

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

ALLAN J. CULVER, JR. :
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 :
 v. : Civil Action No. CCB-02-3071
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 F. VERNON BOOZER, et al. :
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MEMORANDUM

Debtor Allan J. Culver, Jr. ("Culver" or "Appellant") appeals from orders of the United States Bankruptcy Court for the District of Maryland dated November 13, 2001 and August 21, 2002, denying his request to set aside a foreclosure sale.¹ Oral argument is unnecessary as the facts and legal arguments are adequately presented in the briefs and record and the decisional process would not be aided significantly by oral argument. See FED. R. BANKR. P. 8012. For the reasons that follow, the orders of the bankruptcy court will be affirmed.

A bankruptcy court's findings of fact are reviewed for clear error, and its conclusions of law are reviewed de novo. See FED. R. BANKR. P. 8013; In re Stanley, 66 F.3d 664, 667 (4th Cir. 1995); In re Johnson, 960 F.2d 396, 399 (4th Cir. 1992); Tidewater Fin. Co. v. Henson, 272 B.R. 135, 138 (D.Md. 2001); Binswanger Cos. v.

¹The court incorporates by reference the facts and procedural history of the case as recited by this court in its October 8, 2002 memorandum and order denying Culver's motion for a stay of order pending appeal.

Merry-Go-Round Enter., Inc., 258 B.R. 608, 611 (D.Md. 2001),
aff'd, 2001 WL 1555314 (4th Cir. Dec. 6, 2001). Rule 8013 of the
Federal Rules of Bankruptcy Procedure provides, in relevant part:
"Findings of fact, whether based on oral or documentary evidence,
shall not be set aside unless clearly erroneous, and due regard
shall be given to the opportunity of the bankruptcy court to
judge the credibility of the witnesses." FED. R. BANKR. P. 8013.

In his brief, Culver identified three issues for appeal,
namely, whether the bankruptcy court erred in holding that
Deborah Culver did not have an interest in the foreclosed
property sufficient to trigger the automatic stay by virtue of:
(1) an unrecorded deed dated October 23, 1991 purporting to
transfer title to Allan J. Culver, Jr. and Deborah Culver as
tenants by the entirety; (2) Deborah Culver's actual possession
of the property; and (3) Deborah Culver's "marital interest" in
the property.

(1) Unrecorded deed

The bankruptcy court analyzed whether Deborah Culver had an
interest in the property by virtue of the tenancy by the entirety
deed having been created and (arguably) delivered to her. (Hr'g
Tr., 11/8/01, at 79). Since the creation of the deed appeared to

be undisputed,² the bankruptcy court focused on whether the deed had been delivered to Deborah Culver. (Id.).

According to the bankruptcy court, the test of delivery under Maryland law is whether the grantee exerts dominion and control over the deed, which is a factual inquiry. (Id. at 79-80). The court stated several reasons for finding that Deborah Culver never had the requisite dominion and control over the deed. First, the court noted that Culver could not offer much factual detail regarding the circumstances by which he presented or delivered the deed to Deborah Culver. (Id. at 80-82). For instance, Culver could not recollect, at his deposition or at the hearing, where he presented the deed to Deborah Culver or for how long she may have examined or retained the deed. (Id.). Culver did testify that he created the deed, retained possession of it in a file at his office, and twice presented it to the clerk of court for recording; both times, the clerk was unable to record the deed due to outstanding tax liens on the property, and thus, the clerk returned the deed to Culver, who restored the deed to its file at his office. (Id. at 15-17, 28-36). Second, the court reviewed the deposition transcript of Deborah Culver, who repeatedly testified that she never had control of the deed (or any legal documents). (Id. at 82). Rather, the bankruptcy court

²Notably, no party has attached a copy of the deed as an exhibit to any pleading before this court.

found that Deborah Culver merely "acknowledge[d] [that] she thinks she saw [the deed]." (Id.). Third, the bankruptcy court ascertained that Culver's statements and schedules from his 1997 bankruptcy case do not list Deborah Culver as having any interest in the property. (Id. at 72). Upon assessing all the testimony and evidence presented at the hearing and in the record, the bankruptcy court concluded that Culver remained in control of the deed at all times, and, at most, Culver showed the deed to Deborah Culver; hence, there was no delivery. (Id. at 82-83). In addition, the court found that Culver "failed to establish his intent to deliver an interest in the property to his wife." (Order, 8/21/02, at 1-2).

On appeal, Culver makes two arguments. First, he contends that under Maryland law, "... if a grantor shows a deed to a grantee... delivery is complete... eventhough [sic] the grantee does not retain dominion and control over the deed instrument." (Appellant's Br. at 10). Rather, to constitute delivery, it is enough that "...the intention that it shall be a delivery must exist.'" (Id.) (quoting Carson v. Phelps, 40 Md. 73, *14 (1874)). Second, Culver asserts that the act of presenting a deed to the clerk of court for recording constitutes constructive delivery to the grantee, even if the grantee is unaware of the deed. (Appellant's Br. at 10-13). Again, Culver maintains that the critical inquiry is whether the grantor intended to deliver

the deed. (Id. at 11-12).

The most recent opinion of the Court of Appeals of Maryland to address the issue of delivery is Fike v. Harshbarger, 332 A.2d 27, 28-29 (Md. 1975), which held:

to constitute delivery of a deed the grantor must do some act putting it beyond his power to revoke, that there can be no valid delivery so long as the deed is within his control and subject to his authority, although delivery need not be to the grantee, but may be to a third party authorized to receive it, or even to a stranger for the use of the grantee.

See also, Gianakos v. Magiros, 197 A.2d 897, 903 (Md. 1964)

(holding that a grantor must intend to deliver a deed in order to constitute delivery under Maryland law); Fike v. Harshbarger, 317 A.2d 859, 861-62 (Md. App. 1974), aff'd, 332 A.2d 27 (Md. 1975) (stating that the test of delivery in Maryland is whether the grantor parted "with all dominion and control over the deed at the time of its delivery to a third person... and the delivery to the third person must be for the use and benefit of the grantee") (internal citations omitted).

Significantly, in Fike, the Court of Appeals of Maryland applied a clear error standard of review to the lower court's holding that the deed was not irrevocably beyond the grantor's control. 332 A.2d at 29. See also Gurley v. Gurley, 226 A.2d 276, 282 (Md. 1967); Gianakos, 197 A.2d at 903 (holding that whether the requirements of valid delivery have been established "depends largely on the facts of each case").

The bankruptcy court's enunciation of the Maryland law of delivery is consistent with the authorities excerpted above. Culver's first argument on appeal, that delivery is complete upon merely showing the deed to the grantee (even when the grantee does not exert any dominion or control over the deed), is, therefore, erroneous. Further, under the clear error standard of review, this court cannot find that the bankruptcy court judge erred in his conclusions that Deborah Culver did not have dominion and control of the deed, that Culver did not intend to deliver the deed, and, thus, that there was no actual delivery of the deed.

Culver's second argument, that there was delivery by virtue of his presentation of the deed to the clerk of court, is not persuasive. As Culver himself noted, whether there has been delivery depends, in part, on the grantor's intent. (Appellant's Br. at 10-12); see also Buchwald v. Buchwald, 199 A. 800, 803 (Md. 1938) ("An intent and an act must concur to constitute delivery, an intent that the deed shall 'presently become operative and effectual,' and a transfer, actual or constructive, of the deed to the grantee. If either is wanting there is no delivery") (internal citations omitted). As stated, the bankruptcy court found from all the evidence and testimony that Culver did not intend to deliver an interest in the property to Deborah Culver. (Opinion, 8/21/02, at 1-2). This court does not

find clear error with this factual finding, and accordingly, there was no delivery of the deed, even if the act of presenting a deed to the clerk of court may constitute constructive delivery to a grantee.³ The bankruptcy court's holding that Deborah Culver did not have an interest sufficient to invoke the automatic stay by virtue of the unrecorded deed, therefore, will be affirmed.

(2) Actual possession of property

Culver also asserts that Deborah Culver's actual possession of the property at the time she filed her bankruptcy petition

³The contention that the act of presenting a deed to the clerk of court in itself is sufficient to constitute constructive delivery to the grantee, however, is not supported by the weight of Maryland law. The foundational case for this proposition is Stewart v. Redditt, 3 Md. 67, *9 (1852), which involved delivery of a bill of sale for slaves. In Stewart, the court stated that a clerk's possession of a deed after it had been recorded is regarded as possession by the grantee, since the grantee is the proper party to receive a deed after recordation. In this case, however, the clerk of court returned the deed to Culver, the grantor, after determining that it could not be recorded due to outstanding tax liens. The Court of Special Appeals of Maryland in Fike cited Gianakos, which in turn cited Stewart, for the proposition that presenting a deed to a clerk for recordation is constructive delivery to the grantee. See Gianakos, 197 A.2d at 903-04; Fike, 317 A.2d at 860. The Court of Appeals' affirmance of Fike did not rely on that reasoning. Both cases, moreover, are distinguishable from the present circumstances. See Gianakos, 197 A.2d at 903-04 (holding that a recorded deed was considered delivered to the grantee because, inter alia, "after it had been recorded by his direction, it is difficult to see how [grantor] retained the right to recall it..."); Fike, 317 A.2d at 860-62 (finding that a deed was not delivered, despite subsequent recordation, because it was within grantor's control throughout his lifetime).

constituted an interest in the property sufficient to trigger the automatic stay. (Appellant's Br. at 14-16). To support this contention, Culver cited Maryland Code, Real Property, section 3-202, which states: "If a grantee under an unrecorded deed is in possession of the land and his possession is inconsistent with the record title, his possession constitutes constructive notice of what an inquiry of the possessor would disclose as to the existence of the unrecorded deed." MD. CODE ANN., REAL PROP. § 3-202 (2002); (see also Appellant's Br. at 15).

This provision of the Maryland Code, located under subtitle 2, entitled "Priorities Based on Recording," does not confer any interest in the property on Deborah Culver, particularly because the unrecorded deed was never delivered to her. In addition, as stated by this court in its October 8, 2002 opinion, whether the debtor has an interest in property is determined by non-bankruptcy law. WILLIAM L. NORTON, JR., NORTON BANKRUPTCY LAW AND PRACTICE 51:5 (2d ed. 2002) (citing Butner v. United States, 440 U.S. 48 (1979)). Culver still has not identified any body of Maryland law recognizing that a mere possessory interest in property is sufficient to invoke the automatic stay. Cf. In re Ford, 3 B.R. 559, 565 (Bankr. Md. 1980), aff'd, 638 F.2d 14 (4th Cir. 1981) (holding that a debtor's interest in a tenancy by the entirety is property of the bankruptcy estate because of debtor's undivided present interests in the use, possession, income and

right of survivorship of the property). Accordingly, the bankruptcy court's ruling that Deborah Culver's actual possession of the property was not sufficient to invoke the automatic stay will be affirmed.

(3) "Marital interest" in property

Finally, Culver contends that Deborah Culver had an interest in the property sufficient to trigger the automatic stay due to her "marital interest" in the property pursuant to Maryland Code, Family Law, section 8-201. (Appellant's Br. at 16-24); see also MD. CODE ANN. FAM. LAW § 8-201 (2002).

Culver's brief and reply brief neither attempt to distinguish nor even address the marital interest analysis expounded by this court in its October 8, 2002 opinion. As stated in that opinion, the Court of Special Appeals of Maryland explained the purpose of section 8-201 as follows:

Marital property is merely a term created by the legislature to describe the status of property acquired during the marriage, however titled (as defined in Md. Family Law Code Ann. § 8-201(e) (1984)), title to which may have given rise to a potential inequity, upon dissolution of the marriage. That inequity, conceptually, may be corrected via a different legislative creature called the "monetary award." Thus, the only function of "marital property" is to form a base for a "monetary award." The legislature never intended that either spouse could have a legal interest in the "marital property" of the other since it merely intended to cure the title created inequity through the issuance of a "monetary award."

Falise v. Falise, 493 A.2d 385, 388 (Md. App. 1985) (emphasis in original); see also, Herget v. Herget, 573 A.2d 798, 800 (Md. 1990). Accordingly, Maryland law suggests that a mere unvested right to an equitable distribution of marital property is not a legal or equitable interest in that property sufficient to invoke the automatic stay. The bankruptcy court's holding, therefore, that Deborah Culver's "marital interest" in the property was not sufficient to invoke the automatic stay will be affirmed.

A separate Order follows.

Date

Catherine C. Blake
United States District Judge

