

Circuit Court for Anne Arundel County
Case No. C-02-FM-16-003196

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2487

September Term, 2017

YAW APATU

v.

NADINE APATU

Friedman,
Beachley,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: April 2, 2019

*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.

On August 8, 2017, the Circuit Court for Anne Arundel County granted an absolute divorce to appellant, Yaw Apatu, from appellee, Nadine Apatu. The divorce judgment ordered the sale of the former marital home, with the parties to split evenly the costs and fees incurred and the proceeds of the sale. The court also appointed John K. Gardner as trustee to execute the sale.

On October 16, 2017, Mr. Gardner filed a report of sale and petition for ratification. Mr. Gardner reported that the property had been professionally appraised at a value of \$322,000, that he had entered into a contract with a realtor to sell the property at a list price of \$339,900 with a 5% realtor commission, and that a buyer had submitted a contract to purchase the property for \$340,000 with a \$5000 seller's credit to help the buyer with closing costs. Mr. Gardner stated further that he had secured a voluntary 90-day stay of the pending foreclosure of the property, and that executing the proposed contract quickly was the best opportunity to sell the property without a deficiency

On October 23, 2017, Mr. Apatu filed a notice of appeal from the divorce judgment and exceptions to the proposed sale. He claimed in his exceptions that a second professional appraisal had assessed the value of the property at \$344,000, that the \$339,900 list price was too low, and that the \$5000 seller credit and 5% realtor commission were too generous. He also alleged that the buyers were given preferential treatment. On November 14, 2017, Mr. Apatu filed an emergency motion to stay the sale pending the outcome of the appeal and the ruling on his exceptions.

In an order entered on November 30, 2017, the court overruled Mr. Apatu's exceptions and denied his motion to stay the sale. On December 6, 2017, the court ratified

the sale of the property. Mr. Apatu noted a timely appeal and presents eight questions for our review.¹ The only issues properly before this Court, however, are (1) whether the circuit court abused its discretion in overruling his exceptions and denying his motion to stay the sale without a hearing, and (2) whether the trial court erred in ratifying the sale.² For the reasons that follow, we affirm.

¹ The questions as posed by Mr. Apatu are:

1. Did the Trial Court abuse its discretion in Overruling without opinion, and denying Appellant’s timely Exceptions and Motion To Stay without granting a Hearing per MD Rule 14-305(d) and MD Rule 2-311(f)?
2. Did the Trial Court err in ratifying Trustee Sale without evidence of final or estimated costs showing deficiency or net proceeds from sale? MD Rule 14-305(e) requires the Court to ensure sale is fair and properly made.
3. Did the Trial Court err by not referring the sale to an Auditor pursuant to MD-Rule 2-543?
4. Did the Trial Court err in excusing the Trustee from filing a bond in the sale of the marital asset? MD Rule 14-303(a) requires a Trustee to file a bond for faithful execution and performance of the sale.
5. According to MD Law the Circuit Court may transfer title of asset in this case the Marital Home to Trustee. Trustee as legal owner of asset signed all sale documents without input from Appellant. Did the trial Court err in assigning default judgment to Appellant when Trustee was responsible for sale including deficiency?
6. Sale of marital home was a Court ordered Sale and not a Foreclosure sale by Mortgagor (Bank) hence Trustee should have been working to seek the highest possible proceeds for Appellant. Did the Trial Court collude with Trustee in not seeking the best interest of Appellant and Family?
7. Throughout the sale and even after Appellant had filed Exceptions against Trustee Sale, Trustee engaged in Ex-parte communication with the Court. Did the Court err in communicating with Trustee without including Appellant who was represented Pro-se?
8. Per MD Estates and Trust Code 14.5-901 Did Trustee break the law by breach of trust and fiduciary duty by abusing the power and discretion vested on him by the law?

² We do not reach Mr. Apatu’s remaining questions as he failed to raise them before the circuit court and they were not adequately briefed on appeal. *See* Md. Rule 8-131(a);
(continued)

Under Md. Rule 14-305(d)(2), a hearing on exceptions to a sale is only required if the court decides to set aside the sale, otherwise, “[t]he court shall hold a hearing if a hearing is requested and the exceptions or any response **clearly show a need to take evidence.**” (Emphasis added.) It is within the court’s discretion whether to conduct a hearing. *See Four Star Enterprises Ltd. Partnership v. Council of Unit Owners of Carousel Ctr. Condominium, Inc.*, 132 Md. App. 551, 567 (2000) (“A hearing is by no means mandatory under Rule 14-305(d)(2), even if one of the parties requests it.”). The court was well within its discretion to find that the exceptions raised by Mr. Apatu did not demonstrate a clear need to take evidence, and his assertion that he was entitled to a hearing is without merit.

Mr. Apatu was also not entitled to a hearing on his motion to stay the sale pending the outcome of his appeal. As a threshold matter, the Maryland Rules do not require a hearing. *See* Md. Rule 2-311(f) (“Except when a rule expressly provides for a hearing, the court shall determine in each case whether a hearing shall be held.”). Further, the question of whether to grant or deny a stay of proceedings is a matter within the discretion of the trial court that will be disturbed only if the discretion is abused. *Vaughn v. Vaughn*, 146 Md. App. 264, 279 (2002). Here, the August 8, 2017 judgment granting an absolute divorce, ordering the sale of the property, and appointing a trustee to effectuate the sale was a final order, and Mr. Apatu was required to note an appeal within thirty days unless a

see also Boston Scientific Corp. v. Mirowski Family Ventures, 227 Md. App. 177, 209 (2016) (“An appellate court is not required to address an argument on appeal when the appellant has failed to adequately brief his argument.”).

revisory motion was filed within ten days of that order. Mr. Apatu filed a motion for reconsideration on August 21, 2017, thirteen days after the judgment of absolute divorce was entered. The trial court’s denial of Mr. Apatu’s emergency motion to stay the sale pending the outcome of the appeal was not an abuse of discretion where it is clear from the record that the notice of appeal, filed on October 23, 2017, was untimely filed. *See* Md. Rule 8-202(c); *see also Coppage v. Orlove*, 262 Md. 665, 666 (1971) (“[I]n a proper case a court may stay proceedings pending the determination of another proceeding that may affect the issues raised.”) (quoting *Dodson v. Temple Hill Baptist Church, Inc.*, 254 Md. 541, 546 (1969) (quotation marks omitted)).

Mr. Apatu’s final argument, that the court erred in ratifying the sale without ensuring that the sale was “fair and properly made” in accordance with Md. Rule 14-305(e) is also without merit. “The court will ordinarily ratify a sale made by a trustee ‘in the absence of fraud or improper dealing or a clear inadequacy of price as of the time the sale was made[.]’” *D’Aoust v. Diamond*, 424 Md. 549, 584 (2012) (quoting *Standish Corp v. Keane*, 220 Md. 1, 9 (1959)). Here, the trustee’s report of sale was accompanied by a contract to purchase the property for a price well above its \$322,000 appraised value and very near the \$344,000 appraisal value asserted by Mr. Apatu. The realtor’s narrative summary reflects that eleven showings of the property were scheduled, four showings were cancelled, and feedback from the showings that occurred. There is no evidence that any other offers were submitted. The property was also at risk of sale in foreclosure within 90 days, and Mr. Gardner maintained that the proposed contract was in the parties’ best interests. At settlement, the net proceeds from the sale were \$2,113.16. Considering the

imminent risk of sale in foreclosure if the property was not voluntarily sold within 90 days, the lack of competing offers, and the fact that net proceeds were derived from the sale at the time it was made, we find no evidence that the court abused its discretion by ratifying the sale.

**JUDGMENTS OF THE CIRCUIT COURT
FOR ANNE ARUNDEL COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT**