

Circuit Court for Prince George's County
Case No. CAEF15-37294

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1752

September Term, 2017

ABLADE ODOI-ATSEM

v.

MARK S. DEVAN, et al.
AS SUBSTITUTE TRUSTEES

Fader, C.J.
Kehoe,
Reed,

JJ.

Opinion by Reed, J.

Filed: December 19, 2018

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

On December 11, 2015, an action was initiated with the filing of an Order to Docket Foreclosure by Mark S. Devan, et. al., as Substitute Trustees for Wells Fargo Bank, N.A. (hereinafter “Appellees”) against Ablade Odoi-Astem (hereinafter “Appellant”). A Notice of Intent to Foreclose was sent via certified mail and by first class mail on October 23, 2015, to Appellant. The foreclosure action involved a residential condominium unit located at 155 Potomac Passage, Unit PH111, National Harbor, Maryland 20745 (hereinafter “the Property”). Subsequently, Appellees filed a Motion for Alternative Service requesting the Circuit Court for Prince George’s County authorize service by certified mail, first-class mail, and by posting the summons on the front door of the secured condominium building.

The circuit court granted the Motion for Alternative Service and on March 31, 2016, an Affidavit of Alternative Service was filed certifying that the Order to Docket Foreclosure was mailed via first class mail and certified mail to Appellant. Subsequently, Appellant filed an Ex Parte Motion to Dismiss and a Motion to Strike Appellees’ Affidavit for Alternative Service. On June 28, 2016, the circuit court denied Appellant’s Ex Parte Motion to Dismiss and Appellant filed a timely appeal from that denial. This Court affirmed the circuit court’s decision to deny Appellant’s Ex Parte Motion to Dismiss and Motion to Strike Appellees’ Affidavit for Alternative Service.

The Property was sold and on August 22, 2016, Appellant filed a Motion to Set Aside Foreclosure Sale and Request for Hearing. On October 18, 2017, the circuit court entered a Final Ratification of Sale and Referral to the Auditor. It is from this decision that

Appellant files this timely appeal. In doing so, Appellant brings the following questions for our review, which we have rephrased for clarity:¹

- I. Was the sale on the Property a nullity and was the purported sale valid based on price?
- II. Did Appellees properly serve Appellant and were Appellees entitled to an Order for Alternative Service?
- III. Did Appellees comply with the circuit court’s order for alternative service?
- IV. Did Appellees comply with the mediation requirement prior to filing an action for foreclosure?
- V. Did the foreclosure action comport with the 14th Amendment of the United States Constitution?

For the foregoing reasons, we affirm the decision of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

Appellant owned a residential condominium unit (“the Property”), which was encumbered by a deed of trust. Wells Fargo Bank, N.A, (“Wells Fargo”) was entitled to

¹ Appellant presents the following question:

1. Was the sale of the Improperly Foreclosed Property A Nullity, and Was the Purported Sale on Itself For The Highest Price It Could Get?
2. Did the Appellee Properly Serve the Appellant in Accordance with Maryland Law and Was The Appellee Entitled to Order for Alternative Service?
3. Did the Appellee Comply With the Lower Court’s Order for Alternative Service?
4. Did Appellee Comply With the Mediation Requirement Prior to Filing the Foreclosure?
5. Did the Foreclosure Action Comport With the 14th Amendment Due Process?

enforce the terms and conditions of that instrument. Subsequently, Appellant went into default on the note and Wells Fargo authorized Appellees to file a foreclosure action against the Property. On October 23, 2015, Appellees sent a Notice of Intent to Foreclose via certified mail, return receipt requested, and by first-class mail to Appellant and subsequently sent an additional Notice of Intent to Foreclose addressed to “All Occupants” residing at the Property. Appellees filed an Order to Docket Foreclosure on December 11, 2015, and on January 27, 2016, Appellees filed a Motion for Alternative Service. Appellees alleged that they were unable to serve Appellant because Appellant’s condominium unit was located within a building that has a secured entry door preventing the process server from gaining lawful entry into the building. Appellees also argued in their motion that the process server unsuccessfully attempted to serve Appellant at two secondary addresses. On February 23, 2016, the circuit court granted the Motion for Alternative Service and ordered that Appellees serve Appellant by first-class mail and certified mail combined with posting the summons on the secured entry door of the Property since the process server was unable to gain lawful entry. Moreover, the circuit court stated that the posting of the Order to Docket on the main door of the building qualified as posting in a conspicuous place on a residential property pursuant to Maryland Rule 14-209(b).

On March 21, 2016, the Order to Docket Foreclosure and related papers were mailed via first-class mail and certified mail, return receipt requested to Appellant. Additionally, the Order to Docket Foreclosure was posted on the main exterior front door of the Property. Appellees filed their Affidavit of Alternative Service on March 31, 2016, and a copy of the Affidavit of Alternative Service was mailed to Appellant via first-class mail. In Appellees’

Affidavit of Alternative Service, William Marshall Jr., the process server, stated under oath that he posted the relevant documents on the main door of the Property on March 9, 2016. Subsequently, Appellant filed an Ex Parte Motion to Dismiss and Motion to Strike Appellees' Affidavit for Alternative Service. In Appellant's motion, Appellant asserted that Appellees (1) "never attempted to serve [Appellant]" prior to filing the Motion for Alternative Service; (2) that the Motion for Alternative Service "was a clear fraud on the court as it misrepresented the facts to the court"; (3) that Appellees failed to mail Appellant a copy of their Motion for Alternative Service; and (4) that Appellees knew Appellant was represented by counsel because his lawyer had communicated with Wells Fargo's loss mitigation department on November 20, 2015. None of the assertions made by Appellant were under oath or supported by an affidavit.

On June 28, 2016, the circuit court denied Appellant's Ex Parte Motion to Dismiss and Motion to Strike Appellees' Affidavit for Alternative Service. The circuit court found that the Motion for Alternative Service was proper, which allowed Appellees to post the summons "on the main door of the building of the Property." Appellant appealed the circuit court's decision and this Court affirmed the circuit court's ruling.²

On July 29, 2016, since there was no order staying the sale, the Property was sold to Wells Fargo Bank at a foreclosure auction for \$343,563. Appellant filed a Motion to Set Aside Foreclosure Sale and Request for Hearing asserting that he was not properly served. Appellant also alleged that "the sale of the Property was not conducted in good faith

² *Ablade Odoi-Atsem v. Mark S. Devan et al., Substitute Trustee*, 2016 WL 11317827.

because his attorney had written to [Appellees] informing them of a potential buyer's interest in the property." On October 18, 2017, the circuit court entered a Final Ratification of Sale and Referral to the Auditor. Appellant then filed his second Notice of Appeal, giving rise to this appeal.

DISCUSSION

i. Issues Previously Discussed in Appellant's Prior Appeal

A. Parties' Contentions

Appellant argues that Appellees did not properly serve him, which violates Maryland Rule 2-121(a). Specifically, Appellant asserts that Appellees' Affidavit of Service "failed to describe how it could not 'gain lawful entry'" to the Property. Appellant contends that Appellees failed to mention that it "sent any certified mail to Appellant containing the court Order to Docket [Foreclosure]." As such, Appellant believes that Appellees were not entitled to Alternative Service. Appellant further argues that he did not evade service or resist service by threat or force. Appellant also asserts that the circuit court granting Appellees' Motion for Alternative Service was in violation of the Fourteenth Amendment of the United States Constitution and Article 24 of the Maryland Declaration of Rights.

Second, Appellant asserts that Appellees did not comply with the circuit court's alternative service order. Specifically, Appellant contends that Appellees failed to comply with the circuit court's order by failing to: (1) mail the relevant court documents to Appellant via certified mail; and (2) post the relevant court documents on Appellant's condominium unit, instead posting on the exterior of the building which contained over

200 condominiums.

Lastly, Appellant argues that Appellees were not entitled to an Order to Docket Foreclosure because Appellees “violated federal law and regulations when it failed to even engage with Appellant’s request for credit” and failed to provide Appellant with mandated mediation. Specifically, Appellant relies on 15 U.S.C. § 1691(d)(1), stating that “Wells Fargo is notorious for not answering modification and credit request [sic] by minority homeowners in Prince George’s County.” Appellant also contends that 24 CFR § 203.604 requires Appellees to engage in certain loss mitigation procedures before foreclosure and Appellees failed to do that here. Appellant asserts that Appellees “never gave Appellant the opportunity to engage in mediation before filing the foreclosure action.” In addition, Appellant argues that the circuit court erred in not requiring Appellees to show that they complied with federal law before issuing an Order to Docket Foreclosure.

Appellees respond that the issues raised in this appeal are identical to those asserted in the prior appeal and as such, the decision in the prior appeal is “dispositive of nearly all of the issues raised in this appeal.” In *arguendo*, Appellees contend that Appellant failed to apply the correct standard when it comes to service of process pursuant to Maryland Rule 14-209(a). Specifically, Appellees assert that Appellant’s argument that initial service must be attempted by certified mail has no merit. Appellees argue that Appellant ignores the fact that the rule requires that service initially be attempted by *personal delivery* and if service by personal delivery is not successful the rule also provides that service is authorized by personal delivery *or* by certified mail.

Appellees argue that the record shows that the process server mailed the “service

papers by first class and certified mail to” Appellant at three different addresses including at the Property address. Appellees further argue that “the entire point of [Appellees’] Motion for Alternative Service was to allow for posting on the main door of the building, not the door of the individual condominium unit, because the process server could not gain [lawful] access to the door of the individual unit.” Appellees assert that they fully complied with the circuit court’s alternative service order. Specifically, Appellees maintain that Appellant “incorrectly [agued] that [Appellees] never sent Appellant any certified mail.”

Appellees argue that Appellant did not “raise issues concerning alleged violations of federal laws and regulations concerning applications for credit and loss mitigation procedures” at the circuit court level. As such, Appellees argue it is not “appropriate for this Court to adjudicate such issues” pursuant to Maryland Rule 8-131. In the alternative, Appellees assert that this Court should consider that a Final Loss Mitigation Affidavit was filed on April 26, 2016, and “at no time after the filing of the Final Loss Mitigation Affidavit did [Appellant] avail himself to the opportunity to engage in foreclosure mediation.” Lastly, Appellees maintain that the foreclosure did not violate any due process rights.

Most of the issues being raised by Appellant have already been addressed by this Court in Appellant’s prior appeal.³

³Appellant presented the following questions in his prior appeal:

1. Did [Appellees] properly serve [Appellant] in accordance with Maryland law, and were [Appellees] entitled to an Order for Alternative Service of process?

B. Standard of Review

The grant or denial of injunctive relief in a property foreclosure action lies generally within the sound discretion of the trial court. *Wincopia Farm, LP v. Goozman*, 188 Md. App. 519, 528, (2009) (citing *Jones v. Rosenberg*, 178 Md. App. 54, 65 (2008)). Therefore, we review the trial court's grant or denial of a foreclosure injunction for an abuse of discretion. *Id.* (citing *Jones*, 178 Md. App. at 65). Abuse of discretion means that a ruling will be reversed when that ruling ““does not logically follow from the findings from which it supposedly rests or has no reasonable relationship to its announced objective.”” *Eastside Vend Distrib., Inc. v. Pepsi Bottling Group, Inc.*, 396 Md. 219, 240, (2006) (quoting *Dehn v. Edgcombe*, 384 Md. 606, 628, (2005)). We review the trial courts’ legal conclusions, however, de novo. *Wincopia Farm*, 188 Md. App. at 528 (citing *Moscarillo v. Prof’l Risk Mgmt. Servs., Inc.*, 169 Md. App. 137, 145 (2006)); *see also Garfink v. Cloisters at Charles, Inc.*, 392 Md. 374, 383 (2006) (stating that questions of law are reviewed without deference).

C. Analysis

Service of Process, Alternative Service, & Due Process

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2. Did [Appellees] comply with the circuit court’s order for alternative service?
 3. Did [Appellees] comply with the mediation requirement prior to filing the foreclosure?
 4. Did the foreclosure action violate [Appellant’s] due process rights?
 5. Did [Appellees] sell the property to the secured party for the highest price they could obtain?

On June 25, 2016, a panel of this Court addressed whether Appellees properly executed service on Appellant, whether Appellant’s due process rights were violated, and whether the circuit court erred when it granted Appellees’ Motion for Alternative Service.

We stated the following:

[Appellant] contends that [Appellees] did not personally serve him. [Appellant] is correct but the point is irrelevant-[Appellees] filed their motion for alternative service precisely because they were unable to serve [Appellant] personally.

[Appellant] argues that there is no evidence in the record that [Appellees] sent copies of the papers filed by them to initiate the foreclosure action to him by certified mail. [Appellant] did not present this contention to the circuit court and cannot raise it for the first time on appeal. *See* Md. Rule 8-131(a) (“Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court[.] ”); *Granados v. Nadel*, 220 Md. App. 482, 499–500 (2014) (“[T]his Court need not decide [an] issue if it was not raised and decided by the circuit court.”).

[Appellant] claims that the substitute trustees were not entitled to alternative service of process because he did not evade service of process or resist service by threat or force. But the substitute trustees’ motion for alternative service was based on the fact that the process server could not obtain lawful access to the building in which [Appellant’s] unit is located. Although [Appellant] claims in his brief that he “did not refuse to sign any certified mail with return receipt that was sent by Appellee,” he did not make such an assertion to the circuit court.

[Appellant] also claims that the order granting alternative service required [Appellees] to post the order on the door of his individual unit, and not the main door to the building in which his unit is located. This argument is unpersuasive. As we have explained, the court directed [Appellees] to post “the order to docket suit and all attached papers on the main door of the building of the subject property.” We interpret “the main door of the building of the subject property” to mean the primary entrance to the building in which [Appellant’s] condominium unit is located. [Appellant’s] argument that the court order required [Appellees] to post the order on the entrance door of his individual unit is not consistent with the plain language of the order.

As it pertains to the second, third, and fourth questions presented, it appears that the decision in the prior appeal disposed of those issues being raised in this appeal.

Mediation Requirement

Appellant also argues that Appellees were not entitled to an Order to Docket Foreclosure because Appellees “violated federal law and regulations when it failed to even engage with Appellant’s request for credit” and failed to provide Appellant with mandated mediation. Appellant also contends that 24 CFR § 203.604 requires Appellees engage in certain loss mitigation procedures before foreclosure and that Appellees “never gave Appellant the opportunity to engage in mediation before filing the foreclosure action.” In addition, Appellant argues that the circuit court erred in not requiring Appellees to show that they complied with federal law before issuing an Order to Docket Foreclosure.

A panel of this Court also addressed whether Appellees complied with loss mitigation procedures prior to filing its foreclosure action in Appellant’s prior appeal. We stated the following:

[Appellant] raises additional contentions.

First, [Appellees] failed to respond to his request to refinance his loan, which he asserts is a violation of the Equal Credit Opportunity Act, specifically, 15 U.S.C. § 1691(d); *Second*, [Appellees] failed to engage in mediation prior to filing the foreclosure action; and *Third*, [Appellees] and the substitute trustees failed to provide reasonable notice of the sale in violation of his due process rights guaranteed by the Fourteenth Amendment. None of these arguments were presented to the circuit court and are waived for the reasons previously explained.

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Additionally, Appellees filed a Final Loss Mitigation Affidavit on April 28, 2016. Appellees stated in their Final Loss Mitigation Affidavit that it did not conduct a loss mitigation analysis because “[Appellees have] not received all information from [Appellant] that [Appellees] need to complete a loss mitigation analysis.” Moreover, Appellant failed to raise this issue with the circuit court.

As such, a panel of this Court has found: (1) that Appellant was properly served; (2) that Appellant’s due process rights were not violated; (3) that the circuit court did not err when it granted Appellees’ Motion for Alternative Service; and (4) that Appellees’ were entitled to an Order to Docket Foreclosure.

ii. Foreclosure Sale

A. Parties’ Contentions

Appellant argues that on November 20, 2015, through his counsel, Appellant offered Appellees a payment plan to catch up on his missed payments. Appellant further asserts that prior to the purported sale, “Appellant found a bona fide buyer that was ready to buy the property at \$360,000 with a preapproved mortgage from Bank of America for \$347,400.” Appellant explains that he communicated this information to Appellees and Appellees never responded. Appellant further argues that Appellees were not acting diligently when they sold the Property for \$343,563. Specifically, Appellant contends that Appellees did not respond when Appellant found someone else willing to pay \$360,00, subject to a preapproved mortgage of \$347,400 because Appellees knew that there was an offer “on the table” for a higher price, therefore “Appellee[s] was [sic] not acting diligently, and the purposed sale must be set aside.”

Appellees respond that there are no valid legal grounds for Appellant to set aside the sale of the Property. Specifically, Appellees contend that the denial of Appellant’s Ex Parte Motion to Dismiss “was immediately appealable because it is akin to the denial of an injunction.” However, the circuit court did not issue an order preventing the sale of the Property, “thus it was conducted legally on July 29, 2016.” Appellees also argue that Appellant’s argument that he had a potential buyer was not properly raised in circuit court prior to the sale, “thus the issue was not timely raised.” We agree.

B. Standard of Review

The Court of Appeals stated in *Bates v. Cohn*, 417 Md. 309, 318 (2010), “[b]efore a foreclosure sale takes place, the defaulting borrower may file a motion to ‘stay the sale of the property and dismiss the foreclosure action.’” *Id.* (quoting Md. Rule 14-211(a)(1)). In other words, the borrower “may petition the court for injunctive relief, challenging ‘the validity of the lien or ... the right of the [lender] to foreclose in the pending action.’” *Id.* at 318–19 (quoting Md. Rule 14-211(a)(3)(B)). “The grant or denial of injunctive relief in a property foreclosure action lies generally within the sound discretion of the trial court.” *Anderson v. Burson*, 424 Md. 232, 243 (2011). Accordingly, we review the circuit court’s denial of a foreclosure injunction for an abuse of discretion. *Id.* We review the trial court’s legal conclusions de novo. *See Wincopia Farm, LP v. Goozman*, 188 Md. App. 519 (2009); *see also Svrcek v. Rosenberg*, 203 Md. App. 705 (2012).

C. Analysis

Appellant asserts that prior to the purported sale, he located a bona fide purchaser who was prepared to buy the Property for \$360,000. Appellant contends that he communicated this information to Appellees, yet Appellees never responded. Appellant alleges that Appellees did not respond when Appellant found someone else willing to pay \$360,00, subject to a preapproved mortgage of \$347,400 because Appellees knew that another buyer was willing to pay a higher price.

Maryland Rule 14-211 sets forth the procedure for filing a motion to stay for a foreclosure sale. The rule states the following:

(a) Motion to Stay and Dismiss.

(1) *Who May File.* The borrower, a record owner, a party to the lien instrument, a person who claims under the borrower a right to or interest in the property that is subordinate to the lien being foreclosed, or a person who claims an equitable interest in the property may file in the action a motion to stay the sale of the property and dismiss the foreclosure action.

(2) *Time for Filing.*

(A) *Owner-Occupied Residential Property.* In an action to foreclose a lien on owner-occupied residential property, a motion by a borrower to stay the sale and dismiss the action shall be filed no later than 15 days after the last to occur of:

- (i) the date the final loss mitigation affidavit is filed;
- (ii) the date a motion to strike post file mediation is granted; or
- (iii) if post file mediation was requested and the request was not stricken, the first to occur of:

- (a) the date the post file mediation was held;
 - (b) the date the Office of Administrative Hearings files with the court a report stating that no post file mediation was held;
- or

(c) the expiration of 60 days after transmittal of the borrower’s request for post file mediation or, if the Office of Administrative Hearings extended the time to complete the post file mediation, the expiration of the period of the extension.

Here, Appellant had the option to file a motion to stay the foreclosure sale *before* the foreclosure sale but failed to do so. Pursuant to Maryland Rule 14-211(2)(A), a borrower must file a motion to stay a foreclosure sale no later than 15 days after the last to occur of “ the date the final loss mitigation affidavit was filed ... or the date the post file mediation was held.” As noted above, Appellant failed to engage in mediation before the foreclosure action was filed. Appellant also failed to file a motion to stay the foreclosure sale after Appellees file its Final Loss Mitigation Affidavit. Moreover, when Appellant appealed the denial of his Ex Parte Motion to Dismiss there was no order preventing the sale and Appellant never brought to the circuit court’s attention that another buyer was interested in purchasing the Property.

Lastly, a panel of this Court already addressed whether Appellees sold the property at an inadequate price and whether Appellant filed “exceptions to the sale.” We stated the following:

[Appellant’s] final contention is that the Property was sold at an inadequate price. As [Appellees] correctly point out, this contention is not properly before us because the record does not indicate that Odoi-Atsem filed exceptions to the sale. *See* Md. Rule 14-305 (setting out post-sale procedures); *Johnson v. Nadel*, 217 Md. App. 455, 465 (2014) (“A debtor may challenge irregularities in the foreclosure sale’s procedure by filing post-sale exceptions at the time of the ratification and seek to overturn the sale on those bases.” (citation and quotation marks omitted)).

Accordingly, as it pertains to the question of the validity of the foreclosure sale, we hold that the sale was valid and that the circuit court did not err when it entered a Final Ratification of Sale and Referral to the Auditor.

The judgment of the Circuit Court for Prince George's County is affirmed.

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