

Circuit Court for Prince George's County  
Case No. CAEF16-04502

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 769

September Term, 2017

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CARL CREWS

v.

CARRIE M. WARD, *et al.*,  
Substitute Trustees

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

JJ.

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PER CURIAM

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Filed: July 3, 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.

On March 1, 2016, substitute trustees, appellees, filed an order to docket foreclosure in the Circuit Court for Prince George’s County for 7601 Finns Lane, Lanham, Maryland 20706 (“the property”).<sup>1</sup> Carl Crews, appellant, requested mediation with the Office of Administrative Hearings (OAH) but failed to appear at the scheduled mediation on October 5, 2016. On October 19, 2016, the court received a report from the OAH indicating that no mediation had occurred because Crews did not attend. On November 23, 2016, the court entered an order denoting the receipt of the report and permitting appellees to advertise the sale and proceed with the foreclosure.

On May 18, 2017, five days before the foreclosure sale was scheduled to occur, Crews filed an emergency motion to stay, claiming that the OAH had not sent him notice of the date, time, or place of the mediation. He therefore requested that the foreclosure sale be stayed to permit him to attend mediation. The court denied Crews’s motion without a hearing finding that: 1) it did not state a valid defense or present a meritorious argument for the stay; 2) it was not timely filed; 3) it was not submitted under oath or supported by affidavit; 4) it failed to state a legal and factual basis of a defense; and 5) it failed to state the date Crews was served with notice of the foreclosure. The property was subsequently sold at the foreclosure auction to the lender for \$305,000. On appeal, Crews contends that his motion “substantially complied” with Rule 14-211, and that the court erred in denying it without a hearing. For the reasons that follow, we affirm.

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<sup>1</sup> The substitute trustees are: Carrie Ward; Howard Bierman; Jacob Geesing; Pratima Lele; Joshua Coleman; Richard Goldsmith, Jr.; Ludeen McCartney-Green; Jason Kutcher; Elizabeth Jones; and Nicholas Derdock.

For owner-occupied residential property, such as in this case, Rule 14-211(a)(2)(A) provides that a motion to stay must be filed no later than 15 days after the last to occur of: 1) the filing date of the final loss mitigation affidavit; 2) the date the court grants a motion to strike postfile mediation; or 3) where mediation was requested and not stricken the first to occur of: (a) the date the postfile mediation was held; (b) the date the [OAH] files with the court a report stating that no postfile mediation was held; or (c) sixty days after transmittal of the request for mediation.

In addition, the motion to stay must: (1) be under oath or supported by affidavit; (2) state with particularity the factual and legal basis of each defense that the moving party has to the validity of the lien or the right of the plaintiff to foreclose; (3) be accompanied by any supporting documents in the possession or control of the moving party; (4) state whether there are any collateral actions involving the property; (5) state the date the moving party was served with or first became aware of the action; and (6) if the motion is untimely, state with particularity the reasons why it was not timely filed. Md. Rule 14-211 (a)(3). If the court concludes that the motion: (1) was not timely filed and does not show good cause for excusing non-compliance; (2) does not on its face state a valid defense to the validity of the lien or the plaintiff's right to foreclose; or (3) does not substantially comply with the other requirements of Rule 14-211(a)(3), it must deny the motion. Md. Rule 14-211(b)(1). Otherwise it must hold a hearing on the merits.

We need not address every reason provided by the court for denying Crews's motion to stay because we are persuaded that the motion was not timely filed and did not show good cause for excusing non-compliance. Because Crews requested post-file mediation

and that mediation did not occur, he was required to file his motion to stay no later than 15 days after the OAH filed its report with the court stating that no post-file mediation was held. That report was filed with the court on October 19, 2016, and the court ordered the sale to proceed on November 23, 2016. However, Crews did not file his motion to stay until May 18, 2017, approximately seven months later. Consequently, the motion was untimely.

Moreover, the motion did not state with any particularity the reasons why it was not timely filed. On appeal, Crews contends that he could not have filed the motion in a timely manner because he did not have notice of the mediation date. But even if we assume that Crews was not notified about the date of the mediation, that does not excuse his failure to file a timely motion to stay. The relevant date after which the motion had to be filed was not the date that the mediation was scheduled, but the date that the OAH filed its report regarding the outcome of the mediation with the court. That report, and the court’s order directing the sale to proceed, were entered on the court docket. Therefore, Crews was on notice that the mediation had been scheduled and that he failed to appear, at a minimum, by the end of November 2016. *See Arundel Corp. v. Halter*, 223 Md. 247, 250 (1960) (noting that parties are “charged with notice of what actually is in the court records as to the case, without regard to [] actual knowledge, so that the docket entries are constructive notice to the parties and their counsel”).<sup>2</sup> Yet he did not file the motion to stay until six

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<sup>2</sup> Crews also does not contend that he did not receive a copy of the trial court’s November 23, 2016 order.

months later. Because Crews’s motion to stay was untimely and he did not demonstrate good cause for excusing non-compliance, the circuit court did not err in denying the motion.<sup>3</sup>

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

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<sup>3</sup> In his reply brief, Crews claims, for the first time, that the court erred by not holding a hearing on his motion. However, that issue is not preserved for our review. *See Davis v. Wicomico Cnty. Bureau of Support Enforcement*, 222 Md. App. 230, 240 n.2 (2015) (observing that arguments raised for the first time in a reply brief are not preserved), *aff’d*, 447 Md. 302 (2016). Moreover, even if the issue were properly before us, it lacks merit because Rule 14-211(b)(1) provides that the court “shall” deny a motion to stay the foreclosure, *with or without a hearing*, if the court determines that the motion was untimely and does not show good cause for the late filing.