Circuit Court for Howard County
Case No. 13-C-17-111262

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1098

September Term, 2018

JOHN LICCIONE

v.

JOHN E. DRISCOLL, III, *et al*.

Beachley,
Gould,
Adkins, Sally D.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Adkins, Sally D., J.

Filed: March 4, 2020

This case presents a multifaceted procedural challenge to the foreclosure of a residence formerly owned by Appellant John Liccione. The Maryland Rules provide a strict timetable for such a challenge, narrowing a litigant's available defenses as the foreclosure proceeds from notice, to sale, to ratification. *See* Md. Rules 14-211, 2-543, and 14-305(d). At issue is whether this timetable may be overlooked—and a ratified sale set aside—on procedural fairness and equity grounds. To challenge the validity of the sale, Liccione raises a series of objections grounded in due process concerns, including service of process, insufficient notice and opportunity, and procedural irregularities. After review, we reject each of these challenges, and affirm the Circuit Court for Howard County's decision.

FACTUAL OVERVIEW AND PROCEDURAL POSTURE

Liccione is appealing the foreclosure of the property located at 14621 Viburnum Drive, Dayton, Md. ("the Property"). In April 2013, Liccione and his then-wife, Moea Goron-Futcher, signed a Refinance Money First Deed of Trust on the Property, incorporating a promissory note of $783,487. Liccione was the sole obligor for this note. This appeal turns largely on the timing of interceding events between Liccione's default and the eventual foreclosure and sale of the Property by John E. Driscoll, III, and others, collectively the Substitute Trustees.[1]

[1] Under the deed of trust for the Property, which secured the $783,487 promissory note, the Property is held in trust by a trustee, though Liccione and Goron-Futcher occupied it. The lender is permitted to remove the trustee and appoint a successor. The appellees in this case are the successor trustees.

Liccione and Goron-Futcher lived together until August 2016, when Liccione vacated the Property, and Goron-Futcher obtained a protective order forbidding his return. One month later, they defaulted on the Property's mortgage through non-payment. Attempting to forestall foreclosure, Liccione filed three Requests for Mortgage Assistance ("RMAs") over the next four months. These requests were rejected, and the bank issued a notice of intent to foreclose on January 23, 2017. A little under two months later, Liccione mailed the bank a letter requesting reconsideration of his situation due to changed circumstances. This request was likewise unavailing, and the foreclosure action was docketed on April 26, 2017.

Throughout this period, Liccione's proper address was somewhat unclear. His RMAs, his contemporaneous application for unemployment insurance, and his March 17 letter to the Bank listed the Property as his address, despite the protective order precluding his return. His contemporaneous bank statements dated October 22, November 22, and December 22 listed 2880 Kulp Road, Eden, N.Y., 14057 ("the New York Address") as his forwarding address.

The Substitute Trustees attempted to serve Liccione with an order to docket on April 27, and again on April 29. On both occasions, Goron-Futcher informed the process server that Liccione no longer resided at the Property and provided the New York Address as his last known place of residence. After the second attempt, the Substitute Trustees verified Liccione's New York Address through the Maryland Judiciary Case Search. On May 13,

they posted service at the Property, and mailed the order to docket to the New York Address via certified mail and first-class mail.

On May 26, Liccione was arrested on domestic violence charges. His arrest warrant and court papers provided the New York Address as his domicile. He was incarcerated and held without bail. In an August 28 competency proceeding, after hearing "details that referenced delusions and paranoia," the court handling Liccione's criminal case declared him mentally incompetent and a danger to himself and others. Liccione was committed to the Springfield Psychiatric Hospital. He involuntarily remained there until December 1, roughly six months after his arrest. Following his release, Liccione found an apartment in Howard County. He also finalized his divorce with Goron-Futcher, signing a marital settlement agreement governing the division of their assets on January 10, 2018.

While Liccione was in state custody, the foreclosure process continued unabated. On August 20 and 21, 2017, while Liccione was in the county jail, a notice of sale was mailed to the Property and the New York Address. The Property was sold at auction on September 18. The report of sale was docketed on October 6, followed by the post-sale publication on November 15. Goron-Futcher filed exceptions to the sale and a motion to dismiss on November 9. Among other claims, she argued that Liccione was never served with the order to docket, and never received notice of the sale due to his incarceration and commitment. Her exceptions were untimely,[2] and her motions were ultimately withdrawn.

[2] The deadline for exceptions to the sale occurred on November 5, four days before Goron-Futcher's filing.

The sale was ratified on February 2, 2018—two months after Liccione was released from custody. Liccione says he discovered the sale on May 23, while reviewing the Maryland Judiciary Case Search regarding a different matter. On May 30, Liccione moved to vacate the judgment and foreclosure sale and dismiss the foreclosure action, and a month later, he filed his exceptions to the sale. His motion to vacate was dismissed without a hearing, and his exceptions were denied as untimely. Liccione filed this timely appeal, and presents the following questions:

> 1. Did the Circuit Court err in denying Appellant's Motion to Vacate because the Order to Docket and other initiating documents were not properly served on Liccione before, during, and after he was incarcerated and/or committed to a State mental institution?
>
> 2. Did the Circuit Court err in denying Appellant's Motion to Vacate and Exceptions because the Notice of Sale was not properly served on Liccione because he was incarcerated and/or committed to a State mental institute at all material times?
>
> 3. Did the Circuit Court err in denying Appellant's Exceptions as untimely in light of his incarceration and/or commitment to a State mental institution during the pendency of the foreclosure case and resulting lack of knowledge of the case?
>
> 4. Did the Circuit Court err in not appointing Appellant a legal guardian and/or attorney even though the same Court itself had declared him mentally incompetent and had involuntarily committed him to a State mental institution during much of the foreclosure?
>
> 5. Did the Circuit Court err in not having a hearing on Appellant's Motion to Vacate and Exceptions?

DISCUSSION

Whether the circuit court had jurisdiction to entertain Liccione's motions is chiefly a question of timing. *Thomas v. Nadel*, 427 Md. 441, 443 (2012). Prior to a foreclosure sale, the borrower may file a motion to stay the sale proceedings. Md. Rule 14-211. This motion may contest the validity of the debt, challenge the plaintiff's right to foreclose, or otherwise assert "known and ripe defenses" to the foreclosure action. *Nadel*, 427 Md. at 443. Once the sale has taken place, the universe of acceptable challenges narrows; a litigant may only contest the auditor's account within the first ten days following the sale, Md. Rule 2-543, and may only file exceptions to the sale within thirty days of the report of sale. Md. Rule 14-305(d). These exceptions may only address the statement of indebtedness or procedural irregularities in the sale itself. *Nadel*, 427 Md. at 449. *See also Bates v. Cohn*, 417 Md. 309, 327 (2010) (examples of procedural irregularities include insufficient advertisement of the sale, fraud in the sale procedures, and an unreasonable sale price).

Ratification presents a greater hurdle. A court may only ratify a sale once the time for filing exceptions has expired, any timely filed exceptions have been denied, and the court is satisfied that the sale was proper. Md. Rule 14-305(e). The ratification of a sale, therefore, renders the judgment final and forecloses any substantive objections to its validity. *Manigan v. Burson*, 160 Md. App. 114, 120 (2004) ("upon the court's ratification of a foreclosure sale[,] objections to the propriety of the foreclosure ordinarily will no longer be entertained"). Any subsequent challenges must be raised through a motion to vacate, filed within the narrow scope of the court's revisory jurisdiction under Md. Rule 2-

535(a). *Thacker v. Hale*, 146 Md. App. 203, 231 (2002) (Rule 2-535 "embraces all the power the courts of this State have to revise and control enrolled judgments and decrees") (cleaned up). Consistent with this framework, we will first consider the timeliness of Liccione's exceptions, and then address the jurisdictional validity and the substance of his motion to vacate.

Timeliness Of Exceptions In Light Of Incarceration

We first turn to Question 3, regarding the circuit court's denial of Liccione's exceptions as untimely. The report of sale was filed on October 6, 2017, placing the deadline for post-sale exceptions thirty days later, on November 6. Liccione filed his exceptions on June 29, 2018—over seven months after the statutory deadline, six months after his release, and four months after the sale's ratification. On appeal, he insists that these deadlines should be extended on equitable grounds, as he lacked notice of the proceedings until his case search on May 23.[3] Assuming, arguendo, that these deadlines may be waived, we decline to do so here.

The record does not support Liccione's assertion that he was unaware of the foreclosure proceedings. To the contrary, prior to his arrest, Liccione had been served with a notice of intent to foreclose and was actively negotiating with the bank to receive extensions and assistance on his delinquent payments. Equally significant is the marital

[3] Even accepting Liccione's argument that he was unaware of the foreclosure proceedings and prejudiced by his incarceration, his exceptions would remain untimely. Were we to toll the running of the Maryland Rule 14-305(d) deadline until May 23, 2018, the date Liccione claims he first became aware of the foreclosure action, his exceptions would have been due on June 22. He filed his exceptions on June 29, a full week later.

settlement agreement signed by Liccione and Goron-Futcher in January 2018, one month after Liccione's release, and one month before the sale was ratified by the circuit court. It provided a comprehensive accounting of the parties' marital assets—but did not mention division or ownership of the Property, a residence that was once their shared marital home. This complete omission of the Property from the agreement strongly suggests that Liccione had actual knowledge of the sale prior to ratification.

As this Court once said, "the State can do no more than give the litigant a day in court; if he does not utilize it . . . he is as conclusively and finally bound by it, as though he had actively contested it." *Manigan*, 160 Md. App. at 120 (cleaned up). *See also Greenbriar Condominium, Phase I Council of Unit Owners, Inc. v. Brooks*, 387 Md. 683, 740 (2005) (the property owner's obligation is "to prosecute his rights, not to sit on them"). The record suggests that Liccione was aware of the ongoing foreclosure procedures both before and after his incarceration. Likewise, the record does not disclose any prejudice to Liccione's interests, as he had over two months to pursue his rights following release. *See Fagnani v. Fisher*, 418 Md. 371, 384 (2011) (litigant challenging a ratified sale must demonstrate the irregularities that rendered the sale unlawful or prejudiced his ability to defend his interests). In these circumstances, it was incumbent upon Liccione to assert his rights and utilize his day in court. His failure to do so is dispositive of his claims, and so we affirm the circuit court's denial of Liccione's exceptions as untimely.

Motion To Vacate On Due Process Grounds

Liccione, in Questions 1 & 2, appeals the denial of his motion to vacate the foreclosure sale. Maryland Rule 2-535(a) provides that a court retains revisory power over a final judgment for thirty days. After thirty days, the court's revisory judgment is only retained for claims grounded in fraud, mistake, or irregularity. Md. Rule 2-535(b). 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). Therefore, this motion may only be entertained if it rests on the narrow jurisdictional grounds provided by Rule 2-535(b).

For the purposes of Rule 2-535(b), mistake constitutes a "jurisdictional error, such as where the [c]ourt lacks the power to enter judgment," and has no bearing in this case. *Green v. Ford Motor Credit Co.*, 152 Md. App. 32, 51 (2003). Irregularity refers to "a nonconformity of process or procedure," and not a mere departure from truth or accuracy that could have been challenged by the defendant at trial. *Davis v. Attorney Gen.*, 187 Md. App. 110, 125 (2009). *See also Thacker*, 146 Md. App. at 219–220 (examples include a clerk of court's "failures to send notice of a default judgment, to send notice of an order dismissing an action, to mail a notice to the proper address, and to provide for required publication"). Although Liccione broadly alleges that the court failed to provide notice of the foreclosure proceedings during his incarceration and commitment, the specifics of his claims are directed almost exclusively towards the conduct of the Substitute Trustees rather than the court. *See Pelletier v. Burson*, 213 Md. App. 284, 290 (2013).

Liccione's fraud claim rests on different considerations. The fraud called for by Rule 2-535(b) entails extrinsic fraud committed on the court, rather than intrinsic fraud that occurred during the trial. *Das v. Das*, 133 Md. App. 1, 18 (2000). In *Das*, we described extrinsic fraud as that which "prevents the adversarial system from working at all." *Id.* at 18–19. Such fraud might involve circumstances such as:

> a false promise of a compromise; or where the defendant never had knowledge of the suit, being kept in ignorance by the acts of the plaintiff; . . . these, and similar cases which show that there has never been a real contest in the trial or hearing of the case, are reasons for which a new suit may be sustained to set aside and annul the former judgment or decree, and open the case for a new and a fair hearing.

Id. at 19 (cleaned up).

Liccione's motion to vacate states a claim for extrinsic fraud and falls squarely within the revisory jurisdiction of the circuit court. He asserts that the Substitute Trustees never properly served him with the order to docket and notice of sale, depriving him of notice of the proceedings against him and an opportunity to defend his interests. Such conduct would constitute a fraud on the court, whereby the Substitute Trustees "kept him in ignorance" to prevent a real contest on the issues and a true adversarial trial. *See, e.g.*, *Olivera v. Grace*, 122 P.2d 564, 568 (Cal. 1942) ("If the plaintiff knows of the defendant's incompetency but conceals such information from the court . . . his conduct constitutes a fraud upon the court as well as upon the incompetent defendant."). Nevertheless, the merits of this contention, sounding in procedural due process, are unavailing.

The Due Process Clause of the Fourteenth Amendment requires that "state action affecting property must generally be accompanied by notification of that action." *Tulsa Prof. Collection Servs., Inc. v. Pope*, 485 U.S. 478, 484 (1988). Due process is not measured by the defendant's actual receipt and knowledge of the process against him. *Jones v. Flowers*, 547 U.S. 220, 226 (2006) ("Due process does not require that a property owner receive actual notice before the government may take his property."). Rather, the plaintiff's method of service must be "reasonably calculated . . . to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). The required procedures turn largely on the nature of the action and the amount of information available to the plaintiff. *See, e.g.*, *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 800 (1983) (service by mail is a minimum constitutional requirement where the recipient's name and address are "reasonably ascertainable").

Maryland's rules governing service of foreclosure documents are best construed as a quasi-in-rem scheme:

> (h)(1) A copy of the order to docket or complaint to foreclose on residential property and all other papers filed with it in the form and sequence as prescribed by regulations adopted by the Commissioner of Financial Regulation, accompanied by the documents required under paragraphs (2), (3), and (4) of this subsection, shall be served on the mortgagor or grantor by:
>
> > (i) Personal delivery of the papers to the mortgagor or grantor; or

> (ii) Leaving the papers with a resident of suitable age and discretion at the mortgagor's or grantor's dwelling house or usual place of abode.
>
> ***
>
> (5) If at least two good faith efforts to serve the mortgagor or grantor under paragraph (1) of this subsection on different days have not succeeded, the plaintiff may effect service by:
>
> (i) Filing an affidavit with the court describing the good faith efforts to serve the mortgagor or grantor; and
>
> (ii) 1. Mailing a copy of all the documents required to be served under paragraph (1) of this subsection by certified mail, return receipt requested, and first-class mail to the mortgagor's or grantor's last known address and, if different, to the address of the residential property subject to the mortgage or deed of trust; and
>
> 2. Posting a copy of all the documents required to be served under paragraph (1) of this subsection in a conspicuous place on the residential property subject to the mortgage or deed of trust.

RP § 7-105.1(h). The validity of service, therefore, does not depend on whether Liccione actually received the documents in question, but whether the Substitute Trustees complied with the statutory requirements in their efforts to reach him.

A.

Service of an order to docket is chiefly controlled by Maryland Rule 14-209. This provision requires the foreclosing party to serve the mortgagor a copy of all papers filed to commence the action. Md. Rule 14-209(a). Service must be achieved through personal delivery of the papers to the mortgagor, or by leaving the papers with a suitable resident at the mortgagor's domicile. *Id.* Alternatively, if the plaintiff's good faith efforts to serve

the mortgagor prove unsuccessful on two separate days, the plaintiff may mail copies of all initiating papers to the mortgagor's last known address by first-class and certified mail, and attach another copy to the property subject to foreclosure. Md. Rule 14-209(b).

The Substitute Trustees dutifully complied with this procedural framework. They mailed the order to docket to Liccione's New York Address—his last known address, provided on contemporaneous bank statements and criminal docket filings—only after twice attempting and failing to effect personal service at the Property. The New York Address was obtained from Goron-Futcher and verified through the Maryland Judiciary Case Search to ensure its authenticity. Each of these events occurred at least ten days prior to Liccione's arrest and incarceration. Although it is possible that he was incarcerated before reading any mail received at the New York Address, this possibility holds no bearing on the validity of service. *See Golden Sands Club Condominium, Inc. v. Waller*, 313 Md. 484, 500 (1988) (in context of procedural due process, "actual receipt of notice is not the test").

Additionally, the facts do not suggest—and Liccione does not contend—that the New York Address is invalid. Rather, it was used repeatedly by Liccione before the sale. The record demonstrates that this address was on Liccione's bank statements, his RMAs, his March 2017 letter to the mortgagee, and each of his criminal case filings. Moreover, although the Substitute Trustees were unable to achieve service at this address by certified mail, the copy sent by first-class mail was not returned as invalid. *See Griffin v. Bierman*, 403 Md. 186, 200 (2008) (service by first-class mail was sufficient despite certified mail

returned as "unclaimed"). Accordingly, it appears that the order to docket was properly served, and we uphold the decision of the circuit court on this issue.

B.

Similar criteria govern service of a notice of sale. Maryland Rule 14-210(b) requires the foreclosing party to "send notice of the time, place, and terms of sale (1) by certified mail and by first class mail to [the property owner] . . . and (2) by first-class mail to 'All Occupants' at the address of the property." The mailing to the property owner must be sent to the last known address of the property owner reasonably ascertainable from a document recorded at least thirty days prior to the date of the sale. Md. Rule 14-210(b). As with the order to docket, the Substitute Trustees complied with each of these statutory mandates.

Liccione's incarceration and commitment complicate this analysis. The order to docket was served before Liccione's arrest, but the notice of sale was issued—and the sale itself occurred—while he was in state custody. If a foreclosing party has knowledge that the recorded address for the property owner is invalid, it must engage in a reasonable inquiry with the objective of ascertaining the correct address for service of process. *Slattery v. Friedman*, 99 Md. App. 106, 118 (1994). In conducting this inquiry, the foreclosing party must pursue all information that could reasonably lead to the recipient's proper address. *St. George Antiochian Orthodox Christian Church v. Aggarwal*, 326 Md. 90, 104 (1992) (one cannot engage in willful blindness or manifest indifference regarding the validity of an address on file). The record suggests the Substitute Trustees were aware of Liccione's predicament; they submitted their response to Goron-Futcher's exceptions to

Liccione's criminal attorney.[4] In this document, the Substitute Trustees acknowledged Liccione was incapacitated and committed to a state institution.

Nevertheless, the service here satisfies Maryland's quasi-in-rem statutory scheme. On different days, the Substitute Trustees made good-faith attempts to serve Liccione through personal delivery, satisfying the personal service elements of RP § 7-105.1(h)(1). They then satisfied the in rem elements by mailing the foreclosure documents—certified and first-class—to Liccione's last known address and to the Property, and by posting the documents on the Property. RP § 7-105.1(h)(5). *See Griffin*, 403 Md. at 201. In *Griffin*, the mortgagor fell into default on her loans after the death of her fiancé. She was served with the foreclosure documents by certified mail and first-class mail to the mortgaged property. The trial court found that she was entirely unaware of the foreclosure proceedings until the notice of the completed sale was posted on the door of her house. *Id.* at 194. The certified mail was unclaimed, but the first-class mailings had not been returned, and no facts suggested that the address provided was invalid. *Id.* at 193–94. Moreover, Griffin had authorized service by mail, and was in full knowledge of her default. *Id.* at 203. The Court of Appeals deemed this in rem service adequate. *Id.* at 201–02. Although the General Assembly amended RP § 7-105 to include attempts at personal service, the

[4] At oral argument, the Substitute Trustees further claimed that Liccione received actual notice of the proceedings via the transmission of this document to his criminal attorney. We disagree. Criminal attorneys are not, and should not be, guardians ad litem of the incarcerated. Service of process on a criminal attorney is no substitute for proper service on their client in a civil matter.

Court's *Griffin* analysis is still applicable, as the current statute still calls for in rem service when necessary, and indeed it was attempted here.

Further illustrative is our decision in *Das v. Das*, featuring a husband's collateral challenge to a default judgment of absolute divorce entered in favor of his wife. 133 Md. App. at 6. The couple had separated following domestic violence allegations and the entry of a temporary protective order against the husband. *Id.* at 7. Facing a losing custody battle, the husband took the extraordinary step of fleeing to Japan and India with one of their minor children. *Id.* at 8. In his absence, the wife continued to assert assorted family law proceedings, and requested an order of default judgment against him. *Id.* at 8–9. The clerk of court mailed this notice of default order to the husband's stateside address. *Id.* When the husband moved to vacate the judgment on the grounds of extrinsic fraud, we rejected his claim, reasoning that his own failure to "keep the court enlightened of his address" and his actions to evade jurisdiction were at the heart of his misfortune. *Id.* at 19.

Taken together, the principles articulated in these decisions compel the same result in this case. Liccione authorized service by mail and was aware of his default. He has not suggested that the New York Address is invalid, and there is no indication that the first-class mail sent there was returned undeliverable. His failure to keep the court apprised of his proper address following his departure from the Property does not invalidate the Substitute Trustees' reasonable efforts to effect service. *See Das*, 133 Md. App. at 19–20 (litigants have continuing duty to inform court of their address). And while the Substitute Trustees might have had "at least some notice" of Liccione's incarceration, the facts fail to

establish fraud. *Cf. id.* at 19 (wife's knowledge of husband's India address insufficient to demonstrate "deliberately deceptive artifice" (internal citation omitted)). Accordingly, we affirm the circuit court's denial of Liccione's motion to vacate.

Failure To Provide A Hearing

In Question 5, Liccione contends that the circuit court committed reversible error by failing to schedule a hearing on his motions. Maryland Rule 2-311(f) provides that a court must provide a hearing for any motion that is dispositive of a claim or defense, provided a hearing is requested by one of the parties. We have previously characterized a dispositive decision as "one that conclusively settles a matter." *Pelletier*, 213 Md. App. at 292. Such a decision must "actually and formally dispose of the claim or defense. It is not enough that it is the functional equivalent of a dispositive decision or that it lays the inevitable predicate for such a decision." *Logan v. LSP Marketing Co.*, 196 Md. App. 684, 696 (2010).

The exercise of a court's revisory power is not ordinarily dispositive, as the relevant issues have already been decided in the underlying judgment.[5] *Lowman v. Consolidated Rail Co.*, 68 Md. App. 64, 75 (1986). *See also, e.g.*, *Miller v. Mathias*, 428 Md. 419 (2012) (no hearing necessary for post-judgment motion in child custody action); *Pelletier*, 213 Md. App. at 293 (no hearing necessary for post-ratification challenge to foreclosure sale).

[5] This rule is compelled by principles of res judicata. As we held in *Pelletier v. Burson*, 213 Md. App. 284, 292–93 (2013), "[i]f the possibility that the court might reconsider or revise its decision would prevent that decision from being dispositive of a claim or defense, then even final, i.e., appealable, judgments could be said not to be dispositive, because even they might be subject to revision."

Liccione's motion to vacate is no exception. Ratification—not reconsideration—is dispositive of the validity of the foreclosure sale, except in cases of fraud or illegality. *See Pulliam v. Dyck-O'Neal, Inc.*, 243 Md. App. 134, 148 (2019) ("The effect of a final ratification of sale is res judicata as to the validity of such sale, except in the case of fraud or illegality.") (cleaned up). Accordingly, the circuit court did not abuse its discretion by refusing to hold a hearing for Liccione's motion to vacate.

Regarding Liccione's exceptions, Rule 14-305 separately provides that a court "shall hold a hearing if a hearing is requested and the exceptions or any response clearly show a need to take evidence." The circuit court denied Liccione's exceptions because they were untimely. This was a purely procedural decision that required no consideration of the merits, and no evidence beyond the direct and unambiguous facts of the date of the sale and the date of the filing. Accordingly, the circuit court did not abuse its discretion by refusing to hold a hearing for Liccione's exceptions to the sale.

Failure To Appoint A Legal Guardian

Finally, in Question 4, Liccione asserts that the circuit court should have appointed a legal guardian to represent his interests in light of his incapacity. For this proposition, Liccione cites Maryland Code (1984, 2012 Repl. Vol.), § 5-1013(d) of the Family Law Article ("FL"), which provides that a court "may take any action and order any proceedings that the court considers just and proper to protect a party under legal disability." As an initial matter, this provision is inapplicable in these circumstances. Title 5 of the Family Law Article, "Children," applies to children in cases governed by family law. *See* FL § 5-

1002(b) ("The purpose of this subtitle is: (1) to promote the general welfare and best interests of children born out of wedlock . . . and (3) to simplify the procedures for determining paternity . . . .").

A more appropriate predicate for Liccione's claim is Maryland Rule 2-202(d), "Suits Against Individuals Under Disability," which provides:

> In a suit against an individual under disability, the guardian or other like fiduciary, if any, shall defend the action. The court shall order any guardian or other fiduciary in its jurisdiction who fails to comply with this section to defend the individual as required. If there is no such guardian or other fiduciary, the court shall appoint an attorney to represent and defend the individual.

The use of the word "shall" indicates that the duty to appoint a guardian is mandatory and cannot be waived at the discretion of the court. *Ginnavan v. Silverstone*, 246 Md. 500, 505 (1967). Nevertheless, two independent considerations compel that we reject Liccione's challenge.

First, this issue is unpreserved, as Liccione did not challenge the court's failure to appoint a guardian in his motion to vacate. Maryland law contains sparse authority on the effects of a court's failure to appoint a guardian to represent an incompetent defendant. What precedent exists demonstrates that this failure is not a jurisdictional defect that voids a judgment outright, *Pendergast v. Young*, 188 Md. 411, 417 (1947), but an irregularity that renders a judgment voidable, and vulnerable to a motion to vacate. *See Kemp v. Cook*, 18 Md. 130, 138 (1861). This interpretation accords with the predominant view among other jurisdictions. *See, e.g.*, *Mitchell v. Gales*, 61 A.3d 678 (D.C. 2013); *McCaughey v. Lester*, 278 P.2d 826 (Okla. 1954) (judgment can be vacated on grounds of fraud); *Hood*

v. Holding, 171 S.E. 633 (N.C. 1933) (judgment can be vacated on grounds of irregularity); *Williams v. Pyles*, 363 S.W.2d 675 (Mo. 1963) (judgment only subject to direct review, and cannot be challenged collaterally). As Liccione did not present this issue in his motion to vacate, it is not properly before us on appeal.

Second, even were the issue preserved, Liccione presents no meritorious defense to the foreclosure itself. A court's revisory jurisdiction is a function of equity and generally has no applicability unless the movant has presented a meritorious defense. *See Olivera*, 122 P.2d at 569. In *Home Life Ins., Co., v. Cohen*, 270 N.W. 256 (Mich. 1936), the plaintiff moved to vacate a ratified foreclosure sale in circumstances almost identical to this case. *Id.* at 256. Her principal allegation was that she had been committed to a state institution throughout the foreclosure proceedings, and that no guardian had been appointed to represent her interests. The court rejected this assertion, as she had presented no meritorious defense. *Id.* at 257. She failed to demonstrate that her debt had been paid, or that her incompetence had interfered with her ability to pay. *Id. Cf. Hodges v. Phoenix Mut. Life Ins. Co.*, 255 P.2d 627, 632 (Kan. 1953) (granting motion where the plaintiff had sufficient funds and incompetence directly precluded his ability to pay). Likewise, Liccione has neither contested his default, nor asserted that his adjudication of incapacity—occurring almost a full year after his default—interfered with his ability to make his payments.

In sum, Liccione's guardianship challenge relies on an improper statutory provision, raised outside of the correct procedural context, presenting no meritorious defense to the

foreclosure proceedings. In these circumstances, an exercise of the court's revisory judgment would be plainly inapposite.

CONCLUSION

It is imperative that every litigant is given a full opportunity to assert their rights and defend their interests in court. But it is axiomatic that there be some point in time where a matter is laid to rest, and a judgment becomes final. *See Leadroot*, 147 Md. App. at 683; *Manigan*, 160 Md. App. at 121 ("Once the decision has been rendered and the litigants, if they so choose, have exhausted every means of reviewing it, the public policy of this State demands that there be an end to that litigation."). The issues raised by Liccione simply offer far too little, and come far too late, to overcome this principle. His exceptions were untimely, his procedural challenges were unpreserved and are unavailing, and his motion to vacate fails to establish extrinsic fraud. Accordingly, we affirm the judgment of the circuit court.

JUDGMENT OF THE CIRCUIT COURT FOR HOWARD COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.