

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0867

September Term, 2015

STARSHA M. SEWELL

v.

THOMAS DORE, ET AL,
SUBSTITUTE TRUSTEES

Meredith,
Leahy,
Zarnoch, Robert A.
(Retired, Specially Assigned),

JJ.

Opinion by Meredith, J.

Filed: July 8, 2016

* 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.

The appellant in this case, Starsha M. Sewell, asserts that her home was wrongfully foreclosed upon and sold by the appellees, Thomas Dore, et. al., the substitute trustees under a deed of trust for real property located in Capitol Heights, Prince George’s County. Several years after the foreclosure sale was ratified, appellant filed a motion to alter or amend pursuant to Maryland Rule 2-534, as well as a request for relief pursuant to Maryland Rule 2-535(b). The court held an evidentiary hearing on the motions and denied them. The appeal followed.

QUESTIONS PRESENTED

In her brief, appellant presents twelve questions for our review. But the only question properly before us is: Did the circuit court abuse its discretion in denying appellant’s motion pursuant to Maryland Rule 2-535(b) to revise a judgment entered several years earlier?¹

¹ Appellant’s questions presented verbatim are as follows:

1. Did the Honorable Thomas P. Smith abuse his discretion upon denying the Appellants Motion for Relief of Judgment to Alter and Amend a Judicial Foreclosure that was affirmed due to the filing of robo-signed documents?
2. Will this Honorable Court rescind the illegal flip and re-sale of the property on the basis that the post-sale irregularity stems from the Trustee’s fraudulent misrepresentation of the facts, as Dawn Newman did not purchase the Appellant’s Property on behalf of CDA?
3. Will this Honorable Court apply the Bates and Cohn standard to this case on the basis that the post sale irregularity is that the property was not sold at the foreclosure sale?
4. Will this Honorable Court rescind the re-sale of 7020 Independence Street Capitol Heights, MD 20743 on the basis that the Purchaser’s Affidavit and Money Purchase Deeds are products of extrinsic fraud

(continued...)

¹(...continued)

that resulted [in] a quiet title transfer in efforts to conceal robo signing [sic] fraud from the courts?

5. Because the Purchaser's Affidavit filed on the courts in 2010 was a product of fraud should the sale be vacated pursuant to Rule 2-534, and Disparate Impact clause of the Fair Housing Act; on the basis that Robosigned documents are products of fraud; hence the re-sale of a "taking" fails at eminent domain, because the deed and title on the resale of the property are products of fraud; hence the judicial action must be vacated.
6. Did the robo-signed documents cause post sale irregularities in the title chain of the property?
7. Did the PG County Police engage in discriminative retaliation on the Appellants Minor children in an attempt to silence her advocacy for Fair Housing rights, upon violating Judge Zarnoch's order, which vacated their intervention in a family law matter; because they benefit from HUD Good Neighbor's Program, which permits them to acquire properties for 50 percent discount from HUD?
8. Did the Trustee's [sic] violate FHA, Disparate impact[,] False Availability as defined in (Texas Department of Housing and Community Affairs vs. The Inclu[s]ive Communities Project Inc. 13-371, 5th Cir- June 25[,] 2015)?
9. Did The Honorable Thomas P. Smith violate the Md. Code Ann. Real Prop. § 7-105.1, which provides homeowners in foreclosure with the right to mediation; upon denying the Appellants Motion to Vacate at the Evidence Hearing on June 17, 2015?
10. Did the Extrinsic fraud via purchaser's affidavit prevent adversarial trial, by failing to provide documentary evidence of an actual purchase, as the purchasers affidavit was utilize[d] to obstruct adversarial trial with the sole intent to prevail on the courts by presenting documents for the appearance of a purchase, which obstructed adversarial trial in violation [of] 18 U.S.C. § 1519?

(continued...)

Because we answer “no” to that question, we will affirm.

FACTS AND PROCEDURAL BACKGROUND

On January 10, 2008, appellant purchased the real property located at 7020 Independence Street in Capitol Heights. Appellant financed the purchase by way of a promissory note executed in favor of First Home Mortgage Corporation, the lender. Repayment of the loan was secured by a deed of trust on the property, which contained a power of sale naming appellees as substitute trustees. On January 16, 2008, First Home Mortgage Corporation assigned the note and deed of trust to the Maryland Department of Housing and Community Development (“DHCD”). After appellant failed to make payments

¹(...continued)

11. Because Mistake is limited to jurisdictional error, such as where the Court lacks the power to enter judgment.” *Green v. Ford Motor Credit Co.*, 152 Md. App. 32, 51 (2003). Did Judge Thomas P. Smith [l]ack jurisdiction to enter and ratify a judgment, when the property was not sold at an actual foreclosure sale; and did he also abuse his discretion upon denying a motion for modification/forbearance for a home that was not purchased in the Duval Wing by CDA on Feb[r]uary 12, 2010 but was instead paid off in full on October 15, 2002 (E.8).
12. Because, the dispositive action in this case was the ratification of the sale itself; not the denial of appellant’s motion to re-open. *See Lowman*, 68 Md. App[.] at 75; Should this entire action be vacated on the basis that Judge Thomas P. Smith did not have jurisdiction to enter a judgment to ratify the sale, because the Trustee’s did not sale [sic] the property [to] Dawn Newman on Feb[r]uary 12, 2010; and on the basis that Starsha Sewell did not sale [sic] the property to CDA for \$153,000 dollars as on May 18, 2011 as the MD SDAT indicates due to the extrinsic fraud of Shannon Menapace. See (E.1., E.8, E.9, E.10, E.11, E.12)

(Bold emphasis removed.)

on the note, a default was declared. On December 9, 2009, the substitute trustees initiated a foreclosure action by docketing suit in the Circuit Court for Prince George's County.

On February 12, 2010, DHCD purchased the property at a public sale, and a report of sale was filed on February 25, 2010. Appellant filed a motion to vacate the foreclosure sale on August 30, 2010. The sale was ratified by an order entered on August 31, 2010. The circuit court denied appellant's motion to vacate twice, in orders docketed on September 20, 2010, and December 6, 2010.

An order ratifying the auditor's report was entered on January 7, 2011. No further docket entries were made until April 22, 2015. In the interim, appellant commenced litigation attacking her foreclosure case in other forums.²

On April 22, 2015, appellant filed in the foreclosure action a motion requesting that the circuit court vacate the judgment dated 12/06/2010. The motion was captioned:

Defendant's Motion to Alter or Amend Judgment Dated 12/06/2010 and 01/07/2011, pursuant to Md Rule 2-534; Along With A Motion to Vacate All Judgments and or to Move for A New Trial due to Fraud on the Court, Misappropriation and Identity Theft.

The appellee opposed the motion as (a) untimely under Rule 2-534, and (b) without merit.

Appellant then filed a pleading on May 7, 2015, captioned:

² On September 27, 2012, appellant filed a notice of removal in the United States District Court for the District of Maryland, and appealed the dismissal of that action to the United States Court of Appeals for the Fourth Circuit. Appellant subsequently filed a claim with the Maryland Insurance Administration. That claim was dismissed following a proceeding before the Office of Administrative Hearings.

Defendant's Response to the Plaintiff's Motion and Correction of Clerical Error, as the Defendant seeks to Amend All Judgments on Record pursuant to Md Rule 2-535(b); or would like to Move for A New trial due to the Plaintiff's Extrinsic Fraud on the Court, and the Substituted Trustee's Commission of Misappropriation and Identity Theft.

The circuit court set the case in for an evidentiary hearing on appellant's motions. The parties appeared in court on June 17, 2015, at which time the motion judge gave the appellant the opportunity to produce evidence in support of her motions.

Appellant introduced several exhibits, and told the judge that, "[p]rimarily, it's my position that I was one of the individuals who was subjected to the wrongful foreclosure practices." In support of her motions, she offered the court "a copy of the purchaser affidavit" which "indicates that [the property] was purchased and sold to someone in the County of Harford and it was sold to someone named Dawn Newman," and, said appellant, "that's not true." Appellant protested that "the tax record database" was inconsistent with that affidavit, and "[t]here's no record of me ever owning the house in the database." Appellant claimed that the manner in which the sale was reflected in these records was a "misappropriation" of her personal information. She related that "something deceptive happened around about 2010 that caused my personal information to be used inappropriately."

After reviewing the purchaser's affidavit, the judge observed that it reflected that Ms. Newman purchased the property as an agent for the Maryland Department of Housing and Community Development, and the reference in the affidavit to Harford County was simply

an indication of “where the affidavit was executed, that’s where the notary public is. That has nothing to do with where the sale is.”

Appellant then told the judge: “The only reason why I’m here today is to try to cure the injustice that happened in 2010, primarily because I was denied loss mitigation, based off of this house having been sold in 2010 to CDA.” She explained: “I lost the right to mitigation, which was . . . mandated under the Maryland law that I was entitled to that.”

Appellant introduced a transcript of a hearing conducted by the Office of Administrative Hearings on behalf of the Maryland Insurance Administration on November 21, 2014; a package of documents she received from the United States Department of Housing and Urban Development in January 2013 in response to her Freedom of Information Act Request; real property tax bills addressed to Nicole Nicholson; a “Bogman Loan Inquiry” printout from <https://www.bogmaninc.com/bwrbal.asp>; and a letter dated October 1, 2013, from Chicago Title Insurance Company, denying a title insurance claim made by appellant. The October 2013 letter from Chicago Title included the following statements:

You have alleged that you are the victim of wrongful foreclosure practices because the substitute trustees who conducted the foreclosure of the Subject Property allegedly illegally transferred title to the Community Development Administration of the Department of Housing and Community Development (the “CDA”). It appears that you are now alleging that this was a forged deed.

Our investigation has revealed that the deed was conveyed via foreclosure process, not by someone purporting to be you and forging your signature. The Company’s investigation determined that the Substitute Trustee conveyed the Subject Property by deed dated March 16, 2011, and recorded on May 18, 2011 This deed conveys the Subject Property from the Substitute Trustee,

Shannon Menapeace, to the CDA. The consideration recited in the deed is \$153,000.00.

Counsel for appellee pointed out that the law regarding loss mitigation went into effect in July of 2010, several months after the subject property had been sold at a foreclosure sale on February 12, 2010. Counsel argued that appellee had no control over the manner in which the sale was reported in the database of the State Department of Assessments and Taxation, but counsel produced a copy of the deed transferring the property.

In rebuttal, appellant stated: “My argument is that they transferred my house, they did not foreclose. And there’s a difference”

At the conclusion of the hearing on appellant’s motions, the judge ruled from the bench, stating:

This case has been before the Court repeatedly. The sale in this case occurred February 12th, 2010. The sale was ratified September 2nd, 2010. The motion to vacate was denied December 6th, 2010. The audit of this case was ratified January 7th, 2011. The Moveant [sic] has failed to provide any evidence of fraud, mistake or irregularity.

The motions are denied as stated.

The circuit court’s denial of appellant’s motions was docketed on June 18, 2015. On July 2, 2015, appellant filed her notice of appeal.

DISCUSSION

Appellant seeks to set aside rulings made by the Circuit Court for Prince George’s County in 2010 and 2011 ratifying the foreclosure sale of her real property. Appeals of those orders should have been filed within 30 days after the entry of the orders on the

docket. Any motion pursuant to Maryland Rule 2-534 to alter or amend one of those orders (or for a new trial pursuant to Maryland Rule 2-533) had to be filed within ten days after the entry of the order. For that reason alone, appellant’s motion filed on April 22, 2015, asking the circuit court to alter or amend the judgments entered several years earlier, was untimely, and the circuit court did not err in denying the untimely motion.

The document filed by appellant on May 7, 2015, indicated in its caption that appellant was also moving, pursuant to Maryland Rule 2-535(b), for relief based on an allegation of appellee’s extrinsic fraud. Rule 2-535(b) provides: “On motion of any party filed at any time, the court may exercise revisory power and control over the judgment in case of fraud, mistake, or irregularity.” Consequently, a motion seeking relief pursuant to Rule 2-535(b) is not barred by any specific time limit set forth in that rule. Nevertheless, cases interpreting Rule 2-535(b) impose a burden upon the moving party to establish a sufficient reason for the court to reopen a case that has been closed and dormant for several years. Here, the circuit court did not err in ruling that appellant had not met that burden.

In *Pelletier v. Burson*, 213 Md. App. 284 (2013), this Court rejected a motion to reopen a mortgage foreclosure proceeding pursuant to Rule 2-535(b), and explained various limitations upon the relief that is available pursuant to that rule:

Appellant asserts that she filed her motions to dismiss predicated on the authority of Md. Rule 2–535(b), which “allows a motion to be filed by a party at any time to seek the court's revisory power and control of a judgment only in the case of fraud, mistake, or irregularity.” She contends that “the affidavits attached to the Order to Docket [suit] were fraudulently signed and were ‘robo-signed’ ” and that she was not aware of the fraud until after the sale date. Appellant argues that the trial court erred in denying her motions

because the affidavits could “be considered either an irregularity, fraud, or both[.]”

Appellees respond that “even if Appellant could reopen the case, she could not challenge the substitute trustee's right to foreclose or the validity of the debt, as such challenge should have been made in 2010 before the sale.” They argue that appellant's allegations do not amount to extrinsic fraud, that there are no facts to support reopening the case on grounds of irregularity and/or mistake, and finally, that appellant does not have a meritorious defense to the underlying foreclosure action and did not act in good faith, or with ordinary diligence.

“We review the circuit court's decision to deny a request to revise its final judgment under the abuse of discretion standard. The effect of a final ratification of sale is *res judicata* as to the validity of such sale, except in the case of fraud or illegality.” *Jones v. Rosenberg*, 178 Md. App. 54, 72, 940 A.2d 1109 (2008).

Maryland Rule 2–535(a) provides, in pertinent part: “On motion of any party filed within 30 days after entry of judgment, the court may exercise revisory power and control over the judgment. . . .” Md. Rule 2–535(b) is an exception to the general rule and provides: “On motion of any party filed at any time, the court may exercise revisory power and control over the judgment in case of fraud, mistake, or irregularity.” “**The existence of fraud, mistake, or irregularity must be shown by ‘clear and convincing evidence.’**” *Davis v. Attorney Gen.*, 187 Md. App. 110, 123–124, 975 A.2d 362 (2009) (quoting *Das v. Das*, 133 Md. App. 1, 18, 754 A.2d 441 (2000)). “**Maryland courts have narrowly defined and strictly applied the terms fraud, mistake, [and] irregularity, in order to ensure finality of judgments.**” *Thacker v. Hale*, 146 Md. App. 203, 217, 806 A.2d 751 (2002).

* * *

“To establish fraud under Rule 2–535(b), **a movant must show extrinsic fraud**, not intrinsic fraud.” *Jones*, 178 Md. App. at 72, 940 A.2d 1109. “**Fraud is extrinsic when it actually prevents an adversarial trial** but is intrinsic when it is employed during the course of the hearing which provides the forum for the truth to appear, albeit, the truth was distorted by the complained of fraud.” *Id.* at 73, 940 A.2d 1109. The rationale is that

[O]nce parties have had the opportunity to present before a court a matter for investigation and determination, and once the

decision has been rendered and the litigants, if they so choose, have exhausted every means of reviewing it, the public policy of this State demands that there be an end to that litigation . . . [.] This policy favoring finality and conclusiveness can be outweighed only by a showing that the jurisdiction of the court has been imposed upon, or that the prevailing party, by some extrinsic or collateral fraud, has prevented a fair submission of the controversy.

Id. (internal quotation marks omitted).

“Under Maryland law, an enrolled judgment can be set aside for mistake or irregularity. Mistake is limited, however, to jurisdictional error, such as where the Court lacks the power to enter judgment.” *Green v. Ford Motor Credit Co.*, 152 Md. App. 32, 51, 828 A.2d 821 (2003).

Appellant has not argued any irregularity with the foreclosure process or procedure. Indeed, the record is devoid of even a hint of irregularity that would warrant the re-opening of this ratified foreclosure sale.

Appellant's assertions of fraud related to what she believes to have been fraudulent signatures and affidavits, do not rise to the level of extrinsic fraud. The alleged fraud did not prevent an adversarial trial, but, had such existed, would have been contained within the trial itself.

Finally, appellant makes no allegations of jurisdictional mistake.

In narrowly construing the terms of irregularity, fraud, and mistake, and considering the public policy favoring finality of judgments, we conclude that the facts do not warrant the setting aside of the ratified foreclosure proceedings. Accordingly, the circuit court did not abuse its discretion by denying appellant's motions.

213 Md. App. at 289-92 (emphasis added) (footnotes omitted).

In the present case, appellant produced no evidence that was sufficient to persuade the circuit court that the orders entered in this foreclosure action in 2010 and 2011 were the

product of fraud, mistake, or irregularity. Accordingly, the circuit court did not err in denying appellant's motions.

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