

Circuit Court for Baltimore City
Case No. 24-O-18-001996

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 717

September Term, 2021

VALEDIA GROSS

v.

CARRIE M. WARD

Berger,
Reed,
Meredith, Timothy E.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: July 1, 2022

*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.

In 2018, Carrie M. Ward, appellee, acting as substitute trustee for Deutsche Bank National Trust Company (Deutsche Bank), filed an Order to Docket in the Circuit Court for Baltimore City, seeking to foreclose on real property owned by Valedia Gross, appellant. Ms. Gross filed multiple motions to stay or dismiss the foreclosure action, all of which were denied, and her home was ultimately sold at a foreclosure auction. The foreclosure sale was ratified in October 2019, and the case was referred to an auditor. Following the ratification of the auditor’s report, Ms. Gross filed a notice of appeal. This Court affirmed the judgment ratifying the auditor’s report. *Gross v. Ward*, No. 42, Sept. Term 2020 (filed March 9, 2021). In doing so, we declined to consider Ms. Gross’s claims that the court had erred in denying her motions to dismiss and overruling her exceptions to the sale because her notice of appeal was untimely as to the court’s order ratifying the forelclosure sale.

Following the ratification of the auditor’s report, Ms. Gross filed numerous motions to revise the judgment pursuant to Maryland Rule 2-535(b), including a February 10, 2020 “Motion to Reconsider”, a February 10, 2020 “Motion to Vacate Order Ratifying Audit and Motion to Dismiss”, a February 24, 2020 “Motion to Vacate Sale & Strike Order to Docket”, and an April 23, 2021 “Amended Motion for Court to Exercise Revisory Power Pursuant to Rule 2-535.” In those motions, she claimed that: (1) appellee had committed extrinsic fraud by proceeding with the foreclosure action despite “being provided notice that the Security Agreements and Assignment for [her] residence were null and void,” and (2) that there was an irregularity in the judgment because she had never been properly

served with a Notice of Intent to Foreclose. The court denied the Rule 2-535(b) motions without a hearing.

On appeal, Ms. Gross contends that the court erred in denying her Rule 2-535(b) motions. We disagree. To vacate or modify an enrolled judgment pursuant to Rule 2-535(b), a movant must establish the existence of either fraud, mistake, or irregularity. These jurisdictional predicates are “narrowly defined and strictly applied” due to the strong countervailing interest in judicial finality. *Leadroot v. Leadroot*, 147 Md. App. 672, 682-83 (2002) (quotation marks and citation omitted). We review a trial court’s decision to alter or amend a default judgment under an abuse of discretion standard. *Peay v. Barnett*, 236 Md. App. 306, 315-16 (2018). However, “[t]he existence of a factual predicate of fraud, mistake, or irregularity, necessary to support vacating a judgment under Rule 2-535(b), is a question of law” which we review de novo. *Wells v. Wells*, 168 Md. App. 382, 394 (2006).

Ms. Gross first contends that appellee committed fraud by proceeding with the foreclosure action despite knowing that the Deed of Trust, and the subsequent assignment of that Deed of Trust, had been declared null and void. This claim is based on the fact that in September 2018, Ms. Gross filed a declaratory judgment action seeking a declaration that the original Deed of Trust and Note were unforceable. Ms. Gross did not name Deutsche Bank as a party or serve it with notice of that action. Rather, the sole named defendant was Ms. Gross’s original lender, First NLC Financial Services, LLC, which was then a defunct entity. After First NLC failed to file an answer, Ms. Gross obtained a default declaratory judgment in January 2020, which ordered and declared that the Deed of Trust

and Note signed by Ms. Gross were null and void and that the assignment of the Deed of Trust by First NLC to Deutsche Bank was also null and void. Appellant recorded the declaratory judgment in the land records in February 2020.

Upon learning of the default judgment, Deutsche Bank intervened in the case and filed a motion to vacate the declaratory judgment, claiming that Ms. Gross had committed extrinsic fraud by filing the action without notifying it, despite her knowing that it had an interest in the litigation as the noteholder and beneficiary of the Deed of Trust. As to the merits, Deutsche Bank further argued that the declaratory judgment action was barred by the doctrine of res judicata because the validity of the Deed of Trust and its subsequent assignment had been conclusively established in a 2010 declaratory judgment action involving the same parties. The circuit court subsequently vacated the default declaratory judgment, and following a hearing in July 2020, dismissed the declaratory judgment action as being barred by res judicata. This Court affirmed that judgment on direct appeal. *Gross v. First NLC Fin. Servs., LLC*, No. 581, Sept. Term 2020 (filed August 18, 2021).

As an initial matter, we are not persuaded that Ms. Gross’s revisory motions sufficiently allege fraud of any kind considering the fact that (1) the validity of the Deed of Trust was conclusively established in the 2010 litigation involving the same parties; (2) the default declaratory judgment obtained by Ms. Gross was entered after the foreclosure sale had been ratified, and (3) the default declaratory judgment upon which Ms. Gross relies was subsequently vacated because Ms. Gross had failed to notify Deutsche Bank of the declaratory judgment action. But in any event, “[t]o establish fraud under Rule 2-535(b), a movant must show extrinsic fraud, not intrinsic fraud.” *Pelletier v. Burson*, 213

Md. App. 284, 290 (2013) (quotation marks and citation omitted). “Fraud is extrinsic when it actually prevents an adversarial trial but is intrinsic when it is employed during the course of the hearing which provides the forum for the truth to appear, albeit, the truth was distorted by the complained of fraud.” *Id.* at 290-91 (quotation marks and citation omitted). Here, even if Ms. Gross’s revisory motions sufficiently alleged fraud, the complained of fraud was intrinsic because it had no bearing on her ability to fully present her case. In fact, as the party who had filed the declaratory judgment action, Ms. Gross had ample opportunity make the court aware of that action prior to the foreclosure sale being ratified.

Ms. Gross further asserts that, because the Deed of Trust was declared to be null and void, the court lacked jurisdiction over the foreclosure action. But again, this claim ignores the fact that the validity of the Deed of Trust had been established in the 2010 declaratory judgment action, and that the January 2020 order finding it to be null and void was subsequently vacated. Moreover, the Maryland Rules of Procedure, which govern the courts of this state, provide that the circuit courts in Maryland have general equity jurisdiction over foreclosures. *See* Md. Rule 14-203; *see also* *Voge v. Olin*, 69 Md. App. 508, 514 (1986) (“[T]he circuit court has general equity jurisdiction over mortgage foreclosure proceedings and it may invoke all the equitable powers with which it is imbued[.]”). And because the subject property is located in Baltimore City, the Baltimore City circuit court had *in rem* jurisdiction over the foreclosure after the Order to Docket was filed. *See* Md. Rule 14-203. Ms. Gross’s arguments regarding the validity of the Deed of Trust do not concern the court’s power to decide the case, but rather whether it was appropriate to grant the relief requested by appellee. *See generally* *Preissman v. Mayor &*

City Council of Balt., 64 Md. App. 552, 559 (1985). Consequently, there is no merit to her claim that the court lacked subject matter jurisdiction.

Finally, Ms. Gross contends that the judgment should be vacated because appellee did not properly serve her a copy of the Notice of Intent to Foreclose prior to filing the Order to Docket. Even if true, however, this claim does not establish the existence of fraud, mistake, or irregularity within the meaning of Rule 2-535(b). Moreover, we note that Ms. Gross raised this exact contention in one of the motions to stay or dismiss that she filed prior the court ratifying the foreclosure sale. And she did not file a timely notice of appeal from the court’s order denying that motion, or from the court’s final order ratifying the foreclosure sale. Thus, this claim is also barred by the doctrine of *res judicata*. See *Jones v. Rosenberg*, 178 Md. App. 54, 72, *cert. denied*, 405 Md. 64 (2008) (noting that final ratification of sale “is *res judicata* as to the validity of such sale, except in the case of fraud or illegality”).¹

Because the claims raised in Ms. Gross’s revisory motions were either not cognizable under Rule 2-535, lacking in merit, or both, the court did not err in denying them. Consequently, we shall affirm the judgment of the circuit court.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**

¹ It is unclear whether Ms. Gross was also contending that she was not served with a copy of the Order to Docket. But to the extent that she was raising such a claim, the court did not err in rejecting it as the Order to Docket contained an affidavit from a process server indicating that he had personally served Ms. Gross, and none of her motions included any corroborative evidence to undermine that affidavit. See *Wilson v. Maryland Dep’t of the Env’t*, 217 Md. App. 271, 285 (2014) (stating that a “mere denial of service is not sufficient” to overcome “the presumption of validity” that adheres to a return of service).