Circuit Court for Prince George's County
Case No. CAE15-09239

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 139

September Term, 2018

PAULETTE DANTLEY

v.

ANGELA REID, ET AL.

Berger,
Leahy,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Raker, J.

Filed: September 10, 2019

In 2000, appellant Paulette Dantley and appellees Angela Reid and Pauline Martin received by transfer of deed a residential property from their parents. The parties received the property as joint tenants,[1] and appellant resided in the house. In May 2015, because of personal differences, appellees filed a petition in the Circuit Court for Prince George's County seeking a sale in lieu of partition. Appellant disagreed, the court appointed a trustee in October 2015, and the parties litigated ownership for nearly two years. In January 2018, the circuit court granted the Trustee's Motion for Possession of the property. Appellant presents the following rephrased questions for our review:

1. Did the lower court deny appellant due process of law?

2. Did the lower court err in granting Trustee's Motion for Possession where Trustee failed to exercise due diligence?

3. Did the lower court lack jurisdiction over appellant?

Finding that the circuit court erred, we shall remand the case for further proceedings consistent with this opinion.

I.

This case has developed a lengthy and colorful record since 2015. Appellant appeared *pro se* in the circuit court and this Court. The record extract, and indeed the record, is deficient in many ways. Nonetheless, we shall endeavor to explain the factual and procedural history.

[1] The parties' brother, John Reid, Jr., was the third joint tenant. He died in 2015, passing his interest to the parties.

In November 2000, John Reid, Sr. and Minnie Reid, the parties' parents, transferred to their children the residential property at issue in this case, located in Prince George's County, Maryland. The deed listed John Reid, Jr., appellant, Angele[2] Reid, and Pauline Martin as transferees "in fee simple as joint tenancy." Appellant testified in an April 13, 2018 hearing that her mother died in 2000. Between 2000 and 2015, Mr. Reid, Sr. also died. Appellant and Mr. Reid, Jr. lived in the home until Mr. Reid, Jr.'s death in July 2015. When Mr. Reid, Jr., died, his interest in the property passed to his sisters—each possessed a one-third interest in the property. Appellant continued to live in the home.

The parties dispute the events that led to appellees' motion to sell the property. Appellees filed in May 2015 a "Petition . . . to Force Sale of Property," alleging that appellant failed to maintain the property and that the parties were unable to reach an equitable solution to their disagreement over the property. Appellant argued in response that the court lacked jurisdiction over the case and that appellees failed to contribute to her upkeep of the property, used it freely for personal reasons, and destroyed and stole her personal property. She requested an equal division of the proceeds of the sale, reimbursement for various costs and thefts, and one million dollars in "punitive and compensatory damages" for alleged torts.

After multiple postponements of the initial hearing on the motion, the circuit court held a hearing in October 2015. The court ordered that the parties attend an alternative dispute resolution ("ADR") session, appointed Ronald Bergman ("Trustee") the trustee of

[2] It appears that this was a misspelling of "Angela," the first name of one of the appellees.

the property, and stayed the matter pending the ADR session. The ADR session was rescheduled multiple times, and the parties finally met for ADR in May 2016. The parties did not resolve their dispute through ADR.

The case languished on the court's docket for over a year. After a status hearing on December 8, 2017 (of which the record contains no substantive information), the court scheduled a further status hearing for January 26, 2018 and notified the parties. On January 24, two days before the hearing, the Trustee mailed a Motion for Possession of the property pending sale. The Trustee affirmed that he mailed the motion to the court and the parties on that date, but the court did not receive the motion until the Trustee presented it at the January 26 status hearing, and appellant did not receive it until a few days after the hearing. In the motion, the Trustee alleged that appellant did not allow prospective buyers to enter the property and did not reply to a contact attempt by a real estate broker.

Appellant did not attend the January 26 hearing despite receiving notice of it (as a status hearing). As noted above, for the first time, the Trustee submitted at the hearing his Motion for Possession. The Trustee repeated his allegations that appellant denied a realtor access to the property and that she did not reply to the realtor's subsequent attempt to contact her. The judge noted that he received the motion for the first time during the hearing. Appellees then submitted to the court a "Consent to Court Appointed Trustee Ronald B. Bergman, Esq.'s Motion for Possession," alleging in general terms that appellant was obstructing attempts to sell the property.

After realizing that appellant was not present at the hearing, the judge nonetheless granted the Trustee's Motion for Possession: "Madam Clerk, motion for possession is granted. Order signed in open court. Show that [appellant] was not here . . . Show that the trustee was present by phone. [Appellees' counsel]'s here, and Ms. Reid was present. And we'll sign the order because it's there." The judge scheduled a further status hearing for April 13, stating that "The sheriff has to do it. Let's talk about this. I've got to keep this thing moving." The court's order, entered January 30, ordered the sheriff to put the Trustee in immediate possession of the property and to remove appellant and her personal property by force if necessary.

When appellant learned of the Motion for Possession through the judiciary's CaseSearch website, she filed on February 5 a "Motion to Vacate the Order of Possession/Motion for Reconsideration of Order of Possession." She alleged that she was denied due process when the court granted the Trustee's motion at the January 26 hearing, and she requested a hearing on the issue of possession. Appellees filed on March 12 a motion in opposition, alleging generally that appellant had obstructed their sale of the property and that her motion for reconsideration was an attempt to "game the system." The court denied appellant's motion on March 13 (without a hearing), ordered appellant to vacate the property by March 31, and ordered the Sheriff's Department of Prince George's County to deliver possession of the property to the Trustee by April 2.

Appellant filed on March 23 a Notice of Appeal to this Court. She also filed with the circuit court a motion to stay eviction proceedings pending her appeal. The Trustee

filed a motion in opposition, stating that appellant was alleging a due process violation "in bad faith." The court denied her Motion to Stay the same day, and the Trustee requested that the court enter a Writ of Possession.

The court held a status hearing on April 13, 2018. Appellant and the Trustee appeared for the hearing. At the April 13 hearing, the Trustee acknowledged appellant's due process issue: "[Appellant] has a matter currently on appeal. She's entitled to her due process. That's fine. And we're entitled to gain possession of the property and have the sheriff come out [to forcibly remove appellant]." The court heard appellant's arguments that she wanted to purchase the property and that the Trustee was not diligent in communicating with her as she attempted to purchase the property. In response to appellant's arguments that she needed more time to find a new place to live, the judge noted that, "I ordered you out in January" and concluded, "I'm ordering that you get out now." At the end of the hearing, the Trustee told appellant, "I am going down to the sheriffs to pay the $40 for the eviction." At the time the parties filed briefs in this Court, they averred that the property had not been sold.

II.

Appellant raises several arguments regarding the circuit court's order granting appellees' Motion for Possession. She argues first that the circuit court lacked subject matter jurisdiction because jurisdiction for the administration of her parents' estate was in the Orphans' Court rather than the circuit court. She argues next that she was denied due

process because she did not receive notice of either the January 26 hearing on the motion or the motion itself. Denied an opportunity to be heard on the motion and deprived of her property, she argues that she was denied her constitutional right to due process.

Appellant argues also that the court denied her a right of "first refusal to buy said property." She contends next that the Trustee failed to exercise due diligence in communicating with her regarding the realtor, the appraisal of the property, and his Motion for Possession. She maintains that appellees must reimburse her for her various expenditures to maintain the property from 2000 to present. She reasons that under Maryland law, she and appellees, as joint tenants, were equally responsible for maintenance costs and that there was no agreement that she would assume those costs. Finally, in response to appellees' arguments, she argues in conclusory fashion that her appeal is neither moot nor premature.

Appellees move for dismissal of this appeal. They argue first that this Court should strike appellant's brief for failure to comply with Maryland Rule 8-504, which requires clear and concise statements of the facts and standards of review. The Rule requires also that the brief contain argument in support of the party's position on each issue. Appellees contend that appellant's brief does not meet those requirements and lacks "any actual argument." Appellees argue also that appellant's record extract is deficient because it does not contain all the documents necessary to decide her appeal.

Similarly, appellees argue that this appeal is both moot and premature. As to mootness, appellees argue that an appeal from the Order of Possession is moot because

appellant vacated the property. Regarding ripeness, appellees argue that appellant's claims for reimbursement of expenses are premature—at the time the parties filed briefs, the property had not been sold, and thus the circuit court has not had the opportunity to divide the proceeds.

Appellees address the merits of two issues. First, appellees argue that the Trustee was appointed properly. They argue that once they sought a sale in lieu of partition, the circuit court had jurisdiction over the case. They assert that because the property could not be partitioned without loss to the parties, it was not clear error for the circuit court to order the sale and appoint a trustee. Second, they argue that the Motion for Possession was granted properly because the Trustee was charged with selling the property and appellant "refused to vacate the Property and thus prevented the Trustee from completing his duties as an officer of the Court."

III.

We address first appellees' motion to dismiss. We recognize that appellant is proceeding *pro se* and attempting to assert a constitutional right in the loss of her family home. Although we agree that appellant neglected to include relevant materials in the record extract, we exercise our discretion under Rule 8-602(c)(6) to deny appellees' motion to dismiss and proceed to the merits of the appeal. *See McAllister v. McAllister*, 218 Md. App. 386, 399 (2014) (noting that "this Court typically will not dismiss an appeal, even in

the face of noncompliance with Rule 8-501, unless the appellee sustains prejudice."). The motion to dismiss is denied.

We turn next to the issue of the circuit court's jurisdiction. Appellant asserts that the circuit court lacked jurisdiction to consider this case, arguing that jurisdiction lays in the Orphans' Court. Appellant is incorrect. By Maryland law, the Orphans' Court "may not, under pretext of incidental power or constructive authority, exercise any jurisdiction not expressly conferred." Md. Code, Est. & Trst. Art., § 2-102. In layman's terms, the Orphans' Court's jurisdiction is limited generally to matters related to the estate of a deceased person and to the care and property of minors and disabled persons. *See* Md. Code, Est. & Trst. Art., §§ 2-102, 13-105.

Although both parties describe the property at issue as inherited, it appears to us from our independent examination of the record that the property was transferred by deed in November 2000 to appellant, John Reid Jr., Angele Reid, and Pauline Martin during the lifetime of John Reid, Sr. and Minnie Reid. At that time, Mr. Reid, Sr. and Minnie Reid transferred the property to the four individuals in a fee simple joint tenancy. Neither party provides a date of death for Mr. Reid, Sr. or Minnie Reid (and no such date appears in the record), but because the parents themselves transferred the property, obviously it must have been transferred before their deaths, and if they transferred it properly before their deaths, it could not have formed part of either parent's estate. Thus, ownership of the property has nothing to do with the parents' estates or the care of a minor or disabled person, and the Orphan's Court did not have jurisdiction. The circuit court appropriately exercised

jurisdiction over the case pursuant to Maryland Code, Real Property Article, § 14-107(a) (permitting a circuit court to partition property of joint tenants and order the sale of such property that cannot be divided without loss or injury to the owners).

We turn to the preliminary issues of finality and mootness. We agree with appellees that appellant's claim to reimbursement for her maintenance expenses is premature. "Generally, one co-tenant who pays the mortgage, taxes, and other carrying charges of jointly owned property is entitled to contribution from the other." *Crawford v. Crawford*, 293 Md. 307, 309 (1982). But "as a general rule, a party may appeal only from 'a final judgment entered in a civil or criminal case by a circuit court.'" *Metro Maint. Sys. S., Inc. v. Milburn*, 442 Md. 289, 297 (2015), *citing* Md. Code, Cts. & Jud. Pro. Art., § 12-301. Appellant may be entitled to contribution from appellees, but that issue is not ripe. At least on the record before us, there is no order of sale and no evidence of a hearing or judgment as to contribution. Therefore, there is no final judgment as to that issue for this Court to consider.

We address next the issue of mootness. Appellees argue that this appeal is moot because "[a]ppellant has vacated the property and the Property is in possession of the Trustee and being prepared for sale." An issue is moot when "there is no longer an existing controversy between the parties at the time it is before the court so that the court cannot provide an effective remedy." *G.E. Capital Mortg. Servs., Inc. v. Edwards*, 144 Md. App. 449, 453 (2002).

In this case, at the time the briefs were filed in this Court, both parties represented that the property had not been sold. Appellees cite no factually relevant authority for their argument that the issue of possession is moot, and we cannot say from the record before us whether the issue is moot. Until all the requisite proceedings have occurred, there is an existing controversy between the parties, and the issue is not moot.

We turn to the merits of this appeal. Appellant asserts violations of due process in granting the Trustee's Motion for Possession. The Fourteenth Amendment to the United States Constitution does not allow "any State [to] deprive any person of life, liberty, or property, without due process of law." Article 24 of the Maryland Declaration of Rights protects the same right. *Knapp v. Smethurst*, 139 Md. App. 676, 703 (2001). Appellant claims that she was denied notice and a meaningful hearing on the issue of possession. Those are claims of procedural due process. *Bell v. Burson*, 402 U.S. 535, 541–43 (1971).

Beginning with appellant's notice argument, we hold that appellant received notice of both the January 26 hearing and the Motion for Possession. Regarding the January 26 hearing, the court mailed notice of the hearing to appellant on December 11, 2017, well over a month before the hearing. Regarding the Motion for Possession, we note the general rule that for motions that do not raise new claims, "[s]ervice by mail is complete upon mailing." Rule 1-321(a). The Trustee's Motion for Possession included a Certificate of Service certifying that the Trustee mailed the Motion for Possession to appellant via first-class mail on January 24, 2018. Under Maryland Rule 1-321(a), the Trustee effectuated service by mailing the motion to appellant.

Appellant's more important claim, the one she has asserted repeatedly since the January 26 hearing, is that she was denied the opportunity to be heard when the circuit court decided the Motion for Possession at a hearing at which she had no notice that the issue was on the docket, a hearing she did not attend. To establish a denial of due process, appellant must demonstrate (1) that she had a protected property interest, (2) that she was deprived of the interest by a State action, and (3) that she was afforded less procedure than was due. *Knapp*, 139 Md. App. at 704. "That the hearing required by due process is subject to waiver, and is not fixed in form does not affect its root requirement that an individual be given an opportunity for a hearing before [s]he is deprived of any significant property interest . . . ." *Boddie v. Connecticut*, 401 U.S. 371, 378–79 (1971). Appellant need not prove actual prejudice to prove a denial of due process. *Knapp*, 139 Md. App. at 705.

Possession of real property is a protected property interest. *Id*. Appellant was deprived of that interest when the circuit court granted the Trustee's Motion for Possession without giving her notice that the issue would be heard. The court therefore did not give her a full and fair opportunity to be heard. Appellant was afforded less procedure than she was due.

Pursuant to Rule 2-311(b), appellant had fifteen days from the date of service (January 24) to file a response to the Trustee's motion.[3] Because the Trustee did not request

[3] Rule 2-311(b) states in pertinent part: "Except as otherwise provided in this section, a party against whom a motion is directed shall file any response within 15 days after being served with the motion . . . If a party fails to file a response required by this section, the court may proceed to rule on the motion."

a hearing on his motion, the court did not have to hold a hearing unless appellant requested one in her response to the motion. Rule 2-311(f). But whether it held a hearing or not, the court could not rule on the motion before appellant responded or the fifteen-day deadline expired, because appellant had "15 days after being served with the motion" to respond. Rule 2-311(b); *Carroll Cty. Dept. of Soc. Servs. v. Edelmann*, 320 Md. 150, 161 n.2 (1990). When the court decided the Motion for Possession on January 26, solely on the Trustee's claim that appellant was obstructing the sale process, the court denied appellant any opportunity to be heard on the issue. It denied her procedural due process.[4]

There are many unanswered questions in this case. For example, what is the present status of the property? Has the property been sold? Is the property still in the possession

[4] The hearings the circuit court held after ordering possession to the Trustee did not cure the court's initial error. A post-deprivation hearing may be constitutionally sufficient where it allows the party to present new evidence and argue under the same standard she would have faced in a pre-deprivation hearing. *See, e.g.*, *Brown v. Handgun Permit Rev. Bd.*, 188 Md. App. 455, 470 (2009); *cf. Armstrong v. Manzo*, 380 U.S. 545, 551–52 (1965). That did not occur here.

When appellant learned of the Motion for Possession, she filed timely a Motion to Vacate or Reconsider the court's order. But in contrast to the initial opportunity to be heard, where the Trustee had the burden of proof, the court required appellant to show in her post-judgment motion that the court had erred. The burden of persuasion was misplaced. Similarly, although appellant was heard at the April 13 "Status Hearing" on the issue of possession, the judge noted in response to her arguments that he had ordered her to leave the property "in January." Given that the judge had ordered that appellant vacate the property at least twice since receiving the Motion for Possession and that his response to appellant's arguments was based on the earlier (deficient) ruling, it does not appear that the court used any of the post-deprivation argument to "consider the case anew." *Armstrong*, 380 U.S. at 552. Thus, the initial denial of procedural due process was not cured by any subsequent hearing.

of the Trustee? Rule 8-604 permits an appellate court to remand a case to a lower court for further proceedings without affirming or reversing the judgment. The Rule provides as follows:

> "If the Court concludes that the substantial merits of a case will not be determined by affirming, reversing or modifying the judgment, or that justice will be served by permitting further proceedings, the Court may remand the case to a lower court. In the order remanding a case, the appellate court shall state the purpose for the remand. The order of remand and the opinion upon which the order is based are conclusive as to the points decided. Upon remand, the lower court shall conduct any further proceedings necessary to determine the action in accordance with the opinion and order of the appellate court."

Rule 8-604(d)(1).

We shall remand this case to the circuit court for further proceedings without affirming, reversing, or modifying the judgment. If the matter is not moot, the court should afford appellant a hearing on the Trustee's right to possession of the property.

CASE REMANDED TO THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY WITHOUT AFFIRMING, REVERSING OR MODIFYING THE JUDGMENT, PURSUANT TO MARYLAND RULE 8-604, FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLEES.