

Circuit Court for Baltimore City
Case No. 24-C-19-000940

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2344

September Term, 2019

MOSES FADIRAN

v.

INCOME ONE, LLC

Graeff,
Beachley,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: April 15, 2021

*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. Md. Rule 1-104.

Appellant, Moses Fadiran, appeals from an order entered by the Circuit Court for Baltimore City denying his motion to vacate or revise a judgment foreclosing his right to redeem property purchased by appellee, Income One, LLC (“Income One”), at a tax sale. Mr. Fadiran, a self-represented litigant, presents three issues for our review, which we have consolidated and rephrased as follows:¹

Did the circuit court err or abuse its discretion by declining to exercise its revisory power over the judgment foreclosing the right of redemption pursuant to Maryland Code (1985, 2019 Repl. Vol.), § 14-845 of the Tax-Property Article (“TP”), Maryland Code (1977, 2020 Repl. Vol.), § 6-408 of the Courts and Judicial Proceedings Article (“CJP”), or Maryland Rule 2-535(b)?

¹ In his brief, Mr. Fadiran presented the following issues:

1. Exhibit 3 shows all the email transactions between the Appellant and the Appellee’s Attorney, . . . and support[s] the fact that the payment was made as required. [Appellee’s Attorney] was paid his Attorney fee, and the City was paid by [cashier’s] check as required. It was paid out of the money that was taken out of the Appellant[’s] bank account[;] it was not a personal check to depict insufficient fund[s]. The attack on the City System [caused] the Appellant to [lose] more than a month and [Appellee’s Attorney] acknowledged this. Had it been more time the situation would have been rectified[.]

2. Appellant would have filed within the required 30 days[,] but [Appellee’s Attorney] promised that he would file for a Motion to Vacate Judgment because the payment was made on June 20, 2019 prior to his [filing]. This is supported by Exhibit 3 page 8. When the check[] did not go through, the City Tax Office did not advise Appellant to make restitution but advised [Appellee’s Attorney].

3. Appellant was not in Court as a significant witness, Appellant believe[s] [the court] probably would have ruled different[ly] Additional[ly,] Appellant would have paid to the Court had he been advised by [h]is [c]ounsel.

In its brief, Income One moved to dismiss the appeal because Mr. Fadiran’s notice of appeal was filed 35 days after the circuit court entered a final judgment. We agree that the appeal is not timely and shall grant Income One’s motion to dismiss.

BACKGROUND

Mr. Fadiran is the former fee simple owner of real property located at 1920 Eutaw Place in Baltimore City, Maryland (the “Property”). On May 14, 2018, the Director of Finance for Baltimore City sold the Property at a public auction to Income One for the sum of \$176,012 and issued it a “Certificate of Tax Sale.” On February 19, 2019, Income One filed a complaint in the Circuit Court for Baltimore City seeking to foreclose Mr. Fadiran’s right of redemption. On February 27, the court entered an “Order of Publication,” which was reproduced, published, and circulated in *The Daily Record* once per week for three consecutive weeks. Process was posted at the Property on March 23, 2019. Approximately one week later, Mr. Fadiran was served with process at his mailing address. Although he had been properly served, the record does not reflect that Mr. Fadiran filed either an answer to Income One’s complaint or a petition to redeem the Property.

On July 2, 2019, the court entered an order foreclosing Mr. Fadiran’s right to redeem the Property. Thereafter, counsel for Income One learned that Mr. Fadiran had tendered a cashier’s check to Baltimore City in the amount of its lien on or about June 20, 2019—prior to the court’s July 2 order. Upon having been so informed, on July 16, Income One filed a “Motion to Vacate Judgment and Dismiss Case,” to which it attached a printout of the “Tax Sale Redemption Data File,” indicating that Mr. Fadiran had redeemed the

Property on June 20. To Mr. Fadiran’s chagrin, the parties later learned that the cashier’s check was non-negotiable. This was so because Wells Fargo—the bank that issued the check—had not lifted a “stop payment” order that Mr. Fadiran requested after he misplaced the check. Given that the check was invalid, the lien remained in effect. After having been so notified, Income One withdrew its motion to vacate and dismiss. On August 19, Mr. Fadiran responded with a “Motion to Vacate or Revise Judgment,” in which he argued, in pertinent part:

[Maryland] Rule 2-535 and Courts and Judicial Proceedings Article, Section 6-408 allow the Court to revise or amend a judgment more than 30 days after its entry in case of “fraud, mistake, or irregularity.” There is certainly mistake and irregularity on [in] this proceeding.

* * *

Defendant actually paid to redeem the Property from the tax sale. The Court, thus, did not have jurisdiction to issue a judgment stripping the Defendant of his Property. Application of the “mistake” basis for revising a judgment is limited to jurisdictional error. “Irregularity” as a basis for revising a judgment concerns a nonconformity of process or procedure. Presenting a bank check to the Director of Finance is the normal procedure for redeeming a property from tax sale. The mistake of Wells Fargo in processing the check is the nonconformity which justifies the application of Rule [2]-535.

(Citations and paragraph numbering omitted). Following a hearing, the circuit court denied Mr. Fadiran’s motion in a memorandum opinion entered on December 17, 2019.² In so doing, the court reasoned:

Despite the statutory restrictions on reopening a judgment in a tax sale foreclosure case, the Court retains revisory power over the judgment pursuant to Md. Rule 2-535(a) for [a] period of 30 days. . . . In this case,

² Although his counsel was present, Mr. Fadiran failed to appear at the hearing, purportedly because he was unable to locate the courtroom in which it was held.

Defendant Fadiran filed his motion more than 30 days after entry of the judgment. There is nothing to suggest that the Court did not have jurisdiction to enter the judgment on July 2, 2019, nor is there evidence of fraud in the conduct of the proceedings to foreclose. For these reasons, the motion to vacate judgment must be denied in accordance with TP § 14-845.

Even if the Court retains power to revise a tax sale foreclosure judgment, beyond 30 days in accordance with Md. Rule 2-535(b), Defendant Fadiran failed to meet his burden in establishing a mistake or irregularity. *See Pelletier v. Burson*, 213 Md. App. 284, 290 (2013) (to ensure finality of judgments, existence of fraud, mistake, or irregularity must be established by clear and convincing evidence). For purposes of Md. Rule 2-535(b), an irregularity is defined to mean “the doing or not doing of that, in the conduct of a suit at law, which, conformable to the practice of the court, ought or ought not to be done.” *Davis v. Attorney General*, 187 Md. App. 110, 125 (2009). “Furthermore, an irregularity in the contemplation of Rule 2-535(b) is not an error, which in legal parlance, generally connotes a departure from truth or accuracy of which a [party] had notice and could have challenged, but a nonconformity of process or procedure.” *Pelletier v. Burson*, 213 Md. App. 284, 290 (2013)[.] A “mistake” is limited to a “jurisdictional mistake.” *Peay v. Barnett*, 236 Md. App. 306, 322 (2018). The facts of this case do not constitute “nonconformity of process or procedure” or a “jurisdictional mistake” within the meaning of Md. Rule 2-535(b).

As previously noted, Income One contends that, because Mr. Fadiran filed this appeal more than 30 days after the court entered its order denying his motion to vacate or revise the judgment, “this Court lacks the jurisdiction to consider the appeal and must dismiss it.”

Mr. Fadiran filed his notice of appeal on January 21, 2020—35 days after the circuit court entered the final judgment at issue. In so doing, he failed to comply with the timeliness requirement of Maryland Rule 8-202(a), which provides, in pertinent part: “Except as otherwise provided in this Rule or by law, the notice of appeal shall be filed within 30 days after entry of the judgment or order from which the appeal is taken.”

Because there is no applicable exception to the 30-day requirement set forth in Rule 8-202 here, we shall dismiss Mr. Fadiran’s appeal as untimely filed.³ We will not do so, however, for want of jurisdiction.

In *Rosales v. State*, 463 Md. 552, 568 (2019), the Maryland Court of Appeals held that, despite prior case law to the contrary, the failure to file a timely appeal pursuant to Rule 8-202(a) does not deprive an appellate court of jurisdiction to entertain an appeal. The Court explained that the imposition of jurisdictional limitations is solely within the purview of the Legislature—and not the Court. When adopting the 1957 Code, the Legislature declined to include a 30-day filing requirement. *Id.* at 564–65. *Compare* Md. Code (1951), Art. 5 § 6, *with* Md. Code (1957), Art. 5 § 6. The current 30-day time limitation for noting an appeal is governed exclusively by Maryland Rule 8-202. The Court held that, having been promulgated by the Court of Appeals rather than by the Legislature, the 30-day filing requirement does not constitute a jurisdictional limitation, and is, instead, a “claim-processing rule.” *Id.* at 568. Although the Court of Appeals confirmed that “Maryland Rule 8-202(a) remains a binding rule on appellants” which it would continue to

³ We are aware that January 18 and 19 were weekend days, and that the court and clerk’s office were closed on January 20 in observance of the Dr. Martin Luther King, Jr. holiday. Had the court’s judgment been entered on December 19 as opposed to December 17, Mr. Fadiran’s notice of appeal would have been timely. *See* Md. Rule 1-203(a)(1) (“In computing any period of time prescribed by these rules, . . . [t]he last day of the period so computed is included unless: (1) it is a Saturday, Sunday, or holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or holiday[.]”). These court closures are, however, ultimately irrelevant, as the last date on which Mr. Fadiran could have timely appealed was January 16, 2020, which fell on neither a weekend nor a holiday.

enforce, the Court explained that “a reviewing court must examine whether waiver or forfeiture applies to a belated challenge to an untimely appeal.” *Id.*

On July 21, 2020, Income One filed a motion to dismiss this appeal pursuant to Maryland Rule 8-431, citing Mr. Fadiran’s failure to timely file an appellate brief. We initially granted Income One’s motion. Thereafter, Mr. Fadiran filed a motion for reconsideration, attributing the belated submission of his brief to the coronavirus pandemic. On September 4, we granted Mr. Fadiran’s unopposed motion, thereby rescinding our August 11 order of dismissal and reinstating the instant appeal. In its appellate brief, Income One now renews its motion to dismiss—this time pursuant to Maryland Rule 8-202—arguing that Mr. Fadiran failed to timely file a notice of appeal.

Income One’s first motion to dismiss was based on Rule 8-602(c)(5), which reads:

(c) The court may dismiss an appeal if:

...

(5) a brief or record extract was not filed by the appellant within the time prescribed by Rule 8-502[.]

Under Rule 8-603(a)(3), a motion based on Rule 8-602(c)(5) must be filed “within . . . ten days after the appellant’s brief was or should have been filed.” Income One’s second motion to dismiss was based on Rule 8-602(b)(2), which reads:

(b) The Court shall dismiss an appeal if:

...

(2) the notice of appeal was not filed with the lower court within the time prescribed by Rule 8-202.

Rule 8-603 allows such motion to be filed either “within . . . ten days after the record was or should have been filed pursuant to Rule 8-412” under subsection (a)(1), or the motion may be included in the appellee’s brief under subsection (c). Notably, subsection (c) does not allow a motion to dismiss under Rule 8-602(c)(5) to be included in the brief. Thus, the two bases for dismissal could not have been included in a single motion to dismiss and could not both have been raised in Income One’s brief.

Income One properly incorporated its second basis for dismissal in its appellate brief. Md. Rule 8-603(c) (“A motion to dismiss based on subsection . . . (b)(2) . . . of Rule 8-602 may be included in the appellee’s brief.”); Md. Rule 8-602(b)(2) (“The Court shall dismiss an appeal if . . . the notice of appeal was not filed with the lower court within the time prescribed by Rule 8-202.”). It is of no consequence that the motion to dismiss that Income One incorporated in its brief was the second such motion that it filed. In *Slusher v. Hanson Road Joint Venture*, 25 Md. App. 356, 361 (1975), this Court held that a motion to dismiss included in a brief was properly raised even where a motion to dismiss based on the same deficiency had been raised earlier and denied as untimely. *See also Hohensee v. Minear*, 253 Md. 5, 5-7 (1969) (per curiam) (granting motion to dismiss raised in brief after denying previous motion to dismiss); *Dubin v. Mobile Land Corp.*, 250 Md. 349, 352–33, 355 (1968) (same); *Agnoli v. Powers*, 235 Md. 289, 293–94 (1964) (same); *Gonzales v. Boas*, 162 Md. App. 344, 352–53 (2005) (appellee filed two motions to dismiss). Having timely filed the motion at issue, Income One neither waived nor forfeited its present motion to dismiss pursuant to Rule 8-202. *See Rosales*, 463 Md. at 568. Moreover, Mr. Fadiran

has not filed a reply brief (or any other responsive pleading) challenging Income One’s motion to dismiss. Accordingly, we shall dismiss this untimely appeal pursuant to Rule 8-202.⁴

**APPEAL DISMISSED. COSTS TO BE PAID
BY APPELLANT.**

⁴ Even if Mr. Fadiran had timely filed his appeal, he would not prevail. The circuit court did not err in determining that Mr. Fadiran failed to demonstrate lack of jurisdiction or fraud in the conduct of the foreclosure proceedings as required by TP § 14-845(a) for the reopening of a judgment. Similarly, the circuit court did not err in concluding that the record failed to show fraud, mistake, or irregularity as contemplated by Rule 2-535(b) pertaining to the court’s revisory power over a judgment.

Finally, “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.” *Canaj, Inc. v. Baker & Division Phase III, LLC*, 391 Md. 374, 396 (2006). Mr. Fadiran does not contend, nor does the record reflect, that he paid the subject lien prior to or simultaneously with his motion to vacate or revise the court’s foreclosure judgment. Even if he had presented evidence of fraud or lack of jurisdiction (he did not), Mr. Fadiran’s failure to satisfy this condition precedent would have justified the denial of his motion pursuant to TP § 14-845.