

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0690

September Term, 2015

CELESTE WENEGIEME

v.

THOMAS P. DORE, ET AL.,
SUBSTITUTE TRUSTEES

Berger,
Arthur,
Reed,

JJ.

Opinion by Berger, J.

Filed: May 31, 2016

*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 case arises out of a foreclosure proceeding initiated in the Circuit Court for Baltimore City by substitute trustees Thomas P. Dore, Mark S. Devan, Gerard F. Miles, Jr., Shannon Menapace, and Erin Gloth (collectively the “Substitute Trustees”), appellees. In the foreclosure proceedings, the Substitute Trustees filed an order to docket a foreclosure with respect to real property located at 3517 Woodstock Avenue, Baltimore, Maryland 21213 (“the Property”) owned by mortgagor Celeste Wenegieme (“Wenegieme”), appellant.

Following the sale of Wenegieme’s property and the ratification of that sale, the purchaser of the property, Wells Fargo Bank, N.A. (“Wells Fargo”), filed a motion for judgment awarding possession of the property. The circuit court granted Wells Fargo’s motion and this timely appeal followed. On appeal from the grant of Wells Fargo’s motion for judgment awarding possession, Wenegieme challenges the sale of the property. Indeed, Wenegieme presents one question for our review,¹ which we have rephrased as follows:

Whether the circuit court erred in granting Wells Fargo’s motion for judgment awarding possession of the property.

¹ The issue, as presented by Wenegieme, is:

Is it legal for a property to be sold under bankruptcy protection? Also within the statute is there an automatic stay relief clause under Rule 4000-1?. If so; adhering to RULE 400-1 AUTOMATIC STAY - RELIEF; 11 USC § 362(a); Local Bankruptcy Rule 4000-1; The Appellees should have petitioned the “ Federal Bankruptcy Court “ for relief from the automatic stay upon a showing of cause, before Honorable Judge Charles J. Peter awarded possession of my property know as 3517 Woodstock Avenue Baltimore 21213 to the Appellees.

For the reasons set forth herein, we shall affirm the judgment of the Circuit Court for Baltimore City.

FACTS AND PROCEEDINGS

In June of 2008, Wenegieme purchased the Property in exchange for a note and a Deed of Trust made to the order of Advisors Mortgage Group, LLC, in the amount of \$216,956 plus interest. The note was subsequently transferred to Wells Fargo. In February of 2012, the parties agreed to modify Wenegieme's obligations under the note. Thereafter, in August of 2012, Wenegieme defaulted on her payments under the note. In accordance with the acceleration clause in the note, the entire amount of her obligation became due upon her default. The Substitute Trustees filed an order to docket a foreclosure on September 4, 2012. Contained in the order to docket was an affidavit from the holder of the note attesting that as of July 31, 2012, Wenegieme's outstanding obligation in default was \$282,971.67.

The matter was temporarily stayed pending the resolution of a contemporaneous bankruptcy proceeding initiated by Wenegieme. After the bankruptcy was resolved, Wenegieme filed numerous motions to stay or dismiss the foreclosure proceedings. All of Wenegieme's motions were denied. On October 30, 2013, Wells Fargo purchased the property at a public auction for \$32,340.00. The circuit court ratified the foreclosure sale on January 14, 2014.

Following the sale of the property, Wenegieme filed two documents that were construed as exceptions made pursuant to Md. Rule 14-305(d). In her filings, Wenegieme

argued that the sale of the property was improper because bankruptcy proceedings were pending. Both motions were denied, and Wenegieme filed a notice of appeal. Wenegieme's appeal, however, was dismissed because she failed to file a brief and a record extract in accordance with Md. Rule 8-602(c)(1). Wenegieme then filed a motion for reconsideration of the dismissal of her appeal, which was denied because it was untimely.

Following the ratification of the foreclosure sale, the auditor's account was confirmed over Wenegieme's objection. Thereafter, Wells Fargo filed a motion for judgment awarding possession on April 6, 2015. In response, Wenegieme filed a motion in opposition to Wells Fargo's motion for judgment awarding possession. In her opposition, Wenegieme argued that the sale of the property was improper because the proceedings were under an automatic stay due to a pending bankruptcy proceeding. Wenegieme affixed a receipt for the filing of a bankruptcy case to her opposition.²

In the April 27, 2015 bankruptcy filing, the debtor was identified as Celestine Wenegieme, Jr. Notably, the last four digits of the debtor's social security number reported in Wenegieme's previous bankruptcy filings and the April 27, 2015 filing did not match. Moreover, in her previous filings, Wenegieme identified Celestine as her brother. Accordingly, Celestine and Celeste Wenegieme are not one in the same. Additionally,

² Wenegieme filed a bankruptcy petition in the United States Bankruptcy Court for the Southern District of New York on April 27, 2015.

Celestine claims that on October 4, 2012--after the present foreclosure proceedings were underway--he acquired a joint interest in the Property.³

Wells Fargo avers that at the time they requested possession of the property, neither Celeste nor Celestine possessed the Property. Rather, “the only evidence before the Circuit Court was that an individual by the name of Dorothy Wimbush, and her daughter, Arianna Gregg, were occupying the property.” On May 6, 2015, the circuit court granted Wells Fargo’s motion for judgment awarding possession. This timely appeal followed. Additional facts will be discussed as necessitated by the issues presented.

DISCUSSION

An order granting possession of property is an appealable interlocutory order pursuant to Md. Code (1974, 2013 Repl. Vol.), § 12-303(1) of the Courts and Judicial Proceedings Article (“A party may appeal from . . . [a]n order entered with regard to the possession of property with which the action is concerned”). We review a circuit court’s order granting or denying a motion for judgment of possession applying an abuse of discretion standard. *G.E. Capital Mortg. Servs., Inc. v. Edwards*, 144 Md. App. 449, 456 (2002) (citing *Billingsley v. Lawson*, 43 Md. App. 713, 726-27 (1979)).

The scope of an appeal of an order granting or denying possession is quite limited. *Manigan v. Burson*, 160 Md. App. 114, 119 (2004). “The appeal must pertain to the issue

³ Celestine’s claim was presented in a complaint filed in the United States District Court for the Southern District of New York on October 24, 2012.

of possession . . . and may not be an attempt to relitigate issues that were finally resolved in a prior proceeding.” *Id.* A party may not raise issues in an appeal of an order granting possession which could have been properly raised in a motion to stay or dismiss a foreclosure or in timely filed exceptions. *Id.* We have explained that, in general, after a circuit court has ratified a foreclosure sale, “objections to the propriety of the foreclosure will no longer be entertained.” *Id.* at 120. In *Manigan*, we commented that a party could challenge the legality of a foreclosure in two separate ways:

“Under Maryland foreclosure procedures, plaintiffs are afforded two separate opportunities in which they may challenge in a state court the legality of the foreclosure. First, under Rule [14-209(b)], plaintiffs may move prior to sale to enjoin foreclosure. Secondly, after the sale but before ratification, plaintiffs have the opportunity to file objections to the sale.”

Id. at 119 (quoting *Billingsley v. Lawson*, 43 Md. App. 713, 723-24 (1979)).

In *Manigan*, a foreclosure defendant argued “that the trial court erred in issuing the writ of possession without first conducting a full evidentiary hearing into the propriety of the foreclosure.” *Id.* at 118. We held that the issues regarding the propriety of the foreclosure were not properly before us because they had not been raised at the proper time. *Id.* We further commented that “[t]he law is firmly established in Maryland that the final ratification of the sale of property in foreclosure is *res judicata* as to the validity of such sale, except in case of fraud or illegality, and hence its regularity cannot be attacked in collateral proceedings.” *Id.* at 120 (citing *Ed Jacobsen, Jr., Inc. v. Barrick*, 252 Md. 507, 511 (1969)).

Accordingly, the scope of our review is limited to the issue of possession and the issue raised by Wenegieme which addresses the propriety of the underlying foreclosure is not properly before us.

We turn our attention next to the circuit court’s award of possession to Wells Fargo. Pursuant to Maryland Rule 14-102(a), “[i]f the purchaser of an interest in real property at a sale conducted pursuant to the Rules in this Title is entitled to possession and the person in actual possession fails or refuses to deliver possession, the purchaser or a successor in interest who claims the right of immediate possession may file a motion for judgment awarding possession of the property.” We have explained that “[t]o invoke [Rule 14-102], the purchaser must show that (1) the property was purchased at a foreclosure sale, (2) the purchaser is entitled to possession, and (3) the person in possession fails or refuses to relinquish possession.” *G.E. Capital Mortgage Servs., Inc., supra*, 144 Md. App. at 457.

In the instant case, Wells Fargo, as the foreclosing lender and purchaser at public auction, had the right to immediate possession of the Property pursuant to Maryland Rule 14-102. Wells Fargo became the purchaser of the Property following the public auction on October 30, 2013. The circuit court ratified the foreclosure sale on January 14, 2014. Nevertheless, Wenegieme claims that granting Wells Fargo possession was improper because her brother had a bankruptcy case pending. This challenge does not address possession of the property, but rather whether the lender had a right to foreclose. These challenges have

been conclusively determined at prior stages in this litigation and those adjudications are given preclusive effect when considering Wells Fargo's motion for judgment awarding possession. We, therefore, hold that the circuit court did not err in granting Wells Fargo's motion for judgment awarding possession.⁴

**JUDGMENT OF THE CIRCUIT COURT FOR
BALTIMORE CITY AFFIRMED. COSTS TO BE
PAID BY APPELLANT.**

⁴ Assuming, *arguendo*, that Wenegieme's challenge to the lender's right to foreclose was otherwise timely, Wenegieme's brother's bankruptcy proceeding would have no effect on the validity of the foreclosure sale because the bankruptcy proceedings were initiated after the foreclosure sale had occurred.