Circuit Court for Anne Arundel County Case No. C-02-CV-16-003905

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 462

September Term, 2018

THORNTON MELLON, LLC

v.

ANNE ARUNDEL COUNTY, et al.

Wright, Nazarian, Sharer, J., Frederick (Senior Judge, Specially Assigned),

JJ.

Opinion by Sharer, J.

Filed: June 18, 2019

*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.

- Unreported Opinion -

Thornton Mellon, LLC,¹ purchased property located at 202 Juneberry Way in Glen Burnie, Anne Arundel County, at a tax sale, and later filed a complaint in the Circuit Court for Anne Arundel County to foreclose the right of redemption. Named as defendants were the property owner, Linda Suhrie; Oakleaf Villas Garden Condominium; Anne Arundel County; Unknown Occupant; and "All Other Persons that Have or Claim to Have any Interest in the Property." In due course, the court issued a writ of possession. It is at that point that the controversy, essentially between Thornton Mellon and the Sheriff of Anne Arundel County, began.²

The court's order directed the Sheriff to enforce the writ of possession. At the scheduled date of enforcement, the Sheriff declined to enforce the writ because the purchaser – Thornton Mellon – did not provide a moving crew to remove personal property from the residence. The Sheriff acted under an internal departmental policy that required holders of the writ of possession to provide a moving crew. Thornton Mellon, in sum, argues that because the "mover policy" has not been given public notice and no state or local tax sale laws expressly authorize such a policy, the Sheriff is without authority to require purchasers to provide movers.

Thereafter, Thornton Mellon filed a Modified Renewed Motion for Writ of Possession, asking the court to declare the Sheriff's "mover policy" void, which was

¹ A name seemingly influenced by the character "Thornton Melon" played by the late Rodney Dangerfield in "Back to School," released in 1986.

² There is no challenge to the procedural aspects of the tax sale or Thornton Mellon's foreclosure of the right of redemption.

denied. This appeal ensued from the court's denial of Thornton Mellon's request for reconsideration of that decision.³

Jurisdiction: Is the Appeal Properly Before this Court?

Preliminarily, we must determine whether the appeal is properly before this Court. As we pointed out in *Murphy v. Steele Software Sys. Corp.*, 144 Md. App. 384 (2002), "[i]t is our duty, in appropriate cases, to raise, and decide, issues of our jurisdiction" 144 Md. App. at 392 (citing *Harford Sands, Inc. v. Levitt & Sons, Inc.*, 27 Md. App. 702, 706 (1975)).

Although not addressed by the appellees,⁴ a careful review of the joint record extract filed in this appeal reveals that, in August 2017, Thornton Mellon assigned its interest in the real property to Danny Noonan, LLC.⁵ The record does not reveal any apparent effort by Thornton Mellon to apprise the trial court, this Court, or any of the parties defendant,

2. Whether the Sheriff, who has a statutory duty to "serve all papers directed to him according to their instructions, within the time set by the court," is permitted to require the recipient of a writ of possession to provide movers and incur other costs associated with the removal of personal property from real property obtain via tax sale in exchange for enforcement of the writ of possession, where there is no such requirement in the writ of possession or otherwise provided under the law applicable to tax sale proceedings?

⁴ Of the named defendants, only Anne Arundel County has participated in this appeal.

⁵ A whimsical name seemingly influenced by the character "Danny Noonan" in the film "Caddyshack," released in 1980, also starring Rodney Dangerfield.

³ In its brief, Thornton Mellon, asks:

^{1.} Whether the trial court abused its discretion or erred in denying Appellant's request for a writ of possession and an order declaring the Sheriff's mover policy void as applied to tax sale proceeding[s]?

of the assignment. Indeed, the assignment occurred while the trial court proceedings were ongoing and, in fact, before the hearing on Thornton Mellon's motion for reconsideration, in April 2018. Furthermore, not only was the assignment not brought to the court's attention in Thornton Mellon's September 7, 2017 renewed motion for writ of possession, but the renewed motion twice misrepresents that "Petitioner [Thornton Mellon] has received a tax deed ... to the Property" The first, and only, reference to an assignment of Thornton Mellon's interest is found in counsel's affidavit, filed on September 26, 2017, which recites, in relevant part: "I am an attorney for Plaintiff (and their assignee, Danny Noonan LLC)" At no point during the proceedings did Danny Noonan, LLC, seek to intervene, pursuant to Md. Rule 2-214; nor did Thornton Mellon move to substitute Danny Noonan, LLC, as a party, pursuant to Md. Rule 2-241. Maryland Code, (1974, 2013 Repl. Vol.) Courts and Judicial Proceedings Article, § 12-303(1), provides that

[a] party may appeal from ... [a]n order entered with regard to the possession of property with which the action is concerned or with reference to the receipt or charging of the income, interest, or dividends therefrom, or the refusal to modify, dissolve, or discharge such an order[.]

We have also explained that "a fundamental principle of standing to appeal [is] that an appellate court will not entertain an appeal by one who does not have an interest that will be affected by prosecuting the appeal." *Lopez-Sanchez v. State*, 155 Md. App. 580, 595 (2004), *aff'd*, 388 Md. 214 (2005). This premise includes "appellants who in fact were parties below, but did not have an interest that could be affected by a decision on appeal, and therefore lacked standing to prosecute an appeal." *Id*. - Unreported Opinion -

Maryland Code (2012 Rep. Vol.) Tax-Property, § 14-850, provides that "[a]ny person who acquires a deed to property under this subtitle is entitled to issuance of a writ for possession of the property under the Maryland Rules as if the person had obtained a judgment awarding possession of the property." As evidenced by the recorded Tax Sale Deed, at the time of the entry of the denial of Thornton Mellon's motion for reconsideration, Danny Noonan, LLC had sole and exclusive ownership of the property and, thus, sole legal right to possession of the property.

At oral argument we raised the question of our jurisdiction with Thornton Mellon's local counsel, who professed no knowledge of the assignment or the interests of Danny Noonan, LLC in the property. Local counsel deferred to Thornton Mellon's corporate counsel, apparently a member of the Illinois bar, who explained that Thornton Mellon, LLC and Danny Noonan, LLC were "related entities." While they may, in fact, be related entities, there is nothing in the record to support that assertion. From our perspective, they appear to be separate legal entities.⁶

We cannot decide the rights and obligations of an entity that was not a party to the litigation below, nor can we decide the rights and obligations of a party who asserts interest

⁶ At oral argument on May 6, 2019, we raised, *sua sponte*, a question of our jurisdiction, based on want of a necessary party, *i.e.*, Danny Noonan, LLC. Not having received a satisfactory explanation, we concluded the proceedings without hearing arguments on the merits. Thereafter, Danny Noonan LLC filed with this Court a Notice of Substitution of Party, seeking to substitute Danny Noonan, LLC for Thornton Mellon as appellant in this appeal. We have rejected that notice as untimely. Commensurate with that filing, Danny Noonan filed a Motion to Reset Oral Argument. We have denied that motion.

in the appeal, but which had no legal standing in the property when the trial court's order was entered.

Because the title holder to the property at issue was not a party below, and because the purported appellant had no legal interest in the property at the time of the entry of the orders of the circuit court, we are without jurisdiction to hear this appeal.

APPEAL DISMISSED. COSTS ASSESSED TO APPELLANT.