

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1235

September Term, 2014

OLAKUNLE OYEBANJO

v.

LAKESIDE REO VENTURES, LLC

Krauser, C.J.,
Graeff,
Friedman,

JJ.

Opinion by Graeff, J.

Filed: August 12, 2015

*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 case arises from the tax sale auction of a property, which was owned by Olankunle Oyebanjo, appellant, and located at 2008 Browns Lane (the “Property”). After purchasing the Property at the tax sale, Woods Cove LLC filed a complaint in the Circuit Court for Prince George’s County to foreclose Mr. Oyebanjo’s right of redemption. Lakeside REO Ventures LLC, appellee, was later substituted as a party in place of Woods Cove. On June 27, 2014, the circuit court entered an order foreclosing Mr. Oyebanjo’s right of redemption.

On appeal, Mr. Oyebanjo, an unrepresented litigant, asserts one issue for our review, which we have rephrased, as follows:

Did the circuit court err in failing to hold a hearing on Lakeside’s motion for a final judgment foreclosing the right of redemption?

For the reasons set forth below, we shall affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

On May 9, 2011, Woods Cove LLC purchased the Property at a tax sale. On November 18, 2011, Woods Cove filed a complaint to foreclose Mr. Oyebanjo’s right of redemption in the Property. On December 12, 2011, the circuit court issued an order of posting, directing “a competent private person, appointed by the Plaintiff, who is 18 years of age or older,” to post notice at the Property advising all interested persons that a request to redeem the property must be made prior to February 10, 2012. Also on December 12, 2011, the circuit court issued an order of publication stating that service of notice on the defendants to the foreclosure action could be accomplished through “publication of a Notice at least once a week in each of three successive weeks in *The Enquirer-Gazette*[.]”

a newspaper of general circulation in Prince George's County." On February 25, 2013, Woods Cove filed an affidavit of posting affirming that, on February 21, 2012, Matthew Morgan posted a copy of the complaint, a summons for Mr. Oyebanjo, the order of posting, the order of publication, and a notice to interested parties at the Property.

On August 28, 2013, Woods Cove filed a "Motion to Set Hearing to Determine Date for Entry of Final Order Foreclosing All Rights of Redemption." Woods Cove noted that all of the defendants were timely served, that "the time limit set in the order of publication and the summons ha[d] expired," and that none of the defendants had redeemed the Property. The circuit court set a status hearing for the case on February 20, 2014. The record reflects that Mr. Oyebanjo was notified of the hearing.

Mr. Oyebanjo failed to appear at the status hearing. The court set the case for another hearing on February 28, 2014. Neither party appeared at that hearing. The court set the case for yet another hearing on March 14, 2014. On February 28, 2014, Woods Cove moved for a final judgment foreclosing the right of redemption as to all interested parties of the Property.

On May 13, 2014, counsel for Woods Cove filed a Notice of Party Substitution Pursuant to Rule 2-241, substituting Lakeside REO Ventures LLC for Woods Cove. On June 10, 2014, the court issued a notice that it had set the case for a hearing on June 27, 2014. The record reflects that Mr. Oyebanjo was notified of the hearing.

On June 27, 2014, the circuit court issued an order foreclosing Mr. Oyebanjo's right of redemption. In his brief, Mr. Oyebanjo alleges that no hearing was held. Lakeside does not dispute this allegation.

DISCUSSION

Before addressing Mr. Oyebanjo's contentions, we will review briefly the statutory scheme dealing with tax sales. Maryland Code (2012 Repl. Vol.) Tax Property Article, Title 14, Subtitle 8, Part III, § 14-808 - § 14-854 addresses tax sales of property for which taxes have not been paid. After notice of the sale is given pursuant to §§ 14-812 and 14-813, the sale is conducted by public auction, pursuant to § 14-817. The person purchasing the property is required to pay the amount of unpaid taxes, interest, penalties, and expenses incurred in the sale, and the remainder is due when the owner's right to redemption is foreclosed. § 14-817.1, 14-818. The purchaser receives notice that the owner of the property may redeem the property by paying the unpaid taxes, plus further accruing taxes, interest, fees, and penalties. § 14-828. With exceptions not applicable here, the purchaser of the property may institute an action to foreclose the right of redemption six months after the sale.

Mr. Oyebanjo's sole argument on appeal is that the circuit court erred in foreclosing his right of redemption without a hearing. His argument, in its entirety, is as follows:

The Circuit Court for Prince George's scheduled a Hearing about the property at 2008 Browns lane, No hearing was ever held. At a hearing, the Appellant would have had the opportunity to present facts under oath of the material changes in his circumstances to be considered before the judgment was made by the Circuit Court. By denying the Appellant a hearing, The Circuit Court denied the Appellant due process and his/her day in court as required Maryland Rule 2-311(f).

As the Circuit court failed to follow the requirement of Maryland Rule 2-311(f), its decisions in denying Appellant a hearing were not legally correct.^[1]

Lakeshore contends that the court properly granted judgment foreclosing the right of redemption. It asserts that the court did not err in denying the motion without a hearing because Mr. Oyebanjo did not request a hearing.

Maryland Rule 2-311(f) provides as follows:

Hearing—Other Motions. A party desiring a hearing on a motion, other than a motion filed pursuant to Rule 2-532, 2-533, or 2-534, *shall request the hearing in the motion or response under the heading “Request for Hearing.” The title of the motion or response shall state that a hearing is requested.* Except when a rule expressly provides for a hearing, the court shall determine in each case whether a hearing will be held, but the court may not render a decision that is dispositive of a claim or defense without a hearing *if one was requested as provided in this section.*

(Emphasis supplied). As the emphasized portions of the Rule indicate, and as the Court of Appeals has explained, the circuit court is obligated to hold a hearing only if one is requested. *See Miller v. Mathias*, 428 Md. 419, 441-43 (2012) (Rule 2-311(f) did not require the circuit court to hold a hearing because the appellant never requested a hearing). Here, Mr. Oyebanjo never requested a hearing. As such, the circuit court was not required to hold one.²

¹ In his statement of facts, Mr. Oyebanjo requests that this Court: (1) modify the circuit court’s order to allow him to sell the property and pay the tax lien; or (2) remand the case to the circuit court for a hearing. Lakeside correctly notes that an order by this Court modifying the circuit court’s order to allow Mr. Oyebanjo to sell the Property is not an available remedy.

² We note that, although the circuit court *sua sponte* set the case for a hearing, it did so on June 13, 2014, months after Mr. Oyebanjo was required to request a hearing pursuant to Rule 2-311(f). Given these circumstances, the court’s subsequent (continued . . .)

To the extent that Mr. Oyebanjo asserts that he was denied due process, we reject that contention. In *McDermott v. BB&T Bankcard Corp.*, 185 Md. App. 156, 170 (2009), this Court emphasized that the essence of due process “is the *opportunity* to be heard.” (quoting *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)). In *McDermott*, the appellant argued that he was denied due process because the circuit court struck his request for a jury trial without a hearing. *Id.* We noted that the Maryland Rules permitted him to request a hearing, but he never requested one. *Id.* at 169-70. Because he was afforded the opportunity to request a hearing, we held that he was not denied due process. *Id.* at 170.

Similarly, here, Mr. Oyebanjo had the opportunity to request a hearing by responding to the motion for judgment and informing the court that he desired a hearing. He did not do so. Because he was afforded the opportunity to do so, however, he was not denied due process.

Finally, we note that Mr. Oyebanjo’s proffer regarding the testimony he would have presented if there had been a hearing, regarding “changes in his circumstances to be considered before the judgment was made” would not have affected the outcome of this matter. There is no provision in the Tax Property Article that provides that a “change in circumstances” is a defense to the foreclosure of the right of redemption. Thus, even if Mr. Oyebanjo had been given to a hearing pursuant to his proffer, he would not have presented any valid defense. Any error on the part of the circuit court in not holding a hearing, therefore, was not prejudicial. See *Catler v. Arent Fox, LLP*, 212 Md. App. 685, 725 (to

(. . . continued) decision to rule without a hearing did not violate the requirement of Rule 2-311 that the court conduct a hearing upon request.

obtain reversal in a civil case, a party must show prejudice), *cert. denied*, 435 Md. 502 (2013). Accordingly, even if we were persuaded that the court erred in granting judgment without a hearing, which we are not, appellant would not be entitled to reversal of the court's order.

**JUDGMENT OF THE CIRCUIT
COURT FOR PRINCE GEORGE'S
COUNTY AFFIRMED. COSTS TO
BE PAID BY APPELLANT.**