Circuit Court for Baltimore City
Case No. 24-C-17-002650

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1173

September Term, 2018

D'URVILLE A. CHRISTOPHER, SR.

v.

2015 ULTRA-SAFE FUND, LLC

Berger,
Leahy,
Shaw Geter,

JJ.

Opinion by Berger, J.

Filed: October 23, 2019

*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.

This is an appeal from the denial, by the Circuit Court for Baltimore City, of a motion to dismiss a complaint to foreclose the right of redemption in a tax sale proceeding. Appellant is D'Urville A. Christopher, Sr., an interested party in the real property and a defendant in the redemption foreclosure action, and appellee is 2015 Ultra-Safe Fund, LLC ("Ultra-Safe"), the purchaser of the property at tax sale and the plaintiff in the redemption foreclosure action.

Christopher, *pro se*, raises three questions for our review, which we have consolidated and reworded:

> Did the circuit court err or abuse its discretion in denying Christopher's motion to dismiss Ultra-Safe's complaint to foreclose the right of redemption?[1]

For the reasons that follow, we will dismiss Christopher's appeal.

BACKGROUND

On May 18, 2015, Ultra-Safe purchased the real property located at 3518 W. Belvedere Avenue in Baltimore City ("the property") by tax sale at public auction, after

[1] The questions as presented by Christopher are:

1. Did the Judge commit a judicial error by not properly disposing of the extra actions in this case in accordance with (IAW) Md. Rule 2-602?

2. Did the Judge's error violate the Defendant's procedural due process rights in general?

3. Did the Judge err[ ] by not ruling on the preliminary motions prior to his final disposition?

Shirley and Alfred Howell, the record owners, failed to pay $1104.80 in property taxes and costs for the 2014/2015 tax year.[2] On May 15, 2017, after providing the requisite notice to interested parties, Ultra-Safe filed a complaint to foreclose the right of redemption against the Howells.[3]

On June 21, 2017, Howell and Christopher, as a "private citizen who also has interest in the property," filed a "motion for dismissal against tax sale and complaint to foreclose rights of redemption."[4] In the motion they claimed that Howell, in August 2016, had paid the City of Baltimore all delinquent and current property taxes levied on the property. The motion also asserted that Christopher, on active duty in the United States Navy, and his mother, a military dependent, were protected from any sale, foreclosure, or seizure of the property, pursuant to the Servicemembers' Civil Relief Act ("SCRA"), 50 U.S.C. App. §§501-596b. Christopher and Howell sought relief in the form of dismissal of the tax sale and the return of "all monies paid to 2015 Ultra-Safe Fund, LLC" relating to the property.

[2] Alfred Howell died on December 7, 2000. The property was re-deeded to Shirley Howell as sole owner on December 20, 2016, providing her a life estate with powers, with the property passing to Christopher, her son, as sole owner upon her death. Shirley Howell is not a party to this appeal.

[3] Ultra-Safe amended its complaint to add Christopher as an interested party on March 14, 2018. Pursuant to assignment by Ultra-Safe, Katana Properties, LLC, became the substitute plaintiff on July 23, 2018. For clarity, we will refer to both parties as Ultra-Safe.

[4] Christopher and Howell represented themselves throughout the pendency of the circuit court action.

In its response to Christopher's and Howell's motion to dismiss, Ultra-Safe asserted that "the question for this Court is not one of dismissal, but one of whether or not the tax sale certificate should be voided." Ultra-Safe took "no position whether or not Baltimore City should or should not void this sale." The court ordered the Mayor and City Council of Baltimore ("the City") to respond to Christopher's and Howell's motion by August 23, 2017.

On October 30, 2017, Christopher and Howell again moved for dismissal, on the ground that the City had not filed a timely response to their motion, as ordered by the court. The City filed its response to Christopher's and Howell's motion on December 11, 2017, claiming that the outstanding taxes Howell had paid in August 2016 related to the amounts due for tax years 2015-2016 and 2016-2017, which were subsequent taxes not included in the tax sale; because she had not paid the 2014-2015 taxes, the 2015 tax sale certificate remained valid. Moreover, Christopher did not gain any ownership interest in the property until December 15, 2016, after the tax sale had occurred.[5] And, the State concluded, Howell may not have been a dependent protected under the SCRA in 2014 and 2015, and even if she were, "that still does not invalidate the tax sale certificate."

The court denied Christopher's and Howell's motion for dismissal of the tax sale and the complaint to foreclose rights of redemption by written order dated March 23, 2018.[6]

[5] The life estate deed to Howell was signed by the parties on December 15, 2016 but was not recorded until December 20, 2016.

[6] It appears that there was a hearing on March 14, 2018, during which the court determined that Howell owed delinquent taxes for tax year 2014/2015. No hearing transcript has been made part of the record.

The court found that the SCRA was not applicable, because the preclusion of a sale to enforce the collection of a tax or assessment applies only to property owned by a servicemember individually or jointly with a dependent, and at the time the outstanding taxes were due, Howell was the sole owner of the property. The court ordered Christopher and Howell to redeem the property on or before May 14, 2018 or risk the court's entry of a judgment foreclosing the right of redemption.

On April 11, 2018, Christopher and Howell filed a motion for dismissal against writ of summons, stating that an April 3, 2018 tax lien search showed that Howell had, in fact, paid the delinquent tax amount due for the tax year 2014-2015, which payments included "the appropriate interests and fees associated with the property." Because Ultra-Safe had received "all monies owed," they continued, the apparent "administrative error" by the City required a dismissal.

Ultra-Safe responded that the payment to which Christopher referred was made on May 18, 2015, the same date Ultra-Safe paid the taxes and was provided a tax sale certificate. Ultra-Safe averred that "Baltimore City would be the proper party to answer who made the payment on 5/18/15." In its response, the City added that the documents supplied by Christopher and Howell did not indicate that *Howell* had paid the 2014/2015 taxes, only "that the taxes were paid, in general." Because the exhibit showed that the taxes were paid on the date of the tax sale, the City asserted that they were paid by Ultra-Safe and not by Howell, "and the exhibits attached to the pending Motion for Dismissal are insufficient to demonstrate otherwise."

Christopher and Howell replied that they had paid $3599.44 in cash, of which $1104.00 was for taxes and other municipal liens, but they conceded they had no receipt for the payment. Nonetheless, as the City had failed to provide a "strict accounting" as proof of which party had paid which fees, they averred that the City could not prove that it was not Howell who had made the payment.

On June 20, 2018, the court denied Christopher's and Howell's motion for dismissal. Christopher and Howell filed a notice of appeal on July 18, 2018. On August 30, 2018, Ultra-Safe moved to dismiss the property, "for reason that costs have now been paid" and the property was redeemed on July 27, 2018. The court dismissed the property, Christopher, and Howell, and further, closed the case on September 24, 2018.

DISCUSSION

In his brief, Christopher raises several arguments in support of his claim that the circuit court erred in its denial of his and Howell's motion to dismiss. We will not consider the substantive issues Christopher raises because several procedural failures require us to dismiss the appeal.

I. *Christopher's brief does not conform to the requirements of the Maryland Rules*

Christopher filed his initial brief with this Court on January 23, 2019. The brief did not conform to all applicable Maryland Rules, and on February 13, 2019, we ordered

Christopher to file a corrected brief in full compliance of the Maryland Rules on or before April 30, 2019, or risk dismissal of the appeal.[7]

Christopher filed another brief on March 20, 2019. The refiled brief was substantially similar to the original brief and did not contain all the required corrections. *First*, the refiled brief did not include a record extract containing all parts of the record reasonably necessary for the determination of the questions presented by the appeal. Although Christopher added the circuit court docket entries and the judgment from which he appealed, he did not order or include the transcript from the March 14, 2018 hearing, as required by Rule 8-411(a). He also failed to add any of the pleadings, exhibits, or court orders referenced in his brief. *Second*, Christopher did not, in the body of his brief, reference the pertinent pages of the record extract. *Finally*, his refiled brief added only some required page numbers in the table of contents.

These deficiencies provide bases for dismissal of the appeal. *Ubom v. SunTrust Bank*, 198 Md. App. 278, 285 n. 4 (2008). Nonetheless, were they the only problem, they would not be, alone, necessarily fatal to Christopher's appeal. *See Esteps Elec. &*

[7] The specific deficiencies in the brief included: (1) failure of the record extract to contain all parts of the record that are reasonably necessary for the determination of the questions presented by the appeal, including the circuit court docket entries and the judgment appealed from, as required by Md. Rule 8-501(a) and (c); (2) absence of table of contents for the record extract, as required by Rule 8-501(h); (3) failure of the record extract to be numbered consecutively from first page to last page, as required by Rules 8-501(i) and 8-503(a) and (b); (4) failure of the brief to reference the record extract, as required by Rule 8-503(b); (5) failure of the cover page to include the name of the trial court and each judge whose ruling is at issue, as required by Rule 8-503(c); and (6) failure of the table of contents and table of citations to contain page numbers, as required by Rule 8-504(a).

Petroleum Co. v. Sager, 67 Md. App. 649, 657 (1986) (although "dismissal may be an appropriate sanction, whether to employ it is a matter left to the exercise of this Court's discretion"). The deficiencies in the brief are not, however, the only, or the most severe, problem with the appeal.

II. *The appeal was not taken from a final judgment*

Appeals may be taken to this Court, with few exceptions, only from a final judgment entered by a circuit court in a civil or criminal case. *Miller & Smith at Quercus, LLC v. Casey PMN, LLC*, 412 Md. 230, 241 (2010). As the Court of Appeals explained in *Miller & Smith at Quercus*,

> [t]o qualify as a final judgment, an order 'must either decide and conclude the rights of the parties involved or deny a party the means to prosecute or defend rights and interests in the subject matter of the proceeding,' *Nnoli* [*v. Nnoli*], 389 Md. [314,] 324 [2005], and must, ordinarily, satisfy three criteria:
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> > (1) [I]t must be intended by the court as an unqualified, final disposition of the matter in controversy, (2) unless the court properly acts pursuant to Md. Rule 2-602(b), it must adjudicate or complete the adjudication of all claims against all parties, and (3) the clerk must make a proper record of it in accordance with Md. Rule 2-601.
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> *Rohrbeck v. Rohrbeck*, 318 Md. 28, 41, 566 A.2d 767, 773 (1989). In considering whether a particular court order or ruling constitutes a final, appealable judgment, we have looked to whether the order was 'unqualified,' and whether there was 'any contemplation that a further order [was to] be issued or that anything more [was to] be done.' *Rohrbeck*, 318 Md. at 41-42, 566 A.2d at 774 (citations omitted) (alterations in original).

412 Md. at 242-43.

In a tax sale, after the sale, the owner of the property, and any other person having an equitable interest in the property, has the right to redeem title to the property by reimbursing the tax sale purchaser for the taxes and other expenses paid. *PNC Bank, Nat'l Ass'n v. Braddock Props.*, 215 Md. App. 315, 322-23 (2013). After a period of six months, the tax sale purchaser may acquire fee simple title to the property by filing a complaint in the circuit court to foreclose all rights of redemption of the property. *Id*. Until the right of redemption has been finally foreclosed, however, the property owner may redeem the property at any time. *Simms v. Scheve*, 298 Md. 1, 4 (1983).

In general, the final appealable judgment in a tax sale proceeding is the order foreclosing the right of redemption. *Quillens v. Moore*, 399 Md. 97, 116 (2007). No such judgment was issued in this matter. The court's denial of Christopher's and Howell's motion to dismiss did not foreclose their right to redeem the property and did not operate as a final judgment. Therefore, Christopher's appeal was not taken from a final judgment, and his appeal is premature. Because this Court acquires no jurisdiction over a premature appeal, we must dismiss the appeal.[8] *McLaughlin v. Ward*, 240 Md. App. 76, 84 (2019).

III. *The appeal is moot*

In addition, Christopher's appeal from the circuit court's order denying his motion to dismiss is moot. A case is moot when there is "no longer an existing controversy when

[8] There are three exceptions to the final judgment requirement: appeals from interlocutory orders specifically allowed by statute; immediate appeals permitted under Rule 2-602; and appeals from interlocutory rulings allowed under the common law collateral order doctrine. *Salvagno v. Frew*, 388 Md. 605, 615 (2005). None of the exceptions apply here.

the case comes before the Court or when there is no longer an effective remedy the Court could grant." *Suter v. Stuckey*, 402 Md. 211, 219 (2007). Courts do not entertain moot controversies. *Id.* at 219-20. Therefore, "we generally dismiss moot actions without a decision on the merits." *Dep't of Human Res., Child Care Admin. v. Roth*, 398 Md. 137, 143 (2007).

Subsequent to the filing of Christopher's notice of appeal, Christopher and Howell redeemed the property by paying the outstanding taxes, after which the City and Ultra-Safe dismissed the property, Christopher, and Howell. The City further released the property from tax sale. Therefore, there is no longer an existing controversy, nor an effective remedy we can grant Christopher.[9]

APPEAL DISMISSED; COSTS TO BE PAID BY APPELLANT.

[9] An appellate court may address the merits of a moot case if "a controversy that becomes non-existent at the moment of judicial review is capable of repetition but evading review," or if we wish to express our views on the merits to prevent harm to the public interest. *Sanchez v. Potomac Abatement, Inc.*, 198 Md. App. 436, 443 (2011), *aff'd*, 424 Md. 701 (2012). In our view, neither of those circumstances exists in this matter.