

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1295

September Term, 2014

CHARLES FRANKLIN

v.

NOVALUX MD 12, LLC

Wright,
Graeff,
Eyler, James R.
(Retired, Specially Assigned),

JJ.

Opinion by Eyler, James R., J.

Filed: February 16, 2016

This case arises out of a decision by the Circuit Court for Baltimore City denying Charles Franklin, appellant’s, motion to vacate or reopen a decree foreclosing the right of redemption for real property known as 501 North Calhoun Street in Baltimore City (“the property”). On November 26, 2013, Novalux MD 12, L.L.C. (“Novalux”), appellee, the purchaser of the lien for unpaid taxes and assessments on the property, filed a complaint to foreclose the right of redemption. Despite notice, Franklin did not respond to the complaint and, on May 5, 2014, the circuit court entered a judgment foreclosing the right of redemption. Thereafter, on June 25, 2014, Franklin, proceeding in proper person, filed a “motion to vacant judgement/reopening.” Novalux filed a response to Franklin’s motion and, subsequently, Franklin filed an addendum repeating the claims made in his original motion. By order dated July 25, 2014, the circuit court denied Franklin’s motion. This appeal followed.

ISSUE PRESENTED

In an order dated April 6, 2015, we held that because Franklin’s “motion to vacant judgement /reopening” was filed more than ten days after the entry of the judgment foreclosing the right of redemption it did not stay the running of the thirty-day period for noting an appeal provided in Maryland Rule 8-202(a). The notice of appeal was, however, filed within thirty days of the circuit court’s judgment denying Franklin’s “motion to vacant judgement/reopening.” Accordingly, we ordered that the issue in this appeal shall be limited to whether the circuit court abused its discretion in denying Franklin’s “motion to vacant judgement/reopening.” For the reasons set forth below, we shall affirm.

FACTUAL BACKGROUND

The basic facts of this case are not in dispute. Novalux purchased a lien for unpaid taxes and assessments on the subject property at an auction conducted by Baltimore City and, thereafter, filed a complaint to foreclose the equity of redemption. Franklin did not respond to the complaint, nor did he request the court to fix the amount necessary for redemption or make any payment to redeem the property. Subsequently, the circuit court entered judgment foreclosing the right of redemption.

Franklin sought to vacate the judgment foreclosing the right of redemption and reopen the case. In his motion, Franklin contended that counsel for Novalux refused to provide him with a statement of fees and costs so that he could redeem the property. Novalux countered that it provided Franklin’s agent with an email that included a statement of attorney’s fees and expenses as well as the total amount required to redeem the property. In addition, by email dated July 3, 2014, after the motion to vacate had been filed, counsel for Novalux advised Franklin that the amount necessary to redeem the property was \$3,163.66.

In his brief on appeal, Franklin acknowledges that he received the July 3, 2014 email from Novalux’s counsel. Nevertheless, it is undisputed that Franklin never paid the amount required to redeem the property.

In a written order dated July 25, 2014, the circuit court denied Franklin’s motion to vacate the judgment and reopen the case, stating:

Defendant does not state that the redemption amount has been paid. “[I]n order to challenge the foreclosure of the equity of redemption in a tax sale, the taxes and other relevant charges acknowledged to be due, either prior to

the challenge or simultaneously with it, must, as a condition precedent, be paid.” *Canaj, Inc. v. Baker & Div. Phase III*, 391 Md. 374, 396 (2006). The Court of Appeals affirmed this condition precedent a year later when it held that “a property owner must tender all of the deficient real property taxes before he can challenge the validity of a tax sale.” *Quillens v. Moore*, 399 Md. 97, 125 (2007).

STANDARD OF REVIEW

In the case at hand, we shall review the decision of the circuit court to deny Franklin’s “motion to vacant judgement/reopening” for an abuse of discretion. *Canaj, Inc. v. Baker and Division Phase III, LLC*, 391 Md. 374, 400-01 (2006). In *Canaj*, the Court of Appeals explained the applicable standard of review as follows:

Maryland Code (1973, 2002 Repl. Vol.), §6-408 of the Courts and Judicial Proceedings Article (“CJ”), Maryland Code (1985, 2001 Repl. Vol., 2005 Supp.), §14-845(a) of the Tax-Property Article (“T.P.”), and Maryland Rule 2-535, govern the ability of the trial courts to review their own judgments. Under the trial court’s general review power as provided by Rule 2-535 and C.J. §6-408, when a party files a motion to set aside a judgment more than thirty days after the judgment is entered, the grounds for setting aside the judgment are generally limited to instances of fraud, mistake or irregularity. In reviewing the decision below, “the only issue before the appellate court is whether the trial court erred as a matter of law or abused its discretion in denying the motion.” *In re Adoption/Guardianship No. 93321055/CAD*, 344 Md. 458, 475, 687 A.2d 681, 689, cert. denied sub nom. *Clemy P. v. Montgomery County Dep’t of Soc. Servs.*, 520 U.S. 1267, 117 S.Ct. 2439, 138 L.Ed.2d 199 (1997).

In the context of tax sales, a judgment foreclosing an owner’s right of redemption can be reopened, after thirty days have passed, on the grounds of lack of jurisdiction or fraud. T.P. §14-845(a). In addition, if the party seeking that the judgment be vacated bases its position on grounds of constructive fraud, the claim must be filed within one year from the date of judgment. *Id.* Although we have not previously stated the standard of review of a lower court’s decision under this section, it stands to reason that the same standard used in reviewing decisions under C.J. §6-408 and Rule

2-535(b) should be applied. The Rule and both statutes deal with the ability of the trial court to review its judgments.

Id.

DISCUSSION

The procedures for tax sales in Maryland are set forth in §14-808 *et seq.* of the Tax-Property Article. Provisions pertaining to tax sales “shall be liberally construed as remedial legislation to encourage the foreclosure of rights of redemption by suits in the circuit courts and for the decreeing of marketable titles to property sold by the collector.” Md. Code (2012 Repl. Vol.) §14-832 of the Tax-Property Article (“T.P.”). In support of the public interest in having marketable titles to property purchased at tax sales, the legislature limited the ability of courts to reopen judgments, providing:

“A court in the State may not reopen a judgment rendered in a tax sale foreclosure proceeding except on the ground of lack of jurisdiction or fraud in the conduct of the proceedings to foreclose; however, no reopening of any judgment on the ground of constructive fraud in the conduct of the proceeding to foreclose shall be entered by any court unless an application to reopen a judgment rendered is filed within 1 year from the date of the judgment.”

TP §14-845(a).

In his motion, Franklin argued that the judgment foreclosing the right of redemption should be vacated and his case reopened because counsel for Novalux failed to respond to his agent’s request for the amount of legal fees. In addition, when Franklin himself requested Novalux’s counsel to provide the amount of legal fees due, counsel “neglected to release the legal fees which is required in order for the liens to be released.” Franklin claimed that he had the money to redeem the property and had been trying to

redeem it since December 2013, but was unable to do so because counsel for Novalux “continued to neglect to release their legal fees” which “ultimately authorized The City of Baltimore to release the tax-sale liens” on the property. Franklin also claimed that none of the mailings in the court file ever made it to him. In his addendum to his “motion to vacant judgement/reopening,” Franklin acknowledged that on July 5, 2014, counsel for Novalux mailed him a statement “[w]ith enclosed legal fees with a dead-line date to be at his office with \$3,163.66 when that date went to July 21, 2014 to arrive with those monies.”

What is clear from our review of the record is that Franklin did not deny that delinquent taxes were due, did not raise any jurisdictional challenge, and did not allege fraud. His sole complaint was that counsel for Novalux failed to advise him of the amount required to redeem the property. Section 14-827 of the Tax-Property Article provides that “[t]he owner or other person that has an estate or interest in the property sold by the collector may redeem the property at any time until the right of redemption has been finally foreclosed under the provisions of this subtitle.” The amount required to redeem is specified by statute as follows:

- (1) the total lien amount paid . . . together with interest;
- (2) any taxes, interest, and penalties paid by any holder of the certificate of sale;
- (3) any taxes, interest, and penalties accruing after the date of the tax sale;
- (4) in the manner and by the terms required by the collector, any expenses or fees for which the plaintiff or the holder of a certificate of sale is entitled to reimbursement under §14-843 of this subtitle; and

(5) for vacant and abandoned property sold under §14-817 of this subtitle for a sum less than the amount due, the difference between the price paid and the unpaid taxes, interest, penalties, and expenses.

T.P. §14-828(a).

If there is any dispute regarding redemption after the action to foreclose the right of redemption has been instituted, “the person redeeming may apply to the court before which the action is pending to fix the amount necessary for redemption. . . .” T.P.

§14-829(a). Pursuant to T.P. §14-829, the right of redemption cannot be foreclosed until the circuit court rules on a property owner’s application for determination of the amount needed to redeem the property. *Dawson v. Prince George’s County*, 324 Md. 481, 488 (1991). Once the judgment foreclosing the right of redemption has been entered, the court may not reopen the judgment except on the grounds of lack of jurisdiction or fraud in the conduct of the proceedings to foreclose as set forth in TP §14-845(a).

In the case at hand, Franklin failed to raise in the circuit court the issue of the amount necessary for redemption. After judgment was entered, the grounds for challenging the foreclosure of the right of redemption were limited to lack of jurisdiction and fraud in the conduct of the proceedings to foreclose. Franklin’s motion to “vacant judgement/reopening” does not assert a lack of jurisdiction or fraud in the conduct of the proceeding to foreclose. But even if his assertions could be read to constitute one or both of those grounds, he would not meet with success because he failed to satisfy a required condition precedent.

In order to challenge the judgment foreclosing the right of redemption in a tax sale on the grounds of lack of jurisdiction or fraud in the conduct of the proceedings to

foreclose, Franklin was required, as a condition precedent, to pay the total sum of taxes, interest, penalties, and expenses that were due. This condition precedent was addressed by the Court of Appeals in *Quillens v. Moore*, 399 Md. 97 (2007). In that case, Quillens failed to pay real property taxes on eight pieces of property. *Id.* at 100. The properties went to tax sale and, eventually, Baltimore City obtained a certificate of tax sale for two of the properties. *Id.* Thereafter, Baltimore City sought and obtained a judgment foreclosing the right of redemption for the properties. *Id.* at 101.

On appeal, Quillens challenged, *inter alia*, the circuit court’s holding that he was required to tender payment of all of the deficient taxes in order to challenge the validity of the tax sale proceedings. *Id.* at 123-24. In concluding that, as a condition precedent to challenging the validity of the tax sale proceeding, Quillens was required to tender payment of all of the deficient taxes, the Court of Appeals relied upon its prior opinion in *Canaj, supra*, where it stated, in part:

If a delinquent taxpayer can find a way to overturn a tax sale without paying the delinquent taxes, the delinquent taxpayer will never redeem. It is for this reason that the general rule is that in order to challenge a tax sale, the payment of taxes in arrears is a condition precedent. It was not met in the case at bar (at one point prior to the judgments, appellant appeared to question the computation of taxes but not that some amount was due. That issue was abandoned and not raised in the case before us.).

* * *

By attacking the sale procedure in a post-judgment motion to vacate, instead of paying the taxes and charges which it would have been required to do in order to redeem prior to judgment, the taxpayer appears to be seeking to have the title of the property revert back to the delinquent taxpayer without having to ever redeem by paying the overdue and due taxes.

* * *

We continue to hold that in order to challenge the foreclosure of the equity of redemption in a tax sale, the taxes and other relevant charges acknowledged to be due, either prior to the challenge or simultaneously with it, must, as a condition precedent, be paid. Appellant has not contested the fact that taxes are owed, or in this appeal, the amounts. There is no issue as to his obligation to pay the taxes. If we were to overrule our cases holding that payment is first required, the City would be left where it was before the tax sale. The public would be burdened perpetually with the problems created by the thousands of abandoned properties, which the delinquent owners would be unlikely to ever pay taxes on or ever to rehabilitate.

Canaj, 391 Md. at 385 n.6, 387, 396.

The Court in *Quillens* concluded:

The *Canaj* holding applies, by its own terms, to the present case. *Quillens* is trying to skirt this by saying that he is challenging the jurisdiction of the Circuit Court; in effect, by challenging the jurisdiction of the Circuit Court, however, *Quillens* is seeking post-foreclosure affirmative relief because he is seeking to have the tax sale and the order foreclosing his right of redemption in the City properties set aside. In light of our opinion in *Canaj*, a property owner must tender all of the deficient real property taxes before he can challenge the validity of a tax sale, which *Quillens* has failed to do.

Quillens, 399 Md. at 126.

The principle applied in *Canaj* and *Quillens* applies in the case at hand. As a condition precedent to challenging the foreclosure of the right of redemption, Franklin was required to pay the real property taxes and other relevant charges acknowledged to be due. There is no evidence that Franklin paid the amount necessary to redeem the property and he does not claim that he did. Because he failed to make the required

payment, the circuit court did not abuse its discretion in denying his “motion to vacant judgement/reopening.”

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