Circuit Court for Prince George's County
Case No. CAE-10-07351

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2437

September Term, 2018

GEORGE E. MCDERMOTT

v.

KENNETH J. MACFADYEN, ET AL.

Berger,
Nazarian,
Arthur,

JJ.

Opinion by Arthur, J.

Filed: February 21, 2020

*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 George E. McDermott, a vexatious litigant, brings yet another challenge to the proceedings emanating from the ratified foreclosure sale of a residential property that he and his wife formerly owned at 8324 Bock Road in Oxon Hill.

On October 18, 2018, McDermott, representing himself, filed what he describes as his tenth notice of appeal in this foreclosure action. The notice of appeal concerns two orders, entered on September 19, 2018, by the Circuit Court for Prince George's County:

1. an order denying McDermott's "Motion to the Court Clerk to Provide Defendant with Scheduled Time and in What Will Courtroom the Alleged Auditor's August 23 Hearing is to Take Place on the Calendar" (Docket Entry 228); and

2. an order ratifying and confirming the "Amended Report of Auditor," dated August 9, 2018, on the ground that "no exceptions thereto [had] been filed within the period prescribed by Rule," and ordering that the case be closed statistically (Docket Entry 229).

In response, the appellees, Kenneth J. MacFadyen and other substitute trustees, seek the dismissal of the appeal or affirmance on multiple grounds. They argue that dismissal is appropriate under Md. Rule 8-602, "because the content of appellant's brief failed to comply with Rule 8-504[.]"[1] On the merits, the substitute trustees argue that "none of the allegations addresses the orders dated September 19, 2018[,]" and that the circuit court did not abuse its discretion in entering those orders.

[1] The substitute trustees also argue that McDermott, who has been enjoined from filing pleadings and other papers without first obtaining leave of court, did not request or obtain leave to file the relevant papers, including the notice of appeal. The trustees, however, do not cite any authority for the proposition that this Court may dismiss an appeal that a party has filed without first obtaining the requisite leave of court. If a party violates an injunction, the typical remedy is a contempt proceeding in the court whose order has been violated.

Because we agree that McDermott's appeal has no merit, either procedurally and substantively, we shall affirm the challenged orders, including the order that closes the case.

BACKGROUND

After McDermott and his wife defaulted on a note secured by a deed of trust on their residence, the property was sold at a foreclosure auction. In 2010 the circuit court ratified the foreclosure sale, and in 2011 this Court affirmed the order ratifying the sale. *See McDermott v. MacFadyen*, No. 1650, Sept. Term 2015, 2016 WL 7189580 (Md. App. Dec. 12, 2016) (per curiam); *McDermott v. MacFadyen*, No. 736, Sept. Term 2011 (Md. App. May 23, 2013).

Seeking relief from these and other orders, McDermott has waged a lengthy but unsuccessful campaign of litigation in both state and federal courts. By his own account, McDermott has pursued dozens of cases and appeals, in which he has filed hundreds of pleadings and other papers. As a result, both the Circuit Court for Prince George's County and the United States District Court for the District of Columbia have required McDermott to obtain leave of court before making any additional filings.[2]

[2] In Maryland, judicial authority to grant injunctive relief against "frivolous" and "vexatious" litigation derives from Maryland Rule 15-502(b). Rule 15-502(b) grants courts the power to issue "pre-filing order[s] . . . to control the actions of a vexatious or frivolous litigant." *Riffin v. Circuit Court for Baltimore Cty.*, 190 Md. App. 11, 28-29 (2010). Such an order must be premised upon a documented record and "substantive findings as to the frivolous or harassing nature of the litigant's actions." *Id*. at 33-34.

The events pertinent to McDermott's latest appeal are set forth in the following timeline:

DATE	EVENT	DOCKET ENTRY
January 19, 2018	Writ of possession issued.	188
February 7, 2018	Auditor files corrected report.	190
March 19, 2018	Sheriff's return is filed, noting "Property turned over to Sheriff[.]"	194
April 26, 2018	Court ratifies corrected report and closes case statistically.	197
May 31, 2018	Substitute trustees move to vacate order ratifying corrected auditor's report and file exceptions to that report.	205
June 20, 2018	Court sustains exceptions to corrected auditor's report, vacates order ratifying corrected report, and returns the matter to the auditor for an amended report, with instructions to award the substitute trustees "additional reasonable attorney fees upon proof to the Auditor of said fees."	211
August 9, 2018	Auditor files amended report.	221
August 22, 2018	Without leave of court, McDermott files "motion to the court clerk to provide [him] with scheduled time" and place for "the alleged auditors [sic] August 23 hearing" and demands that "all proceedings must take place in a open the record court proceedings" [sic].[3]	225
September 19, 2018	Court denies McDermott's "motion to the court clerk to provide [him] with scheduled time" and place for "the alleged auditors [sic] August 23 hearing."	228
September 19, 2018	Court ratifies auditor's amended report and closes the case statistically.	229

[3] Notwithstanding McDermott's motion, nothing in the record indicates that a hearing occurred on August 23, 2018, or was even scheduled to occur on that date.

September 22, 2018	Without leave of court, McDermott moves the court "to issue a Nunc pro tunc [sic] order vacating all judgments orders and decrees[,]" on the ground that they were "procured by this court for [sic] fraud on the defendants/court . . . by the alleged court insiders usurping the jurisdiction and authority of the court of special appeals [sic]."	231
September 28, 2018	Without leave of court, McDermott moves for "admission of facts and genuineness of documents" and for an order "not to enter" a "fraudulent unsugned [sic] order[.]"	232
October 12, 2018	Without leave of court, McDermott files what he calls a "notice of filing a commerical [sic] lien" "concerning inaccurate or wrongfully filed records of this court and appellate courts[.]"	234
October 18, 2018	Without leave of court, McDermott moves "to strike all the alleged orders of Judge Alves of September 19," 2018.	235
October 18, 2018	Without leave of court, McDermott purports to remove this case, which has been statistically closed, to "the United States District Court for the Northern District of Virginia" [sic].[4]	237
October 18, 2018	Without leave of court, McDermott notes this appeal. The notice of appeal expressly challenges "all orders of September 19, 2018," and attaches the two orders from that date.	238
October 29, 2018	Court denies McDermott's motion "to issue a Nunc pro tunc [sic] order vacating all judgments orders and decrees[,]" his motion for "admission of facts and genuineness of documents" and for an order "not to enter the fraudulent unsugned	240

[4] There is no Northern District of Virginia. Virginia has two federal districts: the Eastern District (in Alexandria, Richmond, Norfolk, and Newport News) and the Western District in Abingdon, Big Stone Gap, Charlottesville, Danville, Harrisonburg, Lynchburg, and Roanoke).

	[sic] order," and McDermott's "notice of filing a commerical [sic] lien."	

DISCUSSION

The substitute trustees move to dismiss this appeal under Maryland Rule 8-602(c)(6), which authorizes this Court to dismiss an appeal if the contents of an appellant's brief do not comply with Rule 8-504. Rule 8-504 establishes the requirements for the contents of an appellate brief. In pertinent part, Rule 8-504(a) states:

> (a) **Contents.** A brief shall . . . include the following items in the order listed:
>
> * * *
>
> (2) A brief statement of the case, indicating the nature of the case, the course of the proceedings, and the disposition in the lower court . . . .
>
> (3) A statement of the questions presented, separately numbered, indicating the legal propositions involved and the questions of fact at issue expressed in the terms and circumstances of the case without unnecessary detail.
>
> (4) A clear concise statement of the facts material to a determination of the questions presented . . . . Reference shall be made to the pages of the record extract supporting the assertions. . . .
>
> (5) A concise statement of the applicable standard of review for each issue, which may appear in the discussion of the issue or under a separate heading placed before the argument.
>
> (6) Argument in support of the party's position on each issue.
>
> (7) A short conclusion stating the precise relief sought.

McDermott filed a brief and reply brief in this Court, neither of which comply with these requirements. In particular, McDermott's filings fall far short of these standards, in the following respects:

- Rather than "[a] brief statement of the case, indicating . . . the course of the proceedings, and the disposition in the lower court," McDermott presents twelve pages from which it is impossible to discern either "the course" or "the disposition" of the relevant proceedings.
- Rather than separately numbered questions presented "without unnecessary detail," McDermott's brief presents the following "questions":

  > "Did judge Judge [sic] Alives [sic] actions of October 29, 2018 [DE 240] improperly denying defendants [sic] motion's [sic] [DE 231, 232, and 234] while case was still on appeal [sic]. And lower court lacked legal jurisdiction court was aware [sic] appeal was pending as evidenced by the lower courts [sic] docket [DE 238] filed on 10/26/2018 See [E – 1]. Thereby violating appellant's constitutional rights" [sic].
  >
  > "DID THIS COURT BY AND THROUGH THE USE OF FORGED/REDACTED/UNVERIFIABLE ALLEGED COURT ORDERS SENT BY US MAIL TO THE APPELLANT ENCOURAGE LOWER COURT AGENTS AND ASSIGNS, TO ENGAGE IN CRIMINAL MISCONDUCT AGAINST THE APPELLANT, HIS FAMILY MEMBERS AND TENS OF THOUSANDS OF MARYLANDERS SUFFERING FROM ILLEGAL FORECLOSURE SCAMS BY THE APPELLEES."

- Rather than a "clear, concise statement of the facts material to a determination of" those "questions," McDermott sets forth more than five pages of irrelevant allegations, which are typically unsupported by the record even on the few occasions on which he actually purports to offer any support for them.
- Rather than "[a] concise statement of the applicable standard of review for each issue" and legal argument explaining why the circuit court erred in issuing the two

decisions of September 19, 2018, from which McDermott noted this appeal, McDermott presents rambling narratives, which incorporate baseless accusations of misconduct and criminality within the judiciary.

- As argument in support of his "questions," McDermott "incorporates by reference" his previous seventeen pages styled as a "statement of the case" and "statement of facts." Thereafter, he adds eight pages of "argument," organized into the two "questions" set forth above.
- Rather than "a short conclusion setting forth" appropriate relief from those two orders, McDermott's "summation" includes sweeping requests for relief that ask us to "vacate and set aside all the unsigned orders of these courts and the orders of the Circuit Court issued in secret or issued while case [sic] was on appeals [sic] in 1 of the 10 appeals presently before the court emanating from lower court case PG County Circuit Court CAE 10 – 07 351 [sic]."
- Finally, McDermott also asks this Court to "compel the appellees [sic] agent Kenneth J [sic] Mac Fayden [sic] to appear in open court on the record and produce documents in the original form, and his retainer agreement with the alleged creditor . . . which they have failed to produce upon written request from 2006 to the present day."

Given these material deficiencies in content and coherence, McDermott's briefs leave us unable to ascertain or answer his latest appellate contentions. Consequently, dismissal is appropriate under Rule 8-504(c), which provides that this Court "may

dismiss the appeal" "[f]or noncompliance with" the substantive requirements for appellate briefs. Dismissal is also appropriate under Rule 8-602(c)(6), which provides that this Court may dismiss an appeal if the contents of a brief do not comply with Rule 8-504. *See Rollins v. Capital Plaza Assocs., L.P.*, 181 Md. App. 188, 203 (2008); *see also Smithfield Packing Co., Inc. v. Evely*, 169 Md. App. 578, 607-08 (2006).

Rather than dismiss the appeal, however, we shall exercise our discretion to affirm the September 19, 2018, orders from which McDermott appeals, and the resulting judgment closing this foreclosure action, because McDermott fails to establish any grounds for appellate relief.

As the substitute trustees point out, McDermott's briefs do not address either of the orders of September 19, 2018. To the contrary, McDermott asserts a myriad of grievances concerning events that occurred both before and after the challenged orders.

McDermott's first "question" expressly challenges the order entered on "October 29, 2018. . . denying" his motion "to issue a Nunc pro tunc [sic] order vacating all judgments[,] orders and decrees[,]" his motion for "admission of facts and genuineness of documents" and for an order "not to enter the fraudulent unsugned [sic] order," and his "notice of filing a commerical [sic] lien." Yet the order of October 29, 2018, was not filed until *after* McDermott noted the present appeal on October 18, 2018. McDermott's notice of appeal does not relate forward to encompass rulings that postdate the notice itself, and McDermott did not note a separate appeal from the order of October 29, 2018. McDermott's first argument, therefore, concerns an order from which he has not

appealed. Accordingly, that argument could not possibly have any conceivable bearing on any of the issues in this appeal.

Likewise, McDermott's second question does not address the orders of September 19, 2018. Instead, McDermott advances procedural complaints concerning matters that occurred long *before* September 19, 2018. Alleging "injustices" and "misconduct" by various courts, he invokes a broad spectrum of legal principles, including the "void for vagueness doctrine," the Foreign Corrupt Practices Act, and the Fair Debt Collection Practices Act. Focusing obsessively on the process by which court orders are issued and made available to litigants, McDermott asserts, among other things, that the circuit court has erred "so many times it's impossible to count not only in this case, but in the other 12." He complains that throughout this case, "beginning in 1996 through present day[,]" "[t]he clerk of the court used a rubberstamp stating that the original [order] was in the court file" even though, he says, "no original was ever produced[.]" In McDermott's view, "it is unlikely that a judge would release a sub-par opinion /order, such as the appellant has been receiving for 20+ years from this court if he the actual judge were forced to sign his name to it [sic]."

Under Md. Rule 8-504(a)(6), an appellate brief must contain "[a]rgument in support of the party's position[.]" "[A]rguments not presented in a brief or not presented with particularity will not be considered on appeal." *Klauenberg v. State*, 355 Md. 528, 552 (1999). Indeed, an appellant waives an issue when he fails to present an argument in

his brief or when his objection below differs from the grounds asserted on appeal. *Id*. at 551-52.

From McDermott's briefs, we discern nothing that substantively addresses the ratification of the auditor's amended report (Docket Entry 229) or the denial of his request for scheduling information (Docket Entry 228), which are the subjects of the two orders entered on September 19, 2018. Nor does McDermott's prayer for appellate relief otherwise mention those matters. Moreover, the circuit court record shows that McDermott did not file exceptions or other opposition to the Auditor's Amended Report and that the "August 23" hearing about which he sought information was neither scheduled nor held. Because McDermott does not particularize why the circuit court erred in entering either of the orders on September 19, 2018, McDermott is not entitled to appellate relief from them. *See Mathis v. Hargrove*, 166 Md. App. 286, 318 (2005).

McDermott claims that he is particularly aggrieved by what he believes are "unsigned per curiam orders in the alleged name of the court with all judges concurring[.]" He is apparently concerned about the clerk's practice of sending out copies of orders, with the judge's original signature redacted for purposes of security.

We reject McDermott's allegations of unsigned, "forged," and "fraudulent" court orders, and of other malfeasance and misconduct within the judiciary. Contrary to McDermott's professed belief, the record in this case contains orders that bear original signatures by the circuit court judges who issued them. In particular, the record includes two orders dated September 19, 2018, both of which were signed (in blue ink) by Judge

Krystal Q. Alves. These orders, like all of the other orders in this foreclosure action, are valid and binding judicial decisions. The validity of an order is not affected by the clerk's practice of providing a party or the public with a copy of an original, signed order that redacts the judge's signature. *See generally* Md. Rule 1-322(c) ("[a] photocopy or facsimile copy of a pleading or paper, once filed with the court, shall be treated as an original for all court purposes[]"); Md. Rule 1-324(a) ("[u]pon entry on the docket of . . . any order or ruling of the court not made in the course of a hearing or trial . . . , the clerk shall send a copy . . . to all parties entitled to service"). Because there is nothing improper about such practices, McDermott's unfounded beliefs to the contrary have no merit.[5]

In summary, in the absence of opposition to the amended audit or any argument directed at either its ratification or the orders of September 19, 2018, we shall affirm the resulting final orders in this foreclosure action.

Finally, because of the likelihood of further frivolous filings by McDermott, we note that "'the final ratification of the sale of property in foreclosure proceedings is *res judicata* as to the validity of such sale, except in the case of fraud or illegality[.]'" *Hersh v. Allnutt*, 252 Md. 513, 519 (1969) (quoting *Bachrach v. Washington United Coop., Inc.*,

[5] Likewise, McDermott's complaints about "unsigned" and otherwise unsourced appellate decisions is belied by the record. Like all previous opinions and mandates in this Court in this action, this unanimous written decision is made and issued by three identified judges of this Court. *See McDermott v. MacFadyen*, No. 1650, Sept. Term 2015, 2016 WL 7189580 (Md. App. Dec. 12, 2016) (per curiam); *McDermott v. MacFadyen*, No. 736, Sept. Term 2011 (Md. App. May 23, 2013).

181 Md. 315, 320 (1943)); *accord Ed Jacobsen, Jr., Inc. v. Barrick*, 252 Md. 507, 511 (1969). The only type of fraud warranting relief from a ratified foreclosure sale is "extrinsic fraud" that "'actually prevent[ed] an adversarial trial.'" *Billingsley v. Lawson*, 43 Md. App. 713, 718-19 (1979); *see Pelletier v. Burson*, 213 Md. App. 284, 290-91 (2013). "'[A]n enrolled decree will not be vacated even though obtained by the use of forged documents, perjured testimony, or any other frauds which are "intrinsic" to the trial of the case itself.'" *Billingsley v. Lawson*, 43 Md. App. at 719 (quoting *Schwartz v. Merchants Mortg. Co.*, 272 Md. 305, 308 (1974)). Furthermore, "assertions of fraud related to what [a party] believes to have been fraudulent signatures and affidavits, do not rise to the level of extrinsic fraud." *Pelletier v. Burson*, 213 Md. App. at 291.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.