

UNREPORTED\*

IN THE APPELLATE COURT

OF MARYLAND

No. 1769

September Term, 2024

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MATTHEW B. HUNGERFORD

v.

WEST 11 LLC

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Nazarian,  
Kehoe, S.,  
Raker, Irma S.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Kehoe, J.

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Filed: March 12, 2026

\*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Appellant, Matthew B. Hungerford (“Mr. Hungerford”), filed this appeal from an order of the Circuit Court for Montgomery County denying a motion to vacate a judgment foreclosing his right of redemption in property sold in a tax sale. For reasons set forth below, we shall vacate the court’s order and remand for further proceedings.

### **FACTUAL BACKGROUND**

In June of 2023, real property identified as 0 Slidell Road in Montgomery County (“the Property”) was sold at a tax sale to GBIF, LLC. (“GBIF”), subject to the right of redemption. Six months later, GBIF filed a Complaint to Foreclose the Equity of Redemption for Non-Payment of Taxes. The named defendants included Mr. Hungerford, the record title holder of the Property, with a mailing address of 17125 Black Rock Road, Germantown (“the Germantown address”).<sup>1</sup> The complaint alleged that the amount necessary to redeem the Property was \$2,030.13, plus interest, costs, and expenses. GBIF subsequently assigned the tax sale certificate to West 11, LLC (“West 11”), and West 11 was substituted for GBIF as the plaintiff.

West 11 twice attempted to serve Mr. Hungerford with the summons and complaint: first at the Germantown address, and subsequently at another address acquired through a search engine used by the legal community. On each attempt, the process server was advised that Mr. Hungerford had moved.

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<sup>1</sup> Also named as defendants were the Estate of Matthew B. Hungerford, Montgomery County, the State of Maryland, and “any and all persons having or claiming to have any interest in” the Property.

On February 20, 2024, West 11 filed a motion for alternative service on grounds that, despite good faith efforts and due diligence, it had been unable to locate and serve Mr. Hungerford. West 11 represented that it had already complied with notice provisions that require a plaintiff in a tax sale foreclosure action to (1) mail notice of the foreclosure action to the owner of record at their last known address; (2) publish the notice in a newspaper of general circulation in the county where the property is located, and (3) post the notice in a conspicuous place on the Property. West 11 requested the court authorize alternative service in the form of the notice already provided. The motion was accompanied by an Affidavit of Due Diligence, which stated that the records of the tax collector and the Maryland State Department of Assessments and Taxation listed the Germantown address as Mr. Hungerford’s mailing address. The motion also set forth in detail West 11’s efforts to find a current address for Mr. Hungerford.

The circuit court granted the motion and ordered that service of Mr. Hungerford be accomplished by mailing a copy of the court’s order for alternative service along with the summons, complaint, and all other papers filed with the complaint, to Mr. Hungerford, at the Germantown address. West 11 subsequently filed an affidavit stating that it had complied with the court’s order.

On May 14, 2024, West 11 filed a motion for judgment of foreclosure. West 11 asserted that it had satisfied all statutory notice requirements, and that no party in interest had come forward to pay the amount necessary to redeem the Property. The court entered a judgment foreclosing the rights of redemption in the Property on June 21, 2024.

On July 23, 2024, Mr. Hungerford filed a motion to strike the judgment foreclosing his right of redemption. He alleged he did not receive notice of the foreclosure action by mail or personal service, and had never seen anything posted on the Property, which he used for the storage of landscaping equipment and visited several times a week. Mr. Hungerford further alleged that he had submitted a certified check for “taxes paid” along with the motion. Attached to Mr. Hungerford’s motion was a copy of voided official bank check, dated July 23, 2024, in the amount of \$2,483.99, payable to Montgomery County.

The court held a hearing on Mr. Hungerford’s motion on October 9, 2024. Mr. Hungerford, representing himself, conceded that he had failed to update his mailing address for property tax purposes, but he insisted that he had never seen notice of the foreclosure proceeding posted on the Property and had not received notice in mail forwarded from his previous address.<sup>2</sup> Counsel for West 11 claimed that Mr. Hungerford was not entitled to relief because he failed to pay the outstanding taxes and expenses, which is a condition precedent to challenging a tax sale foreclosure.<sup>3</sup> Counsel for West 11 further claimed that the sheriff’s office had filed an affidavit verifying that notice had been posted on the

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<sup>2</sup> In this Court, Mr. Hungerford presents the additional argument that West 11 did not comply with the order of publication because The Daily Record, where the notice was published, is not “located” in Montgomery County. We disagree. The order of publication required West 11 to publish notice in a “newspaper having a general circulation in Montgomery County.” We are satisfied that The Daily Record is such a newspaper.

<sup>3</sup> See *Canaj, Inc. v. Baker & Div. Phase III, LLC*, 391 Md. 374, 396 (2006) (“[I]n order to challenge the foreclosure of the equity of redemption in a tax sale, the taxes and other relevant charges acknowledged to be due, either prior to the challenge or simultaneously with it, must, as a condition precedent, be paid.”)

Property. When the court asked Mr. Hungerford if he was suggested that the sheriff filed a “false document[,]” Mr. Hungerford responded, “It’s in the notes that it wasn’t [posted].”

The court denied the motion to vacate the judgment of foreclosure, finding that the Property had been posted, that West 11 had obtained an order for alternative service, and that the order had been satisfied. This appeal followed.

### ISSUES PRESENTED ON APPEAL

Mr. Hungerford, representing himself on appeal, presents three questions for this Court’s review, which we have consolidated and rephrased:<sup>4</sup>

Whether the circuit court erred in denying Appellant’s motion to vacate the judgment of foreclosing the right of redemption based upon a conclusion that there was no lack of jurisdiction or fraud.

### STANDARD OF REVIEW

After thirty days, a judgment foreclosing an owner’s right of redemption can be reopened only on grounds of lack of jurisdiction or fraud.<sup>5</sup> *Canaj, Inc. v. Baker and*

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<sup>4</sup> Mr. Hungerford presents the following questions in his brief:

- I. Whether the [c]ircuit [c]ourt erred by granting judgment without ensuring that the Appellant was properly served with notice of the proceeding.
- II. Whether the judgment should be reversed due to the failure to publish the required foreclosure notice in a local Montgomery County newspaper.
- III. Whether [Appellant] was wrongfully denied the opportunity to redeem his property due to procedural error and a lack of due process.

<sup>5</sup> For a period of thirty days after the entry of a judgment foreclosing the right of redemption, the judgment may be reopened by the circuit court by means of its general revisory power. *Mayor and City Council of Baltimore v. Thornton Mellon, LLC*, 249 Md. App. 231, 240 (2021). Mr. Hungerford filed his motion to strike the judgment of

*Division Phase III, LLC*, 391 Md. 374, 401 (2006) (citing Md. Code, Tax - Property Article (“TP”), § 14–845(a)). In enacting TP § 14-845(a), “[t]he legislature has declared that the public interest in marketable titles to property purchased at tax sales outweighs considerations of individual hardship in every case, except upon a showing of lack of jurisdiction or fraud in the conduct of the foreclosure.” *Id.* at 414 (quoting *Royal Plaza Community Ass’n, Inc. v. Bonds*, 389 Md. 187, 192 (2005)) (further citation omitted).

“Failure of procedural due process deprives the court of jurisdiction and so gives grounds to reopen the judgment [of foreclosure] under TP [§] 14-845.” *Voltolina v. Prop. Homes, LLC*, 198 Md. App. 590, 599 (2011) (citing *CSR, Ltd. v. Taylor*, 411 Md. 457, 475–76 (2009)). Where a tax sale purchaser fails to comply with applicable notice requirements, the court may also reopen its judgment on grounds of constructive fraud. *Canaj*, 391 Md. at 422–23 (citing *Jannenga v. Johnson*, 243 Md. 1, 5 (1966)) (further citations omitted).

“The circuit court’s decision [whether] to reopen a judgment foreclosing the right of redemption under TP § 14-845(a) is reviewed for legal error.” *Cicada Investments, LLC v. Harbour Portfolio VII LP*, 261 Md. App. 148, 157 (citing *Davis v. Att’y Gen.*, 187 Md. App. 110, 124 (2009), *cert. denied*, 487 Md. 271 (2024)). “[W]e will not overturn the ruling unless it appears from the record that the trial court erred as a matter of law or abused its discretion in denying the motion.” *Id.* (quoting *Voltolina*, 198 Md. App. at 600).

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foreclosure on July 23, 2024, 32 days after the judgment was entered. Accordingly, the judgment could not be disturbed except upon a showing of lack or jurisdiction or fraud.

## DISCUSSION

“A land owner’s interest in their property is one of the fundamental principles upon which both the United States’ and Maryland’s Constitutions were created.” *Canaj*, 391 Md. at 425. “Great care must be taken in avoiding the erroneous deprivation of such property interests.” *Id.* In the context of a tax sale foreclosure, where “the owner may be deprived of important property rights and state action is involved, constitutional guarantees of due process are implicated.” *St. George Antiochian Orthodox Christian Church v. Aggarwal*, 326 Md. 90, 92 (1992).

“[A]t a minimum [the Due Process Clause] require[s] that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case.” *Canaj*, 391 Md. at 424 (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950)). “In the context of tax sales in Maryland, these due process provisions have centered around the issue of notice to the owner of the property.” *Id.* (citing *Royal Plaza*, 389 Md. at 192, *Scheve v. Shudder, Inc.*, 328 Md. 363, 369 (1992); *St. George*, 326 Md. 90). “Because the State has a significant interest in encouraging the participation of purchasers in tax sales and in the giving of marketable titles, it seeks to establish a procedure that, if carefully followed, will insulate a tax sale deed from subsequent attack.” *St. George*, 326 Md. at 92. The rights of the property owner and the interests of the State are both important; “our task is to be certain they are in balance.” *Id.*

“[I]t is well settled that due process of law is not violated in application because the interested party did not receive actual notice.” *Voltolina*, 198 Md. App. at 599 (quoting

*Griffin v. Bierman*, 403 Md. 186, 206 (2008)). “The constitutionality of a particular notice mechanism . . . turns instead on whether the chosen method is reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Id.* (citations and internal quotation marks omitted).

The notice required to be given to the owner of property that is the subject of a tax sale foreclosure proceeding is governed by various provisions of the Tax Property Article and the Maryland Rules, which this Court analyzed in *Voltolina. Id.* at 601–604. If, as in this case, the owner’s whereabouts cannot be ascertained, despite good faith efforts and due diligence, the plaintiff may provide notice pursuant to “parallel” rules and statutory provisions:

First, an order that adopts the contents suggested by TP § 14–840 . . . requires the complainant to insert notice in a newspaper of general circulation in the relevant county . . . once a week for 3 successive weeks. Second, the complainant must “cause a copy of the order of publication to be mailed by first-class mail or certified mail, postage prepaid,” to each defendant’s last known address. TP § 14–839(a)(4). Third, notice must be posted in a conspicuous place at the property. Rule 14–503(c); TP § 14–836(b)(6) (“Further notice of the proceeding shall be required by posting of the property in accordance with applicable Maryland Rules of Procedure.”).

*Id.* at 602–03 (footnotes omitted). For substitute service to be effective, the plaintiff must satisfy all three requirements. *Id.* at 603–04.

Here, West 11 represented to the court, in its Motion for Alternative Service and again at the hearing on Mr. Hungerford’s motion to strike the judgment of foreclosure, that the requisite notice had been posted on the Property, as evidenced by a return of the sheriff

filed on January 24, 2024. The return filed on that date, however, indicates a disposition of “non est” for the stated reason: “no such address.” Our review of the docket entries does not reveal any attempt to post notice on the Property after that date.<sup>6</sup> Consequently, we conclude that the apparent failure to post the Property with the notice required pursuant to Maryland Rule 14-503(c) and TP § 14-836(b)(6) amounts to a failure of due process, which deprived the circuit court of jurisdiction.

Similarly, the failure to post the Property amounted to constructive fraud in the proceedings. “Constructive fraud is a ‘breach of a legal or equitable duty which, irrespective of the moral guilt of the fraud feisor, the law declares fraudulent because of its tendency to deceive others, to violate public or private confidence, or to injure public interests.’” *Cicada Investments*, 261 Md. App. at 162 (quoting *Canaj*, 391 Md. at 421–22). “‘Constructive fraud, as it might be relied on by an owner of property being sold for taxes, would normally relate to notice and things of that nature that would hinder the delinquent taxpayer from exercising his right to redeem, i.e., pay the delinquent taxes.’”<sup>7</sup> *Id.* (quoting *Canaj*, 391 Md. at 422). The failure of a plaintiff to comply with notice requirements is considered constructive fraud.<sup>8</sup> *Id.* (citing *Canaj*, 391 Md. at 423).

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<sup>6</sup> West 11 did not file a brief in this Court.

<sup>7</sup> “Failure to comply with every part of the [tax sale] statute does not, in and of itself, . . . constitute constructive fraud, especially when it does not relate to notice or to the owner’s ability to redeem.” *Canaj, Inc. v. Baker and Division Phase III, LLC*, 391 Md. 374, 423 (2006).

<sup>8</sup> *But see Canaj*, 391 Md. at 423 (stating that deviations from procedural requirements do not amount to constructive fraud where there is sufficient evidence to show that the owner received actual notice of the foreclosure proceeding) (citing *Walter E.*

Although we conclude that the record demonstrates lack of jurisdiction and constructive fraud, it is not clear from the record whether Mr. Hungerford satisfied the condition precedent to seeking to vacate the judgment of foreclosure by paying the taxes and other relevant charges. *See Canaj*, 391 Md. at 396. We note that Mr. Hungerford attached a voided check to his motion to strike the judgment of foreclosure, but we cannot discern whether the circuit court actually received the check or if the amount remitted was sufficient to satisfy the condition. Accordingly, we shall vacate the order denying Mr. Hungerford’s motion to strike the judgment of foreclosure and remand to the circuit court for further findings.

**ORDER OF THE CIRCUIT COURT FOR  
MONTGOMERY COUNTY DENYING  
APPELLANT’S MOTION TO STRIKE THE  
JUDGMENT OF FORECLOSURE IS  
VACATED. CASE REMANDED FOR  
FURTHER PROCEEDINGS NOT  
INCONSISTENT WITH THIS OPINION.  
APPELLEE TO PAY COSTS.**

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*Heller Co. v. Kocher*, 262 Md. 471 (1971)). Here, however, there is no evidence that Mr. Hungerford received actual notice.