

Circuit Court for Prince George's County
Case Nos. CAE 17-36456 & CAE 17-36642

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

Nos. 3368 & 3370

September Term, 2018

THORNTON MELLON LLC

v.

PRINCE GEORGE'S COUNTY,
MARYLAND

Wright,
Nazarian,
Gould,

JJ.

Opinion by Wright, J.

Filed: August 13, 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.

Thornton Mellon LLC, appellant, filed a Motion to Foreclose the Right of Redemption in the Circuit Court for Prince George’s County. Appellant acquired the two properties at issue through a tax sale, and sought to foreclose the right[] of redemption after attempting service on the defendants via mail, personal service, and publication.

The Circuit Court for Prince George’s County found the defendants were not personally served and denied appellant’s request for an Order Foreclosing the Right of Redemption. Appellant filed a Motion to Reconsider, which the circuit court also denied. Appellant noted this timely appeal and presents the following question for our review:¹

1. Whether the trial court erred in denying Appellant’s Motions to Reconsider where the Defendants in each case were properly served in accordance with laws governing tax sale foreclosure proceedings?

We hold that the circuit court erroneously applied the law and reverse the judgment of the circuit court.

BACKGROUND

On May 8, 2017, the Director of Finance of Prince George’s County sold two properties to appellant at a tax sale, one located at 1902 Billings Avenue in Capitol Heights, MD (“CAE 17-36456”), and the second located at 418 Possum Ct., also in

¹ Appellee, Prince George’s County, filed a statement of no position in lieu of a brief.

Capital Heights, MD (“CAE 17-36642”).² On November 18, 2017, appellant filed a Complaint to Foreclose Rights of Redemption for the two properties.

Along with the Complaint, appellant attached an Affidavit of Search, stating that it conducted a complete search of the Land Records Office, Circuit Court, and the Register of Wills for Prince George’s County, to ascertain the correct address for the defendants. In both cases, appellant filed affidavits with respect to Service, Non-Service, Posting, and [Md. Code (1985, 2012 Repl. Vol.), Tax-Property Article (“TP”)] § 14-839(a)(4),³ certifying the following service attempts:

Service attempts via publication

² The defendants in CAE 17-36456 were: Ora Harmon, Juanita Harmon, Patricia Merritt, Stanley McNair, and Prince George’s County. The defendants in CAE 17-36642 were Daniel George, Clarice Suggs, Westhampton Association, Inc. (the Homeowners Association), and Prince George’s County.

³ TP § 14-839(a)(4) provides:

This paragraph does not apply if a last known address for a defendant is not obtained as provided under paragraphs (1) and (2) of this subsection. The plaintiff shall cause a copy of the order of publication to be mailed by first class mail or certified mail, postage prepaid, to each defendant at the defendant’s address as determined by the provisions of paragraphs (1) and (2) of this subsection. As to any defendant not served by summons or as provided by paragraph (5) of this subsection, the plaintiff shall file an affidavit in the proceedings, which affidavit:

- (i) shall certify that this provision has been complied with; and
- (ii) shall be accompanied by:
 1. the receipt obtained from the post office for the mailing; or
 2. the certified mail receipt.

Pursuant to TP § 14-840, when the “summons required by [TP] § 14-839 is issued, the court shall pass an order of publication directed to all defendants” which is “published in a newspaper of general circulation . . . once a week for three successive weeks.” *Castruccio v. Dr. Bruce Goldberg, Inc.*, 103 Md. App. 492, 494 (1995). In December 2017, the circuit court ordered publication for the two properties.

Certificates of publication filed later in December 2017 show that notice was published in the Prince George’s County Post for both properties. For the property in CAE 17-36642, a Notice of Action to Foreclose was posted in the Prince George’s County Post on December 28, 2017, January 4, 2018, and January 11, 2018. For the property in CAE 17-36456, the Notice was posted in the Prince George’s County Post on December 21, 2017, December 28, 2017, and January 4, 2018.

Service attempts via personal service and posting

Appellant’s affidavits also discussed service attempts via personal service and posting. Appellant’s process server attempted personal service at the properties on January 15, 2018, January 16, 2018, and January 18, 2018. The personal service attempts were unsuccessful.

By the same affidavit, appellant’s process server affirmed that she posted a physical notice of the action at the respective properties on January 15, 2018.

Service attempts via certified mail and additional service

TP § 14-839(a)(3) requires that necessary defendants, including record title holders or mortgagees, must be served with a summons, a copy of the complaint, and other papers filed under that action, by personal service *or* by certified mail.

After personal service proved unsuccessful, appellant attempted service by certified mail.⁴ In the Affidavit with Respect to Service, Non-service, Posting and Maryland Tax Property, appellant indicated that in CAE 17-36642, it attempted service by certified mail, restricted delivery, return receipt requested, on December 29, 2017 to an “unknown occupant” of the property and to Westhampton Association.⁵ In CAE 17-36456, appellant’s process server attempted service by certified mail, restricted delivery, return-receipt requested, on December 20, 2017.

In Affidavits of Additional Diligence, appellant informed the court that it performed a “skip trace” and had located additional addresses for the defendants.⁶ Appellant found three possible addresses for Juanita Harmon, two addresses for Patricia Merritt, two addresses for Stanley McNair, two addresses for Clarice Suggs, and two addresses for Daniel George. Subsequently, appellant filed a line to the court requesting

⁴ Appellant noted in a Motion for Deferral that “[d]ue to an error on the part of their process server, service attempts and affidavits were not completed upon initial issuance.”

⁵ There was a signature on the return receipt for Westhampton Association. However, it was not in the signature box.

⁶ Appellant performed the skip trace using Clear, an online database of Thomas Reuters. For more information on Clear, see: <https://legal.thomsonreuters.com/en/products/clear-investigation-software/skip-tracing-collections>.

that additional summons be sent to the most current addresses found for the aforementioned defendants. It also appears that appellant sent an additional copy of the complaint via certified mail, restricted delivery, return receipt requested, to the defendants at their newly identified addresses. Of these, Clarice Suggs and Stanley McNair were the only defendants who signed a return receipt.

Additional Orders

After reissuing summons to the updated addresses for the defendants, the circuit court sent a notice to the parties contemplating dismissal of the case on May 7, 2018, due to a lack of jurisdiction pursuant to Md. Rule 2-507(b). The court determined that Ora Harmon, Juanita Harmon, Stanley McNair, Patricia Merritt, Prince George’s County, Clarice Suggs, Daniel George, and Westhampton Association, Inc. had not been served. Appellant filed a Motion to Defer on May 21, 2018, and noted that “[a]t worst, every defendant has been served by Publication[.]” On May 31, 2018, the court reserved the case for disposition until July 30, 2018.

Appellant thereafter filed its affidavit of additional service, indicating it had served the defendants via certified mail, restricted delivery, return receipt requested, and attached the return receipts bearing the respective signatures of Clarice Suggs and Stanley McNair. In July 2018, appellant filed a Motion to Enter Judgment for Order Foreclosing Right of Redemption and Request for Hearing for both cases.

On August 1, 2018, the circuit court denied appellant’s Motion to Defer as to Ora Harmon, Juanita Harmon, Patricia Merritt, Prince George’s County, Daniel George, and

Westhampton Association, Inc., but granted the motion as to Stanley McNair and Clarice Suggs.

On October 22, 2018, the circuit court denied appellant’s Motion for Order Foreclosing Rights of Redemption and Request for Hearing, citing insufficient service to all the defendants. On November 11, 2018, appellant filed a Motion to Reconsider. On January 8, 2019, the court denied appellant’s response to Order-Motion for Order Foreclosing Right of Redemption and Request for Hearing as to Ora Harmon, Juanita Harmon, Patricia Merritt, Prince George’s County, and Daniel George. Appellant noted this timely appeal.

STANDARD OF REVIEW

This appeal arises from the circuit court’s denial of appellant’s Motion to Reconsider; Md. Rule 2-535 governs the court’s revisory power.⁷ The circuit court “has broad discretion whether to grant motions to alter or amend filed within ten days of the entry of judgment,” and “[i]ts discretion is to be applied liberally so that a technicality

⁷ Md. Rule 2-534 provides:

On motion of any party filed within 30 days after entry of judgment, the [circuit] court may exercise revisory power and control over the judgment and, if the action was tried before the court, may take any action that it could have taken under [Md.] Rule 2-534. A motion filed after the announcement or signing by the trial court of a judgment or the return of a verdict but before entry of the judgment on the docket shall be treated as filed on the same day as, but after, the entry on the docket.

does not triumph over justice.” *Benson v. State*, 389 Md. 615, 653

(2005) (citing *Maryland Bd. of Nursing v. Nechay*, 347 Md. 396, 408 (1997)).

“[T]he denial of a motion to alter or amend a judgment is reviewed by appellate courts for abuse of discretion.” *Schlotzhauer v. Morton*, 224 Md. App. 72, 84 (2015) (citations and quotations omitted), *aff’d*, 449 Md. 217 (2016). That discretion is limited by the requirement that the court correctly apply the law applicable to the case. *Id.* A ruling reviewed under an abuse of discretion standard will not be reversed unless “[t]he decision under consideration [is] well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.” *North v. North*, 102 Md. App. 1, 14 (1994). “Thus, an abuse of discretion should only be found in the extraordinary, exceptional, or most egregious case.” *Wilson v. John Crane, Inc.*, 385 Md. 185 (1005).

In *Morton v. Schlotzhauer*, 449 Md. 217 (2016), where the Court of Appeals affirmed this Court’s decision, the Court stated:

A case may be decided by the court when there is a bench trial in which the court is the factfinder. A case may also be decided by the court when, as in this case, the court awards summary judgment to a party as a matter of law. Thus, a circuit court’s decision on a motion to alter or amend under [Md.] Rule 2-534 may depend, in some cases, on that court’s assessment of the facts or it may depend entirely on the court’s assessment of the legal principles that apply to the particular case. If the court’s ruling is rooted in its role as a factfinder, an appellate court typically would accord its decision substantial deference. If the circuit court’s decision is based on an application of legal principles, an appellate court does not accord the circuit court any special deference.

Id. at 232 (internal citations omitted). Put another way, although we examine the grant or denial of a motion to reconsider using the abuse of discretion standard, if the trial court’s decision is based on legal principles, then as the reviewing court, our review amounts to a *de novo* inquiry.

DISCUSSION

I. Statutory Overview

Appellant avers that “[t]he underlying basis for the [circuit] court’s decisions are its incorrect belief that the [d]efendants in the underlying cases had not been properly served because they were not personally served with process.” It is painfully obvious to this Court that the defendants below were properly served. Therefore, the circuit court did not properly apply the law to the facts.

After a tax sale purchaser has successfully purchased a home, they may file a complaint to foreclose all rights of redemption at the property six months after the date of sale. TP § 14-833(a)(1). Before filing the complaint, the purchaser must send notice to all necessary defendants, including “the person who last appears as owner of the property on the collector’s tax roll.” TP § 14-833(a-1)(1)(i)-(ii). The complaint to foreclose rights of redemption may not be filed until “at least [two] months after sending the first notice and at least 30 days after sending the second notice[.]” *Id.* The notices must be sent “by first-class certified mail, postage prepaid, return receipt requested” to the “last known address” of each person. TP § 14-833(a-1)(1)(6)(i)-(ii).

Md. Rule 2-121(a) provides:

Service of process may be made within this State or, when authorized by the law of this State, outside of this State (1) by delivering to the person to be served a copy of the summons, complaint, and all other papers filed with it; (2) if the person to be served is an individual, by leaving a copy of the summons, complaint, and all other papers filed with it at the individual's dwelling house or usual place of abode with a resident of suitable age and discretion; or (3) by mailing to the person to be served a copy of the summons, complaint, and all other papers filed with it by certified mail requesting: "Restricted Delivery--show to whom, date, address of delivery." Service by certified mail under this Rule is complete upon delivery.

Md. Rule 2-122(a) provides that when a defendant's whereabouts are unknown, service can be accomplished by "publishing the notice at least once a week in each of three successive weeks in one or more newspapers of general circulation[.]" Notice is "reasonable and sufficient" when there has been an order of publication, other publicity, and notices to a defendant. TP § 14-839(b)(1). Service of process is intended to give defendants fair notice of the action against them and provide them with the opportunity to be heard. *Conwell Law LLC v. Tung*, 221 Md. App. 481, 500 (2015).

II. Appellant's Attempts at Service Were Sufficient

In *Voltolina v. Property Homes, LLC*, 198 Md. App. 590, 605 (2011), this Court determined that notice requires a tax sale purchaser to serve a defendant with a complaint via posting, mail, and published notice in a newspaper. There, the appellee attempted to serve the defendants several times with a summons and via substitute process. *Id.* at 595. Appellee's process server left his contact information at the property, sent several certified mailings to the appellant, and called the appellant's telephone number. *Id.* at 595-96 (footnote omitted). After review, this Court held that "because appellee posted,

mailed, and published notice pursuant to the default notice provisions of TP §§ 14-836, 14-839, 14-840, and [Md.] Rule 14-503(c), appellant was served ‘in accordance with [Md.] Rule 2-122[.]’⁸ *Id.* at 605. Importantly, the appellee “filed an affidavit showing that reasonable and good faith efforts to serve appellant at his last known address failed.” *Id.*

Here, appellant satisfied the statutory requirements for notice. In both the underlying cases, appellant’s process server attempted personal service at the respective properties at least three times. When those attempts proved unsuccessful, the process server physically posted the notice of the actions at the properties. Appellant also sent the notices via certified mail, restricted delivery requested, return receipt requested. Last, appellant posted notice of the action once a week for three consecutive weeks in the Prince George’s County Post.

⁸ Md. Rule 14-503(c) addresses posting on the property and states:

Upon the filing of the complaint, the plaintiff shall cause a notice containing the information required by [Md.] Rule 14-502(c)(3) to be posted in a conspicuous place on the property. The posting may be made either by the sheriff or by a competent private person, appointed by the plaintiff, who is 18 years of age or older, including an attorney of record, but not a party to the action. A private person who posts the notice shall file with the court an affidavit setting forth the name and address of the affiant, the caption of the case, the date and time of the posting, and a description of the location of the posting and shall attach a photograph of the location showing the posted notice.

Like the tax sale purchaser in *Voltolina*, appellant went beyond the statutory notice requirements. When appellant’s first attempts at service were unsuccessful, appellant conducted a skip trace search to find the current addresses of the defendants. Once appellant identified the current addresses, it attempted out-of-state service via certified mail, and requested additional summons from the court. It is clear to the Court that appellant made “reasonable and good faith efforts” to notify the defendants of the pending litigation.⁹

It is clear from the record below that the defendants in the underlying cases had ample notice of the action to Foreclose the Right of Redemption. We hold that the circuit court erred by misapplying the law applicable to the case, and remand for proceedings consistent with this opinion.

**JUDGMENTS OF THE CIRCUIT COURT
FOR PRINCE GEORGE’S COUNTY
REVERSED AND THE CASE REMANDED
FOR PROCEEDINGS CONSISTENT**

⁹ In lieu of submitting physical return receipts with the court, appellant filed return receipt photocopies with return receipt tracking numbers. This was sufficient to prove service of process.

A Return Receipt provides evidence of delivery (to whom it was delivered and the date of delivery). You also receive the delivery address, if it’s different from the address on the mail piece. You may choose to receive the Return Receipt electronically (a copy of the signature) or by mail (with an original signature). Tracking your return receipt by mail is available when you access www.usps.com (under “Quick Tools,” click on *Tracking*) or call toll-free 800-222-1811. Provides tracking updates as an item travels to its destination, including the date and time of delivery or attempted delivery. <https://www.usps.com/ship/insurance-extra-services.htm>

**WITH THIS OPINION; COSTS TO BE
PAID BY APPELLEE.**