UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1092

September Term, 2015

RHONDA R. BROWN

v.

THOMAS P. DORE, ET AL.

Eyler, Deborah S.,
Wright,
Alpert, Paul, E.
(Retired, Specially Assigned),

JJ.

Opinion by Alpert, J.

Filed: May 20, 2016

This case is before us for the second time. Rhonda R. Brown, appellant, (hereinafter "Ms. Brown"), is the former owner of real property located at 2001 Allis Street in Annapolis ("the Property"). The Property was sold at a foreclosure sale on May 10, 2012 by Thomas P. Dore, *et al.*, substitute trustees, appellees. Ms. Brown appeals from a June 29, 2015 order entered in the Circuit Court for Anne Arundel County ratifying and confirming the auditor's report in connection with the foreclosure sale.

QUESTION PRESENTED

Ms. Brown presents the following question for our consideration:

> I. Did the circuit court commit error in hearing this matter without a lender or beneficiary on the Deed of Trust in this matter and entering an order of final ratification?

For the reasons set forth below, we shall affirm.

FACTUAL BACKGROUND

The basic facts of this case were set forth in our unreported opinion in Ms. Brown's prior appeal and we need not recount them in detail here. *See Brown v. Thomas P. Dore, et al., Substitute Trustees*, No. 0038, Sept. Term 2013 (filed January 26, 2015). It is sufficient to say that Ms. Brown's mother, Fannie M. Brown, executed a promissory note and deed of trust on the Property with Wells Fargo Bank, N.A. ("Wells Fargo"). Following her mother's death, Ms. Brown was appointed the personal representative for her mother's estate and became the record owner of the Property. A default for nonpayment occurred on February 2, 2011, and, thereafter, appellees instituted foreclosure proceedings. After several unsuccessful attempts to serve Ms. Brown with a copy of the notice of foreclosure action and other documents, service was obtained by

posting. The Property was sold on May 10, 2012, and a report of sale was filed in the circuit court on May 29, 2012.

Ms. Brown filed exceptions and a motion to set aside the sale. She asserted that she never received a notice of default or notice of the filing of foreclosure proceedings and challenged the good faith efforts of the process server with respect to service of the order to docket and other documents. A hearing was held on December 17, 2012 and, several days later, the court overruled Ms. Brown's exceptions and motion to set aside the sale. The final order ratifying and confirming the sale of the Property was entered on February 12, 2013. Ms. Brown filed a notice of appeal.

In an unreported opinion, we concluded that the circuit court did not err in overruling Ms. Brown's exceptions and ratifying the sale. *See Brown v. Thomas P. Dore, et al., Substitute Trustees*, No. 0038, Sept. Term 2013 (filed January 26, 2015). Ms. Brown's subsequent petition for writ of certiorari to the Court of Appeals was denied.

While that appeal was pending, the report and account of the auditor was filed. On June 29, 2015, a final order ratifying the auditor's report was entered. Thereafter, on July 24, 2015, Ms. Brown filed a second notice of appeal, giving rise to the case at hand.

We shall provide additional facts as necessary in our discussion of the question presented.

DISCUSSION

Although Ms. Brown appealed from the ratification of the auditor's report, she challenges only the ratification of the sale by questioning the ownership of the loan and alleging "separation" of the note and deed. Ms. Brown contends that because "there is no

lender or beneficiary named on the Deed of Trust . . . the subject property is does [sic] not qualify to be foreclosed on as no party exists upon which to institute a foreclosure." She maintains that "[t]he law provides that only a secured party has the capacity to may [sic] bring a foreclosure matter to sell property."

Preliminarily, we note that the instant appeal is limited to challenges pertaining to the ratification of the auditor's report. Ms. Brown was required to provide argument in support of her position on that issue, but failed to lodge any complaint at all, either in the circuit court or in this Court, with respect to the auditor's report. *See* Md. Rule 8-504(a)(6)("A brief shall . . . include . . . [a]rgument in support of the party's position on each issue."); Md. Rule 8-131(a)("Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court . . . ."). As a result, issues pertaining to the ratification of the auditor's report have been waived. *Blue v. Arrington*, 221 Md. App. 308, 321 (2015).

The arguments that are set forth in Ms. Brown's brief, are, in effect, an attempt to re-litigate the ratification of the sale of the Property. In our prior unreported opinion, we held that the circuit court did not err in overruling Ms. Brown's exceptions to the foreclosure sale and ratifying the sale. That holding is the law of the case. *Turner v. Housing Authority of Baltimore City*, 364 Md. 24, 31-33 (2001). In *Turner*, the Court of Appeals stated:

> [T]he Circuit Court was not empowered to grant the appellee's motion to reinstate the judgment. This conclusion is required by our cases. The doctrine of the law of the case is well settled in this State. In *Waters v. Waters*, 28 Md. 11, 22 (1867), we stated:

> "No principle is better established than that a decision of the Court of Appeals once pronounced in any case is binding upon the court below and upon this Court in the subsequent proceedings in the same case, and cannot be disregarded or called in question. It is the law of the case binding and conclusive upon the parties, not open to question or examination afterwards in the same case."
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> More recently, we explained it thusly:
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> > "'Once this Court has ruled upon a question properly presented on an appeal or, if the ruling be contrary to a question that could have been raised and argued in that appeal on the then state of the record, as aforesaid, such a ruling becomes the "law of the case" and is binding on the litigants and courts alike, unless changed or modified after reargument, and neither the question decided nor the ones that could have been raised and decided are available to be raised in a subsequent appeal.'" (Citations omitted).
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> *Loveday v. State*, 296 Md. 226, 229, 462 A.2d 58, 59 (1983)(quoting *Fidelity-Baltimore Nat'l Bank & Trust Co. v. John Hancock Mut. Life Ins. Co.*, 217 Md. 367, 372, 142 A.2d 796, 798 (1958)).

Id. at 31-32.

More specifically, as we stated in *Bank of New York Mellon v. Nagaraj*, 220 Md. App. 698 (2014), a circuit court has no authority to vacate a foreclosure sale in cases where an appellate court has already affirmed the ratification of the foreclosure sale. *Nagaraj*, 220 Md. App. at 708. In *Nagaraj* we commented:

> In Maryland, a trial court no longer has jurisdiction to modify a judgment after it has been affirmed on appeal. As this Court explained:
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> > A sound public policy requires that there be an end to litigation between the same parties growing out of the same facts. In cases where there has been an adversary trial between the parties, a judgment rendered by the trial court, and that judgment affirmed by this court, without a remand

> for further proceedings, it is an end of that litigation, and the trial court has no jurisdiction to strike out the judgment.
>
> This rule, that a judgment cannot be revised after a decision by the appellate court, applies even where the ground raised was not addressed on appeal and where fraud, mistake or irregularity is alleged.

Id. at 708-09 (internal quotations and citations omitted).

In the case at hand, Ms. Brown did not raise any issues concerning the ownership of the loan or the separation of the note and the deed either in the circuit court or in her prior appeal. As a result, those claims have been waived. Md. Rule 8-131(a). Even if she had, in our prior unreported opinion, we held that the circuit court did not err in overruling Ms. Brown's exceptions to the foreclosure sale and ratifying the sale. That judgment cannot now be revised.

Lastly, even if the issues of the ownership of the loan and the separation of the note and the deed had been raised in a timely manner, Ms. Brown would fare no better. The note contained an endorsement in blank by the lender, Wells Fargo Bank, N.A., thereby making the note payable to any party in possession of it. The holder of the note was within its right to appoint the substitute trustees and enforce the note. *Deutsche Bank National Trust Company v. Brock*, 430 Md. 714, 727-33 (2013). Any separation of the note and deed of trust was of no legal consequence. *Id.* Thus, even if Ms. Brown's

arguments concerning the separation of the note and deed of trust were properly before us, we would hold that they are without merit. *Id.*

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.