Circuit Court for Frederick County
Case No. 10-C-16-001285

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 320

September Term, 2019

ALEXANDER BATHULA

v.

ANNA L. TRAVIS, et al.

Reed,
Gould,
Eyler, Deborah S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: July 31, 2020

This appeal arises from the circuit court's denial of Alexander Bathula's ("Appellant") Motion for Reconsideration, where it found that Appellant failed to properly name John L. Thompson ("Appellee") in his capacity as personal representative of the estate of Anna L. Travis ("Ms. Travis") in his action to foreclose the right of redemption. Appellant raises a single question on appeal, which we have rephrased for clarity:[1]

I. Did the court err in denying Appellant's Motion for Reconsideration?

Finding that there has been no final judgment, we dismiss this appeal.

FACTUAL AND PROCEDURAL BACKGROUND

On January 15, 1976, a residential property, described as LT ½ AC, N/S Arnold Rd, Nr Burkittsville, Maryland, with a premise address of 1048 Arnoldstown Road, Jefferson, MD 21755 ("the Property") was conveyed to Ms. Travis, which she owned as a tenant in severalty. On January 29, 2007, Ms. Travis passed away. Subsequently, on April 16, 2007, the Orphans' Court for Frederick County appointed Appellee as the Personal Representative of Ms. Travis' estate for the purposes of administration and distribution.

On May 12, 2014, Appellant received a Frederick County Certificate of Sale for the Property. On May 4, 2016, Appellant filed a Complaint to Foreclose the Right to Redemption, naming Ms. Travis and Appellee as defendants. While a notice of posting was provided by the clerk of the court to the Frederick County Sheriff's Department, the order

---

[1] Appellant presents the following question:

1. Did the circuit court err in finding that naming a defendant other than in his capacity as a personal representative is fatal to a claim under the relevant Maryland statute?

of publication was not published pursuant to the relevant provision of the Tax Property Article and the original summonses were not timely served prior to expiration. On December 22, 2016, Appellant filed a motion to reissue the summons. The circuit court granted Appellant's motion, directing the clerk to issue new summons on January 3, 2017. Subsequently, on January 17th, 24th, and 31st of 2017, the publication order ran in the Frederick News Post, requesting that all interested persons in the property appear in court on March 28, 2017. However, later that month, on January 26, 2017, the circuit court clerk issued a notice of contemplated dismissal, which Appellant maintains he did not receive and did not expect as the circuit court had already issued renewed orders of publication and posting. Accordingly, absent a response, on March 3, 2017, the circuit court dismissed the case for lack of prosecution.

On June 28, 2017, Appellant filed a Motion to Reopen, which the court granted on July 23, 2017. On September 27, 2017, Appellant requested to reissue summons, which Appellee concedes he did in fact receive in November of 2017.[2] On December 2, 2017, Appellee filed a Motion for Judgment Foreclosing Right of Redemption,[3] which the court denied on January 9, 2018. Almost two months later, on March 1, 2018, Appellant amended his Complaint to add the County as a defendant, and to be consistent, Appellant then served

[2] Appellee argues that he never received any summons before November 2017. Appellant, on the other hand, notes that the summons did in fact go to him at his address, but the envelope came back "refute." Appellants asserts that Appellee did receive it, but he "refuted" it.

[3] During oral arguments, when Judge Eyler asked Appellee why he filed the motion to foreclose the right to redeem, he stated that he was hoping to force the purchaser to go through with the transaction and pay the taxes on the property.

process. However, no interested party appeared to redeem the property or answer the amended complaint.

When no one appeared, on June 3, 2018, Appellant filed a Motion for Final Order, foreclosing all rights of redemption in the Property. On August 29, 2018, the circuit court denied Appellant's motion[4] and Appellant subsequently filed a second Motion to Reopen, dated January 18, 2019. The circuit court also denied this motion, citing lack of compliance with Md. Code Ann., Tax Prop. § 14-836(b)(8)(i). From this order, Appellant filed a Motion for Reconsideration on March 8, 2019, and the circuit court again denied Appellant's motion, this time specifically explaining that Appellee was named as a defendant in his personal capacity and not in his capacity as personal representative of the estate of Ms. Travis. **(E. 58)** This appeal followed.

DISCUSSION

A. Parties' Contentions

Appellant argues that the circuit court erred in finding that naming a defendant other than in his capacity as a personal representative was fatal to a claim under Md. Code Ann., Tax Property Article § 14-836(b)(8)(i) ("Tax Prop."). Appellant notes that Appellee was named as a defendant because he was identified in the title abstract as a personal representative for Ms. Travis and because he was identified as a mortgagee for the property in question. Appellee contends that the circuit court first erred when it entered the July 23,

[4] The circuit court's order denying the Appellant's Motion for Final Order does not state a reason as to why it was being denied. However, Appellant notes in his Motion and their brief that the reason was likely because he did not file the 'pre-final' affidavit of notice and service.

2017 order granting Appellant's first motion to reopen the case, because more than 30 days had passed when Appellant filed the motion. Appellee maintains that the court's revisory power found in Md. Rule 2-535 would not apply here because there was no indication of fraud, mistake, or irregularity, pursuant to CJ § 6-408. Appellee further asserts that if the March 3, 2017 dismissal did not end the case, Appellant's claim would still fail because there was no final judgment from which Appellant could take appeal.

B. Standard of Review

We review a trial court's denial of a Motion for Reconsideration for abuse of discretion. *Wilson-X v. Dep't of Human Res.*, 403 Md. 667, 674 (2008). However, in *Wilson-X*, the Court of Appeals warned that:

> [T]rial judges do not have discretion to apply inappropriate legal standards, even when making decisions that are regarded as discretionary in nature. [A] failure to consider the proper legal standard in reaching a decision constitutes an abuse of discretion. [E]ven with respect to a discretionary matter, a trial court must exercise its discretion in accordance with correct legal standards.

Wilson-X, 403 Md. at 675–76. (cleaned up). The court went on to explain that "[t]he relevance of an asserted legal error, of substantive law, procedural requirements, or fact-finding unsupported by substantial evidence, lies in whether there has been such an abuse." *Wilson-X*, 403 Md. at 667. Even so, we will not reverse a trial court's decision for abuse of discretion except when "[t]he decision under consideration [is] well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *North v. North*, 102 Md. App. 1, 14 (1994). However, "whether a judgment is final and thus whether this Court has jurisdiction to review the judgment, is a question of law to be reviewed *de novo*." *Baltimore Home Alliance, LLC.,*

v. Gessing, 218 Md. App. 375, 381 (2014) (citing *Shofer v. Stuart Hack Co*., 107 Md. App. 585, 591, 669 A.2d 201 (1996)).

C. Analysis

"For an appellate court to have subject matter jurisdiction, an appeal must generally be taken from a final judgment or an appealable interlocutory order." *Bessette v. Weitz*, 148 Md. App. 215, 232 (2002) (citing Md. Code Ann., Cts. & Jud. Proc. §§ 12-301, 12-303 (1974, 2002 Repl. Vol.)). A final judgment typically has three features:

> it must be intended by the court as an unqualified, final disposition of the matter in controversy, (2) unless the court properly acts pursuant to Md. Rule 2-602(b), it must adjudicate or complete the adjudication of all claims against all parties, and (3) the clerk must make a proper record of it in accordance with Md. Rule 2-601.

Rohrbeck v. Rohrbeck, 318 Md. 28, 41 (1989). As outlined in Md. Rule 2-601(a), "an order … that adjudicates fewer than all of the claims in an action … or that adjudicates less than an entire claim, or that adjudicates the rights and liabilities of fewer than all the parties to the action … is not a final judgment." A judgment is considered final when the "trial court's determination [] either decide[s] and conclude[s] the rights of the parties involved or den[ies] a party the means to prosecute or defend rights and interests in the subject matter of the proceeding." *Nnoli v. Nnoli*, 389 Md. 315, 324 (2005).

Here, Appellant asserts that he filed a Motion for Final Order on July 3, 2018, and the circuit court denied it, with Appellant assuming that it was because he did not file the "pre-final" affidavit of notice and service. Appellant notes that with this denial of his Motion for Final Order, the case was closed. That is inaccurate. There is nothing indicated in the court docket that the denial of the Motion for Final Order closed the case. When

Appellant filed the Motion for Final Order, he affirmed that "despite notice, publication and posting, no interested party or other person has appeared in this Court to redeem the property and/or answer the Complaint." However, Appellant admitted that he erred in failing to file an affidavit of notice and service, which meant that the Motion for Final Order couldn't have been granted, and the Appellant needed to cure that deficiency by filing the required "pre-final" affidavit before he could refile a Motion for Final Order. Appellant's erroneous assumption that the Motion for Final Order closed the case has unfortunately led to a premature appeal. Even now, the court docket does not reflect a notice of contemplated dismissal, as was found the first time the case was closed, or any type of record of the circuit court's denial establishing a final judgment, as mandated by Md. Rule 2-601.

Therefore, the circuit court's denial of Appellant's motion for reconsideration is not an "unqualified, final disposition of the matter in controversy," constituting a final judgment. *See Rohrbeck*, 318 Md. at 41. In its Order denying the Motion for Reconsideration, the circuit court simply informed Appellant that he failed to serve Appellee in his capacity as personal representative, rather than in his personal capacity, according to Tax Prop. § 14-836(b)(8)(i). *See also Remson v. Krausen*, 206 Md. App. 53, 772 (2012). However, Appellee had conceded jurisdiction to the circuit court on December 2, 2017, when he filed a Motion for Judgment Foreclosing Right of Redemption as the personal representative. Yet, the circuit court denied the Motion to Reopen and the Motion for Reconsideration.

Either way, since the case has not been closed, the circuit court has not "den[ied] [Appellant] the means to prosecute or defend their rights and interests." *See Nnoli*, 389 Md. at 324. Appellant can file the "pre-final" affidavit of notice and service, curing the deficiency of the Motion for Final Order, and then refile the Motion for Final Order. Furthermore, Appellant could also explain that when the Appellee submitted to the court by filing the Motion for Judgment Foreclosing Right of Redemption, he conceded jurisdiction as the personal representative.

We acknowledge that Appellee raises an argument that the case actually ended on March 3, 2017, when over 100 days lapsed after the court dismissed the case for lack of prosecution and Appellant filed his first Motion to Reopen. We do not address the merits of this argument due to lack of appellate jurisdiction over this appeal. When Appellant files his Motion for Final Order, hoping to foreclose all rights of redemption in the Property, Appellee may then bring up his argument about the circuit court's lack of revisory power to reopen the case back in March of 2017.

APPEAL DISMISSED. COSTS TO BE PAID BY APPELLANT.