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DISTRICT II

July 30, 2014

To:

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Circuit Court Judge
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You are hereby notified that the Court has entered the following opinion and order:

2013AP2283

GMAC Mortgage, LLC v. Richard P. Hessil (L.C. # 2011CV4297)

Before Brown, C.J., Neubauer, P.J., and Reilly, J.

Richard Hessil appeals pro se from a circuit court order confirming the sheriff's sale of foreclosed property. On appeal, Hessil contests the foreclosure and the confirmation sale. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2011-12).¹ We conclude that the foreclosure is outside the scope of this appeal, and the circuit court properly exercised its discretion when it confirmed the sheriff's sale. We affirm.

¹ All subsequent references to the Wisconsin Statutes are to the 2011-12 version.

The scope of this appeal is determined by applying a fundamental rule: a foreclosure is appealable as of right, and an appeal from an order confirming a sheriff's sale is also appealable as of right. *Shuput v. Lauer*, 109 Wis. 2d 164, 171-72, 325 N.W.2d 321 (1982). Confirmation is “analogous to the execution of a judgment and simply enforce[s] the parties’ rights which have been adjudicated.” *Id.* at 173. The appeal from the confirmation order does not encompass a challenge to the foreclosure. *Id.*

We observe that Hessil previously appealed from the foreclosure order. *GMAC Mortgage, LLC v. Hessil (Hessil I)*, No. 2012AP1955, unpublished op. and order (WI App Jun. 12, 2013). In that decision, we noted that Hessil did not contest GMAC’s summary judgment motion seeking foreclosure. *Id.* at 4. As a result, we stated that we would not consider the following issues raised for the first time on appeal: “Hessil’s claims regarding the validity of the note and mortgage, GMAC’s status as a holder of the note, GMAC’s standing to foreclose, the assignment of the note and mortgage, whether an enforceable contract existed, and whether GMAC violated the Fair Debt Collection Practices Act.” *Id.* at 5. The rejection of Hessil’s challenge to the foreclosure is law of the case which we follow in this appeal from the order confirming the sheriff’s sale. *Univest Corp. v. General Split Corp.*, 148 Wis. 2d 29, 38-39, 435 N.W.2d 234 (1989).

We turn to Hessil’s challenges to the order confirming the sheriff’s sale. The decision to confirm a sheriff’s sale following a foreclosure is within the circuit court’s discretion. *Security State Bank v. Sechen*, 2005 WI App 253, ¶5, 288 Wis. 2d 168, 707 N.W.2d 576. The distressed nature of a sheriff’s sale automatically reduces the price, and the court must decide whether the bid represents “fair value.” *Bank of New York v. Mills*, 2004 WI App 60, ¶¶10–11,

17, 270 Wis. 2d 790, 678 N.W.2d 332. The determination of fair value involves whether the sale price shocks the court's conscience. *Id.*, ¶18.

To support its request to confirm the sheriff's sale, GMAC submitted an affidavit of counsel regarding GMAC's successful bid, \$142,770.60.² GMAC's counsel alleged that GMAC's bid bore a reasonable relationship to the property's value. Appended to counsel's affidavit was the 2012 property assessment showing an assessed value of \$185,500 and an estimated fair market value of \$176,500. The foreclosure order precluded a deficiency judgment against Hessil.

Hessil objected to confirmation and moved the court under WIS. STAT. § 806.07 for relief from the foreclosure order because GMAC lacked standing to foreclose and the sheriff's sale was not lawful. Hessil argued that GMAC's bid was below the value of the property. The court denied Hessil's § 806.07 motion and confirmed the sheriff's sale. Hessil appeals.

On appeal, Hessil argues that the circuit court should have verified that any value from the sale has been credited to the amount due on the mortgage debt. Hessil relies upon WIS. STAT. § 846.165(2) which provides:

In case the mortgaged premises sell for less than the amount due and to become due on the mortgage debt and costs of sale, there shall be no presumption that such premises sold for their fair value and no sale shall be confirmed and judgment for deficiency rendered, until the court is satisfied that the fair value of the premises sold has been credited on the mortgage debt, interest and costs.

² The foreclosure order set Hessil's indebtedness at \$199,488.60.

Hessil cites no legal authority for his view of this statute. A plain reading of the statute indicates that the “credited” requirement applies only when a deficiency judgment is sought, which is not the case here.³

Hessil next argues that GMAC’s bid at the sheriff’s sale should not be presumed to have been for fair value. Where, as here, a deficiency is not sought, there is a presumption that the bid for the property represented “fair value.” *Bank of New York*, 270 Wis. 2d 790, ¶15. In the absence of a request for a deficiency judgment, confirmation can be denied only if the sale price is inadequate and there was a “mistake, misapprehension, or inadvertence on the part of interested parties....” *JP Morgan Chase Bank, NA v. Green*, 2008 WI App 78, ¶33, 311 Wis. 2d 715, 753 N.W.2d 536.

In opposition to confirmation,⁴ Hessil did not offer any evidence either rebutting GMAC’s submission establishing that its bid bore a reasonable relationship to the property’s value or establishing mistake, misapprehension, or inadvertence. The circuit court properly relied upon the 2012 property assessment submitted by GMAC to assess whether GMAC’s bid represented fair value. *Bank of New York*, 270 Wis. 2d 790, ¶22. In confirming the sale, the

³ Hessil complains that the circuit court did not hold a confirmation hearing, but he makes no legal argument in support of that claim. For that reason, we do not address it, *Vesely v. Security First Nat’l Bank*, 128 Wis. 2d 246, 255 n.5, 381 N.W.2d 593 (Ct. App. 1985), except to note that there is no general hearing requirement for confirmation, *Wells Fargo Bank, N.A. v. Biba*, 2010 WI App 140, ¶14, 329 Wis. 2d 787, 793 N.W.2d 95.

⁴ Hessil’s objection to confirmation was set out in his WIS. STAT. § 806.07 motion for relief filed on September 17, 2013, eight days before the circuit court entered the September 25, 2013 confirmation order.

court implicitly found that GMAC's bid represented fair value. The record supports the confirmation order.

Hessil complains that the circuit court did not hold a confirmation hearing at which he could challenge the foreclosure. Foreclosure and confirmation are separate proceedings, *Shuput*, 109 Wis. 2d at 173, and the foreclosure order was affirmed by this court before the circuit court confirmed the sheriff's sale, *Hessil I*, unpublished op. and order at 1. We note that there is no general hearing requirement for confirmation. *Wells Fargo Bank, N.A. v. Biba*, 2010 WI App 140, ¶14, 329 Wis. 2d 787, 793 N.W.2d 95.

Hessil protests the circuit court's denial of his Wis. STAT. § 806.07 motion seeking relief from the foreclosure order due to a defective foreclosure proceeding. Hessil's § 806.07 motion sought to re-litigate issues decided in the foreclosure case in which Hessil did not contest GMAC's summary judgment motion. *Hessil I*, unpublished op. and order at 4. Hessil offered no basis for relieving him of the consequences of his failure to contest summary judgment. The court did not err in denying the § 806.07 motion.⁵

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed pursuant to Wis. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals

⁵ To the extent we have not addressed an argument raised on appeal, the argument is deemed rejected. *State v. Waste Mgmt. of Wis., Inc.*, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978) ("An appellate court is not a performing bear, required to dance to each and every tune played on an appeal.").