Circuit Court for Baltimore City
Case No. 24-C-16-004067

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2206

September Term, 2016

KATANA PROPERTIES, LLC

v.

GILMA A. MARTINEZ, ET AL.

Arthur,
Reed,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Salmon, J.

Filed: January 23, 2017

Katana Properties, LLC ("Katana") appeals from the Circuit Court for Baltimore City's dismissal of its complaint to foreclose Gilma Martinez, et al.'s ("Martinez") right of redemption for the real property located at 123 S. Hilton Street, Baltimore, Maryland (the "Property"). Appellant presents one issue for our review, "[w]hether the lower [c]ourt erred when it dismissed [Katana's] Complaint[.]"

BACKGROUND

On May 18, 2015, the Director of Finance for Baltimore City sold a tax lien certificate at a tax sale auction for $2,136.22. The sale came about due to Martinez's failure to pay taxes on the Property. The purchaser of the Property was 2015 Ultra-Safe Fund, LLC ("Ultra-Safe"). On July 15, 2016, Ultra-Safe initiated proceedings in the circuit court to foreclose Martinez's right of redemption in the Property. Pursuant to Maryland Rule 14-502(c)(4) and Maryland Code (2008, 2012 Repl. Vol., 2017 Supp.), Tax-Property Article ("T.P.") § 14-833 (a-1), the complaint included an affidavit stating that two notices regarding the redemption action were sent to Martinez via certified mail, return receipt requested.

Martinez filed a motion to dismiss the complaint on the ground that Ultra-Safe failed to comply with the notice requirements of T.P. § 14-833 (a-1). Martinez argued, *inter alia*, that the notices sent to her were not stamped "Notice of Delinquent Property Tax," as required by T.P. §14-833 (a-1), and that the notices "purport to have two dates of mailing but have only one Certified Mail number thus calling into question whether two separate notices were sent as required by the Tax-Property Article."

Ultra-Safe filed a "Reply" to Martinez's motion to dismiss, stating that the first and second notices and certified mail forms were printed at the same time "as a set" before being sent at least one week apart, which explained why there was only one tracking number. In addition, Ultra-Safe asserted that "[t]racking of the notices is inconsequential as only the fact that they were sent is required, not that a [d]efendant received them." In response to Martinez's claim that the notice envelopes did not contain the stamp "Notice of Delinquent Property Tax," Ultra-Safe explained that the copying of the documents had degraded the quality of the documents. Ultra-Safe, however, did not specifically say whether both envelopes had, in fact, been stamped, as required by the statute.

Martinez filed a "Reply . . . and Supplementary Information to Support the Motion to Dismiss," indicating that her counsel had inspected fourteen "randomly selected" cases filed by Ultra-Safe's counsel in the circuit court, and found that in those cases, the certified mail receipts attached to the affidavits supporting the complaints to foreclose the right of redemption also contained duplicative tracking numbers for separate notices.

Ultra-Safe responded with a "Reply" and motion for additional legal fees, arguing that it had fully complied with T.P. §14-833 (a)(6)(i-ii). In response, Martinez filed an Objection to Ultra-Safe's Reply and motion for fees.

On October 6, 2016 2015 Ultra-Safe filed a line "Substituting Plaintiff" and "Assignment" of Tax Sale Certificate to Katana Properties, LLC. On that same date, Katana filed an "Affidavit of Compliance" and request for judgment foreclosing Martinez's right of redemption.

On November 16, 2016, a hearing on the motion to dismiss was held before a circuit court magistrate. At that hearing, the magistrate said: "[i]t's not in the statute for a tax sale, but I can tell you from the Federal laws and from the policy from the U.S. Post Office, each certified mail letter has a unique serial number and corresponding bar code." The magistrate opined that the same tracking number could not be used for two pieces of mail because the numbers were unique to each piece of mail. The magistrate recommended that the motion to dismiss be granted, stating that "[w]e actually believe that it is against Federal law to use the same number on two different mailings." Katana did not file exceptions to the magistrate's recommendation.

On December 2, 2016, the circuit court entered an order granting Martinez's motion to dismiss "on the grounds that [Katana] failed to properly send the pre-filing notices required by Tax-Property §14-833(a-1)[.]"

Boiled down to its essentials, the narrow question presented is whether appellant complied with T.P. § 14-833(a-1)(4)(ii), and 6(i) and (ii), insofar as the statute requires two notices to be sent to the property owner (and others) "first-class certified mail, postage prepaid, return receipt requested[.]" The words "certified mail" are not defined in the Tax-Property Article, but Md. Rule 1-202 defines "certified mail" as meaning "mail deposited with the United States Postal Service, with postage prepaid and return receipt requested." Despite the fact that there were not separate tracking numbers for each letter sent, if the Maryland Rule 1-202 definition were to be utilized, appellant's mailing to Ms. Martinez would appear to be by certified mail.

DISCUSSION

I.

Preservation

Preliminarily, we must decide whether Katana's claim is preserved for review under Rule 2-541, despite Katana's failure to file exceptions to the magistrate's recommendation.

Pursuant to Rule 2-541, the judges of the circuit court may appoint one or more standing magistrates and refer cases to those magistrates. Md. Rule 2-541(a)(1). In addition, the court may appoint a special magistrate for a particular action and specify or limit the powers of the master. Rule 2-541(a)(2). The magistrate has the power to regulate proceedings and to "[r]ecommend findings of fact and conclusions of law." Md. Rule 2-541(c)(7). Subsections (e) and (f) of Md. Rule 2-541, pertaining to the filing of exceptions to the magistrate's report, provide as follows:

> **(e) Report.**
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> (1) *When Filed.* The magistrate shall notify each party of the proposed recommendation, either orally at the conclusion of the hearing or thereafter by written notice served pursuant to Rule 1-321. Within five days from an oral notice or from service of a written notice, a party intending to file exceptions shall file a notice of intent to do so and within that time shall deliver a copy to the magistrate. If the court has directed the magistrate to file a report or if a notice of intent to file exceptions is filed, the magistrate shall file a written report with the recommendation. Otherwise, only the recommendation need be filed. The report shall be filed within 30 days after the notice of intent to file exceptions is filed or within such other time as the court directs. **The failure to file and deliver a timely notice is a waiver of the right to file exceptions.**
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> (2) *Contents.* Unless otherwise ordered, the report shall include findings of fact and conclusions of law and a recommendation in the form of a proposed order or judgment, and shall be accompanied by the original exhibits. A

transcript of the proceedings before the magistrate need not be prepared prior to the report unless the magistrate directs, but, if prepared, shall be filed with the report.

(3) *Service.* The magistrate shall serve a copy of the recommendation and any written report on each party pursuant to Rule 1-321.

(f) Entry of Order.

(1) The court shall not direct the entry of an order or judgment based upon the magistrate's recommendations until the expiration of the time for filing exceptions, and, if exceptions are timely filed, until the court rules on the exceptions.

(2) If exceptions are not timely filed, the court may direct the entry of the order or judgment as recommended by the magistrate.

(Emphasis added).

We are aware of no reported Maryland decision specifically addressing the question of whether a party's failure to file exceptions to a magistrate's report under Rule 2-541(e)(1) results in the waiver of that party's right to appeal from the circuit court's order accepting the magistrate's recommendation. In interpreting the waiver provision of Rule 2-541(e)(1), we are guided by the rules of construction, summarized by the Court of Appeals in *In re Kaela C.*, 394 Md. 432 (2006):

> We begin our analysis by first looking to the plain meaning of the rule's language, our examination of which is guided by the principle that we should read the rule as a whole, so that no word, clause, sentence or phrase is rendered surplusage, superfluous, meaningless or nugatory. If the language of the rule is subject to more than one interpretation, it is ambiguous, and we resolve that ambiguity by looking to legislative history, case law, and statutory purpose. If, however, the rule is clear and unambiguous, we need not look beyond the provision's terms to inform our analysis. In construing the meaning of the rule's language, however, our primary goal is always to discern the legislative purpose, the ends to be accomplished, or the evils to

> be remedied by a particular provision, be it statutory, constitutional or part of the Rules.

Id. at 467-68 (citations and internal quotations omitted). Accordingly, in an effort to discern the purpose and intent of Rule 2-541(e)(1)'s waiver provision, we shall undertake a brief review of the history of the Rule and the relevant case law interpreting similar waiver provisions.

Rule 2-541 was adopted on July 1, 1984, and derived from the former Rule 596, which governed the referral of matters in the circuit courts to magistrates (formerly identified as "masters")[1]. Rule 2-541 (1985). *See also* Rule 2-541, Source (Section (e) is "derived from former Rule 596(f)." The waiver provision pertaining to exceptions, initially contained within Rule 2-541(f)(1), provided that "[t]he failure to file an[d] deliver a timely notice is a waiver of the right to file exceptions." Rule 2-541 (1985). While Rule 2-541 underwent revisions in subsequent years, the waiver provision has remained the same, but it was re-numbered from subsection (f)(1) to subsection (e)(1). Rule 2-541 (2001).

In 1991, the Rules Committee recommended that the Court of Appeals differentiate the role of magistrates in domestic relations cases from other cases. *Harryman v. State*, 359 Md. 492, 510-11 (2000) (citing Court of Appeals Standing Committee on Rules of Practice and Procedure, *One Hundred Fifteenth Report* (Maryland Register, March 22, 1991, at 675)). To accomplish this goal, the Rules Committee proposed, *inter alia*, the

[1] Rule 2-541 was amended effective January 1, 2016 to change the term "master" to "magistrate." Rule 2-541 (2017). In this opinion, we have elected to refer to the former masters as magistrates.

adoption of new Rule S74A (the predecessor to Rule 9-207), which was adopted in 1991. *Id.* In 1999, Rule S74A was superseded by Rule 9-207, and the rule was rewritten in 2000, and rewritten again in 2001 as Rule 9-208. *O'Brien v. O'Brien*, 367 Md. 547, 554, n. 5 (2002). Those re-writings were largely to address contempt proceedings. *Id.*

Rule 9-208(f) includes a waiver provision, adopted from Rule 2-541, stating that "[a]ny matter not specifically set forth in the exceptions is waived unless the court finds that justice requires otherwise." *See* Rule 9-208 (2017), Source (Rule 9-208 was "derived in part from Rule 2-541 and former Rule S74A and is in part new."). Because of the lack of reported Maryland decisions addressing the waiver provisions of Rule 2-541(e)(1), we turn to the cases interpreting the waiver provision of Rule 9-208(f), and former Rule 9-207, for guidance in construing the waiver provision of Rule 2-541(e)(1).

In discussing the role of magistrates generally, the Court of Appeals explained in *O'Brien*, *supra*, 367 Md. at 554-55:

> [T]he master is authorized to take testimony and to make a report to the court. The report includes a statement of the master's findings, based on the evidence taken, and a proposed order. The master's report is advisory only, however. His or her findings of fact are to be treated as *prima facie* correct and are not to be disturbed by the court unless found to be clearly erroneous, *i.e.*, unsupported by substantial evidence in the record before the master, but the master's ultimate conclusions are merely recommendatory and must be reviewed by the court "with an independent exercise of judgment...." *Harryman v. State*, *supra*, 359 Md. at 507, 754 A.2d at 1026; *Domingues v. Johnson*, 323 Md. 486, 491-92, 593 A.2d 1133, 1135 (1991). *See also* Maryland Rule 2-541(c)(7) (authorizing a master to "[r]ecommend findings of fact and conclusions of law").

In *Miller v. Bosley*, 113 Md. App. 381 (1997), this Court interpreted the waiver provision in Rule S74A(d) in the context of a custody proceeding before a magistrate. *Id.*

at 393. In interpreting that waiver provision, this Court recognized that the Rule must first be construed "in accordance with the plain meaning of its language." *Id*. (citing *Morales v. Morales*, 111 Md. App. 628, 632 (1996))(construing provisions of S74A pertaining to calculation of time for filing exceptions). In applying that principle, the Court stated that "[w]e shall not deviate from this approach in the instant case as we are able to interpret the Rule consistent with the plain meaning of its language." 113 Md. App. at 393.

In *Miller*, the magistrate issued a *pendente lite* order recommending that custody of the child be awarded to the father's sister. *Id*. 389. The trial court held a hearing on the *pendente lite* order and signed the proposed order that same day, altering only the visitation schedule. *Id*. Mother failed to file exceptions to the court's order within the time specified in Rule S74A(d), but noted an appeal to this Court. *Id*.

Rule S74A(d) provided that "[a]ny matter not specifically set forth in exceptions is waived unless the court finds that justice requires otherwise." *Id*. at 392. This Court explained that the waiver provision of subsection (d) applied to all cases, including *pendente lite* orders issued by the court following a magistrate's report, and noted that "in all cases lacking timely exceptions, any claim that the master's findings of fact were clearly erroneous is waived." *Id*. at 393. In applying the waiver provision in Rule S74A to the facts of the case of *Miller*, this Court explained:

> The general effect of exceptions is that "any matter not specifically set forth in the exceptions is waived unless the court finds that justice requires otherwise". This waiver applies to all cases, independent of the entry of the order under Section (f). In short, in all cases lacking timely exceptions, any claim that the master's findings of fact were clearly erroneous is waived. Because no exceptions were filed in the instant case and to the extent that the master made first-level findings of fact, we, the chancellor, and the parties

> must accept those facts as established for purposes of the pertinent proceedings leading to this appeal. In other words, if appellant's sole basis for appeal was that the master's factual findings, such as they are, were clearly erroneous, her failure to file exceptions would have proven fatal to such an argument. We perceive, however, that appellant, accepting as she must that the master's first-level fact finding is unassailable here, assigns error to the trial judge in the exercise of his independent judgment as to the propriety of his disposition of the case from those facts.

Id. We concluded that the mother had waived any challenge to the magistrate's findings of fact, and that her appeal was limited to the judge's conclusions of law based on those findings. We determined that the circuit court judge erred in relying on the magistrate's recommendation where the magistrate had failed to provide any explanation in support of his finding that extraordinary circumstances existed to warrant an order of immediate change in custody, and the judge had failed to exercise his independent judgment in reviewing the facts and adopting the custody recommendation. *Id*. at 394, 397.

In *Green v. Green*, 188 Md. App. 661 (2009), this Court considered whether, under the waiver provision of Rule 9-208(f), a mother's failure to timely file exceptions to the magistrate's report was "a bar to the filing of an Appeal based upon the improper application of those (now) established facts to the prevailing law...." *Id.* at 674. The mother had filed exceptions to the magistrate's recommendation after the time for filing exceptions had expired. *Id.* at 665. The circuit court granted father's motion to strike the exceptions for not being timely filed, and mother moved to vacate the order and to reinstate the exceptions. *Id.* After hearing argument on the motion to vacate, along with argument on the exceptions, the circuit court upheld its grant of the motion to strike exceptions and denied the motion to reinstate exceptions. *Id.*

This Court determined that, because the mother had failed to file timely exceptions, she was not permitted to challenge the magistrate's factual findings that were adopted by the circuit court, but that she was permitted to challenge the circuit court's adoption of the master's legal analysis based on those factual findings. *Id.* at 674. We explained:

> [T]hough failing to file exceptions to a master's findings prevents a party from appealing the circuit court's adoption of the master's factual findings, a party is not precluded from appealing the trial court's adoption of the master's recommendation if the issues appealed concern the court's adoption of the master's application of law to the facts.
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> As we said in *In re Levon A.*, 124 Md. App. [103,] 123 [(1998), *rev'd on other grounds*, 361 Md. 626 (2000)] (quoting *Miller*, 113 Md. App. 381):
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> > We perceive that appellant assigns error not to the master, but to the trial judge in his exercise of his judicial responsibilities. Although exceptions are the proper vehicle for review of the master's findings, this appeal may properly consider the propriety of the judge's actions.

Green, 188 Md. App. at 674 (secondary citations omitted). Accordingly, this Court construed the waiver provision of Rule 9-208(f) to limit a party's right to appeal issues pertaining only to the circuit court's application of law to the facts found by the magistrate.

Recently, this Court applied Rule 9-208(f)'s waiver provision in a child support enforcement matter in *Dillon v. Miller*, 234 Md. App. 309 (2017). In *Dillon*, the father filed exceptions to the magistrate's first report, and the circuit court remanded the case for further factual findings. *Id*. at 313. On remand, the magistrate conducted a second hearing and issued a report and recommendation finding that the father's testimony regarding his employment status was not credible, and recommending a finding that the father was

voluntarily impoverished based on an imputed income level of minimum wage. *Id*. at 314-15. The father failed to file exceptions to the magistrate's second report, but noted a timely appeal to this Court. *Id*. at 315.

On appeal, the father argued that the circuit court erred when it adopted the magistrate's findings of fact regarding the amount he was capable of paying for child support and the amount that mother had paid for medical insurance. *Id*. at 315-16. We determined that, as a result of his failure to file exceptions, the father was not permitted to challenge those factual findings, but could only appeal the circuit court's conclusions of law that he was voluntarily impoverished, and the determination of his imputed income as found by the magistrate. *Id*. at 318.

We conclude that this Court's interpretation of the waiver provisions of Rule S74A and Rule 9-208(f) in *Miller*, *Green*, and *Dillon*, holding that a party's failure to file timely exceptions limits that party's challenge on appeal to the circuit court's conclusions of law based on the magistrate's findings of fact, is applicable in equal measure to the waiver provision in Rule 2-541(e)(1). In the present case, Katana acknowledged that the notices that it sent to Martinez contained the same certified mail tracking number, eliminating any dispute as to the magistrate's finding as to that fact. Accordingly, Katana's claim before this Court is limited to the circuit court's adoption of the magistrate's legal conclusion that Katana's notices to Martinez utilizing duplicative tracking numbers constituted a violation of federal law, and therefore also violated T.P. §14-833 (a-1). Under Rule 2-541(e)(1), Katana's challenge to the circuit court's adoption of the magistrate's legal conclusion that Katana's notices to Martinez violated T.P. §14-833 (a-1) is preserved for our review.

II.

Mootness

At oral argument, counsel for Martinez admitted that the issue of whether the circuit court erred in dismissing Katana's complaint is moot as to her client because Martinez has now paid the overdue taxes and redeemed the Property. Therefore, even if this Court reversed the trial court's dismissal order, the rights of the parties would not be affected. Nevertheless, Martinez, in oral argument, asked us to decide the issue presented because, purportedly, there are fourteen other cases involving the same "certified mail" issue.

Md. Rule 8-602(a)(10) provides that this Court may dismiss an appeal if the case has become moot. "Ordinarily, in order for a case to be heard and an appellate court to provide a remedy, there must be an existing controversy." *Office of the Public Defender v. State*, 413 Md. 411, 422 (2010). "If no existing controversy is present, the case is moot and an appellate court ordinarily will not consider the case on its merits." *Id.* "'This Court does not give advisory opinions; thus, we generally dismiss moot actions without a decision on the merits.'" *Green v. Nassif*, 401 Md. 649, 655 (2007) (quoting *Dep't of Human Res., Child Care Admin. v. Roth*, 398 Md. 137, 143 (2007)). We may, on rare occasions, "'address the merits of a moot case if we are convinced that the case presents unresolved issues in matters of important public concern that, if decided, will establish a rule for future conduct.'" *Green*, 401 Md. at 655 (quoting *Coburn v. Coburn*, 342 Md. 244, 250 (1996) (reviewing a moot issue involving a protective order that was likely to recur in other cases in which the statute at issue was regularly applied in circuit courts).

The issue presented in this appeal, in our view, does not raise an issue of "important public concern," nor is it one that is likely to recur. As far as we can determine, the practice of using the same tracking number on two certified letters has been used by only one law firm (appellant's firm) and there is no indication that the law firm intends to use that practice in the future. Moreover, as to the fourteen "randomly selected" cases mentioned in the circuit court, in none of them has the certified mail issue been raised by the property owner – or anyone else. In fact, as far as we can determine, there are no pending cases where any defendant has raised the certified mail issue.[2] We shall therefore dismiss this appeal.

APPEAL DISMISSED AS MOOT; COSTS TO BE PAID BY APPELLANT.

[2] There is one pending case where a judge (the same judge who decided the case sub judice) raised the issue, even though no defendant did. The issue was brought to the attention of the trial judge by appellee's counsel and the attorney who filed an amicus brief in this case. That judge, has not yet decided the issue.