

Circuit Court for Prince George's County
Case No. C-16-CV-22-000595

UNREPORTED*
IN THE APPELLATE COURT
OF MARYLAND

No. 0056

September Term, 2024

WONDER CITY, LLC

v.

CARRIE M. WARD, et al.

Shaw,
Zic,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Shaw, J.

Filed: May 13, 2025

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Appellant Wonder City, LLC purchased property located at 5606 Lansing Drive in Temple Hills, Maryland, at a foreclosure sale, and later, filed a Petition for Allowance of Claim from Surplus Funds. The Circuit Court for Prince George’s County denied the uncontested petition and Wonder City’s motion for reconsideration. Wonder City timely appealed and presents four questions for our review:

1. Did the Circuit Court err by failing to consider the Appellant’s unopposed Petition for Allowance of Claim from Surplus Funds because the Appellant did not file a motion to intervene?
2. Did the Circuit Court err by finding that the terms of the foreclosure sale did not permit the Appellant from requesting an equitable distribution from surplus proceeds to compensate for the damages to the foreclosed property caused by the occupant’s actions and/or neglect after the sale of the property?
3. Did the Circuit Court abuse its discretion by making findings of fact that were not supported by the record in the Foreclosure Case, and disregarding the evidence presented in the Petition for Payment of Claim from Surplus Funds?
4. Did the Circuit Court err by relying on the wrong standard of review for the Motion for Reconsideration?

We hold that the circuit court did not err, and, accordingly, we affirm the judgment.

BACKGROUND

Arthur J. Brown¹ and Valerie Brown owned property located at 5606 Lansing Drive in Temple Hills, Maryland, subject to a Note and Deed of Trust executed by Mr. Brown. Substitute trustees: Carrie M. Ward, Howard N. Bierman, Jacob Geesing, Richard R. Goldsmith, Jr., Elizabeth C. Jones, Nicholas Derdock, Andrew J. Brenner, Christopher

¹ Arthur Brown died on August 29, 2023, before this matter was decided.

Robert Selig, and Philip Shriver filed an Order to Docket a foreclosure action in the Circuit Court of Prince George’s County on November 18, 2022, after the Browns defaulted on their mortgage payments. The Browns were served with notice of the foreclosure action.² According to the record, the Browns did not file any responses, or exceptions, and they did not otherwise participate in the foreclosure action.

The substitute trustees published notice of the foreclosure sale which stated that the “property, and any improvements thereon, will be sold in an ‘as is’ condition and subject to conditions, restrictions and agreements of record affecting the same, if any, and with no warranty of any kind.” It stipulated that the “Purchaser is responsible for obtaining physical possession of the property, and assumes risk of loss or damage to the property from the date of sale.”

The substitute trustees held a public auction on April 11, 2023, and Wonder City, LLC, appellant, purchased the property for \$315,000.00. A day after the sale, Walter Dixon, a contractor and an agent for Wonder City, inspected the property and found that it “was in a good condition.” He noted that Mr. Brown was aware of the sale and informed Mr. Dixon “that he would vacate the Property by ‘no later than May 30th, 2023.’” The foreclosure sale was reported, notice was published, and the sale was ratified by the circuit court, without objection on June 12.

² The Browns and the substitute trustees are collectively the appellees.

On June 14, 2023, Mr. Dixon returned to the property after Mr. Brown had vacated it the day before.³ He documented alleged waste and took pictures to support his conclusions. He noted mold stemming from a water leak and roof damage from unkempt vines among other areas of neglect.

On July 21, 2023, Wonder City filed an uncontested Petition for Allowance of Claim from Surplus Funds, but it did not file a motion to intervene. It alleged that Mr. Brown “caused significant waste to the Property,” and that it was “entitled to \$56,300.00 out of the surplus proceeds of the foreclosure sale to compensate for the waste caused to the Property.” It attached an affidavit from Mr. Dixon in support of its petition with his documentation and pictures.

Separately, the substitute trustees filed a Verified Motion to Resell Property on July 28, 2023. The court entered a show cause order and scheduled a hearing for October 18. Wonder City’s Petition for Allowance of Surplus Funds was held in abeyance pending the motion to resell. The substitute trustees withdrew their motion to resell on September 8. The court auditor filed a Report and Account of the Auditor on October 4, and listed a surplus of \$82,664.52, which the court ratified on October 23 without exceptions. On December 12, 2023, the court denied Wonder City’s Petition for Allowance of Claim from Surplus Funds, without a hearing.⁴ The court reasoned that Wonder City:

³ Mr. Dixon averred in an affidavit that he only returned to the property after he received confirmation from Mr. Brown that he had vacated on June 13, 2023.

⁴ Valerie Brown separately filed a Motion to Release Funds from the Court Registry on July 31, 2023. On December 13, 2023, the court denied Ms. Brown’s request because

has not filed a Motion to Intervene pursuant to Md. Rule 2-214 and therefore is not a proper party to this action. Further, [Wonder City] purchased the property, sight unseen, to wit: “AS IS” and “assum[ed] risk of loss or damage to the Property from the date of sale.” Despite the affidavit of Walter Dixon, . . . the pictures submitted in [Wonder City’s] Petition . . . illustrate years of abuse and owner neglect of said property prior to said foreclosure sale. The assertion that the extent of the damage/neglect to said Property occurred solely between the time frame of April 12, 2023, to June 13, 2023, stretches credulity.

Wonder City filed a Motion to Reconsider the Order Denying Surplus Proceeds on December 18, 2023, which the court denied on March 1, 2024. In its order, the court cited both Maryland Rules 2-535(a) and 2-535(b), as applicable, before determining that there was “no legal or meritorious reason to grant Foreclosure Purchaser’s Motion for Reconsideration.” On March 12, 2024, Wonder City timely noted this appeal.

STANDARD OF REVIEW

Maryland Rule 8-131(c) governs our scope of review in matters decided without a jury:

(c) Action Tried Without a Jury. When an action has been tried without a jury, an appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.

In foreclosure matters, under Maryland Rule 14-216(a), “The court shall order distribution of the surplus [proceeds from a foreclosure sale] equitably among the claimants.” Courts exercising equitable authority have broad discretion and we review a

a “review of the record reveals that [Mr. Brown] is the only person listed on the Note, Deed of Trust and Order to Docket” and Ms. Brown did not file a “Motion to Intervene and therefore is not a proper party to this action under Md. Rule 2-201.”

court’s decision to exercise its equitable authority under an abuse of discretion standard. *Pulliam v. Dyck-O’Neal, Inc.*, 243 Md. App. 134, 141 (2019) (quoting *Schisler v. State*, 394 Md. 519, 535 (2006)); *AMT Homes, LLC v. Fishman*, 228 Md. App. 302, 308 (2016). A court’s conclusions are reviewed *de novo* to determine if they are ““legally correct.”” *Pulliam*, 243 Md. App. at 141 (quoting *Schisler*, 394 Md. at 535).

DISCUSSION

Wonder City argues that the court erred on four issues. First, Wonder City argues that it was not required to intervene. Second, the claim of waste against the former owner of the home is actionable regardless of the language in the advertisement of sale. Third, the record did not support the court’s factual findings. Last, the court used the wrong standard of review in denying the motion for reconsideration. The appellees did not file a brief in this matter.

I. The court properly denied Wonder City’s Petition for Allowance of Claim from Surplus Funds.

Wonder City argues that foreclosure proceedings are a “separate, summary, hybrid transaction of judicial and non-judicial actions authorized by the foreclosure statute, which involves some, but not all of the circuit court civil rules” and that Maryland Rule 14-216(a) allows any person to file a petition for surplus funds. Wonder City contends that foreclosure purchasers “necessarily become a party to the foreclosure sale” because they have an “equitable title at the time of the foreclosure sale . . . and further adjudication in the case requires that a foreclosure purchaser be permitted to participate.” Alternatively,

Wonder City posits that if it did have to intervene, it is “entitled to intervention as a matter of right” and denying its petition “would place form over merits.”

Generally, foreclosure proceedings are governed by the Chapter 200 Rules under Title 14 of the Maryland Rules of Procedure. Rule 14-216 allows “*any person* claiming an interest in the property or in the proceeds of the sale” to “file an application” for surplus funds. (Emphasis added). We note that “there is no indication that 14-216 displaces all other Maryland Rules[.]” *Brower v. Ward*, 256 Md. App. 61, 69 (2022). The Maryland Rules work in accordance with one another and they operate as being “consistent and harmonious” with each other. *Id.* (citing *Johnson v. Francis*, 239 Md. App. 530, 544 (2018)).

As such, Maryland Rule 14-216 does not excuse the obligation of a third-party purchaser to intervene in a foreclosure action. Wonder City correctly notes that Maryland Rule 14-216 permits “any person” to file a petition for surplus funds, but the rule itself does not, by its plain language, modify or eliminate the requirement to intervene in accordance with Maryland Rule 2-214(c). Wonder City has identified examples of when other rules within the foreclosure context differ in their application from the typical civil rules, but these examples do not negate a party’s obligation to intervene. As an example, Wonder City argues that “Maryland Rule 14-102 permits the purchaser at a foreclosure sale to move the court for a judgment . . . and also does not require, either in the text of the rule, or in practice before the circuit courts, that the purchaser first request intervention in the case.” It fails to cite any case law in support of this proposition, and upon review, we

could find none. Wonder City also fails to demonstrate why the practice in circuit court for Maryland Rule 14-102 should affect the obligation to intervene in the 14-216 context.

Wonder City cites *Donald v. Chaney*, 302 Md. 465 (1985), *Wagner v. Cohen*, 6 Gill 97 (1847), *AMT Homes, LLC v. Fishman*, 228 Md. App. 302 (2016), and *Campbell v. Council of Unit Owners of Bayside Condo.*, 202 Md. App. 241 (2011) to argue that foreclosure purchasers have an equitable interest in the properties they buy at foreclosure sales, and thus, become a party by necessity. While all of these cases acknowledge the equitable interest that foreclosure purchasers have in the properties that they bought, none of these cases discuss intervention or whether a foreclosure purchaser automatically becomes a party to the foreclosure action. In our view, these cases do not support Wonder City’s argument that having an equitable interest in a foreclosure action makes a third-party purchaser a party by necessity.

Wonder City conversely argues that even if it did have to intervene, its petition should not be denied because it was “entitled to intervene as a matter of right.” *Mirjafari v. Cohn*, 183 Md. App. 701, 709 (2009). It insists that denying its petition is akin to placing “form over substance.” This is misleading. The court did not deny Wonder City’s petition because it was not entitled to intervene; rather, the court denied its petition because it failed, by its own admission, to file a motion to intervene. The court, ultimately, analyzed the substance of the petition, decided that the averments in the petition lacked credibility and denied relief.

II. The court acted within its discretion in denying Wonder City’s petition.

Wonder City asserts that the court erred in denying its Petition for Allowance of Claim from Surplus Funds. It asserts that while the language in the advertisement of public sale applies to them and the contract applies to them and the substitute trustees, it does not apply to the property’s former occupant, Mr. Brown. Wonder City contends that it properly brought a claim against Mr. Brown for waste, and the uncontested affidavit provided by Mr. Dixon established that there was clear waste from neglect to the property. Because both issues are directed at the court’s denial of Appellant’s petition, we address them together.

We note that the terms within an advertisement for a foreclosure sale “automatically become a part of the contract that is made when the sale is ratified.” *Thomas v. Dore*, 183 Md. App. 388, 400 (2008); *White v. Simard*, 152 Md. App. 229, 244–47 (2003), *aff’d*, 383 Md. 257 (2004). Contractual provisions in a foreclosure sale may be superseded by equitable considerations. *Dore*, 183 Md. App. at 402–05. For example, a court could grant a petition for surplus funds for abatement of interest or for the denial of possession by a former occupant. *See Dore*, 183 Md. App. at 405; *Legacy Funding LLC v. Cohn*, 396 Md. 511, 520–21 (2007).

Maryland law “recognizes the responsibility of a mortgagor to protect the value of a mortgagee’s security from impairment.” *Boucher Inv., L.P. v. Annapolis-West Ltd. P’ship*, 141 Md. 1, 16 (2001); *see also Coutant v. Coutant*, 86 Md. App. 581, 595 (1991) (Maryland also recognizes the responsibility of tenants not to commit waste). “Whether a particular act constitutes waste is generally considered a question of fact for the trier of fact

dependent upon condition and usages, character of the premises, and reasonableness of use.” *Coutant*, 86 Md. App. at 596. Waste can be permissive, which “involves acts of omission rather than commission.” *Id.*; *Boucher*, 141 Md. at 18.

On appellate review, a trial court’s factual findings are held to a clearly erroneous standard. Md. Rule 8-131(c). As Wonder City acknowledges, “In making fact-specific determinations, a reviewing court considers the facts in the record, and the reasonable inferences drawn from those facts[.]” *Hill v. Cross Country Settlements, LLC*, 402 Md. 281, 301 (2007).

Here, irrespective of the “as is” clause of the foreclosure sale and its applicability, the court did not find evidence of waste by the former owner, Mr. Brown, from the time of the sale to the time of the ratification of the sale. Rather, the court specifically held that the affidavit provided by Mr. Dixon “illustrate[d] years of abuse and owner neglect of said property prior to said foreclosure sale. The assertion that the extent of the damage/neglect to said Property occurred solely between the time frame of April 12, 2023, to June 13, 2023, stretches credulity.”

The record shows that the court examined the uncontested facts in the record and concluded, based on Mr. Dixon’s affidavit, that the damage to the property predated the sale and that Mr. Dixon committed no waste. We hold that the court did not need “specialized knowledge or experience with mold . . . and/or plant growth,” as Wonder City suggests to reasonably infer from Mr. Dixon’s pictures on E. 32 and E. 54, among others, that the neglect occurred before Wonder City acquired the home. We affirm the court’s

factual findings as they were not clearly erroneous, and we affirm the court’s equitable decision to decline surplus proceeds as it was neither error nor an abuse of discretion.

III. The court did not abuse its discretion in denying the motion for reconsideration.

In its final contention, Wonder City argues that the court “did not apply the correct basis for reviewing the Motion for Reconsideration.” It argues the court did not properly exercise its revisory power and control over judgment under Maryland Rule 2-535(a) “in light of the arguments made in the Motion for Reconsideration.” Wonder City acknowledges that the court exercised its discretion under Maryland Rule 2-535(b) but argues that because the court failed to exercise its discretion under Maryland Rule 2-535(a) it abused its discretion.

The court’s decision directly refutes this argument. In denying the motion, the court noted that Wonder City filed its motion for reconsideration on December 18, after the court initially denied the petition for surplus funds on December 12. The court in the next paragraphs provided the language of both Maryland Rule 2-535(a) and Maryland Rule 2-535(b) as applicable. The court then stated: “In the instant case, the court finds no legal or meritorious reason to grant Foreclosure Purchaser’s Motion for Reconsideration. Further, the court does not find by clear and convincing evidence fraud, mistake, or irregularity within Foreclosure Purchaser’s Motion for Reconsideration.”

The first sentence of the opinion clearly explains that the court rejected Wonder City’s motion on 2-535(a) grounds, while the second sentence focuses on its rationale for denial under 2-535(b). We hold, therefore, that Appellant’s argument is without merit.

The court clearly did not err or abuse its discretion in denying the motion for reconsideration.

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