

Circuit Court for Baltimore City
Case No. 24-O-13-004935

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2643

September Term, 2016

LORIANN KNIGHT

v.

JEFFREY B. FISHER, *et al.*
SUBSTITUTE TRUSTEES

Woodward, C.J.,
Beachley,
Moylan, Charles, E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: March 7, 2018

*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.

After Loriann Knight, appellant, defaulted on a deed of trust loan on her home, appellees, acting as substitute trustees, filed a foreclosure action in the Circuit Court for Baltimore City.¹ Knight’s home was ultimately sold at a foreclosure sale and the circuit court ratified the sale on December 3, 2015. Knight filed an appeal from the ratification order, which this Court dismissed as untimely on April 13, 2016.

On June 13, 2016, Knight filed a “Motion to Vacate or Rescind Ratification Order and Declare Mistrial” (motion to vacate) claiming that the ratification order should be vacated because it was an irregular judgment within the meaning of Maryland Rule 2-535(b). Prior to the circuit court ruling on the motion to vacate, appellees filed a “Motion for Protective Order” seeking to prohibit Knight from filing any new pleadings challenging the validity of the deed of trust, the validity of the sale, or the ratification of the sale without first obtaining leave from the circuit court. The circuit court granted appellees’ motion on July 7, 2016 (protective order). Then, on August 8, 2016, the court entered an order declining to rule on Knight’s motion to vacate on the grounds that she had failed to comply with the protective order.

On August 17, 2016, Knight filed a notice of appeal from: (1) the July 7, 2016 protective order and (2) the August 8, 2016 order declining to rule on her motion to vacate. That appeal was docketed in this Court as Case No. 1210, September 2016 Term. Appellees then filed a motion to strike Knight’s notice of appeal in the circuit court claiming that (1) her appeal from the protective order was untimely, and (2) the order

¹ Appellees are Jeffrey B. Fisher, Doreen A. Strothman, Virginia S. Inzer, Thomas C. Valkenet, and Carletta M. Grier.

declining to rule on her motion to vacate was a non-appealable interlocutory order. The circuit court granted the motion on October 27, 2016, and struck Knight’s notice of appeal. Because the notice of appeal had been stricken, this Court “administratively closed” Knight’s appeal. Knight now appeals from the circuit court’s order striking her notice of appeal and raises several issues which reduce to one: whether the circuit court erred in striking her August 18, 2016 notice of appeal. For the reasons that follow, we affirm in part and vacate in part the circuit court’s October 27, 2016 order striking Knight’s notice appeal.

Pursuant to Maryland Rule 8-203(a), the circuit court may strike a notice of appeal under certain limited circumstances. Specifically, the rule provides that:

On motion or on its own initiative, the lower court may strike a notice of appeal or application for leave to appeal (1) that has not been filed within the time prescribed by Rules 8-202 or 8-204, (2) if the clerk of the lower court has prepared the record pursuant to Rule 8-413 and the appellant has failed to pay for the record, (3) if the appellant has failed to deposit with the clerk of the lower court the filing fee required by Rule 8-201(b), or (4) if by reason of any other neglect on the part of the appellant the record has not been transmitted to the appellate court within the time prescribed in Rule 8-412.

However, the circuit court may not “preclude review of its own decision by striking an appeal because it believes that the appellate court has no jurisdiction to hear the appeal or that the appellant is not entitled to take the appeal, or for any other reason that goes, directly or indirectly, to the merits of the appeal.” *County Com’rs of Carroll County v. Carroll Craft Retail Inc.*, 384 Md. 23, 42 (2004). Instead, “[i]f an appeal is subject to dismissal for any reason other than the four articulated in Rule 8-203, it is the appellate court that must order the dismissal.” *Id.*

We agree that the circuit court had the authority to strike Knight’s notice of appeal as to the July 7 protective order because her appeal from that order was untimely. This Court has held that a pre-filing order requiring a *pro se* litigant to seek leave of the court before filing any pleadings, while non-final, is the equivalent of an injunction and, therefore, is immediately appealable. *See Riffin v. Circuit Court for Baltimore County*, 190 Md. App. 11, 29-30 (2010). Nevertheless, a party seeking to appeal from a non-final order must still file his or her notice of appeal within thirty days of that order being entered. *See In re Guardianship of Zealand W.*, 220 Md. App. 66, 78 (2014) (“Even when interlocutory appeals are permitted, however, such an appeal must be filed within thirty days of the entry of the order from which the appeal is taken.”). Otherwise the party must wait to seek review of the order after the entry of a final judgment. Here, the protective order was entered on July 7, 2016, but Knight did not file her notice of appeal until August 17th, 2016, approximately forty days later. Consequently, her notice of appeal was untimely as to that order.²

On the other hand, the circuit court lacked the authority to strike Knight’s notice of appeal from the August 8 order declining to rule on her motion to vacate. Appellees concede that the notice of appeal was timely as to that order. Moreover, none of the other

² We note that Knight filed a motion to vacate or amend the protective order within ten days of the entry of that order which has not yet been ruled on by the circuit court. However, the filing of that motion had no impact on the time for filing the notice of appeal because the “tolling effect of Rule 8-202(c) does not apply to a motion for reconsideration of a non-appealable interlocutory order.” *Doe v. Sovereign Grace Ministries, Inc.*, 217 Md. App. 650, 669 (2014); *accord Cabrera v. Mercado*, 230 Md. App. 37, 98-99 (2016) (noting that Maryland Rule 2-534 only applies “after a *final judgment* disposing of all the issues is rendered” (emphasis added)).

bases for striking a notice of appeal under Rule 8-203(a) apply. Although appellees contend that the August 8 order was a non-appealable interlocutory order, that issue could not be decided by the circuit court and must be decided by this Court in Case No. 1210, September 2016 Term. Consequently, we must vacate the circuit court’s order striking Knight’s notice of appeal from the August 8 order. We also shall reopen the appeal in this Court that was designated Case No. 1210, September 2016 Term. However, in that appeal, Knight may only raise issues related to the circuit court’s August 8, 2016 order declining to rule on her motion to vacate.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY STRIKING APPELLANT’S AUGUST 17, 2016 NOTICE OF APPEAL IN COURT OF SPECIAL APPEALS CASE NO. 1210, SEPTEMBER 2016 TERM, AFFIRMED IN PART AND VACATED IN PART. THE JUDGMENT IS VACATED TO THE EXTENT THAT IT STRIKE’S APPELLANT’S NOTICE OF APPEAL FROM THE CIRCUIT COURT’S AUGUST 8, 2016 ORDER DECLINING TO RULE ON HER “MOTION TO VACATE OR RESCIND RATIFICATION ORDER.” THE JUDGMENT IS OTHERWISE AFFIRMED. APPEAL IN CASE NO. 1210, SEPTEMBER 2016 TERM SHALL BE REOPENED BUT THAT APPEAL SHALL BE LIMITED TO THE AUGUST 8, 2016 ORDER. COSTS TO BE PAID ONE-HALF BY APPELLANT AND ONE-HALF BY APPELLEES.