

Circuit Court for Baltimore City
Case No. 24-O-16-000635

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1006

September Term, 2017

STELLA FORD

v.

KEITH YACKO, et al.
SUBSTITUTE TRUSTEES

Meredith,
Graeff,
Beachley,

JJ.

Opinion by Beachley, J.

Filed: September 18, 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.

Following the foreclosure sale of property she owned, appellant Stella Ford filed exceptions with the Circuit Court for Baltimore City, arguing that the sale should be vacated because she did not receive notice of the sale. After the circuit court overruled her exceptions, appellant timely appealed, and presents a single issue for our review:

Did the [c]ircuit [c]ourt err in denying [appellant’s] Exceptions because the Notice of Sale was not properly served?

We perceive no error, and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Appellant owned an investment property in Baltimore, Maryland (the “Property”). There is no dispute that appellant defaulted on a promissory note secured by a deed of trust against the Property. As a result of appellant’s default, appellees, the substitute trustees, initiated foreclosure proceedings in the Circuit Court for Baltimore City on March 8, 2016. On April 14, 2017, the Property was sold at a foreclosure auction. On May 9, 2017, appellees filed a report of sale with the circuit court along with other related documents, including an affidavit affirming that appellees had sent notice of the sale to appellant in compliance with the law.¹

On May 15, 2017, appellant filed exceptions to the foreclosure sale, arguing that the sale should be set aside because she did not receive notice that a foreclosure action had

¹ The report of sale also certified that appellees had advertised the sale in the Daily Record newspaper on March 29, April 5, and April 12, 2017.

been docketed, and also because she did not receive timely notice of the foreclosure sale.² Appellant asserted that although appellees were required to send notice of the sale to her Virginia residence, “It appears likely that the notice, if it was sent, was sent solely to the Property.” Appellees filed a response to appellant’s exceptions, stating that they had sent notice of the sale by regular and certified mail to the Property address as well as to appellant’s Virginia residence. Appellees attached printouts³ of United States Postal Service (“USPS”) tracking information for the certified mailings, as well as a copy of their earlier-filed affidavit regarding their compliance with the relevant statutory requirements.

On June 15, 2017, the circuit court found that appellant had “failed to set forth the alleged irregularity in the manner or conduct of the sale with particularity pursuant to Maryland Rule 14-305(d)[.]”⁴ Without holding a hearing, the court overruled appellant’s exceptions and ratified the sale of the Property. On July 7, 2017, appellant appealed from the circuit court’s order denying her exceptions.

² On appeal, appellant only argues that she did not receive proper notice of the foreclosure sale.

³ The tracking information appears to have been printed out from the USPS website.

⁴ Md. Rule 14-305(d)(1) provides, in relevant part:

Exceptions shall be in writing, shall set forth the alleged irregularity with particularity, and shall be filed within 30 days after the date of a notice issued pursuant to section (c) of this Rule or the filing of the report of sale if no notice is issued. Any matter not specifically set forth in the exceptions is waived unless the court finds that justice requires otherwise.

STANDARD OF REVIEW

In ruling on exceptions to a foreclosure sale and whether to ratify the sale, trial courts may consider both questions of fact and law. In reviewing a trial court's finding of fact, we do not substitute our judgment for that of the lower court unless it was clearly erroneous and give due consideration to the trial court's opportunity to observe the demeanor of the witnesses, to judge their credibility and to pass upon the weight to be given their testimony. Questions of law decided by the trial court are subject to a *de novo* standard of review.

Jones v. Rosenberg, 178 Md. App. 54, 68 (2008) (citations and quotation marks omitted).

DISCUSSION

There are several parts to appellant's contention that she did not receive proper notice of the foreclosure sale. First, appellant claims that Md. Code (1974, 2015 Repl. Vol., 2017 Supp.), § 7-105.2 of the Real Property Article ("RP") requires that a homeowner must *receive* notice of a foreclosure sale by certified mail not later than ten days before the scheduled sale. Appellant next contends that appellees failed to *send* notice to her within ten days of the scheduled sale as required by statute. Finally, appellant asserts that because there was no evidence that she ever received written notice of the sale, appellees had a due process obligation "beyond mere mailing" to ensure that she was aware of the sale.

As an initial matter, we note that appellant is incorrect in her assertion that RP § 7-105.2 requires that a homeowner "must receive" written notice of a foreclosure sale at least ten days before the sale. RP § 7-105.2 requires only that written notice of a proposed foreclosure sale *be sent* to the record owner of the property. RP § 7-105.2(c) specifies that:

- (1) The written notice *shall be sent*:
 - (i) By certified mail, postage prepaid, return receipt requested, bearing a postmark from the United States Postal Service, to the record

- owner and, if applicable, to a condominium or homeowners association at the address shown on the statement of lien; and
- (ii) By first-class mail.
- (2) The notice shall state the time, place, and terms of the sale and *shall be sent* not earlier than 30 days and not later than 10 days before the date of sale.
- (3) The person giving the notice shall file in the proceedings:
- (i) A return receipt; or
 - (ii) An affidavit that:
 - 1. The provisions of this subsection have been complied with; or
 - 2. The address of the record owner is not reasonably ascertainable.

(Emphasis added); *see also* Md. Rule 14-210(b) (setting forth the same substantive requirements for sending notice to the record owner of a property).

Here, appellees complied with the notice requirements of RP § 7-105.2(c). Specifically, appellees filed an affidavit stating that they sent notice of the sale to appellant by both first-class mail and certified mail on April 4, 2017 (ten days prior to the scheduled sale on April 14, 2017). The affidavit verified that notice of the sale was sent to appellant at the following addresses:

Stella Ford
2760 Wilkens Avenue
Baltimore, MD 21223⁵

Stella Ford
10684 Winfield Loop
Manassas, VA 20109⁶

⁵ This is the address for the Property.

⁶ This is the address for appellant's Virginia residence, and is identical to the address that appellant provided in her own filings with the circuit court.

“[T]he testimony of a witness that he properly addressed, stamped and mailed a letter raises a presumption that it reached its destination at the regular time and was received by the person to whom it was addressed.” *Bock v. Ins. Comm’r*, 84 Md. App. 724, 730 (1990) (quoting *Kolker v. Biggs*, 203 Md. 137, 144 (1953)). We also note that “[t]estimony that the addressee did not receive the letter does not conclusively rebut the presumption of receipt.” *Id.* at 733. Because appellees’ affidavit complied with RP § 7-105.2(c), we see no error.

Appellant next contends that, contrary to appellees’ affidavit, notice of the sale was not sent on April 4, 2017. To support this contention, appellant points to the USPS tracking information provided by appellees, which includes the following in an entry for April 5, 2017: “Pre-Shipment Info Sent to USPS. USPS Awaiting Item.” The evidentiary value of this printout is unclear, and appellant does not provide any support for the notion that the receipt of “pre-shipment information” by USPS on April 5 necessarily forecloses the possibility that appellees mailed the notice on April 4. Nor are we persuaded by appellant’s argument that the earliest the notice could have been “sent” was on the date that it arrived at the USPS facility for delivery. *See Bock*, 84 Md. App. at 730 (“Black’s Law Dictionary states that ‘send’ means to deposit in the mail . . . with postage . . . provided for and properly addressed” (quoting *Black’s Law Dictionary* 1221-22 (5th ed. 1979))). Appellant has failed in directing us to any legal authority concerning the meaning of “pre-shipment information.” *See Rollins v. Capital Plaza Assocs., L.P.*, 181 Md. App. 188, 202 (2008) (stating that an appellate court will not seek out the law to sustain a party’s position).

Moreover, in her exceptions, appellant alleged that the notice of sale was deficient because appellees failed to send notice to her Virginia residence. She did not allege any defect in the timeliness of the certified mail. Not only did she fail to preserve the issue, she likewise failed to sustain her burden of showing that the sale was invalid. *See Fagnani v. Fisher*, 418 Md. 37, 384 (2011) (“The party excepting to the sale bears the burden of showing that the sale was invalid, and must show that any claimed errors caused prejudice.”). We therefore reject appellant’s claim that the notice of sale was defective.

Finally, appellant claims that because appellees offered no “proof” that the notice of sale was sent to her Virginia address or received by her, they were required to “undertake some other step to ensure that [appellant] actually received the notice.”⁷ However, appellant failed to preserve this argument for appellate review because she did not raise it before the circuit court. *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[.]”).

Even assuming appellant had preserved this argument for our review, we would find it wholly lacking in merit. In *Griffin v. Bierman*, the Court of Appeals considered a due process challenge to Maryland’s foreclosure notice requirements. 403 Md. 186, 195-96 (2008). There, the homeowner (Griffin) filed exceptions to a foreclosure sale, claiming that she did not receive notice of foreclosure proceedings against her—or notice of the

⁷ Because appellees filed an affidavit pursuant to RP § 7-105.2(c)(3)(ii), they were not required to file a return receipt under RP § 7-105.2(c)(3)(i).

pending sale—until after the property had already been sold. *Id.* at 194. Although the circuit court found that Griffin had not received actual notice of the foreclosure sale, the court refused to set aside the sale, and Griffin appealed. *Id.* The Court of Appeals affirmed the circuit court’s judgment, holding that due process does not require personal service in mortgage foreclosure actions. *Id.* at 206-07.

Appellant cites to the following passage from *Griffin*, which appears in a footnote to the Court’s opinion:

Our holding would be different, however, had the first-class mail notices been returned undelivered, *Nichol v. Howard*, 112 Md. App. 163, 684 A.2d 861 (1996), or the certified mail had been returned as something more revealing than “unclaimed,” *Kennedy v. Cummings*, 91 Md. App. 21, 603 A.2d 1251 (1992). *Had the Trustees known that their attempts to convey notice to Griffin failed . . .* reasonable follow-up measures to attempt to give notice to the interested property owner *might* be required.

403 Md. at 202 n.11 (emphasis added). While the cited footnote is dicta, it is nevertheless inapplicable to the instant case. Here, there is no evidence that the notice of sale that appellees sent via first-class mail was returned. Even assuming appellant did not receive actual notice of the sale, we see nothing in the record to suggest that appellees knew their attempts to convey notice to appellant had failed. Therefore, appellant’s reliance on footnote 11 in *Griffin* is unpersuasive.

Although appellant contends that she did not receive either of the notices mailed by appellees, due process does not require actual receipt of notice of sale. *See Griffin*, 403 Md. at 206. Because appellee complied with the requirements of RP § 7-105.2, we hold

that the circuit court did not err in overruling appellant's exceptions and ratifying the foreclosure sale.

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