

Circuit Court for Prince George's County
Case No. CAEF13-32294

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 493

September Term, 2017

BRIAN CRAIG

v.

STERN & EISENBERG, *et al.*

Woodward, C.J.,
Eyler, Deborah S.,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: July 5, 2018

*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.

After Brian Craig, appellant, defaulted on his home loan, his home was sold at a foreclosure sale to Wilmington Savings Fund Society, FSB, d/b/a Christiana Trust, in its capacity as Trustee for BCAT-4TT, (Wilmington Savings Fund Society) for the sum of \$90,000. After the Circuit Court for Prince George’s County ratified the sale, Craig filed a motion to alter or amend the ratification order, which the circuit court denied without a hearing. Craig then noted this appeal raising ten issues, which reduce to one: whether the court erred in ratifying the foreclosure sale.¹ For the reasons that follow, we affirm.

BACKGROUND

Countrywide Home Loans, Inc. (“Countrywide”) was the holder of a note (“Note”) secured by a Deed of Trust from Craig for the purchase of the property. The property was purchased in 2007. Four years later, Countrywide transferred the Deed of Trust to Bank of America. On October 31, 2013, Bank of America appointed the Substitute Trustees and, that same day, they initiated a foreclosure action against Craig by filing an order to docket in the Circuit Court for Prince George’s County. Craig filed a timely motion to stay and/or dismiss the foreclosure action and requested a hearing on all issues. On March 4, 2014, the circuit court denied Craig’s motion without a hearing. Craig filed a motion for reconsideration which was also denied. In August 2014, Craig filed a request for mediation, which was held on October 3, 2014; however, an agreement was not reached. On October 14, 2014, the court entered an order directing the substitute trustees to proceed with the foreclosure sale.

¹ The named appellee in this case, Stern & Eisenberg, P.C., is counsel for Mark Wittstadt and Gerard Wm. Wittstadt, Jr., substitute trustees.

Thereafter, the Deed of Trust was transferred several times. On December 8, 2014, Bank of America assigned all its rights under the Deed of Trust to the Secretary of Housing and Urban Development. Then, on March 5, 2015, the Secretary of Housing and Urban Development transferred all rights to GCAT 2014–4, LLC. On the same day, GCAT 2014–4, LLC, transferred all rights to Wilmington Savings Fund.

Between October 2014 and February 2015, Craig filed numerous motions seeking to stay or dismiss the foreclosure action: (1) an October 31, 2014 motion for reconsideration of the denial of his prior motion to stay; (2) a November 14, 2014 revised motion for reconsideration of the denial of his prior motion to stay; (3) a November 26, 2014 request for stay of sale and dismissal of action; (4) a December 22, 2014 “Void Judgment Pursuant to Maryland Rule 2-535,” which sought dismissal based on lack of jurisdiction (void judgment motion); and (5) a February 24, 2015 emergency request to stay and dismiss the foreclosure action. Although differently styled, all of Craig’s motions raised the same claim: that the substitute trustees lacked standing to bring the foreclosure as a result of Bank of America having transferred the Note. On March 4, 2015, the circuit court entered an order denying all of Craig’s motions, with the exception of his void judgment motion, which apparently had not been docketed by the clerk. Craig filed an appeal from the denial of those motions and we affirmed, holding that the substitute trustees had standing to foreclose despite the note having been transferred. *Craig v. Wittstadt*, No. 41, Sept. Term 2015 (filed Mar. 24, 2016) (first appeal).

During the pendency of the first appeal, the property was sold at a foreclosure sale to Wilmington Savings Fund and a report of sale was filed with the circuit court on May 7,

2015. Thereafter, appellant filed a “Motion to Correct the Record,” wherein he noted that his void judgment motion had not been docketed or decided by the circuit court. On May 5, 2016, the trial court entered an order (1) treating Craig’s void judgment motion as a motion for reconsideration of its prior orders denying his motion to stay and (2) denying the motion on the merits. Craig then filed a motion to vacate judgment and for reconsideration requesting that the foreclosure sale be set aside because (1) his void judgment motion had not been sent to this Court along with the rest of the record, which he claimed prejudiced his appeal, and (2) the trial court did not rule on that motion until after the appeal had concluded. That motion was also denied.

The circuit court ultimately ratified the sale on March 10, 2017. Craig then filed a timely motion to alter or amend the judgment, with a request for hearing. In that motion, Craig again challenged appellees’ standing to foreclose, raising the same arguments that he had raised in his previous motions. He also reasserted his claims that the court had erred in (1) not transferring his void judgment motion to this Court in his first appeal with the record; (2) denying his void judgment motion; and (3) denying his void judgment motion without a hearing. The court denied Craig’s motion to alter or amend the judgment, finding that it “failed to provide a valid defense or present a meritorious argument” and that it “raised no new facts or issues sufficient to persuade [it] to reconsider its previous ruling.” This appeal followed.²

² We note that, following the notice of appeal, Craig noted exceptions to the auditor’s report of sale, which was filed on June 1, 2017. Craig’s exceptions to the auditor’s report raise many of the same issues he argues before this Court in this appeal.
(continued)

DISCUSSION

As an initial matter, we note that Craig’s brief is difficult to follow. Nevertheless, in challenging the ratification of the foreclosure sale he essentially raises four claims: (1) that the substitute trustees lacked standing to foreclose on the note; (2) that the clerk of court erred by not transmitting his “Void Judgment” motion to this Court during his previous appeal; (3) that the circuit court erred in denying his “Void Judgment” motion; and (4) that he was entitled to a hearing on various motions, including his void judgment motion and his motion to alter or amend the ratification order.

At the heart of this appeal is Craig’s contention that the substitute trustees lacked standing to maintain the foreclosure action. However, as previously noted, Craig raised this claim in numerous pre-sale motions, the circuit court denied those motions, and this Court affirmed. As such, the law of the case doctrine precludes Craig’s arguments regarding the authority of the substitute trustees to conduct the foreclosure sale. *See Balt. Cnty. v. Fraternal Order of Police, Balt. Cnty. Lodge No. 4*, 449 Md. 713, 729 (2016).

Moreover, even if we assume that the claims raised in Craig’s post-sale motions regarding the substitute trustees’ standing to foreclose were not barred by the law of the case doctrine, they were still untimely because they were filed after the foreclosure sale. *See Greenbriar Condo., Phase I Council of Unit Owners, Inc. v. Brooks*, 387 Md. 683, 746 (2005) (noting that, after a foreclosure sale, a debtor’s right to redemption ends and a debtor

On July 20, 2017, the court overruled Craig’s exceptions and ratified the auditor’s report. Craig did not file a notice of appeal from that order.

(continued)

may only file exceptions challenging procedural irregularities in the foreclosure sale under Maryland Rule 14-305 (d)).³ Therefore, the trial court could not have dismissed the foreclosure action or enjoined the foreclosure sale unless Craig’s post-sale motions demonstrated that the court’s prior orders had been the result of fraud, mistake or irregularity. However, none of those motions, including Craig’s motion to alter or amend the ratification order, established the existence of fraud, mistake, or irregularity within the meaning of Rule 2-535(b). Consequently, there were no grounds for the court to deny appellees’ request to ratify the foreclosure sale.

In attempting to circumvent our prior holding regarding the substitute trustees’ standing to foreclose, Craig relies heavily on the fact that his void judgment motion was not transmitted to this Court along with the rest of the record in his first appeal. Craig contends that this prejudiced his appeal and that, if we had the motion when the first appeal was decided, the result would have been different. We disagree. First, that motion had not yet been ruled on by the circuit court at the time the first appeal was pending and, therefore, it was not relevant to the issues to be decided in that case. Moreover, even if the motion had been transmitted, we perceive no reason why it would have affected the outcome of Craig’s first appeal because the claims raised therein were also raised in Craig’s other motions. In any event, the circuit court has now denied the void judgment motion and,

³ With the exception of Craig’s void judgment motion, all of his motions to stay or dismiss that were filed prior to the sale were considered by this Court in Craig’s first appeal. Because the sale occurred between the time Craig filed his notice of appeal in and the time the mandate was issued, we did not consider the merits of any of Craig’s post-sale motions in the first appeal.

although Craig contends that it erred in doing so, we affirm for the same reasons set forth in Craig’s previous appeal.

Having reviewed the record, this Court’s previous opinion, and the arguments in this appeal, we are not persuaded that the court erred in ratifying the foreclosure sale or abused its discretion in refusing to reconsider the ratification order. As for Craig’s argument that the court erred in failing to hold a hearing on his void judgment motion or his motion to alter or amend the ratification order, we note that those motions were not dispositive of a claim or defense and, therefore, no hearing was required.⁴

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

⁴ Craig also did not request a hearing on his void judgment motion.