

Circuit Court for Montgomery County
Case No. C-15-CV-23-000112

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1862

September Term, 2024

MARY LOU DELL

v.

JAMES E. CLARKE, ET AL.

Nazarian,
Beachley,
Harrell, Glenn T, Jr.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: December 2, 2025

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

In 2005, Mary Lou Dell refinanced her home (the “Property”). She defaulted on the loan in 2019 and the lender, through substitute trustees authorized in a Deed of Trust, initiated foreclosure proceedings in the Circuit Court for Montgomery County. After numerous unsuccessful attempts to apply for loss mitigation assistance, the circuit court heard and granted one emergency motion to stay the sale under Maryland Rule 14-211 and denied a second. The Substitute Trustees sold the property at a foreclosure sale on August 6, 2024 and the court ratified the sale on October 29, 2024. On appeal from the ratification order, Ms. Dell argues that the circuit court should have issued a temporary stay and held an evidentiary hearing before ruling on her second Rule 14-211 motion and that the court erred in denying the motion. We can’t reach the issues relating to Ms. Dell’s motions to dismiss or stay, and we affirm the court’s decision to grant the ratification order.

I. BACKGROUND

On October 14, 2005, Ms. Dell refinanced an existing residential mortgage loan with Mason Dixon Funding, Inc. To secure the \$550,000 loan, she executed a Deed of Trust that authorized Mason Dixon to foreclose and sell the Property were she to default. In December 2011, Mason Dixon assigned the Deed of Trust to The Bank of New York Mellon f/k/a The Bank of New York as Trustee for the Certificateholders of CWMBS, Inc., CHL Mortgage Pass-Through Trust 2005-30, Mortgage Pass-Through Certificates, Series 2005-30 (the “Lender”).

Ms. Dell defaulted on the loan in December 2019 and did not make any further payments. In March 2020, NewRez LLC f/k/a New Penn Financial, LLC d/b/a Shellpoint

Mortgage Servicing (“Shellpoint”), the loan servicing agent, sent Ms. Dell a Notice of Intent to Foreclose. On August 9, 2021, February 22, 2022, and June 11, 2022, Ms. Dell submitted loss mitigation applications to Shellpoint. In December 2022, the Lender appointed James E. Clarke, Christine M. Drexel, and Joanna Foronda as substitute trustees. The Substitute Trustees initiated foreclosure proceedings on behalf of the Lender in January 2023 and filed a Preliminary Loss Mitigation Affidavit stating that as of December 21, 2022, Ms. Dell “ha[d] not submitted an initial [borrower response package (“BRP”)]/Application to review.”

On January 24, 2023, Ms. Dell submitted another loss mitigation application. On March 8, the Substitute Trustees filed a Final Loss Mitigation Affidavit stating again that Ms. Dell “ha[d] not submitted a complete/BRP application to conduct a loss mitigation analysis,” that her request was incomplete, and that she had failed to provide required documents. Shellpoint emailed Ms. Dell on March 13 to request additional documents, and Ms. Dell sent them on March 20. The following day, her attorney followed up with the Substitute Trustees regarding her many attempts to apply for loss mitigation. On May 10, the Lender asked Ms. Dell for “proof she is not deceased,”¹ which she provided on May 18.

The Lender denied Ms. Dell’s loss mitigation application on July 13, 2023. After a failed attempt at mediation, Ms. Dell submitted another application to Shellpoint on July

¹ Of all of the requests for information in this process, this one is difficult to take seriously. Fortunately, it didn’t seem to detain Ms. Dell for long.

26. On August 22, when Ms. Dell’s representative, Timothy Jewell, called to inquire about the status of that application, Shellpoint informed him that Ms. Dell was still “listed as deceased in their file” and asked him to “get Ms. Dell on the phone to verify that she was still alive.” Ms. Dell’s attorney followed up with the Lender on September 11, and the Lender “removed the deceased warning” from Ms. Dell’s account.

By this time, the Substitute Trustees had scheduled a foreclosure sale for October 3, 2023. Ms. Dell filed an Emergency Motion to Stay Foreclosure Sale on September 28, arguing that the Substitute Trustees had “failed to act in good faith with respect to the loss mitigation process and foreclosure alternatives” despite her “repeated efforts” to apply for a loan modification review. On October 2, the court entered an order staying the sale pending an evidentiary hearing scheduled for December 18. Shellpoint advised Ms. Dell on October 6 that it wanted to “re-review [her] for loss mitigation retention options” and sent her a copy of the application form. She submitted an application on October 31. Shellpoint confirmed that it had received the application, and the parties agreed to postpone the evidentiary hearing.

Ms. Dell resubmitted her loss mitigation application to Shellpoint on February 21, 2024. Shellpoint confirmed receipt of the application on February 26 and informed her that the application was incomplete. On March 7 and March 22, Ms. Dell received two more requests for additional documents to supplement her application. On March 28, Shellpoint notified Ms. Dell that it couldn’t complete the loan modification review because it had not “receive[d] all of the required documentation,” and, on April 9, it advised that the Lender

required her most recent bank statements for multiple accounts. On April 11, the court entered an Order withdrawing Ms. Dell’s September 28 Emergency Motion to Stay Foreclosure Sale “subject to” her right “to assert any future defenses that may arise with respect to loss mitigation” and providing that the Substitute Trustees would “not take any action to schedule a foreclosure sale prior to June 11, 2024.” Ms. Dell provided Shellpoint with updated bank statements and additional documents on April 25. On May 2, Shellpoint notified her that “because [she had] not provided all the documentation previously requested,” her application was incomplete. On June 3, Shellpoint notified Ms. Dell again that it could not complete the loan modification review due to missing documentation.

After the June 11 deadline set by the court passed, the Substitute Trustees scheduled a foreclosure sale for August 6, 2024. On July 26, Ms. Dell submitted another loss mitigation application. Mr. Jewell called twice (on July 27 and 31) to check the status of the latest application, and Shellpoint informed him that it hadn’t received any documents.

Ms. Dell filed a second Emergency Motion to Stay Foreclosure Sale on August 2 that repeated the argument from the first: that the Substitute Trustees had “failed to act in good faith with respect to the loss mitigation process and foreclosure alternatives” despite her “repeated efforts” to apply for a loan modification review. The court denied Ms. Dell’s motion at an emergency hearing on August 5, and Ms. Dell didn’t appeal from the denial. The foreclosure sale of the Property proceeded the following day. On October 29, 2024, the court issued an order ratifying the sale, and Ms. Dell filed a timely appeal from the ratification order.

II. DISCUSSION

Ms. Dell presents two questions for our review, which we rephrase:

1. Did the circuit court err in ruling on her Rule 14-211 motion to stay the foreclosure sale without an evidentiary hearing?
2. Did the circuit court err in denying her motion to stay?²

We don't reach these questions, though, because they aren't before us. The circuit court denied Ms. Dell's second Emergency Motion to Stay Foreclosure Sale on August 5, 2024, but she didn't appeal from the denial of that motion. *See Huertas v. Ward*, 248 Md. App. 187, 202 (2020) ("A borrower may take an immediate appeal from an order denying a motion to stay the sale of the property" under Md. Code (1974, 2020 Repl. Vol), § 12-303(3)(iii) of the Courts & Judicial Proceedings Article, which authorizes appeals from interlocutory orders that "[refuse] to grant an injunction[.]"). She did appeal from the order ratifying the foreclosure sale, which the court entered on October 29, 2024. Her notice of appeal purported to "includ[e] all appealable issues address[ed] by the [c]ourt during the pendency of the case," and her brief in this Court focuses on her attempts to stay

² Ms. Dell phrased the Questions Presented in her brief as follows:

1. Did the Circuit Court err in denying Appellant's motion filed pursuant to Maryland Rule 14-211 without conducting an evidentiary hearing?
2. Did the Circuit Court err in denying Appellant's motion that was based upon substantially similar facts to the motion it previously granted?

The Substitute Trustees phrased their Questions Presented in the following manner:

1. Did the trial court err in denying Dell's second motion to stay under Maryland Rule 14-211 without an evidentiary hearing?
2. Did the trial court err in denying Dell's second motion to stay when it granted the first motion to stay with similar facts?

the sale and seek dismissal of the foreclosure proceeding altogether.

Unfortunately, a party can't resurrect issues for appellate review by mentioning them in an untimely notice of appeal. "[T]he Supreme Court of Maryland has held that, on an appeal from the ratification of the foreclosure sale (the final judgment), one cannot litigate issues pertaining to the stay." *Andrews v. O'Sullivan*, 256 Md. App. 532, 540 (2022). In *Thomas v. Nadel*, 427 Md. 441 (2012), the Court differentiated between the pre-sale challenges a borrower may bring in a foreclosure action and the appropriate post-sale challenges:

[P]rior to the sale, the debtor may seek to enjoin the foreclosure sale from proceeding by filing a motion to [stay] as provided in [Md. Rule 14-211]. Should a sale occur, however, the debtor's later filing of exceptions to the sale [under Md. Rule 14-305(e)] may challenge only procedural irregularities at the sale or the debtor may challenge the statement of indebtedness by filing exceptions to the auditor's statement of account.

Id. at 444 (*quoting Greenbriar Condo. v. Brooks*, 387 Md. 683, 688 (2005), *superseded by Maryland Rule 14-211 as stated in Thomas*, *id.* at 444 n.5). Exceptions to the sale could include allegations of insufficient advertisement or unconscionable price, *Greenbriar Condo.*, 387 Md. at 741, but not the loss mitigation issues Ms. Dell seeks to raise here.

That all said, a borrower's "failure to limit an appeal to procedural irregularities" at the foreclosure sale doesn't require us to dismiss the appeal. *Andrews*, 256 Md. App. at 542. Instead, "it is a basis for concluding that the appellant has not asserted a substantive challenge to the ratification of the sale—and thus, to rule in the appellee's favor on the merits." *Id.* And that's the posture we're in here. Ms. Dell didn't file any exceptions to the

August 6 foreclosure sale under Rule 14-305(e), and she doesn't argue on appeal from the circuit court's ratification order that there were any procedural irregularities at the sale. Her only arguments pertain to the court's denial of her second Rule 14-211 Emergency Motion to Stay Foreclosure Sale. This leaves no substantive challenge to the ratification of the foreclosure sale, and we affirm the judgment.

**JUDGMENT OF THE CIRCUIT COURT
FOR MONTGOMERY COUNTY
AFFIRMED. APPELLANT TO PAY
COSTS.**