COURT OF APPEALS
DECISION
DATED AND RELEASED

SEPTEMBER 24, 1996

NOTICE

No. 95-3404

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

VILLAGE OF TIGERTON,

Plaintiff-Respondent,

v.

DONALD MINNIESCHESKE AND JAMES MINNIESCHESKE,

Defendants-Appellants,

DELBERT LARSON, MARK VAN DYKE, RODNEY C. JOHNSON AND UNKNOWN DEFENDANTS WHO MAY BE OCCUPYING THE PLAINTIFF'S PROPERTY AS FURTHER IDENTIFIED BELOW,

Defendants.

APPEAL from a judgment and an order of the circuit court for Shawano County: ROBERT A. KENNEDY, Judge. *Affirmed.*

LaROCQUE, J. Donald Minniescheske and James Minniescheske (appellants) appeal a summary judgment and an order denying a motion to vacate a judgment in favor of the Village of Tigerton relating to foreclosed real estate. At the outset, this court acknowledges the Village's contention that the

appellants' statement of the case mixes numerous trial court cases that are not the proper subject of this appeal. Several of the issues appellants raise are not discussed further in their brief. The judgment and order from which appeal is taken are affirmed.

The appellants' contentions relating to a vacated default judgment have been resolved by this court's decision in ***Shawano County v. Redman***, No. 95-2938 (Wis. App. Sept. 24, 1996).

The appellants raise a number of other issues for which no coherent arguments are advanced. Issues raised but not briefed need not be reviewed. ***In re Balkus***, 128 Wis.2d 246, 255 n.5, 381 N.W.2d 593, 598 n.5 (Ct. App. 1985).

Among the issues is a challenge to the grant of restitution for the costs of "surveying the plaintiff's property." The Village contends that because the property was conveyed to it by the County following an in rem tax foreclosure proceeding, it was necessary to survey the property described by a lengthy metes and bounds method so as to avoid encroachment upon property of another. The appellants have not refuted the Village's reliance upon the discretionary authority granted by § 814.036, STATS.: "If a situation arises in which the allowance of costs is not covered by §§ 814.01 to 814.035, the allowance shall be in the discretion of the court." The discretionary decisions of the trial court will not be overturned if the court applies the appropriate law to facts of record to achieve a reasoned and reasonable result. ***Hartung v. Hartung***, 102 Wis.2d 58, 66, 306 N.W.2d 16, 20-21 (1981). The discretionary decision to impose costs must be upheld under the circumstances.

The appellants challenge the trial court's decision to move up the date for hearing on the motion for summary judgment without amending the scheduling order initially setting a date. The Village notes the confusing and convoluted record caused by numerous substitutions of judges sought by the appellants, resulting in more substitutions than they were allowed by law. Because a summary judgment may be granted without an evidentiary hearing, and because the appellants offer no explanation how the shortened notice for the hearing prejudiced them, the challenge to the court's decision to change the date is rejected.

The appellants next challenge the grant of summary judgment despite the "opposing affidavit." The appellants refer to an affidavit seeking a continuance. There is no reference to an affidavit that establishes admissible evidentiary facts placing disputed material facts at issue. The opposing affidavit was therefore insufficient to raise a legitimate question preventing summary judgment.

Finally, the appellants contend there is an issue whether the trial court can "order the burning of Homestead property which is Exempt pursuant to Sec. 815.20 Wis. Stats." The appellants have advanced no argument beyond stating the issue in the introduction to their brief, and the issue is effectively waived. The Village contends that even if considered on the merits, because the foreclosure is beyond challenge, any homestead contentions are moot, citing ***Leciejewski v. Sedlak***, 116 Wis.2d 629, 342 N.W.2d 734 (1984):

> [T]he clear intent of sec. 75.521, Stats., is to foreclose all rights, titles, interests, liens, and claims in the property that is subject to the foreclosure .... Further, a tax deed is not derivative, but creates a new title that extinguishes all former titles and liens not expressly exempted from its operation.

Id. at 639, 342 N.W.2d at 739.

The Village concludes its argument regarding this issue by stating: "Once again the Appellants fail to advise the Court of all the facts, namely that the personal property that the Appellants wanted to pick up from the storage company were in fact picked up." The Village does not cite to the record for this contention, but because the appellants' brief in chief has furnished no clue what the particulars of the issue involve, the merits of the claim cannot be determined. If the appellants mean to suggest that the Village burned personal property not subject to the foreclosure, the brief does not so state, and it would be pure conjecture at this stage of the proceedings to hypothesize about the circumstances or merits of the appellants' contentions. It is conceivable that if personal property has been wrongfully taken or destroyed, the appellants have an independent action for damages. Because there is an inadequate briefing of

the issue, this court declines to determine the validity of the appellants' contentions.

By the Court.—Judgment and order affirmed.

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