

2022 WL 1665478

Only the Westlaw citation is currently available.

UNREPORTED *

Court of Special Appeals of Maryland.

Debra HODGE

v.

Carrie M. WARD, et al.

No. 878, Sept. Term, 2020

I


May 25, 2022

Circuit Court for Montgomery County, Case No. 393110-V

Graeff, Zic, Charles E. Moylan, Jr. (Senior Judge, Specially Assigned), JJ.

Opinion



PER CURIAM

*1 Appellees, the substitute trustees,¹ filed an Order to Docket foreclosure in the Circuit Court for Montgomery County seeking to foreclose on real property owned by Debra Hodge, appellant, and Donna Hodge.² The property was purchased at a foreclosure sale by the noteholder for \$243,000 by way of a credit bid. Appellant filed exceptions claiming that the sale was void because her sister had filed for bankruptcy on November 14, 2019, the day before the foreclosure sale, and therefore, that the sale had been held in violation of the automatic stay imposed pursuant to  11 U.S.C. § 362(a). She also alleged that the bidding process had been “unfair” but provided no details to support that claim. Appellees filed an opposition asserting that no automatic stay had been imposed because the November 14th filing was the third bankruptcy case that appellant's sister had filed within a one-year period. On March 11, 2020, the court denied appellant's exceptions and entered an order ratifying the foreclosure sale. Appellant filed a motion to alter or amend the judgment which was denied on July 31, 2020.

Following the ratification of the sale, the court referred the case to an auditor, who filed a report on April 7, 2020. Appellant did not file exceptions and the court entered an order ratifying the auditor's report on July 31, 2020. Ten days later, appellant filed a timely motion to vacate the order

ratifying the auditor's report. In that motion she alleged that she had been in the process of preparing her exceptions when the court ratified the auditor's report and asked the court to consider those exceptions, which she also filed the same day. In those exceptions, she again alleged that the foreclosure sale was void because it had occurred during her sister's pending bankruptcy case. She also generally asserted that the amount of the mortgage was “incorrect,” the interest rate on the loan was too high, and the “bidding process was not properly carried out” to her benefit. On September 11, 2020, the court denied her motion to vacate the ratification of the auditor's report and her exceptions to that report. Appellant filed a notice of appeal on October 13, 2020.

As an initial matter, we must address what orders, if any, are properly before us in this appeal. In her brief, appellant challenges the court's orders ratifying the foreclosure sale, denying her motion to vacate the order ratifying the foreclosure sale, ratifying the auditor's report, denying her motion to vacate the auditor's report, and denying her exceptions. Appellees contend, however, that appellant did not file a timely notice of appeal from any of those orders and therefore, that the appeal should be dismissed.

A “notice of appeal shall [generally] be filed within 30 days after entry of the judgment or order from which the appeal is taken[.]” Rule 8-202(a). In a foreclosure action, “an order ratifying a foreclosure sale is a final judgment as to any rights in the real property, even if the order refers the matter to an auditor to state an account.”  *Huertas v. Ward*, 248 Md. App. 187, 205 (2020). That is because the “process of referring the case to an auditor and resolving any exceptions to the auditor's report is collateral to the foreclosure proceeding and ... does not affect the finality of an order ratifying the foreclosure sale.”  *Id.* at 206. Rather, “[w]hen a court adjudicates exceptions to an auditor's report, its decision represents a second judgment,” relating only to the expenses of the sale and the distribution of the proceeds which must be separately appealed. *Id.* Thus, for this court to consider the merits of an order ratifying a foreclosure sale, an appeal must be filed within 30 days from the entry of that order. Here, the court entered the order ratifying the foreclosure sale on March 11, 2020. It then denied appellant's motion to vacate that order on July 31, 2020. Thus, appellant's October 13, 2020, notice of appeal was untimely as to both those orders.

*2 Appellees contend that the notice of appeal was also untimely as to the court's orders relating to the auditor's report because the court entered its orders denying her exceptions to the auditor's report and her motion to vacate the ratification of the auditor's report on September 11, 2020, yet she did not file her notice of appeal until October 13, 2020, 32 days later. However, [Maryland Rule 1-203\(a\)\(1\)](#) provides that in computing any period of time, the last day of the period is not included if it is a Saturday, Sunday, or holiday. Because October 11, 2020 was a Sunday and October 12, 2020 was Columbus Day, a Court holiday, appellant was not required to file her notice of appeal from those orders until October 13, 2020. Thus, her appeal was timely as to the court's orders ratifying the auditor's report, denying her motion to vacate that order, and denying her exceptions. Consequently, we shall deny appellees' motion to dismiss but limit the scope of the appeal to any issues raised by appellant with respect to those orders.

As to the merits, appellant's primary contention is that because her sister had filed for bankruptcy prior to the foreclosure sale, a bankruptcy stay operated to render the foreclosure sale void. As an initial matter, we note that the "opportunity to file exceptions to the auditor's report is not an additional opportunity to challenge the adjudication of rights in the real property that occurs in the ratification of the foreclosure sale." [Huertas](#), 248 Md. App. at 206. But even if we assume that such a claim could be raised for the first time in a debtor's exceptions to the auditor's report, this was not the first time that appellant had raised her claim regarding the bankruptcy stay. Rather, that exact claim was raised by appellant, and rejected by the court, prior to the ratification of the foreclosure sale. The subsequent order ratifying the foreclosure sale constituted a final judgment that was res judicata as to the validity of the sale. Thus, having failed to file a timely appeal from that order, appellant could not collaterally attack the validity of the foreclosure sale yet again by raising the same bankruptcy claim in an ancillary proceeding. See [Tucker v. Tucker](#), 35 Md. App. 710, 712-13 (1977) (holding that res judicata can preclude an attack on a void judgment where the same voidness challenge was raised in another action).

In any event, we note that there is no merit to appellant's claim. Pursuant to [11 U.S.C. § 362\(c\)\(4\)](#), if an individual files a bankruptcy case, and "if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed ... the stay under subsection (a) shall not

go into effect upon the filing of the later case[.]" Based on the record before us it appears that appellant's sister filed bankruptcy petitions in June 2019 and September 2019, both of which were dismissed. And appellant has never contended otherwise or argued that any exception applies. Thus, the third bankruptcy petition filed by appellant's sister in November 2019, did not trigger the automatic stay set forth in [11 U.S.C. § 362\(a\)](#).

In addition to her bankruptcy claim, appellant also asserts that the court erred in ratifying the auditor's report because (1) the amount of indebtedness listed in the auditor's report was "incorrect"; (2) the bidding process was "not properly carried out"; (3) the lender unlawfully increased her mortgage payment in 2017; and (4) the auditor's report was ratified in violation of the Administrative Order issued by former Chief Judge Barbera which stayed certain foreclosure actions during the COVID-19 pandemic. However, appellant's first three contentions were not set forth with "particularity" in her exceptions to the auditor's report, as is required by [Maryland Rule 2-543\(g\)](#). For example, appellant did not indicate why the auditor erred in calculating the amount owed on her mortgage, what the correct amount of indebtedness should have been, what issues occurred during the bidding process, or why any increase in her mortgage payment was unlawful. Thus, those claims were properly denied for that reason alone. Moreover, appellant's second and third contention were not proper exceptions to the auditor's report because they addressed the validity of the foreclosure action and foreclosure sale rather than the expenses of the sale or the distribution of the proceeds.

*3 Finally, appellant did not contend in her motion to vacate or in her exceptions that the auditor's report was ratified in violation of any Administrative Order issued by Chief Judge Barbera. Consequently, that claim is not preserved for appellate review and we will not consider it for the first time on appeal. See [Maryland Rule 8-131\(a\)](#).³

APPELLEES' MOTION TO DISMISS DENIED.

JUDGMENTS OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

All Citations

Not Reported in Atl. Rptr., 2022 WL 1665478

Footnotes

- * 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](#).
- 1 Appellees are Carrie M. Ward, Tayyaba C. Monto, Ludeen McCartney-Green, Pratima Lele, Richard R. Goldsmith, George J. Geesing, Joshua P. Coleman, and Howard N. Bierman.
- 2 Donna Hodge is not a party to this appeal.
- 3 Appellant also asserts that the court erred in denying her exceptions without holding a hearing. However, no hearing was required as appellant did not request one. See [Maryland Rule 2-543\(h\)](#). Moreover, no hearing was required on her motion to alter or amend a final judgment as it was not a dispositive motion.

End of Document

© 2022 Thomson Reuters. No claim to original U.S. Government Works.