

Circuit Court for Prince George's County  
Case No.: C-16-CV-23-003655

UNREPORTED\*

IN THE APPELLATE COURT

OF MARYLAND

No. 776

September Term, 2024

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KELTON B. ELLERBE

v.

MARK MEYER, ET AL.

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Friedman,  
Zic,  
Sharer, J. Frederick  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Sharer, J.

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Filed: March 5, 2026

\*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

After appellant, Kelton B. Ellerbe, defaulted on his mortgage loan, appellees, substitute trustees Diane Rosenberg, Mark Meyer, and Miroslav Nikolov, initiated foreclosure proceedings in the Circuit Court for Prince George’s County. Appellant initially moved to stay and dismiss, which the court denied on procedural grounds. Subsequently, the court denied appellant’s objections to the foreclosure. This appeal followed.

In his brief, appellant presents four issues, which can be consolidated and recast into one question: Did the court err in denying appellant’s motion to stay and dismiss?<sup>1</sup>

We answer that question in the negative and affirm.

### **BACKGROUND**

In December 2016, appellant obtained a mortgage loan with First Guaranty Mortgage Corporation secured by residential real property in Prince George’s County. In the transaction, appellant executed a promissory note and a deed of trust. The Deed of Trust authorized Mortgage Electronic Registration Systems, Inc. (“MERS”), nominee for First

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<sup>1</sup> Appellant’s issues as presented are:

1. Whether the circuit court erred by denying Ellerbe’s motion to dismiss or stay this foreclosure action, including by departing from the requirements of *Anderson* [*v. Burson*, 424 Md. 232 (2011).]
2. Whether Lakeview has standing to enforce the promissory note by mere possession of the note alone[.]
3. Whether the circuit court erred by not convening a hearing on the merits of Ellerbe’s motion to dismiss or stay under Maryland Rule 14-211(b)(2)[.]
4. Whether the Harris Affidavit is competent or admissible to satisfy the requirements of *Anderson*[.]

Guaranty Mortgage Corporation, to foreclose and sell the property should there be a default.

In July 2021, appellant defaulted on the loan. In January 2022, interest in the Note was transferred to Lakeview Loan Servicing, LLC (“Lakeview”). In June 2023, the Deed of Trust was assigned to Lakeview.

In August 2023, appellees filed an order to docket suit, initiating the foreclosure proceeding. Appellant filed a motion to dismiss, which appellees opposed, and which was denied for failure to comply with the Maryland Rules regarding service. Appellant thereafter filed an amended motion to stay and dismiss, asserting that Lakeview lacked standing to foreclose. In response, appellees filed an opposition asserting that Lakeview is the owner of the Note and is entitled to enforce the Deed of Trust. Specifically, an affidavit attached to appellees’ opposition asserted that Lakeview had possession of the Note and that it was either “made payable to Lakeview Loan Servicing, LLC OR [t]he promissory note has been duly indorsed.”

The court entered an order concluding that appellant’s motion “shall . . . be held in abeyance for thirty (30) days” and requesting that appellees provide the court “with a copy of said Promissory Note with all indorsements and allonges attached thereto and the manner in which Lakeview Loan Serving, LLC came into possession of such.” The court explained that, although it was “certain that the . . . Deed of Trust had been assigned from MERS to Lakeview[,]” it was “unsure if [Lakeview]’s enforcement rights stem from either: (a) being merely in possession of said Note indorsed in blank, (b) that the Note has been made payable to [Lakeview] or (c) that the Note has been duly indorsed to [Lakeview.]”

In response, appellees provided the court with a copy of the original Note, endorsed in blank. Additionally, appellees requested additional time regarding the court’s request for “the manner in which [Lakeview] came into possession of the [N]ote,” due to a cyberattack “which caused the lockdown of its [loan servicer’s] loan system.” The court granted appellees’ request for more time. In March 2024, appellees filed a supplemental response asserting that “Lakeview was [sic] transferred the [N]ote from Freedom Mortgage on January 12, 2022[,]” with an affidavit from an employee of Lakeview’s loan servicer in support. Ultimately, in May 2024, the court entered an order denying appellant’s motion and explaining that appellees “are in possession of said [N]ote indorsed in blank and therefore have standing to prosecute the instant foreclosure action[.]”

Appellant noted the instant appeal.

### **STANDARD OF REVIEW**

“The decision to grant or deny injunctive relief in a foreclosure action generally is within the discretion of the trial court.” *Est. of Brown v. Ward*, 261 Md. App. 385, 409 (2024) (citing *Anderson v. Burson*, 424 Md. 232, 243 (2011)). Thus, we defer to the trial court’s factual findings unless clearly erroneous. *Fischbach v. Fischbach*, 187 Md. App. 61, 88 (2009). “If any competent material evidence exists in support of the trial court’s factual findings, those findings cannot be held to be clearly erroneous.” *Webb v. Nowak*, 433 Md. 666, 678 (2013) (quoting *Figgins v. Cochrane*, 403 Md. 392, 409 (2008)). “To the extent that the decision turns on a question of law, however, this Court decides those questions without deference to the trial court.” *Est. of Brown*, 261 Md. App. at 409.

## DISCUSSION

Appellant asserts that the court erred in failing to schedule a hearing on his motion to stay and dismiss because “[o]nce the circuit court determined that [his] amended motion was timely and had established ‘on its face’ a defense ‘to the right of the plaintiff to foreclose,’” “the circuit court had but one task: to schedule an evidentiary hearing on [his] motion.” Further, appellant contends that appellees’ Affidavit was incompetent and that it failed to satisfy the requirements set forth in *Anderson*. Appellees respond that the court properly denied appellant’s motion because it failed to substantially comply with Md. Rule 14-211 and failed to assert any valid defenses. As to the substantive assertions, they argue that the Affidavit is valid and that the facts and note in *Anderson* are distinguishable from those before us.

Following the filing of a Rule 14-211 motion to stay the sale of property and dismiss a foreclosure action, the court shall set a hearing if the motion: “(A) was timely filed . . . , (B) substantially complies with the requirements of this Rule, and (C) states on its face a defense to the validity of the lien or the lien instrument or to the right of the plaintiff to foreclose in the pending action[.]” Md. Rule 14-211(b)(2). However,

[t]he court shall deny the motion, with or without a hearing, if the court concludes from the record before it that the motion: (A) was not timely filed and does not show good cause for excusing non-compliance with subsection (a)(2) of this Rule; (B) does not substantially comply with the requirements of this Rule; or (C) does not on its face state a valid defense to the validity of the lien or the lien instrument or to the right of the plaintiff to foreclose in the pending action.

Md. Rule 14-211(b)(1).

In pertinent part, Md. Code Ann., Commercial Law (“Com. Law”) § 3-301 provides that a promissory note may be enforced by “the holder of the instrument[.]” A “holder” is defined as a “person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession[.]” Com. Law § 1-201(b)(21)(i). Further, “[i]f an indorsement is made by the holder of an instrument, whether payable to an identified person or payable to bearer, and the indorsement identifies a person to whom it makes the instrument payable, it is a ‘special indorsement.’” Com. Law § 3-205(a). To the contrary, “[i]f an indorsement is made by the holder of an instrument and it is not a special indorsement, it is a ‘blank indorsement’.” Com. Law § 3-205(b). “When indorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specially indorsed.” *Id.* In sum, “the person in possession of a note, either specially indorsed to that person or indorsed in blank, is a holder entitled generally to enforce that note.” *Deutsche Bank Nat’l Tr. Co. v. Brock*, 430 Md. 714, 729-30 (2013) (footnote omitted).

Here, appellant’s motion to stay and dismiss asserted that appellees did not have standing to initiate foreclosure proceedings. Specifically, he contended that appellees had “no authority . . . to take any action affecting a claim against the title of the subject property” and that they “have failed to prove that they are the holder of the Note.” Appellees respond that Lakeview was in possession of the Note, indorsed in blank, and provided the court with a copy of the Note. Accordingly, there was competent, material evidence for the court to determine that appellees were “in possession of said [N]ote indorsed in blank and therefore have standing to prosecute the instant foreclosure action[.]”

On appeal, appellant does not dispute that the Note is endorsed in blank or that appellees are in possession of the Note. Instead, citing to *Anderson*, he asserts that “possession alone is insufficient under Maryland law to enforce the Note.” However, unlike the facts before us, the bank seeking foreclosure in *Anderson* was not the holder of the note, and the note was not indorsed. *Anderson*, 424 Md. at 247 (“On the record before us, Deutsche is not a holder of the Anderson Note. Deutsche possesses the Note, which is payable to Wilmington, but Wilmington did not indorse the Note itself.”). Accordingly, the court in *Anderson* held that, because the appellee was not a holder of the note and because the note was not indorsed, the substitute trustees “had to prove the [n]ote’s transfer history in order to establish their rights as a nonholder in possession.” *Id.* at 252.

Here, in contrast, the record reflects that Lakeview had possession of the Note and that the Note was indorsed in blank. Accordingly, the circuit court correctly determined that Lakeview is “a holder entitled generally to enforce that [N]ote[,]” and the circuit court properly denied appellant’s motion to stay and dismiss. *Deutsche Bank*, 430 Md. at 730. Appellant’s assertion that the court “departed from the requirements of *Anderson*” is without merit, considering the disparate facts.

Nor are we persuaded by appellant’s contention that the court erred “in its reliance on the . . . Affidavit” or in failing “to follow its own order” holding appellant’s motion in abeyance. Appellant contends that the Affidavit was incompetent for a multitude of reasons, including that it did not state how the affiant knew the information stated, did not contain attachments, did not specify the promissory note referred to, and did not comply with Md. Rule 1-304. What appellant fails to acknowledge, however, is that none of his

contentions regarding the Affidavit, even if true, indicate that the court erred in concluding that appellees had standing to enforce the Note. Lakeview’s status as the holder of the Note, indorsed in blank, was established by the Note itself – not by the Affidavit. The additional information submitted by the Affidavit, while of interest to the circuit court, was simply not necessary to conclude that appellees had standing to enforce the Note. Accordingly, assuming *arguendo* that appellant’s assertions regarding the Affidavit were accurate, they do not alter our conclusion that the circuit court correctly determined that appellees had standing to initiate foreclosure proceedings.

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