

Circuit Court for Anne Arundel County
Case No.: C-02-CV-23-000017

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2511

September Term, 2023

JARRYN R. AVERY

v.

HUNTER C. PIEL, ET AL.

Wells, C.J.
Ripken,
Eyler, Deborah S.,
(Senior Judge, Specially Assigned),
JJ.

Opinion by Wells, C.J.

Filed: May 9, 2025

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Appellant Jarryn Avery appeals an order issued by the Circuit Court for Anne Arundel County denying his motion to vacate the final order ratifying the sale of properties foreclosed on by Hunter C. Piel, Esquire, and Scott B. Wheat, Esquire, substitute trustees and appellees here. From what we can discern from Avery’s informal brief, he raises a host of issues, only one of which has a bearing on this appeal. That issue is whether the properties foreclosed on were non-residential, as Piel and Wheat claimed, or “residential,” as Avery claimed. For the reasons we discuss, we do not perceive an abuse of discretion in the court’s denial of the motion to vacate. We, therefore, affirm.

BACKGROUND

Avery borrowed \$90,000 from Severn Savings Bank to purchase lots 657-662 located on Key Avenue in Brooklyn, Maryland. A purchase money deed of trust was duly recorded in the Land Records of Anne Arundel County. Ultimately, Fairport Asset Management purchased the deed of trust. Avery defaulted on the loan payment. Piel and Wheat were appointed as substitute trustees with the right to foreclose on the properties for Fairport.¹

The foreclosure process proceeded smoothly through the sale of the property at a public auction on May 23, 2023, and the substitute trustees requested the circuit court ratify the sale on June 2, 2023. But on August 22, 2023, Avery, representing himself, moved to

¹ Avery also filed a motion to dismiss based on the substitute trustees’ alleged lack of standing. The motion to dismiss is denied for the reasons expressed in this opinion. Further, we perceive nothing in the pleadings or documents below that would support Avery’s contention that the substitute trustees were not properly appointed to foreclose on the subject properties.

stay or dismiss the foreclosure proceedings, raising several purported “procedural and ethical” issues, including issues of notice. Days later, but this time with counsel’s assistance, Avery filed an “objection to the ratification of sale,” citing Fairport’s alleged lack of standing.

Piel and Wheat timely opposed the motions to stay, dismiss, or otherwise object, in which they noted the properties were lots of “raw, unimproved land” and had not been “improved by four or fewer single family dwelling units that are designed principally and are intended for human habitation” so as to be deemed “residential” properties under Maryland Code Annotated, Real Property (“RP”) § 7-105.1(a)(12). As a result, Piel and Wheat argued, Avery’s motion to stay or otherwise object to the foreclosure was untimely as it had not been filed within 15 days of learning of the foreclosure proceedings under Rule 14-211(2)(B).

Upon learning this, the circuit court issued a “Directive” to Piel and Wheat requiring them to provide proof the properties were, in fact, unimproved land as they claimed. Piel and Wheat filed a “Supplementary Response” to their opposition with detailed information about the properties, including an affidavit from the substitute trustees’ attorney, photographs of the properties, plat maps, and documentation from the Maryland Department of Assessments and Taxation showing the lots foreclosed upon were unimproved by any dwellings.

After receiving this documentation from the substitute trustees, the circuit court issued a Final Order ratifying the sale. Avery moved to vacate that order, raising the same

issues he raised in his previous objections, including his argument that the properties were residential in nature. Piel and Wheat opposed. The circuit court denied the motion to vacate. Avery then appealed.

DISCUSSION

In this case, the circuit court docketed its order ratifying the foreclosure sale on November 9, 2023. Avery’s motion to vacate the final order was docketed on November 15, 2023.² The substitute trustees opposed the motion on December 6, 2023. The circuit court denied the motion on February 13, 2024, and Avery filed this appeal the next day, February 14, 2024.

Avery’s motion to vacate is, essentially, a request for the court to revise the judgment and negate the ratification of the final sale. In numbered paragraph 13 of the motion, he explains:

The legal argument against accepting the Substitute Trustees’ Motion to Vacate Order of Dismissal and Accept Supplementary Response is grounded in the failure of the Substitute Trustees to demonstrate that the property in question is a commercial property, as well as their lack of a reasonable excuse for not responding to the prior order in a timely manner.

The characterization of the property is also what the substitute trustees discuss in arguing against the motion to vacate. In numbered paragraph 4 of their response, the substitute trustees contend:

In addition, the Motion [to Vacate] alleges, somehow, that the Substitute Trustees did not provide the Court additional information regarding the Subject Property’s classification and corresponding foreclosure rules per this

² According to the docket entries, Avery filed a deficient motion to vacate on November 13, 2023, and corrected it with the November 15 filing.

Court’s Directive. On the contrary to [Avery’s] suggestion, the Substitute Trustees provided information showing that the Property in this case is unimproved, non-residential real property in the Substitute Trustees’ Opposition to Defendant’s Motion to Stay or Dismiss Foreclosure Proceedings, filed September 7, 2023, as well as in the Substitute Trustees’ Supplemental Response to Notice Deficiencies in Report of Sale (the “Supplement”), filed nunc pro tunc on October 3, 2023.

Because Avery’s motion to vacate was filed within 30 days of the entry of the final judgment, it suspended or tolled the entry of a final judgment until the court decided the motion. *Martino v. Arfaa*, 169 Md. App. 692, 702 (2006).

Because a final judgment had not yet been enrolled, Maryland Rule 2-535(a) is applicable.³ This subsection provides that “[o]n motion of any party filed within 30 days after entry of judgment, the court may exercise revisory power and control over the judgment[.]” The court’s discretion in this instance is “broad.” *Bower v. Ward*, 256 Md. App. 61, 68 (2022). Indeed, a court may act to revise its judgment at the request of a party or on its own accord. “The exercise of the court’s discretion is not triggered exclusively ... by a motion filed by one of the parties. The court may act to revise its judgment sua sponte.” *Maryland Bd. of Nursing v. Nechay*, 347 Md. 396, 409 (1997).

³ See also Maryland Code Annotated, Courts and Judicial Proceedings (“CJP”) Article § 6-408:

For a period of 30 days after the entry of a judgment, or thereafter pursuant to motion filed within that period, the court has revisory power and control over the judgment. After the expiration of that period the court has revisory power and control over the judgment only in case of fraud, mistake, irregularity, or failure of an employee of the court or of the clerk’s office to perform a duty required by statute or rule.

We review a court’s exercise of its revisory powers under an abuse of discretion standard. *Id.* (“Although we review the circuit court’s exercise of revisory powers under an abuse of discretion standard, we recognize that discretion is ‘always tempered by the requirement that the court correctly apply the law applicable to the case.’” (quoting *Barrett v. Barrett*, 240 Md. App. 581, 591 (2019))). “An abuse of discretion occurs when ‘the discretion was manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons, or when no reasonable person would take the view adopted by the [trial] court.’” *Comptroller of Maryland v. Myers*, 251 Md. App. 213, 242 (2021) (quoting *Wilson-X v. Dep’t of Hum. Res.*, 403 Md. 667, 677 (2008) (additional citations and quotations omitted)).

While he raises, without proof, some alleged filing irregularities, Avery’s basis for the court to vacate the ratification of the sale is his assertion that the foreclosed upon properties were residential, rather than non-residential, as the substitute trustees contended. The circuit court clearly identified that issue as the main impediment to ratifying the sale and sought substantive proof from the substitute trustees about the character of the properties. As far as we can tell from what he argues, Avery seems to base his assertion on the fact that the lots are contained within a residential area, therefore, he seems to reason, they too must be residential.

After reviewing the record, specifically the photographs, plats, and affidavit submitted, we conclude the lots were not improved by any dwellings or other structures as required under RP § 7-105.1(a)(12) to be classified as “residential.” We determine the lots

were “raw unimproved land” as the substitute trustees asserted. Because that fact has been adequately shown, we perceive no abuse of the court’s broad discretion to deny the motion to vacate. Consequently, we affirm.

**APPELLANT’S MOTION TO DISMISS IS
DENIED. JUDGMENT OF THE CIRCUIT
COURT FOR ANNE ARUNDEL COUNTY
AFFIRMED. APPELLANT TO PAY
COSTS.**