

Circuit Court for Baltimore County
Case No. 03-C-15-003217

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1833

September Term, 2019

ESTATE OF ANDREW HARDIN,

v.

HOWARD N. BIERMAN, *et al.*,

Leahy,
Shaw Geter,
Salmon, James P
(Senior Judge, Specially Assigned),
JJ.

Opinion by Shaw Geter, J.

Filed: November 12, 2020

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

This is an appeal from a judgment entered by the Circuit Court for Baltimore County ratifying the foreclosure sale of real property located at 18 Armor Court in Baltimore City. Appellees, Howard N. Bierman, *et al.*, initiated a foreclosure action on March 25, 2015 by filing an Order to Docket. The property was subsequently sold and the court ratified the sale on September 5, 2019, following its denial of exceptions filed by appellant, Estate of Andrew Hardin, et al. On November 13, 2019, the auditor’s report was filed and appellant noted her first appeal on November 19, 2019. She noted her second appeal on December 31, 2019 after the court entered a judgment awarding possession of the property.

Appellant presents the following questions for our review:

1. Whether the circuit court erred in ratifying the sale after it identified legal errors in the documents provided by appellees and those errors were not corrected?
2. Whether the circuit court erred in denying appellant’s motion to dismiss and exceptions to sale despite uncontrovertible evidence of false statements and impossible inconsistencies in affidavits provided by appellees in support of the foreclosure sale?

For reasons discussed below, we must dismiss this appeal.

Maryland Rule 8-202(a) provides, in pertinent part, “the notice of appeal shall be filed within 30 days after entry of the judgment or order from which the appeal is taken.” Md. Rule 8-202(a). A judgment is final when the “trial court’s ruling . . . either decide[s] and conclude[s] the rights of the parties involved or den[ies] a party the means to prosecute or defend rights and interests in the subject matter of the proceeding.” *Maryland Bd. of Physicians v. Geier*, 451 Md. 526, 545 (2017) (quoting *Harris v. State*, 420 Md. 300, 312 (2011)).

Foreclosure actions are *in rem* proceedings that allow for the disposal of property by the mortgagee upon the default of the borrower. *See G.E. Capital Mortg. Servs., Inc. v. Levenson*, 338 Md. 227, 245 (1995). “Title 14 of the Maryland Rules of Procedure sets forth the practice and procedure for foreclosures.” *Zorzit v. 915 W. 36th St., LLC*, 197 Md. App. 91, 98 (2011). “A foreclosure action is concluded with an order from the court ratifying the property’s sale. It is considered a judgment because it is an ‘order of court final in its nature.’” *Hughes v. Beltway Homes, Inc.*, 276 Md. 382, 384 (1975) (quoting *Hersh v. Allnutt*, 252 Md. 513, 519 (1969)).

Appellant noted her first appeal more than 30 days after the court ratified the sale. According to her, the appeal was timely because “there were still outstanding matters to be determined by the court even after the order ratifying the sale was entered.” She argues this court’s decision in *McLaughlin v. Ward* is dispositive. There we stated, in dicta, “if the court refers the matter to an auditor to state an account, as it may under Rule 14-305(f), it may not enter a final judgment until it has adjudicated any exceptions to the auditor’s report.” *McLaughlin v. Ward*, 240 Md. App. 76, 83 (2019). In *McLaughlin*, however, the issue was whether a party could appeal the denial of exceptions to the sale before the sale was ratified. We held the appeal was premature because it was noted “before the entry of the final judgment, which would not occur at least until the ratification of the foreclosure sale.” *Id.* The present case is quite different. Here, the court denied appellant’s exceptions prior to entering a judgment ratifying the sale. Thus, *McLaughlin* is not applicable.

More recently, this Court, in *Huertas v. Ward*, emphasized that “. . . Maryland appellate courts repeatedly have decided appeals from orders ratifying foreclosure sales.”

Huertas v. Ward, No. 2929, SEPT.TERM, 2018, 2020 WL 6326657, at *6 (Md. Ct. Spec. App. Oct. 27, 2020). We noted that when a sale has been ratified it “has the practical effect of putting the parties out of court, as they can no longer prosecute or defend their rights with respect to the property.” *Id.* at *7. “The process of referring the case to an auditor and resolving any exceptions to the auditor’s report is collateral to the foreclosure and thus it does not affect the finality of an order ratifying the foreclosure sale” *Id.* The purpose of the auditor’s report “is that of a calculator and accountant for the court.” *Id.* (quoting *Walker v. Ward*, 65 Md. App. 443, 448 (1985)).

In the case at bar, the foreclosure sale was ratified by court order on September 5, 2019. Appellant noted her appeals on November 15, 2019 and December 31, 2019. Pursuant to Maryland Rule 8-602(b)(2) when an appeal is not properly filed within the requirements of Rule 8-202, the appeal must be dismissed. The Court of Appeals has recognized “Maryland Rule 8-202(a) as a claim-processing rule, and not a jurisdictional limitation.” *Rosales v. State*, 463 Md. 552, 568 (2019). In *Rosales v. State*, the Court stated that it is not “inappropriate for a court to dismiss an untimely appeal. Rather, we are stating that the appropriate grounds for dismissal of an untimely appeal is to dismiss for a failure to comply with the Maryland Rules, instead of for lack of jurisdiction.” 463 Md. 552, 568 (2019). We, thus, hold these appeals must be dismissed as neither is in compliance with Maryland Rule 8-202(a) requiring appeals be noted within 30 days after the entry of judgment from which the appeal is taken.

**APPEAL DISMISSED. JUDGMENT OF
THE CIRCUIT COURT FOR BALTIMORE
COUNTY AFFIRMED; COSTS TO BE
PAID BY APPELLANT.**