

Circuit Court for Prince George's County
Case No. CAE15036970

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1447

September Term, 2017

GREGORY SLATE

v.

THORNTON MELLON, LLC, *et al.*

Reed,
Gould,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Reed, 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 seemingly simple tax case has had a long, extensive history of various issues but ultimately, this appeal should only concern an issue of reimbursement.

On May 11, 2015, Thornton Mellon, LLC (hereinafter Appellee¹) purchased Gregory Slate's (hereinafter "Appellant") property at a tax sale. The property involved a residential condominium unit located at 7401 18th Avenue Unit 16, Hyattsville, MD 20783 (hereinafter "the Property"). On November 30, 2015, Appellee filed a Complaint to Foreclose Appellant's Right to Redemption. On December 3, 2015, Appellant learned of the foreclosure action.

On December 21, 2015, Appellant filed a Motion to Dismiss, and after a hearing on April 1, 2016, the circuit court granted Appellant's Motion to Dismiss. On April 11, 2016, Appellee filed a Motion to Correct Prior Judgment in this Cause and to Reinstate the Case (hereinafter "Motion to Correct"), requesting a modification of the April 1, 2016 Order. On May 4, 2016, the circuit court amended its order to include a statement that Appellant's Motion to Dismiss was granted without prejudice and with leave to amend. Further, without a hearing, on June 13, 2016, the circuit court granted Appellee's Motion to Correct, reinstating the matter, and withdrawing the prior order dismissing the cause.

Following the circuit court's reinstatement of the case, on June 28, 2016, Appellee filed an Amended Complaint. On September 26, 2016, Appellee also filed a Motion for Order Foreclosing Rights of Redemption. Subsequently, the circuit court granted the Motion for Judgment Foreclosing the Right to Redemption, filed February 16, 2017. The

¹ Appellee did not file a brief in this matter.

circuit court held a hearing on July 7, 2017, and ordered that Appellant had until “the end of July” to pay the fees and taxes owed to Appellee to redeem the Property. Appellant tendered two cashier’s checks to Appellee in the amount of \$6,680.75.²

On August 11, 2017, having learned that Appellant received the lien release, paid the county taxes, and redeemed the Property, the circuit court dismissed the case. It is from this decision that Appellant files this timely appeal.³

Appellant presents the following questions for our review, which we have reordered and rephrased for clarity:⁴

² This amount included the amount of attorney’s fees and costs owed to Appellee, in addition to the amount of taxes owed.

³ Originally, because the circuit court did not dismiss the action in its written order on August 11, 2017, did not acknowledge that the redemption amount had been paid, and did not enter an order on Appellee’s Motion to Dismiss, a final judgment did not exist, and a panel of the Court of Special Appeals “exercised its discretion to remand the case back to the Circuit Court for Prince George’s County, without affirmance or reversal, for it to consider whether to dismiss the action on its own motion or on the motion earlier filed by [Appellee].” *See* Memorandum, Chief Judge Matthew J. Fader. *See also* R. 492. On May 21, 2019, Judge Mittelstaedt granted Appellee’s Motion to Dismiss, and ordered that all claims pending were dismissed, with prejudice. R. 503

⁴ Appellant presents the following questions:

1. Whether the trial court erred in violation of Maryland Rule 2-311(e) when, after dismissing the underlying action, it reinstated the action without holding any hearing?
2. Because the plaintiff willfully failed to show the notice requirements under § 14-836(b)(4)(i), did the circuit court have jurisdiction to foreclose the Homeowner right to redemption in the subject property?
3. Whether the trial court erred in foreclosing the Homeowner’s right to redemption without first addressing his defense of invalidity of tax sale and lien, due to prior overpayment of taxes, as plead in his Amended Answer.

- I. Did the circuit court have jurisdiction to foreclose the right to redemption when Appellee failed to follow notice requirements pursuant to § 14-836(b)(4)(i)?
- II. Did the circuit court err when it did not hold a hearing when granting Appellee’s Motion to Correct, pursuant to Maryland Rule § 2-311(e)?
- III. Did the circuit court err when it did not address Appellant’s defense of “invalidity of the tax sale and lien” before foreclosing Appellant’s right to redemption?
- IV. Did the circuit court err in prohibiting Appellant from recovering funds paid that exceeded the amounts allowed under Maryland Rule § 14-843 to redeem his Property?⁵

For the following reasons, we affirm in part and reverse in part and thus, remand to the circuit court for further proceedings in accordance of this opinion.

FACTUAL AND PROCEDURAL BACKGROUND

Appellant is the fee simple owner of a residential condominium unit. On or about October 7, 2011, Appellant’s property taxes were reduced when the assessed value of the Property was lowered from \$80,000 to \$27,000. Because Appellant believed that he was due a refund for overpaying his taxes based on an “inflated assessed value” on the Property, Appellant stopped paying his property taxes. On May 11, 2015, a tax sale certificate was issued by Prince George’s County (hereinafter “the County”) to Appellee with respect to

-
4. Whether the trial court erred in ordering the Homeowner relinquish [sic] funds exceeding the amounts allowed under Maryland § 14-843 to redeem his property.

⁵ Because Appellant did, in fact, redeem the Property at issue, questions (1) – (3) are essentially moot, and this court should only address question (4). Be that as it may, we will address each of the Appellant’s issues in turn.

the Property. On November 11, 2015, Appellee filed an Affidavit of Compliance with Tax-Property §14-833(a-1).

A. Original Complaint

On November 30, 2015, Appellee filed a Complaint to Foreclose Appellant’s Right of Redemption, as “more than six (6) months [had] passed since the sale and the Property [had] not been redeemed by any party in interest.” Appellant became aware of the foreclosure action when he searched his name in the Maryland Judiciary case search to locate one of his other cases. Subsequently, Appellant reached out to Geoffrey Polk (hereinafter “Polk”), an out-of-state attorney who represented Appellee, in order to ascertain the redemption amount and to request service of the summons and complaint via email. Due to unpleasant communication and distrust between Appellant and Polk, Appellant was directed to Polk’s website in order to find the redemption amount, and Polk served Appellant at three different addresses to comply with service procedures, even though Appellant advised Appellee that those addresses were not his addresses.

B. Motion to Dismiss and Reinstatement

Consequently, on December 21, 2015, Appellant filed a Motion to Dismiss. In Appellant’s motion, Appellant asserts that (1) the complaint fails to state a redemption amount, per Maryland Rule (hereinafter “Md. Rule”) § 14-501(b)(4) and (2) the complaint was not accompanied by an affidavit compliant with Md. Rule § 14-502(c)(4)(A). Appellant did not raise the issue of insufficiency of process or the invalidity of his tax lien in the Motion to Dismiss.

On January 29, 2016, Appellee filed a Line to the circuit court, stating that Appellant did not serve a copy of the Motion to Dismiss on Appellee, requesting that the court strike the Motion to Dismiss due to lack of service and that the circuit court provide Appellee with the Motion to Dismiss filed by Appellant.⁶ Appellee received the Motion to Dismiss from the Clerk of the Court on February 12, 2016. On February 17, 2016, Appellee filed a Motion to Strike Appellant’s Motion to Dismiss and Request for a Hearing. In this motion, Appellee asserted that the Motion should be stricken from the record because Appellant’s Motion to Dismiss failed to include a Certificate of Service. On this day, Appellee also filed a Revised Affidavit of Compliance with Tax-Property § 14-833(a-1) and Md. Rule 14-502.⁷ Ironically, the circuit court denied Appellee’s Motion to Strike, as that Motion did not contain a certificate of service. On March 16, 2016, Appellee responded to Appellant’s Motion to Dismiss and Request for a Hearing, asking for a denial of the Motion to Dismiss.

Following a hearing on April 1, 2016, the circuit court granted Appellant’s Motion to Dismiss. Ten days afterwards, on April 11, 2016, Appellee filed a Motion to Correct Prior Judgment and Reinstate this Case and Request for Hearing and Appellant responded in Opposition to the Motion to Correct, also requesting a hearing.

⁶ Polk also requested that the court take Judicial Notice of Appellant’s prior cases that have been dismissed due to lack of service of process.

⁷ The Revised Affidavit included the date for the second notice, as well as attached evidence of the mailing of the second notice. It should also be noted that the date for the first notice changed from September 11, 2015 on the November 12, 2015 affidavit to September 14, 2015 on the February 17, 2016 affidavit.

On May 4, 2016, the circuit court issued an Amended Order, stating “[I]t has come to this Court’s attention that [Plaintiff Thornton Mellon LLC] requests a modification of an Order, dated April 1, 2016 to include that it is without prejudice and with leave to Amend.” The circuit court ordered that the April 1, 2016 Order be amended to include that the Motion to Dismiss is granted without prejudice and with leave to amend. Immediately, Appellee filed a Response to Appellant’s Opposition of the Motion to Correct. Without a hearing, on June 13, 2016, the circuit court granted the Motion to Correct, reinstating the matter and withdrawing the dismissal of the case.

C. Amended Complaint

On June 28, 2016, Appellee’s amended complaint was filed. On September 26, 2016, Appellee filed a Motion for Order Foreclosing Rights of Redemption. Thereafter, on October 17, 2016, Appellant filed an Amended Answer, and again, did not plead “invalidity of the tax sale, tax lien and tax sale certificate.” While the record is not clear, at some point in October of 2016,⁸ the circuit court granted the Motion to Order Foreclosure of the Right of Redemption, but this Order was never docketed.⁹ Nevertheless, a litany of pleadings followed this Order.¹⁰

⁸ It is likely that this Order was signed between October 1, 2016 – October 19, 2016, as Appellant filed a Response in Opposition to the Motion to Foreclose on October 20, 2016.

⁹ Per the record, Judge Mittelstaedt had originally signed the Motion for Judgment Foreclosing the Right to redemption in October of 2016, but the Order was never docketed. (Judge Mittelstaedt signed it before she discovered all the pending motions in the case).

¹⁰ These pleadings included, but are not limited to: Third-Party Claim against Geoffrey Polk; Appellant’s Cross-Complaint Against Prince George’s County (and subsequent answers and Motions of response and opposition); Appellee’s Motion to Declare Appellant

A hearing was held on the various motions filed on February 16, 2017. In finding that the Appellant had not properly raised the issues of notice and invalidity of the tax sale, the circuit court granted the Motion to Order Foreclosure of the Right to Redemption. Subsequently, Appellant filed a Motion to Alter [the] Court’s Judgment and Request for a Hearing¹¹ and a Motion to Vacate the Judgment;¹² Appellee filed a Writ of Possession.¹³

D. Redemption of the Property

A hearing on these motions was held on July 7, 2017. Appellant appeared at the hearing with three cashier’s checks, in hopes of redeeming the Property. The first cashier’s check represented the statutorily allowed fees and costs, in the amount of \$2,962.51, made out to Appellee. The second cashier’s check represented “extraordinary legal fees,” in addition to the amount of back taxes and interest owed to the County, in the amount of

in Bad Faith and Request for Attorney[’s or s’] Fees (and subsequent Motions in response and opposition); Motion to Set Redemption Amount; Motion for Extraordinary Attorney Fees (and subsequent Motions of response and opposition); and a Motion to Vacate the “Yet-to-be-Docketed” Order Foreclosing the Right to Redemption.

¹¹ Filed February 27, 2017.

¹² Filed March 8, 2017.

¹³ Filed March 10, 2017.

\$3,718.24, made out to Appellee.¹⁴ The third cashier's check represented the amount of back-owed taxes, in the amount of \$1,832.49, payable to the County.¹⁵

In an effort to permit Appellant to redeem the Property, the court calculated the amount that Appellant would need to pay Appellee in order to redeem. The total Appellant was informed he would have to pay included: (1) the statutorily allowed fees and costs for the foreclosure sale, in the amount of \$2,962.51; (2) the total of taxes owed, in the amount of \$1,832.00; and (3) the statutorily allowed attorney's fees, in the amount of \$1,500.¹⁶ This totaled \$6,294.51. Appellant inquired if the \$6,294.51 amount included the taxes owed, and the court responded, "it includes everything". The circuit court instructed Appellant that he had until July 31st to redeem the Property.

Yet, Appellant wanted to pay Appellee immediately. Appellee's counsel was hesitant to accept the two cashier's checks¹⁷ made out to Appellee from the Appellant and informed the court that [he] (Appellee's counsel) preferred that Appellant pay the fees according to his client's (Appellee) procedure. Even so, due to Appellant's insistency that

¹⁴ Appellant had a cashier's check with the tax amount owed to the County made out to Appellee because Appellee had previously demanded that the taxes be paid through them.

¹⁵ Appellant had a cashier's check with the tax amount owed to the County made out to Prince George's County, in the event the circuit court ordered Appellant to pay the County, rather than Appellee.

¹⁶ The court denied Appellee's request for extraordinary fees.

¹⁷ The two checks given were for the amounts of \$3,718.24 and \$2,962.51, respectively.

he immediately pay Appellee to redeem his Property and get the lien release,¹⁸ at the instruction of the court, Appellee’s counsel accepted two of Appellant’s cashier’s checks, totaling \$6,680.75. When Appellant gave the two checks to Appellee in open court, he was informed by the Judge that he would not be able to get a reimbursement for the amount in excess of what he owed, to which Appellant replied, “I’m sure.” Afterwards, Appellant inquired if he would get his lien release to pay the County on that day, and the Appellee’s counsel noted that they would provide the release for Appellant to pay the taxes to the County.

Subsequently, Appellant paid the taxes and on August 2, 2017, Appellee filed a Motion to Dismiss. A hearing was held on August 11, 2017. At this hearing, when Appellant raised the fact that he had actually paid Appellee the taxes he had also paid the County, he was told he waived the refund. Consequently, the case was closed¹⁹ and Appellant filed this appeal.

DISCUSSION

A. Parties’ Contentions

Appellant submits that Appellee failed to comply with the notice provisions of Md. Rule § 14-833, and therefore, the circuit court did not have jurisdiction to enter a valid Order Foreclosing the Right to Redemption. In sending notices to addresses where

¹⁸ Due to the long history of the case and the history of distrust between the Appellant and Polk, Appellant was hesitant to walk out without paying Appellee.

¹⁹ Originally, the circuit court did not dismiss the action in a written order on August 11, 2017, and after remand from the Court of Special Appeals, the case was effectively “dismissed”.

Appellee allegedly knew Appellant did not live, Appellant contends that Appellee “failed to exercise the requisite due diligence” in locating his actual address. Thus, the circuit court lacked subject matter jurisdiction to enter a judgment or order in the underlying matter.

Appellant also argues that the trial court committed a “plain error” when they did not hold a hearing when granting Appellee’s Motion to Correct, violating Md. Rule § 3-211(e). Appellant contends that “this Court is compelled to reverse the trial court’s August 11, 2017 Order” because Appellee filed the Motion to Correct pursuant to Md. Rule § 2-534 and the court granted that Motion without a hearing, in violation of Md. Rule § 2-311(e), which states that the trial court may not grant a motion pursuant to 2-532, 2-533 or 2-534 without a hearing.” *Id.*

Further, Appellant maintains that due to an appeal regarding his Property’s assessed value, he overpaid his taxes and was due a refund. Therefore, Appellant contends that no back taxes were owed, and his Property should have never been sold at a tax sale. Appellant asserts that because he raised, as his twenty-third affirmative defense in his Amended Answer, “invalidity of the tax sale, tax lien, and tax sale certificate,” the circuit court should have had a hearing on his invalidity defense.

Finally, Appellant alleges that he was required to pay a total that exceeded the statutorily allowed amounts in fees and costs to redeem his Property. Specifically, Appellant first contends that he was required to pay a filing fee that was higher than what the County charged to file the action, in the amount of \$185, in addition to the normal filing fee of \$150. Further, the Appellant argues that he was required to pay \$907.56 in process service fees, even though he volunteered to receive personal service of the complaint. In

total, the Appellant asserts he was required to pay \$6,680 for redemption of his Property, which “vastly exceeds the amount” Appellant is required to pay under Md. Rule § 14-843.

We find that the court did have jurisdiction to hear the matter, as Appellant waived his notice argument when he did not properly plead it in his Motion to Dismiss. We agree with Appellant that the circuit court erred when they granted the Motion to Correct without holding a hearing, but we hold that the error was harmless. We do not agree with Appellant that the court erred when declining to hear his affirmative defense of invalidity, as the Appellant failed to timely plead this defense.

In determining whether the trial court erred in declining to permit Appellant to recover funds paid beyond the statutorily permitted amount to redeem his Property, we find that the circuit court did err in prohibiting Appellant to recoup the amount in excess of what the statute allowed, a total of \$2,655.49.

Therefore, this Court holds that the circuit court did have jurisdiction to enter a valid Order to foreclose the right to redemption, and we affirm the circuit court’s rulings on the Motion to Correct and the affirmative defense. However, we reverse the circuit court’s findings that Appellant waived any amounts more than what he was required to pay.

B. Standard of Review

Appellant’s allegations regarding notice does not encompass an argument regarding the circuit court’s discretion in hearing the cause of action. Equally, Appellant is not asking the Court to review the substance of the circuit court’s decision to grant the Motion to Correct, as this would have been reviewed under an abuse of discretion standard. *See Schlotzhauer v. Morton*, 224 Md. App. 72, 84, (2015), *aff’d*, 449 Md. 217 (2016) (“In

general, the denial of a motion to alter or amend a judgment is reviewed by appellate courts for abuse of discretion.”). Rather, Appellant contends that the circuit court did not follow the procedural requirements of Md. Rules §§ 14-833(a-1)(1) and 2-311(e). Likewise, Appellant argues that the court did not hold a hearing when he pled in his Amended Answer the affirmative defense of “invalidity of tax sale, tax lien and tax sale certificate,” pursuant to Md. Rule § 14-505. Lastly, in accordance with Md. Rule § 14-843(a-1), Appellant reasons that the circuit court did not follow the statutory mandates regarding the amount Appellee was allowed to recoup.

These are purely legal questions, not ones where the court acted “without reference to any guiding rules or principles.” See *In re Adoption/Guardianship No. 3598*, 347 Md. 297, 312 (1997). Therefore, “[w]hen the trial court’s order ‘involves an interpretation and application of Maryland statutory and case law, our Court must determine whether the lower court’s conclusions are legally correct under a de novo standard of review.’” *Garfink v. Cloisters at Charles, Inc.*, 392 Md. 374, 383 (2006) (quoting *Nesbit v. Government Employees Ins. Co.*, 382 Md. 65, 72 (2004)).

C. Analysis

Notice

Md. Rule § 14-833 sets out the guidelines regarding notice requirements in relation to filing a Complaint to Foreclose the Right to Redemption:

(a-1)(1) The holder of a certificate of sale may not file a complaint to foreclose the right of redemption until at least 2 months after sending the first notice and at least 30 days after sending the second notice required under this subsection to:

(i) the person who last appears as owner of the property on the

collector's tax roll; and
(ii) 1. the current mortgagee of the property, assignee of a mortgagee of record, or servicer of the current mortgage;

Id. at. § 14-833(a-1)(1). Md. Rule § 14-836 further expounds on notice requirements, outlining who receives notice, the methods of notice required and the filings necessary to petition the circuit court for an Order foreclosing the right to redemption. More controlling on this issue, however, is Md. Rule § 2-322(a), which provides:

Mandatory. The following defenses shall be made by motion to dismiss filed before the answer, if an answer is required: (1) lack of jurisdiction over the person, (2) improper venue, (3) insufficiency of process, and (4) insufficiency of service of process. If not so made and the answer is filed, these defenses are waived.

This court recently noted that “the purpose of Rule 2-322(a) is to have the legal question decided before the trial of the action on its merits.” *Swarey v. Stephenson*, 222 Md. App. 65, 96, (2015). Clearly defined, if a defendant does not raise the issue of insufficiency of process when they file their first responsive pleading, they have waived it as a defense to the cause of action. *See Conwell Law LLC v. Tung*, 221 Md. App. 481, 503 (2015).

Notwithstanding the voluminous record that indicates that Appellee did in fact serve Appellant in compliance with Md. Rules §§ 14-833 and 836, we need not address this issue because the circuit court correctly found that Appellant waived insufficiency of process when he failed to raise it in his Motion to Dismiss. The only argument associated with notice that Appellant raised in his Motion to Dismiss was that the Complaint filed was not accompanied by an affidavit that was compliant with Md. Rule § 14-833, “stating the date . . . that notices were given, the name and address of the persons to whom notices were given, and the manner of delivery of the notice and therefore, the complaint fails to state a

claim upon which relief can be granted.” Specifically, Appellant’s contention is that the affidavit did not specify “the names and address” to whom notice was given, and instead, just stated “names and address.” The Motion to Dismiss does not allege that Appellee failed to give proper service of the Complaint. Appellant’s reference to the notice prerequisites of Md. Rule § 14-833 is not likened to the procedural due process argument regarding lack of receipt of the Complaint.

Therefore, we find that the court did have jurisdiction to hear the underlying matter.

Granting the Motion to Correct Without a Hearing

In determining whether the circuit court erred when granting the Motion to Correct absent a hearing, we turn to Md. Rule § 2-311, which states:

(e) Hearing--Motions for Judgment Notwithstanding the Verdict, for New Trial, or to Amend the Judgment. When a motion is filed pursuant to Rule 2-532, 2-533, or 2-534, the court shall determine in each case whether a hearing will be held, but it *may not grant* the motion without a hearing.

Id. at § 2-311(e) (emphasis added). Md. Rule § 2-534 outlines the process for amending and altering a judgment.

On April 11, 2016, Appellee filed a timely Motion to Correct pursuant to Md. Rule 2-534 and 2-535, asking the circuit court to rescind the prior entered Order and fully reinstate the case because the Order was “‘not based on any legal reasoning and is not justified by the record in this matter,’ or in the alternative, that the Order state whether Dismissal was ‘with or without prejudice.’” Appellant subsequently filed a Motion in Opposition to the Motion to Correct. The circuit court thereafter amended the Motion to Dismiss to state “without prejudice and with leave to Amend,” on May 4, 2016. Without a

hearing, on June 13, 2016, the circuit court granted the Motion to Correct, withdrawing the dismissal of the case.

The law is clear that a hearing is required when granting a Motion filed pursuant to Md. Rule 2-534. See *In re Adoption/Guardianship of Joshua M.*, 166 Md. App. 341, 357 (2005) (“[A] hearing is mandated only if the court grants the motion.”) The circuit court’s granting of Appellee’s Motion to Correct without having a hearing was a clear violation of Md. Rule 2-311(e).

Nevertheless, “[i]n light of this procedural error, we must [now] determine whether the failure of the [circuit] court to hold a hearing prior to granting [A]ppellee[’]s motion was harmless error.” *Green v. Taylor*, 142 Md. App. 44, 60, 787 (2001). In order for this Court to reverse the circuit court’s ruling, the Appellant must establish that a “prejudicial error occurred”. *Bradley v. Hazard Tech. Co.*, 340 Md. 202, 206 (1995) (citing *Wooddy v. Mudd*, 258 Md. 234, 237 (1970)). As we found in *Green*, we find here, too, that the procedural error is harmless, as the Appellant has failed to show the prejudicial effect of the violation.

In the Motion to Correct, the Appellee points out that the Order “does not provide any basis for its legal reasoning nor does it state whether said dismissal is with or without prejudice.” In its Brief in Support of the Motion to Correct, Appellee addresses Appellant’s arguments regarding the lack of sufficiency in the Complaint, asserting that a Revised Affidavit of Compliance was timely filed, and “completely complies with the requirements of the M[d]. Rules.” Further, Appellee maintained that the Complaint did include the

“amount necessary to redeem,” as it described the amount that was due and referenced the tax sale certificate, which also outlined the amounts owed.

It is well established that this Court gives great deference to the circuit court’s decision to grant motions to amend when they are filed within ten days of the entry of judgment, pursuant to Md. Rule § 2-534. *Benson v. State*, 389 Md. 615, 653 (2005). While Appellee’s motion was “filed” April 12, 2016, eleven days after the date of the Order, Appellee did not receive the Order until on or around April 4, 2016, and as of this date, the Order had not been entered into the online docket. Even so, the circuit court’s discretion “is to be applied liberally so that a technicality does not triumph over justice.” *Id.*

Here, the two contentions raised in Appellant’s Motion to Dismiss were technical at best. From the record, there is no doubt that Appellant was interested in redeeming his Property, but he continuously attempted to pay the taxes to the County, without first paying the fees and costs due to and associated with the tax sale, which must be paid first, in order to receive the lien release to then pay the outstanding taxes to the County. Md. Rule § 14-828. Notwithstanding the tumultuous relationship that existed between Appellant and Polk, Appellant had various conversations with Polk and the County, and could have ascertained the total amount he owed to redeem his Property from either Polk’s website, which he was referred to several times, or from the County website, which he was also directed to on several occasions.

Finally, the Appellant has failed to demonstrate how the Court’s granting of the Motion to Correct prejudiced him in such a way that it would have affected the verdict below: he ultimately redeemed the Property, and the case was dismissed.

Accordingly, we find that the circuit court did err when they granted the Motion to Correct without a hearing, but the error was harmless.

Affirmative Defense: Invalidity of Tax Sale

Md. Rule § 2-323 is on point and controlling:

Every defense of law or fact to a claim for relief in a complaint, counterclaim, cross-claim, or third-party claim shall be asserted in an answer.

In regard to tax sale validity, Md. Rule § 14-505 states, in its entirety:

Any issue as to the validity of the taxes, the proceedings to sell the property, or the sale, shall be raised by separate affirmative defense.

However, Md. Rule § 14-842 outlines that:

The validity of the procedure is conclusively presumed unless a defendant in the proceeding shall, by answer, set up as a defense the invalidity of the taxes or the invalidity of the proceedings to sell or the invalidity of the sale. A defendant alleging any jurisdictional defect or invalidity in the taxes or in the proceeding to sell, or in the sale, must particularly specify in the answer the jurisdictional defect or invalidity and must affirmatively establish the defense.

On December 21, 2016, Appellant filed a Motion to Dismiss in response to Appellee's Complaint. Appellant did not raise the invalidity of his tax sale in the Motion to Dismiss, in accordance with Md. Rules §§ 2-323 or 14-505. When this cause of action was reinstated, and the Appellant filed an Amended Answer on October 17, 2016, Appellant again failed to plead invalidity of the tax sale in his Answer. On February 16, 2017, the circuit court had a motions hearing and Appellant was informed that he had failed to raise the affirmative defense in his Answer, and the circuit court entered the Order Foreclosing the Right to Redemption. It was not until four days later, on February 20, 2017, when Appellant filed his First Amended Answer to [Appellee's] Amended Complaint, that

he alleged, for the first time, a defense of invalidity regarding the tax sale.

In the record, there is evidence to suggest that Appellant may have been due a refund at some point in time. In 2012, Appellant had correspondence with the Prince George’s County Treasury on June 8, 2012 who informed him that:

Your property taxes for FY2012 went to tax sale on May 24, 2012. Therefore, you owe \$557.85. I can take the refund of \$729.81 to pay your balance due and send you the remainder of this. Otherwise, if you want until July 1, you would owe 2 years of taxes at once.

The record does not disclose whether these 2012 taxes were paid or if the Appellant received the aforementioned refund. What the record does disclose is that on May 11, 2015, Appellee received a presumptively valid tax sale certificate for the Property. However, telling the correspondence regarding the refund is to whether Appellant was due a refund, Appellant had multiple opportunities throughout the litigation to affirmatively establish his defense of invalidity, which he failed to do.

In *Woolridge v. Abrishami*, this Court recently held that “[t]he failure to include an affirmative defense in a defendant’s answer or amended answer ‘bars the defendant from relying on the defense to obtain judgment in its favor.’” *Woolridge v. Abrishami*, 233 Md. App. 278, 296, *cert. denied*, 456 Md. 96 (2017) (quoting *Gooch v. Maryland Mech. Sys., Inc.*, 81 Md. App. 376, 385 (1990)). Even if this Court was to consider the Appellant’s defense as raised in his Amended Answer, a year and a half after his first response to the Complaint, Appellant does not “particularly specify . . . the jurisdictional defect or invalidity” of the tax sale, pursuant to Md. Rule § 14-842. Appellant provides no details regarding proof that he paid his taxes, only offering exhibits that show he had lengthy

correspondences with the County and that he had sought a credit for overpaid taxes back in 2012.

And just one step further, even though Appellant did not timely plead his affirmative defense, nor did he plead it with “particular[] specifi[ci]ty,” Appellant would still be required to pay the taxes in arrears before he could challenge the tax sale. *See Quillens v. Moore*, 399 Md. 97, 124 (2007) (“[T]he general rule is that in order to challenge a tax sale, the payment of taxes in arrears is a condition precedent.”)

Needless to say, as a matter of law, the Appellant did not raise his affirmative defense either timely or properly, and the circuit court did not err when they refused to address said defense.

Excessive Redemption Amount

a. The Amount Owed to Appellee

Md. Rule § 14-843 outlines the expenses that may be reimbursed for costs incurred and associated with an action to foreclose the right to redemption. The rule states the following:

(4) If an action to foreclose the right of redemption has been filed, the plaintiff or holder of a certificate of sale may be reimbursed for:

(i) attorney’s fees in the amount of:

2. \$1,500 if an affidavit of compliance has been filed, which amount shall be deemed reasonable for both the preparation and filing of the action to foreclose the right of redemption;

(iv) if the plaintiff or holder of a certificate of sale provides a signed affidavit attesting to the fact that the expenses were actually incurred, the following expenses actually incurred by the plaintiff or holder of a certificate of sale:

1. filing fee charged by the circuit court for the county in which the property is located;
2. service of process fee, including fees incurred attempting to serve process;
3. a title search fee, not to exceed \$250;
4. if a second title search is conducted more than 6 months after the initial title search, a title search update fee, not to exceed \$75;
5. publication fee charged by a newspaper of general circulation in the county in which the property is located;
6. posting fee;
7. postage and certified mail;

(5) In addition to the expenses and attorney's fees under paragraph (3) or (4) of this subsection, the plaintiff or holder of a certificate of sale may be reimbursed for:

- (i) taxes paid at the tax sale, together with redemption interest, arising after the date of sale to the date of redemption;
- (ii) the high bid premium paid at the tax sale, if applicable[.]

On November 12, 2015, Appellees filed an Affidavit of Compliance with Tax-Property § 14-833(a-1). (**R 15**) After contentions raised in Appellant's Motion to Dismiss, on February 17, 2016, Appellee filed a timely Revised Affidavit of Compliance with Tax-Property § 14-833(a-1), in addition to Md. Rule § 14-502. Consequently, since the Complaint to Foreclose Right of Redemption had been filed, along with a timely Affidavit of Compliance, Appellee is entitled to no more than \$1,500 in attorney's fees, pursuant to Md. Rule § 14-843(4)(i)(2). It is important to note that Appellee did petition the court to

grant additional attorney’s fees, under “exceptional circumstances,”²⁰ but the court denied this request, and we will not disturb that ruling.

At the time the Complaint was filed, Appellee filed an Affidavit for Attorney’s Fees & Expenses, which was updated throughout the process of this litigation. In line with Md. Rule § 14-843(4)(iv), Appellee is entitled to the following costs:

1. \$175.00 – Filing fee charged by the circuit court of Prince George’s County, where the Property is located;
2. \$923.12 – Service of process fee, including all the fees incurred attempting to serve process on Appellant at three different addresses;
3. \$250.00 – The title search fee;
4. \$179.95 – Publication fee charged by Southern Maryland Classifieds;
5. \$50.00 – Posting Fee; and
6. \$50.00 – Postage and Certified Mail.

This equals a total of \$1,628.07 that was due to Appellee, under Md. Rule § 14-843(4)(iv).

Appellant raised the argument that he had agreed to accept personal service of the summons and complaint, and therefore, the service fees are not reasonable. Even so, the record is confusing at best regarding the communications between Appellant and Polk concerning service. Yet, from what can be understood, there were several timely yet unsuccessful attempts to serve Appellant at several locations, various Affidavits with Respect to Service, Non-Service, and Posting filed and there was even an Order of Publication that spanned three weeks.²¹ This Court need not and will not further muddle the record with an extensive evaluation on service, given an incomplete record regarding

²⁰ The court found that despite the alleged superficial arguments made by Appellant, there was otherwise no reason to grant exceptional circumstances in this case.

²¹ Run dates were December 17th, December 24th and December 31st of 2015.

attempts to accept personal service. We will find the service fees valid and include them in the amount owed to Appellee in accordance with Md. Rule § 14-843(4)(iv).

Additionally, per Md. Rule § 14-843(5), Appellee is also entitled to:

- (i) taxes paid at the tax sale, together with redemption interest, arising after the date of sale to the date of redemption;
- (ii) the high bid premium paid at the tax sale, if applicable[.]

As stated in Appellee's Revised and Supplemented Affidavit for Attorney's Fees & Expenses, the tax sale lien amount was \$475.31. The interest that accumulated as of March 14, 2017 was \$350.76, with a per diem interest that was calculated on a monthly basis at the beginning of the month at the rate of 1.667% of the balance.²² Appellant redeemed the Property on July 11, 2017, when he paid the Appellee in open court with two cashier's checks totaling \$6,680.75. In calculating the per diem interest that accumulated between March 14, 2017 to July 11, 2017, with the interest accruing at the beginning of each month, Appellee would be permitted to recover \$897.19, in accordance with Md. Rule § 14-843(5)(i).²³ Because Appellee was reimbursed by the County for the amount of the High Bid Premium in this matter, they are not entitled to this under Md. Rule § 14-843(5)(ii).

²² Prince George's County's Office of Finance.

²³ April: Per Diem Interest: \$13.76; Balance: \$826.01 = \$839.78
May: Per Diem Interest: \$13.99; Balance: \$839.78 = \$853.78
May: Per Diem Interest: \$14.23; Balance: \$853.78 = \$868.01 (May is calculated twice because of Annual Tax Sale Day)
June: Per Diem Interest: \$14.46; Balance: \$868.01 = \$882.48
July: Per Diem Interest: \$14.71; Balance: \$882.48 = \$897.19

In sum, the Appellee is owed a total of \$4,025.26 in fees and expenses statutorily permitted under Md. Rule § 14-843 – no more and no less.

b. The Amount Given to Appellee

Md. Rule §14-843(a)(2) states that:

The plaintiff or holder of a certificate of sale is *not* entitled to be reimbursed for any other expenses or attorney’s fees that are *not included* in this section.

(emphasis added). At the hearing on July 11, 2017, the Appellant tendered two cashier’s checks, totaling \$6,680.75, to Appellee. This amount included fees and costs associated with the process of foreclosing the right to redemption, attorney’s fees and the amount of taxes due in order to redeem, despite the fact that Appellant actually paid the County once he received the lien release from Appellee.²⁴ When the Appellant offered these checks, the court informed him of the following:

[The Court]: Well once you hand it, you’re not getting a reimbursement.

[Mr. Slate]: I’m sure.

[The Court]: Okay I don’t want to get into that dispute. That’s a total of \$6,680.75, paid, handed in open court.

And yet, it seems that all parties, surprisingly, did not consider the fact that the amount tendered included the amount of taxes due, as right before the above statements:

[Mr. Slate]: The total amount is more than to be paid, but –

²⁴ At the hearing the following was stated:

[Mr. Slate]: And does that amount include the taxes, or not?

[The Court]: It includes everything, the \$2,962.51, the taxes are 832 [sic] and the attorney fees are \$1,500, so it would be by the end of July.

[The Court]: Well this is not the County, though, you've got another check for the County.

[Mr. Slate]: That is correct. But those two checks were more than what – were to be paid to Thornton Mellon, but –

[The Court]: . . . You've got to go to the County and pay, so you've got to do that before the end of July.

Further, on August 11, 2017, when Appellant inquired about the fact that he had essentially paid his taxes twice – once to Appellee and once to the County – the following correspondence took place:

[Mr. Slate]: With regards to the funds beyond the statutory legal fees and, and other amounts and the taxes that were given to Mr. Gallagher which they didn't pay which they still have and I paid the taxes and the extra legal fees which the Court did not grant, what's going to happen with that money? Did you, do they keep it or?

[The Court]: Mr. Slate, I think you're rearguing things that have been raised multiple times, okay. Last time we were here, my understanding, I granted the motion to, granted your motion allowing you to redeem your property, that's what you wanted to do. You came to Court. You tendered two checks, voluntarily, cashier checks to Mr. Gallagher. Mr. Gallagher was reluctant to take it at first but then took the checks. You offered more than you were required to pay, you even put that on the record that you were doing that. You did that willingly . . . You took the checks and I said once the checks cleared, you issue a release . . . you can go to the County, pay the taxes and you get your property back . . . You voluntarily tendered the amounts to Mr. Gallagher . . . [s]o I'm going to close the case and that's the end of it okay. Thank you.

We determine this to be an incorrect finding by the circuit court. Md. Rule § 14-843 makes no mention of the redeemer waiving the right to reimbursement for fees and costs paid in excess of the statutory limits. In fact, prior versions of § 14-843(a) “expressly prohibits the certificate holder from seeking reimbursement for additional expenses not

included in the statutory language” *See Deinlein v. Johnson*, 201 Md. App. 373, 389 (2011). We do not ignore Appellant’s persistence to give the checks or Appellee’s reluctance to take them; we just do not find it relevant – the law is clear.

Obviously, there was an oversight by the circuit court when they included the amount of taxes owed in the amount Appellant needed to redeem, and then mandated that the Appellee pay the County the back taxes owed. All the same, Appellant tried to inform the court of this mishap, and he was unfortunately ignored. While we recognize that this case had been a taxing one – pun intended – to say the least, we agree with Appellant that it would be unjust enrichment for Appellant to have paid the amount of back taxes owed to the Appellee that it subsequently then paid the County, or any amount over what was allowed by the statute, for that matter, and not be reimbursed.

Therefore, we find that the court did err, and Appellant is entitled to the difference of what was statutorily allowed under Md. Rule §14-843(a)(2) and what was given to Appellee at the August 11, 2017 hearing, a total of \$2,655.49.

CONCLUSION

Accordingly, we find that the Appellant waived his notice argument when he filed a Motion to Dismiss raising an affidavit compliance issue in relation to notice, but not insufficiency of process. We affirm the circuit court's findings on the Motion to Correct and the affirmative defense regarding invalidity of the tax sale. However, we reverse the circuit court's ruling that Appellant was not allowed to recover the amount paid to Appellee in excess of the statutorily allowed amount, a sum of \$2,655.49.

The judgment of the Circuit Court for Prince George's County is affirmed in part and reversed in part and thus, remanded to the circuit court for further proceedings in accordance of this opinion.

**JUDGMENT OF THE CIRCUIT COURT
FOR PRINCE GEORGE'S COUNTY
AFFIRMED IN PART AND REVERSED IN
PART; COSTS TO BE PAID ½ BY
APPELLANT AND ½ BY APPELLEE.**