

Circuit Court for Caroline County
Case No. 05-C-14-017803

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND**

No. 2392

September Term, 2019

DERRICK M. COMFORT, ET UX.

v.

JAMES E. CLARKE, ET AL.

Kehoe,
Beachley,
Ripken,

JJ.

Opinion by Beachley, J.

Filed: January 5, 2023

*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.

**At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

This case involves years of unsuccessful attempts by Derrick M. Comfort and Catherine A. Comfort, appellants, to avoid the foreclosure of their home by appellees, James E. Clarke and four other substitute trustees. After their home was sold pursuant to foreclosure, the Comforts filed exceptions to the sale as well as counterclaims. The Circuit Court for Caroline County determined that the exceptions to the sale and the counterclaims were untimely and dismissed the Comforts' claims. The Comforts timely appealed and present three questions for our review,¹ which we have rephrased and reordered as:

1. Did the circuit court err by denying the Comforts' exceptions to sale as untimely?
2. Did the circuit court err by dismissing the Comforts' counterclaims as untimely?
3. Did the circuit court violate the Comforts' due process right to notice when it allowed the foreclosure sale to proceed without explicitly lifting its July 1, 2016 stay order?

For the reasons that follow, we affirm the judgment of the circuit court.

¹ The Comforts raised the following three questions for our review:

1. Is a jury trial of right when demanded under Maryland Constitution Decl. of Rights, Art. 23, for defenses raised and counterclaims averred in a foreclosure fraud and chain of title case and consumer protection, and did the court below err in dismissing said counterclaims and defenses?
2. Did the lower court err when it refused to enforce or lift its own order of July 1, 2016 which mandated a stay of foreclosure sale and dismissal of the case, and when it again ignored its own deadline pursuant to its August 9, 2016 order for Appellees' [sic] to file an original, properly endorsed promissory note – ruling against Appellants' filed request for default and motion to dismiss?
3. Did the court below err or violate due process in denying exceptions of Appellants?

FACTS AND PROCEEDINGS

We begin with the relevant facts and procedural background as recited in our prior unreported opinion, *Comfort v. Clarke*, No. 2148, Sept. Term 2017 (filed Oct. 21, 2019).

On October 25, 2006, Derrick Comfort executed a promissory note (“Note”). On that same date, both Mr. Comfort and his wife executed a deed of trust. The Note was in the amount of \$640,000 and was secured by the aforementioned deed of trust, which encumbered the Comforts’ property located at 22192 Hillsboro Road, Denton, MD (“the Property”). The Comforts thereafter failed to make the required monthly payments on the Note. As a consequence, on December 12, 2014, several substitute trustees, who alleged that they were appointed by the holder of the Note to institute a foreclosure action against the Property, filed an order to docket foreclosure in the Circuit Court for Caroline County.

Mr. and Mrs. Comfort filed a motion to dismiss the foreclosure action on several grounds. One of those grounds was that the substitute trustees failed to attach the original Note and “mortgage,” to the order to docket even though those documents contained the key terms and conditions of the underlying agreement as well as possible notations and/or amendments identified solely in the original Note and “mortgage.” The Comforts also contended that the substitute trustees had not been validly appointed. Thereafter, numerous pleadings were filed by the Comforts many of which concerned the fact that the substitute trustees had not filed an accurate copy of the Note with their initial order to docket.

On September 15, 2016, the appellees, who are James E. Clarke and four other substitute trustees, filed an amended order to docket. This time they attached a different copy of the Note, which they claimed was a correct copy. Thereafter, Mr. and Mrs. Comfort, by counsel, filed a series of pleadings including a motion for default judgment. Those pleadings all attempted, in one way or another, to have the amended order to docket dismissed. On October 7, 2016, the circuit court denied the [Comforts’] motion for default and for dismissal.

The Property was scheduled to be sold on January 25, 2017. The Comforts, on January 2[3], 2017, filed a motion for contempt, sanctions, and for a merits hearing. They also filed on [January 25, 2017], an emergency motion for temporary restraining order, a motion to shorten time to respond

to the emergency motion and a request for a waiver of bond. Despite those filings, the sale went forward as scheduled.

The substitute trustees, on February 13, 2017, filed a report of sale in which they reported that the property had been sold on January 25, 2017 for the sum of \$802,687.33.

The Comforts, on March 16, 2017, filed a pleading entitled “Motion to Stay Ratification of Foreclosure Sale Upon Exceptions, Counter-Claim for Quiet Title, Extrinsic Fraud and Other Relief[.]” The substitute trustees filed an opposition to the aforementioned motion along with a motion to strike and/or dismiss the counter-claims. On August 30, 2017, the circuit court held a hearing on the exceptions filed by [the Comforts], as well as on all pending motions. The Comforts objected to the hearing itself, claiming that they were entitled to a jury trial on all “issues triable,” including the claim that the substitute trustees lacked a sufficient chain of title and that the substitute trustees were guilty of extrinsic fraud. After voicing those objections, counsel for the Comforts chose to present no evidence.

The circuit court, on October 10, 2017, filed a memorandum explaining why the exceptions were denied and why the counter-claim[s were] being dismissed. The judge concluded his opinion by stating:

Defendants include two Counter-Claims in their Motion to Stay Ratification of the Foreclosure Sale. These claims are untimely and are, therefore, dismissed.

* * *

UPON CONSIDERATION of the filings in the above referenced matter and the Exceptions Hearing that took place on August 30, 2017, it is this 10th day of October, 2017, in the Circuit Court for Caroline County hereby:

ORDERED that the allegations that the Foreclosure Sale was held in violation of a Stay of Sale are DENIED as MOOT, in light of the Court’s October 7, 2016 Order; and it is further

ORDERED that Defendants’ outstanding Emergency Motion for Temporary Restraining Order is DENIED as

MOOT, in light of the untimeliness of the Motion and the scheduled Sale having taken place; and it is further

ORDERED that all exceptions [are untimely], [and] other than exception number 4, are outside the Scope of Rule 14-305(d), and are therefore DENIED; and it is further

ORDERED that exception number 4 is DENIED; and it is further

ORDERED that Defendants' Counter-Claims are DISMISSED as untimely, and it is further

ORDERED that Defendants' Motion to Stay Ratification of Foreclosure Sale Upon Exceptions, Counter-Claim for Quiet Title, Extrinsic Fraud and Other Relief, and Memorandum of Law in Support Thereof is DENIED.

Comfort, slip op. at 1-3.

On November 9, 2017, the Comforts filed a notice of appeal. *Id.*, slip op. at 4. This Court dismissed the Comforts' appeal because it was filed before a final judgment, which in a foreclosure case is the order ratifying the sale. *Id.*, slip op. at 5-8. On January 13, 2020, the circuit court entered its order ratifying the foreclosure sale. On February 6, 2020, the Comforts filed this appeal. Additional facts will be provided as necessary.

DISCUSSION

The vast majority of the Argument section in the Comforts' brief centers around their claim that they had a right to have a jury consider whether the substitute trustees had the legal authority to prosecute the foreclosure case. According to the Comforts, there was a "break in the chain of title" of the mortgage that precluded the substitute trustees from proceeding with the foreclosure.

The Comforts are correct that their exceptions clearly asserted that the substitute trustees did not have standing to prosecute the foreclosure because of the break in the chain of title, and that they requested a jury trial on this issue. The Comforts are also correct that their counterclaims to “quiet title” and for “extrinsic fraud” requested a jury trial on their claims that the substitute trustees had “no such right of title” to prosecute the foreclosure and that they “defraud[ed] [the Comforts] of their lands by filing false and/or improper documents” to facilitate the foreclosure.

The Comforts’ exceptions and counterclaims were both filed on March 16, 2017. The court denied the exceptions and dismissed the counterclaims because they were not timely filed. We shall address the propriety of the court’s denial of the Comforts’ exceptions and dismissal of their counterclaims separately because the legal analysis requires consideration of different Maryland Rules. We conclude that the court did not err or abuse its discretion.

I. THE COURT CORRECTLY DISMISSED THE EXCEPTIONS AS UNTIMELY

In dismissing the Comforts’ exceptions, the circuit court relied on Rule 14-305(d), which provides,

Sale of Interest in Real Property; Notice. Upon the filing of a report of sale of real property or chattels real pursuant to section (a) of this Rule, the clerk shall issue a notice containing a brief description sufficient to identify the property and stating that the sale will be ratified unless cause to the contrary is shown within 30 days after the date of the notice.

Rule 14-305(e)(1) governs the filing of exceptions:

(1) *How Taken.* A party, and, in an action to foreclose a lien, the holder of a subordinate interest in the property subject to the lien, may file exceptions to

the sale. Exceptions shall be in writing, shall set forth the alleged irregularity with particularity, and shall be filed within 30 days after the date of a notice issued pursuant to section (d) of this Rule *or* the filing of the report of sale if no notice is issued. Any matter not specifically set forth in the exceptions is waived unless the court finds that justice requires otherwise.

(Emphasis added). The court concluded, “In the instant case, both relevant events (issuance of the notice and filing of the Report of Sale) occurred on February 13, 2017. This makes [the Comforts’] Exceptions, filed March 16, 2017, untimely.”

Implicitly recognizing that their exceptions were not filed within 30 days as mandated by Rule 14-305(e)(1), the Comforts rely on Rule 1-203(c) to argue that the court erred because it “failed to calculate the three days allowed under the mailbox rule.” Rule 1-203(c) provides:

Additional Time After Service by Mail. Whenever a party has the right or is required to do some act or take some proceeding within a prescribed period after service upon the party of a notice or other paper and service is made by mail, three days shall be added to the prescribed period.

The interpretation of Maryland Rules is a question of law and thus we review this issue *de novo*. *Davis v. Slater*, 383 Md. 599, 604 (2004).

Whether Rule 1-203(c) extends the prescribed time period depends on the language used in the statute or rule. *Chance v. Washington Metro. Area Transit Auth.*, 173 Md. App. 645, 659 (2007). Rule 1-203(c) only applies when the language states that the time begins to run “after service upon the party” and “service is made by mail.” *Id.* at 661 (citing Md. Rule 1-203(c)). The rule at issue here is Md. Rule 14-305(e)(1), which states “Exceptions . . . shall be filed within 30 days after the date of a notice issued . . . or the filing of the report of sale if no notice is issued.” In *Chance*, this Court unequivocally held that Md.

Rule 1-203(c) did not apply to a statute that required an appeal to be filed “within 30 days after the date of the mailing.” *Id.*; Md. Code (1991, 2016 Repl. Vol.), § 9-737 of the Labor & Employment Article. Applying the holding in *Chance*, we conclude that the three-day mailbox rule set forth in Rule 1-203(c) does not apply to Rule 14-305(e)(1)’s requirement that exceptions be filed within 30 days of either the clerk’s issuance of notice of sale or the filing of the report of sale. In short, the court did not err in dismissing all of the Comforts’ exceptions, including their exception requesting a jury trial on their chain of title claims.²

II. THE COURT CORRECTLY DISMISSED THE COUNTERCLAIMS AS UNTIMELY

The court dismissed the Comforts’ counterclaims, also filed on March 16, 2017, as untimely. The entirety of the Comforts’ argument on this issue consists of a single sentence in their 39-page brief: “Appellants’ counterclaims for fraud and quiet title were timely filed during the pendency of the foreclosure and prior to any deadline passing for the filing of exceptions.” First, as noted in Part I of this opinion, the Comforts are incorrect in their assertion that their counterclaims were filed “prior to any deadline passing for the filing of exceptions.” Second, the Comforts have failed to cite any legal authority to support their contention that their counterclaims were timely. Their single sentence argument is clearly insufficient, and we shall not consider it. *Klaunberg v. State*, 355 Md. 528, 552 (1999) (stating that “arguments not presented in a brief or not presented with particularity will not

² To the extent that the Comforts intersperse other potential defenses throughout their brief, we note that the court denied all 13 exceptions as untimely.

be considered on appeal”).³

III. THE COURT DID NOT VIOLATE THE COMFORTS’ RIGHT TO NOTICE BY NOT EXPLICITLY LIFTING ITS STAY ORDER

The genesis of this appellate claim is the circuit court’s July 1, 2016 order that stayed the foreclosure and ordered the substitute trustees to file, within 30 days, an Amended Order to Docket with the accurate note. On August 9, 2016, the court granted the substitute trustees’ request to extend the filing deadline to September 9, 2016. On September 15, 2016, the Comforts filed a request for default and motion to dismiss because the substitute trustees failed to file the accurate note by the order’s deadline. Later that day, the substitute trustees filed an amended order to docket with an “accurate copy” of the note. Thereafter, the Comforts filed a series of pleadings to have the amended order to docket dismissed. On October 7, 2016, the circuit court denied the Comforts’ motion for default and for dismissal, thus accepting the note and allowing the foreclosure sale to proceed. The Comforts argue that the court violated their right to due process by allowing the sale to

³ Even if this issue were properly briefed, the Comforts would not prevail. Maryland Rule 2-331(d) “provide[s] that a party may raise a counterclaim as a matter of right *only* if it is filed within ‘30 days after the time for filing that party’s answer.’” *Mattvidi Assocs. Ltd. P’ship v. Nationsbank of Va., N.A.*, 100 Md. App. 71, 80 (1994) (quoting Md. Rule 2-331(d)). Although there is no express provision for filing an answer in a foreclosure proceeding, the Comforts filed their counterclaims years after the foreclosure proceedings commenced and after multiple motions were filed. Indeed, the Comforts have not cited any authority that would support their assertion that counterclaims may be timely filed after the foreclosure sale. The decision “to permit an untimely counterclaim[] ‘rests within the sound discretion of the trial judge, and this discretion is subject to review on appeal only for its abuse.’” *Id.* at 83 (quoting *Robertson v. Davis*, 271 Md. 708, 710 (1974)). We perceive no abuse of discretion here.

proceed without explicitly lifting the July 1, 2016 stay order.⁴

The circuit court squarely addressed this issue at the exceptions hearing, stating,

I've looked at the July 1 Order and I think that any reasonable interpretation of it is that the matter was stayed pending an opportunity for [the substitute trustees] to file with, within a certain time and file the new, the correct note. [They] asked for an extension of that. [They] got an extension. Then [they] filed it within a timely manner.^[5] *I think it's implicit that the stay was only meant to be in effect long enough to give [them] a time to file and [they] filed and once [they] filed, the stay was, as I read it and interpret it, was no longer in effect.*

(Emphasis added). Because the July 1, 2016 order gave the substitute trustees additional time to file an amended order to docket with the accurate note, we agree with the court's interpretation that the stay was only meant to remain in place until the filing of the proper note, and we discern no abuse of discretion in the court's implicit lifting of the stay. *Monarch Acad. Balt. Campus, Inc. v. Balt. City Bd. of Sch. Comm'r*, 457 Md. 1, 40-41 (2017) (citing *Fishman v. Murphy ex rel. Estate of Urban*, 433 Md. 534, 546 (2013)) (“[A] court's decision to grant or deny a stay order is generally within its discretion, and is

⁴ The Comforts also argue they did not receive notice concerning the court's decision not to rule on their temporary restraining order (TRO). This issue was not raised in any of the Comforts' questions presented. *See* Md. Rule 8-504(a)(3). Even if this issue were properly raised, it would fail because the court did not abuse its discretion by not ruling on this motion filed only two hours before the foreclosure sale. Moreover, even the most cursory review of the TRO demonstrates that it did not comply with Maryland Rules governing TROs. *See* Md. Rule 15-504(a) (requiring an affidavit or other statement under oath that shows harm will result to the party). We also reject the Comforts' argument that the law of the case doctrine and principles of judicial estoppel precluded the foreclosure sale from going forward.

⁵ To the extent that the Comforts challenge whether the substitute trustees timely filed the amended order to docket, we note that it is within the court's discretion to allow a late filing and, in any event, the Comforts have not shown any prejudice.

reviewed for an abuse of discretion.”).

**JUDGMENT OF THE CIRCUIT COURT
FOR CAROLINE COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANTS.**