

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 502

September Term, 2016

KELLY A. HAM

v.

RICHARD J. HAM, *et al.*

Kehoe,
Leahy,
Albert, Paul E.,
(Senior Judge, Specially Assigned)
JJ.

Opinion by Kehoe, J.

Filed: August 4, 2017

*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. *See* Md. Rule 1-104.

Kelly A. Ham appeals from a judgment of the Circuit Court for Prince George's County Maryland that vacated a mechanic's lien in her favor in the amount of \$2,858,555.65, and dismissed the mechanic's lien action itself. The appellees are John K. Gardner, Esquire, a court-appointed trustee who has legal title to the property, and Richard J. Ham, in his own name and as trustee of the Richard J. Ham Living Trust.

Appellant raises four contentions which we have consolidated and reworded to describe their substance as opposed to the descriptive terminology employed by her. *See Corapcioglu v. Roosevelt*, 170 Md. App. 572, 590 (2006) (“[A] court is to treat a paper filed by a party according to its substance, and not by its label.”):

- I. Did the trial court err when it vacated the July 10, 2014 final judgment, and dismissed appellant's complaint to establish and enforce a mechanic's lien?
- II. Did the trial court err in failing to hold a hearing on appellant's motion to reconsider?

We will affirm the judgment of the circuit court.

Background

The facts of this case are well-known to the parties and we will summarize them briefly in order to place the parties' contentions in context.

Appellant and her sister Christine Ham, are children of Richard J. Ham and Peggy K. Ham. In 2007, Mr. and Mrs. Ham were divorced by a judgment entered in the Circuit Court for Anne Arundel County. As part of the relief granted to Peggy Ham, the court awarded her use and possession of the parties' marital residence located in the Pleasant Prospect community in Prince George's County. The judgment allowed Peggy Ham to reside in the marital home through January 31, 2012, at which time the residence was to

be listed for sale. If she continued to reside in the home after January 31, 2012, she was to be responsible for paying two-thirds of the monthly mortgage payments until the property was sold. After the divorce decree, Peggy Ham resided at the marital residence with the parties' by now emancipated daughters, appellant and Christine Ham. During her extended tenure, Peggy Ham did not pay any of the financial obligations required by the judgment.

Apparently, Richard Ham and Peggy Ham could not agree on how to sell the former marital property. Mr. Ham requested that the Circuit Court for Anne Arundel County appoint a trustee to sell the property. On May 18, 2012, that court appointed Sloane Franklin as trustee to sell the property. Later, the court removed Franklin as trustee and appointed John Gardner as successor trustee. In late 2013 or early 2014, Gardner filed an eviction action against Peggy Ham and their daughters and the three were evicted in April 2014.

At about the same time, appellant filed a Complaint to Establish and Enforce a Mechanic's Lien and for Breach of Contract claiming that she had rendered services and provided materials in the amount of \$2,858,555.65 for home repair and landscaping work at the property. To support this claim, appellant attached what purported to be a running tally of her labor and material used to improve the property. Appellees assert that appellant performed no work of any significant value on the property and point to the fact that the property has a fair market value of \$675,000. Although appellant disputes this issue, there is no question that many of the charges listed on the tally—for instance,

\$79,200 to remove peeling paint from a bedroom, and \$8,580 for a one-hour meeting with a contractor—appear to be grossly excessive.

Appellant did not join Gardner as a party to her complaint, even though he had legal title to the property. Although Richard Ham was named as a defendant, there is nothing in the court file that suggests that he was served with either the summons or the show cause order later issued by the court. In any event, no answer or other responsive pleading was filed and no one appeared at the show cause hearing to challenge appellant's assertions. On July 3, 2014, the Circuit Court for Prince George's County issued an order establishing the mechanic's lien in the amount of \$2,858,555.65.

Appellant also filed a separate notice of *lis pendens*.

About a year after entry of the judgment, Gardner entered into a contract to sell the property to a third party, Michael J. Winkleman. A title examination undertaken at the contract purchaser's behest revealed the existence of the lien and the *lis pendens* notice.

Immediately thereafter, appellees filed an emergency motion to revise the judgment pursuant to Maryland Rule 2-535(b), as well as a motion to vacate the judgment. This generated a spate of filings between the parties. On February 19, 2016, the circuit court, the Honorable John P. Davey, presiding, denied appellees' motion on the ground that there was not a sufficient showing of fraud, mistake or irregularity. Shortly thereafter, appellees filed another motion to revise the judgment.

On April 6, 2016, Judge Davey granted the second motion. Among other relief, the court vacated the judgment imposing the mechanic's lien and ordered that a hearing be

held on the complaint to establish and enforce the mechanic's lien. Appellant filed two motions for reconsideration.

The hearing was held before the Honorable Leo E. Green on May 13, 2016. Before the hearing, appellees served a subpoena duces tecum on appellant requiring her to be present at the hearing and to bring with her documents to support her claim that she had provided materials and services to the Mitchellville property in the amount of \$2.8 million. She was unable to attend the hearing because of a dental emergency, although she was represented by counsel. Counsel did not present any evidence that supported her claim. Discussion between counsel and the court established that Gardner had neither been named as a party nor served with process. Judge Green concluded that the failure to join Gardner was dispositive.

After the hearing, Judge Green signed an order that: (1) dismissed the mechanic's lien action; (2) vacated the judgment establishing the lien; (3) declared that the lien was no longer a lien of record against the property; (4) dismissed the *lis pendens* notice; and (5) authorized the trustee to proceed with the sale of the property.

This appeal followed.

Analysis

I.

Appellant first contends that the trial court's decision to vacate the court order entered by Judge Green on July 10, 2014, was an error of law, as the trustee of the property in

question was not a real party in interest and therefore appellant's failure to join or even serve him with suit papers did not constitute an irregularity. This argument is meritless.

Under the rules of compulsory joinder, appellant was required to join and serve the trustee because he is an interested party in the litigation. Maryland Rule 2-211(a) states that a party must be joined in an action if “disposition of the action may impair or impede the person's ability to protect a claimed interest relating to the subject of the action.” The trustee is an interested party because he or she has legal title to make the sale of the property. *See* Md. Rule 14-302(b) (“When the Court orders a sale it may appoint a trustee to make the sale. The trustee shall be a natural person.”). Because appellant did not name Gardner, who was the legal owner of the property, as a defendant in the mechanic's lien action, the judgment was void and could be vacated at any time. *See, e.g., Cook v. Alexandria Nat. Bank*, 263 Md. 147, 153 (1971).

The mechanism employed by appellees to vacate the judgment was procedurally apt. Maryland Rule 2-535(b) states: “on a motion of any party filed at any time, the court may exercise revisory power and control over the judgment in case of fraud, mistake, or irregularity.” A court does not have jurisdiction over a party until he or she has been properly served. *See, e.g., Miles v. Hamilton*, 269 Md. 708, 713 (1973). This constitutes an irregularity. *See Estime v. King*, 196 Md. App. 296, 307 (2010) (For the purposes of Rule 2-535(b), an ‘irregularity’ means “doing or not doing that ... which, conformable with the practice of the court, ought or ought not to be done[.]” (citation and quotation marks omitted)).

Appellant also contends that the trial court erred in dismissing her complaint without providing her an opportunity to effect proper service. We disagree.

In order to establish a mechanic's lien, a petitioner, such as appellant, must file an action to impose a lien within 180 days of the date that "the work has been finished or the materials furnished." Real Property Article § 9-105(a). Appellant failed to name Gardner, the legal owner of the property, as a party to the complaint. Pointing to her *lis pendens* filing, appellant argues that Gardner had constructive notice of the mechanic's lien action and that this is the effective equivalent of naming him as a party and serving him with process. This is not correct. Filing a notice of *lis pendens* is not a substitute for what is required to initiate a legal action. *See Conwell Law LLC v. Tung*, 221 Md. App. 481, 500 (2015) ("Effective service under [Md.] Rule 2-121(a) requires delivery of a copy of the summons, complaint, and all other papers filed with it.") (Internal citations, quotations, and emphasis omitted).

We are not dealing with a mere technical irregularity with regard to a legal formality. Appellant's failure to join Gardner, compounded by her failure to serve Ham with process, is not a minor good faith error but constitutes a constructive, and indeed perhaps an actual, fraud on the court. There is no reason why the court should permit appellant to start anew after her fraud was discovered.

Appellant next argues that the court erred by failing to rule on one of the motions for reconsideration which she filed in the period between Judge Davey's order and the

hearing before Judge Green. The substance, if not the formal language, of Judge Green’s order comprehensively resolved all pending claims and motions. This is sufficient.

Appellant also contends that the scheduling of that hearing deprived her of her right to due process. However, she was represented by counsel at that hearing who did not object to the scheduling of the hearing.

II.

Finally, appellant contends that Judge Green erred when he denied her motion to reconsider the judgment he entered in favor of appellees without holding a hearing. The court did not abuse its discretion in declining to hold a hearing before ruling on the motion because it denied the motion. *See* Md. Rule 2-311(e) (“When a motion is filed pursuant to Rule 2-532, 2-533, or 2-534, the court shall determine in each case whether a hearing will be held, but it may not grant the motion without a hearing.”).¹

**The judgment of the Circuit Court for Prince George’s County is affirmed.
Appellant to pay costs.**

¹ Appellant presents several variations on the contentions addressed in this opinion but they are also without merit.