UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1046

September Term, 2015

CARLVERN DUNN, *et al*.

v.

JACOB GEESING, *et al*.
SUBSTITUTE TRUSTEES

Krauser, C. J.,
Nazarian,
Moylan, Charles E., Jr.
(Retired, Specially Assigned),

JJ.

PER CURIAM

Filed: July 22, 2016

On December 24, 2014, the Circuit Court for Prince George's County ratified the foreclosure sale of residential property owned by Carlvern Dunn and Paula Graham-Dunn, appellants, and referred the matter to an auditor ("December 24th order"). The Dunns filed exceptions to the auditor's report and also filed a "Motion to Vacate Sale" which we construe as a motion to revise, alter, or amend the December 24th order pursuant to Md. Rule 2-535(b). The trial court scheduled a hearing on June 17, 2015, which the Dunns did not attend, ("the hearing") and, the same day, it issued an order overruling the Dunns' exceptions to the auditor's report, ratifying the auditor's report, and denying the Dunns' Rule 2-535(b) motion ("June 17th order"). The Dunns noted this appeal and present three questions for our review; however, for the reasons set forth below, the only issue properly before this Court is whether the trial court erred by not providing the Dunns with sufficient notice of the hearing. Finding no prejudicial error, we affirm.

The December 24th order constituted a final judgment on the merits as to the validity of the foreclosure sale. *See Hughes v. Beltway Homes, Inc.*, 276 Md. 382, 384 (1975) ("An order ratifying a sale is a judgment . . . because it is an order of the court final in its nature." (internal quotation marks omitted)); *Ed Jacobsen, Jr., Inc. v. Barrick*, 252 Md. 507, 511(1969) ("[T]he law is firmly established in Maryland that the final ratification of the sale of property in foreclosure proceedings is res judicata as to the validity of such sale, except in the case of fraud or illegality, and hence its regularity cannot be attacked in collateral proceedings." (citations omitted)). Because the Dunns' Rule 2-535(b) motion was filed more than ten days after the December 24th order was entered, it did not stay the time period in which that order could be appealed and therefore only the June 17th order

was timely appealed. *See* Md. Rule 8–202(c); *Stephenson v. Goins,* 99 Md. App. 220, 225-26 (1994). Accordingly, the Dunns' arguments challenging the December 24th order are not properly before this Court. *Id.*

The only issue the Dunns raise with respect to the June 17th order is that the trial court erred by not providing them with timely notice of the hearing. However, assuming, without deciding, that the Dunns did not receive adequate notice of the hearing, the error was harmless because no hearing was required by law, nor did they request a hearing, and nothing in the record indicates they suffered prejudice due to the lack of a hearing. *See Bradley v. Hazard Tech. Co.*, 340 Md. 202, 206 (1995) ("Unless an appellant can demonstrate that a prejudicial error occurred below, reversal is not warranted." (citation omitted)); *see also* Maryland Rule 2-311 (f) ("A party desiring a hearing on a motion, other than a motion filed pursuant to Rule 2-532, 2-533, or 2-534, shall request the hearing in the motion or response under the heading 'Request for Hearing.'"); Maryland Rule 2-543 (h) ("The court may decide exceptions [to an auditor's report] without a hearing unless a hearing is requested with the exceptions or by an opposing party or claimant within five days after service of the exceptions.").

Finally, because the Dunns do not specifically argue that the trial court erred in ratifying the auditor's report or abused its discretion in denying their Rule 2-535(b) motion, those issues are not preserved for appellate review. *See Broadcast Equities, Inc. v. Montgomery County*, 123 Md. App. 363, 390 (1998) (noting that arguments not presented in a brief or not presented with particularity will not be considered on appeal). Nevertheless, even if not waived, whether the trial court erred in ratifying the auditor's

report is not at issue because the Dunns' exceptions to the report challenged the validity of the foreclosure sale and not the auditor's determination of the amount they owed following the sale. *See Pacific Morg. & Inv. Group, Ltd. v. LaGuerre*, 81 Md. App. 28, 33-34 (1989) ("If the *auditor's determination of the amount due is disputed*, exceptions may be filed pursuant to Rule 2–543(g)." (emphasis added)); *see also Manigan v. Burson*, 160 Md. App. 114, 120 (2004) ("Ordinarily, upon the court's ratification of a foreclosure sale objections to the propriety of the foreclosure will no longer be entertained."). Moreover, the trial court did not abuse its discretion in denying the Dunns' Rule 2-535(b) motion. Although the Dunns argued that the foreclosure sale was "irregular" because their counterclaim against appellees was still pending when the sale occurred, "irregularity, in the contemplation of [Rule 2-535(b)], usually means irregularity of process or procedure, and not an error, which in legal parlance, generally connotes a departure from truth or accuracy of which a defendant had notice and could have challenged." *Weitz v. MacKenzie*, 273 Md. 628, 631 (1975). Because the Dunns' counterclaim was dismissed before the foreclosure sale was ratified there was no irregularity, within the meaning of Rule 2-535, in the trial court's issuance of the December 24th order.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.