled to a tax credit. The collector told Heidary that he would have to contact SDAT to correct the amount owed. He spent several months in correspondence with the SDAT and the Montgomery County collector. However, during that period, Paradise Point's release expired, and Heidary failed to pay the amount due to the collector in order to redeem his property. Accordingly, the circuit court directed foreclosure of Heidary's right of redemption in an order dated August 29, 2014 (entered on October 16, 2014).

Heidary filed a motion to revise on November 10, 2014. Paradise Point filed a response to the motion, and the circuit court scheduled a hearing for January 14, 2015. Stressing his less-than-perfect command of the English language, Heidary argued that the court should revise the judgment to allow him to redeem his property because he was not represented by counsel during the redemption period and, thus, was unaware of his obligations under the tax sale statute. He also averred that Paradise Point would not suffer an injustice if he redeemed the property because it would get its costs and fees returned. Further, he argued, reopening the judgment would prevent Paradise Point from obtaining a windfall in the form of obtaining the property for \$113,000, compared to its assessed value of \$275,800. Paradise Point responded by asking the court not to revise the judgment, highlighting that it had complied with the tax sale and foreclosure process precisely and that Heidary had ample time to redeem the property, but did not do so in the two years since the tax sale. It also disputed the allegation that it would not be prejudiced if Heidary were to be allowed to redeem the property after his right of redemption had

been foreclosed, and it pointed out that Heidary was experienced with the tax sale process because his property had liens assessed for eight of the last fifteen years.

At the conclusion of the hearing, the circuit court reviewed the parties' submissions and denied Heidary's motion. The court reasoned that Heidary had experience with tax liens in the past and was aware of the relevant deadlines, but did not comply with them. Heidary filed his notice of appeal on January 27, 2015.

### **DISCUSSION**

On appeal, Heidary takes a different approach from that before the circuit court. He now argues that the circuit court abused its discretion in denying his motion to revise because Paradise Point committed constructive fraud in the foreclosure process. Paradise Point responds first by arguing that Heidary failed to raise his fraud argument below, and for that reason, this Court is barred from considering it on appeal. Second, Paradise Point argues that even if we were to consider the fraud issue, Heidary did not allege facts that would establish fraud. We need not reach Paradise Point's latter argument because we agree with Paradise Point's first contention, and find no abuse of discretion on the part of the circuit court.

“Ordinarily, 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[.]”<sup>3</sup> Md. Rule 8-

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<sup>3</sup> However, “the Court may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal.” Md. Rule 8-131(a). The resolution of the unpreserved contentions in this appeal is neither necessary to guide the trial court nor relevant to avoid the expense of another appeal.

131(a); *Anderson v. Burson*, 424 Md. 232, 243 (2011) (declining to hear an argument that was not raised in the circuit court). In the proceedings below, Heidary did not argue that the existence of constructive fraud provided a reason for the circuit court to revise the judgment foreclosing his right of redemption. Instead, in his motion to revise, Heidary argued that the circuit court should reopen the judgment because he was not represented by counsel during the redemption period and because of the alleged injustice that would result from Paradise Point obtaining the deed to his former property for an amount that was roughly half of its assessed value. In fact, when responding to Paradise Point’s opposition to the motion to revise, Heidary specifically indicated that he was not alleging actual or constructive fraud. Thus, “we will not grant ordinarily to [appellant] a new bob at a long-floating apple.” *Anderson*, 424 Md. at 243.

Not only was this issue not raised and decided in the circuit court, Heidary did not present evidence of fraud to the circuit court and now asks us to rely on his representations of conversations that he presents solely in his brief. Even if bald statements in an appellate brief were competent evidence and even if it did, in fact, show constructive fraud (neither of which we decide), we would not consider this evidence because it was not part of the record before the circuit court. *See Dashiell v. Meeks*, 396 Md. 149, 176-77 (2006). For the above reasons, the circuit court did not abuse its discretion in denying Heidary’s motion to revise.<sup>4</sup>

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<sup>4</sup> Pursuant to Maryland Rule 2-535(a), a court may exercise revisory power and control over the judgment on motion of any party filed within 30 days after entry of  
(Continued...)



We next consider Heidary’s assertion of a more general abuse of discretion—one not predicated on his allegations of fraud. “A motion to revise an unenrolled judgment under Maryland Rule 2-535(a) is entrusted to the wide discretion of the trial judge.” *Stuples v. Baltimore City Police Dept.*, 119 Md. App. 221, 239 (1998). Thus, “we will not reverse the judgment of the trial court unless there is grave reason for doing so.” *B & K Rentals v. Universal Leaf*, 73 Md. App. 530, 537-38 (1988), *rev'd on other grounds*, 319 Md. 127 (1990).

On June 2, 2014, Paradise Point filed a petition to foreclose the right of redemption; Heidary did not file a response to the petition. The court then issued orders of publication and posting, which set a deadline of August 12, 2014 for Heidary to

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(...continued)

judgment. *See also* Md. Code (1974, 2013 Repl. Vol.), Cts. & Jud. Proc. Art. (“C.J.P.”) § 6-408. Heidary filed his motion to revise pursuant to Maryland within 30 days of the entry of judgment foreclosing his right of redemption. The Court of Appeals in *Canaj, Inc. v. Baker and Division Phase III, LLC*, 391 Md. 374, 401 n.11 (2006) and in *Suburban Development Corp. v. Perryman*, 281 Md. 168, 169 n.1 (1977), noted that there may be a conflict between C.J.P. § 6-408 and T.P. 14-845(a), which states:

A court in the State may not reopen a judgment rendered in a tax sale foreclosure proceeding except on the ground of lack of jurisdiction or fraud in the conduct of the proceedings to foreclose[.]

In short, even though Rule 2-535(a) and C.J.P. § 6-408 allow a court to revise a judgment within 30 days of its entry, T.P. 14-845(a) seems to prohibit a revisory period. Although it did not resolve the conflict, the Court in *Canaj* implied that C.J.P. § 6-408 applies to all judgments, including judgments foreclosing a right of redemption. 391 Md. at 401 n.11. We similarly need not decide the issue, because, regardless of whether Heidary was required to prove fraud, we hold that the circuit court did not abuse its discretion in denying his motion to revise.

redeem the property. Heidary did not attempt to communicate with the court before the deadline to forestall the foreclosure of his right.

T.P. § 14-844(a) states: “After the time limit set in the order of publication and in the summons expires, the court *shall* enter judgment foreclosing the right of redemption. An interlocutory order is not necessary.” (Emphasis added). When the date in the summons had passed, the circuit court, as mandated by T.P. 14-844(a), entered judgment foreclosing Heidary’s right to redeem on its own accord.

We review the court’s decision to deny a motion to revise for abuse of discretion, and, absent a showing that a court acted in a harsh, unjust, capricious and arbitrary way, we will not find abuse. *Meeks*, 396 Md. at 178; *Stuples*, 119 Md. App. at 239. Under the circumstances here, where the circuit court—unaware of any communications that Heidary may have had with Paradise Point, SDAT, or the Montgomery County tax collector—entered judgment foreclosing Heidary’s right of redemption pursuant to the process outlined in the Tax–Property Article, there was no abuse of discretion in denying Heidary’s motion to revise.

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