Circuit Court for Prince George's County
Case No. CAEF15-37294

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 937

September Term, 2016

ABLADE ODOI-ATSEM

v.

MARK S. DEVAN *ET AL.*
SUBSTITUTE TRUSTEES

Kehoe,
Berger,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kehoe, J.

Filed: June 25, 2016

*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.

Ablade Odoi-Atsem has filed this interlocutory appeal from an order of the Circuit Court for Prince George's County denying his motion to stay or dismiss a foreclosure proceeding. The appellees, Mark S. Devan, *et al*., are the substitute trustees. Mr. Odoi-Atsem raises five issues, which we have reworded somewhat:

> 1. Did the substitute trustees properly serve Odoi-Atsem in accordance with Maryland law, and were the substitute trustees entitled to an order for alternative service of process?
>
> 2. Did the substitute trustees comply with the circuit court's order for alternative service?
>
> 3. Did the substitute trustees comply with the mediation requirement prior to filing the foreclosure?
>
> 4. Did the foreclosure action violate Odoi-Atsem's due process rights?
>
> 5. Did the substitute trustees sell the property to the secured party for the highest price they could obtain?

We will affirm the circuit court's order.

Background

Odoi-Atsem owned a residential condominium unit together with a reserved parking space (collectively, the "Property") at National Harbor. The Property was encumbered by a deed of trust. Wells Fargo Bank, N.A., was entitled to enforce the terms of that instrument. After Odoi-Atsem went into default on the note secured by the deed of trust, Wells Fargo authorized the substitute trustees to initiate a foreclosure action against the Property. On October 23, 2015, the substitute trustees mailed a notice of intent to foreclose by both certified mail, return receipt requested, and first class mail. Both of these mailings were addressed to Odoi-Atsem at the Property.

On December 11, 2015, the substitute trustees filed an order to docket foreclosure together with other papers required to initiate the foreclosure proceeding. The substitute trustees were unable to effect personal service on Odoi-Atsem because access to the condominium building was limited and the concierge apparently refused to admit the private process server. As a result, on January 27, 2016, the Substitute Trustees filed a motion for alternative service. The circuit court granted the motion, directing the substitute trustees to serve Odoi-Atsem by first class and certified mail combined with posting "the order to docket suit and all attached papers on the main door of the building of the subject property. . . ." The substitute trustees filed a return of service on March 31, 2016. It consisted of two parts. The first, dated March 9, 2016, was signed by William Marshall, Jr. In it, Mr. Marshall stated under oath that he had posted the relevant court papers[1] on the main door of the condominium building on March 9, 2016. Attached to his affidavit was a photograph showing documents taped to the main door of the condominium building. The second, signed by Brett White, was undated. Mr. White stated under oath that he had mailed "the aforementioned documents" to Odoi-Atsem by certified and first class mail on March 21, 2016.

[1] Marshall's affidavit stated that the documents posted were:

> Order to Docket, Affidavit Pursuant to 7-105(d) and 14-207(b)(1) with copy of the Deed of Trust, Affidavit Pursuant to 14-207(b)(4), Statement of Mortgage Debt, Non-Military Service Affidavit(s), Affidavit Pursuant to 7-105.1(c) and (d)(a)(ii)(1)–(2) and 14-207(b)(2) with copy of Notice of Intent to Foreclose, Notice of Foreclosure Action, Affidavit Pursuant to 7-105.9(e) with copy of Important Notice, Preliminary Loss Mitigation Affidavit and Package, and Affidavit Pursuant to 14-209(e)(5).

On April 8, 2016, Odoi-Atsem, through counsel, filed a motion titled "Ex Parte Motion to Dismiss and Motion to Strike Plaintiffs Affidavit for Alternative Service." In the motion, Odoi-Atsem asserted that (1) the Substitute Trustees "never attempted to serve the Defendant" prior to filing the motion for alternative service; (2) the Substitute Trustees did not mail a copy of their motion for alternative service to him personally; and (3) the Substitute Trustees knew Odoi-Atsem was represented by counsel because his lawyer had communicated with Wells Fargo's loss mitigation department on November 20, 2015. None of these assertions were made under oath or supported by an affidavit.

By an order dated June 28, 2016, the circuit court denied the motion, stating in pertinent part that:

> the Court finds that Plaintiffs' Motion for Alternative Service was proper, that the Order entered March 3, 2016 allowed service by posting "on the main door of the building of the subject property," [and] that Plaintiffs filed an affidavit stating that they posted on the main door of the building of the subject property. Therefore, service has properly been effected. Moreover, motions to dismiss must be submitted under oath, or supported by affidavit pursuant to MD Rule 14-211(a)(3)(A), and must state an applicable factual and legal basis pursuant to MD Rule 14-211(a)(3)(B). Defendant's Motion does not meet these requirements.

Odoi-Atsem filed a timely appeal. *See Fishman v. Murphy*, 433 Md. 534, 540 n.2 (2013) ("The Estate had the right to appeal the Circuit Court's interlocutory order denying the Motion to Stay and Dismiss because the motion was made under Rule 14–211 and contemplated injunctive relief as a remedy.").

Because there was no order staying the sale, the Property was sold at auction on July 29, 2016. Wells Fargo purchased the Property for $345,563.

Analysis

1. and 2. Alternative Service of Process

Odoi-Atsem raises a number of arguments as to why service of process in this case was deficient.

First, he contends that the substitute trustees did not personally serve him. Odoi-Atsem is correct but the point is irrelevant—the substitute trustees filed their motion for alternative service precisely because they were unable to serve Odoi-Atsem personally.

Second, he argues that there is no evidence in the record that the substitute trustees sent copies of the papers filed by them to initiate the foreclosure action to him by certified mail. Odoi-Atsem did not present this contention to the circuit court and cannot raise it for the first time on appeal. *See* Md. Rule 8-131(a) ("Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]"); *Granados v. Nadel*, 220 Md. App. 482, 499–500 (2014) ("[T]his Court need not decide [an] issue if it was not raised and decided by the circuit court.").[2]

Third, Odoi-Atsem claims that the substitute trustees were not entitled to alternative service of process because he did not evade service of process or resist service by threat or force. But the substitute trustees' motion for alternative service was based on the fact that the process server could not obtain lawful access to the building in which Odoi-Atsem's

[2] Looking past preservation, the record does not support Odoi-Atsem's contention. Mr. White's affidavit states that he mailed "the aforementioned documents" to Odoi-Atsem by certified and first class mail. We interpret the phrase "aforementioned documents" to refer to the documents identified by Marshall in his affidavit, which was filed in conjunction with, and immediately before, Mr. White's affidavit. *See* note 1, *supra*.

unit is located. Although Odoi-Atsem claims in his brief that he "did not refuse to sign any certified mail with return receipt that was sent by Appellee," he did not make such an assertion to the circuit court.

Fourth, Odoi-Atsem claims that the substitute trustees failed to comply with the circuit court's order permitting alternative service of process. He raises two contentions. He asserts that the substitute trustees "never mentioned that [they] sent any certified mail to Odoi-Atsem containing the court Order to Docket and all attached papers." This contention was not raised to the circuit court, and we will not consider it for the first time on appeal for the reasons that we have previously expressed.

Odoi-Atsem also claims that the order granting alternative service required the substitute trustees to post the order on the door of his individual unit, and not the main door to the building in which his unit is located. This argument is unpersuasive. As we have explained, the court directed the substitute trustees to post "the order to docket suit and all attached papers on the main door of the building of the subject property." We interpret "the main door of the building of the subject property" to mean the primary entrance to the building in which Odoi-Atsem's condominium unit is located. Odoi-Atsem's argument that the court order required the substitute trustees to post the order on the entrance door of his individual unit is not consistent with the plain language of the order.

3–5. The Remaining Contentions

Odoi-Atsem raises additional contentions.

First, Wells Fargo failed to respond to his request to refinance his loan, which he

asserts is a violation of the Equal Credit Opportunity Act, specifically, 15 U.S.C. § 1691(d);[3]

Second, Wells Fargo failed to engage in mediation prior to filing the foreclosure action; and

Third, Wells Fargo and the substitute trustees failed to provide reasonable notice of the sale in violation of his due process rights guaranteed by the Fourteenth Amendment.

None of these arguments were presented to the circuit court and are waived for the

[3] Section 1691 provides in pertinent part (emphasis added):

> (a) Activities constituting discrimination
> It shall be unlawful for any creditor to discriminate against any **applicant**, with respect to any aspect of a credit transaction--
> (1) on the basis of race, color, religion, national origin, sex or marital status, or age (provided the applicant has the capacity to contract);
> (2) because all or part of the applicant's income derives from any public assistance program; or
> (3) because the applicant has in good faith exercised any right under this chapter.
>
> * * *
>
> (d) Reason for adverse action; procedure applicable; "adverse action" defined
> (1) Within thirty days (or such longer reasonable time as specified in regulations of the Bureau for any class of credit transaction) after receipt of a completed application for credit, a creditor shall notify the applicant of its action on the application.
> (2) Each applicant against whom adverse action is taken shall be entitled to a statement of reasons for such action from the creditor. A creditor satisfies this obligation by--
>
> * * *

Odoi-Atsem does not appear to fall within the definition of "applicant" for the purposes of § 1691. *See* 15 U.S.C. § 1991a(b) ("The term "applicant" means any person who applies to a creditor directly for an extension, renewal, or continuation of credit, or applies to a creditor indirectly by use of an existing credit plan for an amount exceeding a previously established credit limit."). Odoi-Atsem did not apply for an "an extension, renewal, or continuation of credit" but rather for his loan to be refinanced temporarily to permit him to bring his loan current over time.

reasons previously explained.

Odoi-Atsem's final contention is that the Property was sold at an inadequate price. As the substitute trustees correctly point out, this contention is not properly before us because the record does not indicate that Odoi-Atsem filed exceptions to the sale. *See* Md. Rule 14-305 (setting out post-sale procedures); *Johnson v. Nadel*, 217 Md. App. 455, 465 (2014) ("A debtor may challenge irregularities in the foreclosure sale's procedure by filing post-sale exceptions at the time of the ratification and seek to overturn the sale on those bases." (citation and quotation marks omitted)).

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