

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1147

September Term, 2016

SULION, LLC,

v.

JAN POLISSAR, et al.

Meredith,
Beachley,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: June 26, 2017

*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.

Following a hearing, the Circuit Court for Montgomery County entered an order granting appellee Jan Polissar's Motion to Strike the Court's Judgment Foreclosing the Right of Redemption for property sold at a tax sale. In this appeal, appellant, Sulion, LLC ("Sulion"), contends that the trial court erred in vacating the judgment foreclosing Polissar's right of redemption. We disagree and affirm.

FACTS AND PROCEEDINGS

In 1969, Polissar purchased real property known as 8501 Rayburn Road, Bethesda, Maryland 20817. Because Polissar failed to pay the 2014 and 2015 real property taxes assessed to the property, on June 8, 2015, the tax collector for Montgomery County sold the property to Sulion at a tax sale. For convenience, we summarize the chronology of filings in the circuit court:

- January 20, 2016 – Sulion files a complaint to foreclose the right of redemption
- April 1, 2016 – Sulion files a request for judgment foreclosing the right of redemption
- May 9, 2016 – Order entered foreclosing Polissar's right of redemption
- June 8, 2016 – Polissar files Motion to Strike the Court's Judgment Foreclosing the Right of Redemption
- July 28, 2016 – Court grants Polissar's Motion to Strike the Court's Judgment Foreclosing the Right of Redemption and orders Polissar to pay all amounts necessary to redeem the property by the close of business on July 29, 2016.

Although not directly related to the issue raised on appeal, we briefly discuss the efforts made by Polissar between February, 2016, and May, 2016, to redeem the property. On February 3, 2016, Polissar requested and received an invoice from Sulion in the amount

of \$2,238.90 representing Sulion’s attorney’s fees and expenses. Pursuant to Md. Code (1985, 2012 Repl. Vol.), § 14-828(a)(4) of the Tax-Property Article (“TP”), a party redeeming property must first reimburse the tax certificate holder’s attorney’s fees and expenses as set forth in TP § 14-843. On April 18, 2016, Polissar attempted to pay Sulion’s attorney’s fees and expenses by depositing \$2,300.00 into an account designated by Sulion. However, the \$2,300.00 payment was insufficient as Sulion had incurred more attorney’s fees and expenses between February 3 and April 18, 2016. Polissar then made a second deposit of \$926.30 into the account designated by Sulion. Because the second payment satisfied Sulion’s outstanding costs, on May 2, 2016, Sulion issued Polissar a “release” notifying the Montgomery County tax office that Polissar had paid the necessary attorney’s fees and expenses. The release was valid only for seven days; thus, the County denied Polissar’s attempt to redeem the property on May 20, 2016, eleven days after the release expired. While Polissar was making these efforts to pay Sulion and redeem the property, the circuit court issued its order on May 9, 2016, foreclosing Polissar’s right of redemption. As noted previously, on June 8, 2016, Polissar timely moved pursuant to Md. Rule 2-535(a) to strike the May 9, 2016 order, which the court granted on July 28, 2016.

In his motion, Polissar argued that he had failed to redeem the property “through a series of mistakes, confusion caused by his medical condition and unfamiliarity with the tax sale foreclosure process[.]” Polissar also alleged that Sulion prevented him from redeeming the property by rushing the matter to judgment. On July 28, 2016, the circuit court held a hearing on Polissar’s Rule 2-535 motion. At the hearing, Polissar argued that

he had owned the property for forty-five years, had paid Sulion’s attorney’s fees and expenses, had attempted to resolve the matter without an attorney and was “very confused” about the procedure, and that he had the funds to pay all real estate taxes due on the property. In his amended affidavit accepted by the court, Polissar also noted that he suffered “from a chronic and debilitating case of Attention Deficit Disorder,” making it difficult for him “to organize and execute important tasks.” Sulion responded that it had complied with the provisions of the tax sale statute, that the court should not consider the property owner’s hardship based on Maryland case law, and that the equities of the case had already been contemplated by the tax sale statute.

Following argument, the court ruled from the bench. Although the court found that Sulion had not acted unreasonably or illegally, it granted Polissar’s Motion to Strike the Judgment Foreclosing the Right of Redemption. In doing so, the court expressly required Polissar to pay all amounts due to redeem the property, including \$28,676.97 in taxes, by the close of business on July 29, 2016. Sulion timely appealed that judgment.

DISCUSSION

Sulion contends that, under TP § 14-845(a), a judgment in a tax foreclosure sale may only be reopened based on lack of jurisdiction or fraud. That section provides:

- (a) *Reopening judgments generally.* – 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; however, no reopening of any judgment on the ground of constructive fraud in the conduct of the proceedings to foreclose shall be entertained by any court unless an application to reopen a judgment rendered is filed within 1 year from the date of the judgment.

According to Sulion, the trial court erred when it vacated the May 9, 2016 order foreclosing Polissar’s right of redemption based on “hardship,” rather than lack of jurisdiction or fraud.

Polissar argues that the general revisory power granted to the trial court by Md. Rule 2-535(a) controls rather than TP § 14-845(a). Md. Rule 2-535(a) states:

(a) Generally. On motion of any party filed within 30 days after entry of judgment, the court may exercise revisory power and control over the judgment and, if the action was tried before the court, may take any action that it could have taken under Rule 2-534. A motion filed after the announcement or signing by the trial court of a judgment or the return of a verdict but before entry of the judgment on the docket shall be treated as filed on the same day as, but after, the entry on the docket.

As a result, Polissar argues that the trial court was not limited to reopening the judgment based on lack of jurisdiction or fraud.

The Court of Appeals has soundly rejected Sulion’s argument that an unenrolled judgment in a tax foreclosure sale may only be reopened based on lack of jurisdiction or fraud. In *Haskell v. Carey*, 294 Md. 550 (1982), the Court analyzed the interplay between the predecessor to TP § 14-845(a),¹ and Md. Code (1974, 1980 Repl. Vol.), § 6-408 of the Courts and Judicial Proceedings Article (“CJP”), which, like Rule 2-535(a), grants the court revisory power to review a judgment within thirty days of its entry. The Court concisely identified the potential conflict between the two statutes, which we note is identical to the issue Sulion raises in this case:

If the language of Art. 81, § 113 [limiting revisory power only for lack of jurisdiction or fraud] were construed to be applicable to unenrolled

¹ Md. Code (1957, 1980 Repl. Vol.), Article 81 § 113 preceded Md. Code (1985, 2012 Repl. Vol.), § 14-845(a) of the Tax-Property Article (“TP”).

judgments, then it would conflict with the provision in § 6-408 of the Courts Article that authorizes a trial court to exercise broad discretionary power over unenrolled judgments.

Id. at 557-58. The Court then held,

In our view, § 6-408 and § 113 are not irreconcilable, and can both be given effect if § 113 is construed to be applicable only to enrolled judgments of foreclosure of the right of redemption and inapplicable to such unenrolled judgments. Such a result is consonant with the dual purposes of § 6-408 and the purpose of § 113.

Id. at 558.

Although the Court in *Haskell* interpreted CJP § 6-408 rather than Md. Rule 2-535(a), the Court of Appeals has noted that Rule 2-535 “is intended to be as comprehensive as [CJP] § 6-408,” and that “[r]ead together, the rules, the statute and our decisions boil down to a dictate that for a period of thirty days from the entry of a law or equity judgment a circuit court shall have ‘unrestricted discretion’ to revise it.” *Md. Bd. of Nursing v. Nechay*, 347 Md. 396, 408 (1997) (citations and quotations omitted). Accordingly, *Haskell*’s reasoning applies to Rule 2-535 as well as CJP § 6-408. *See also Seidel v. Panella*, 81 Md. App. 124 (1989).

We further note that in *Haskell*, the Court of Appeals affirmed the trial court’s decision, pursuant to CJP § 6-408, to set aside its prior order foreclosing the owners’ right of redemption based on the owners’ “age, ill health, and other personal problems.” 294 Md. at 551. In doing so, the *Haskell* court expressly acknowledged that trial courts retain “broad discretionary power over unenrolled judgments.” *Id.* at 551-52.

In vacating the judgment pursuant to Rule 2-535(a), the trial court here relied on principles of equity and fairness. In her bench ruling, the trial judge stated:

But I am not going to preclude [Polissar] from [redeeming the property] because I don't believe that that is what is equitable or fair, and certainly, again, I'm not suggesting that [Sulion] has done anything untoward or done anything other than exactly what they're entitled to do, but when I weigh those two competing interests, I think that it would be, it would be, the harm to [Polissar] would be significant under these circumstances.

We note that the trial court expressly “weigh[ed] the two competing interests” and determined that Polissar would be significantly harmed if his right of redemption were foreclosed. In reaching an “equitable and fair” decision, the trial court exercised its considered discretion in reopening the unenrolled judgment foreclosing the right of redemption upon the condition that Polissar redeem the property by the close of the next business day. In summary, we conclude that the circuit court did not abuse its broad discretionary power to revise an unenrolled judgment. Accordingly, we affirm.

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