

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

March 27, 1997

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-1131

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT IV

**Griffin & Brand of McAllen, Inc.,
Plaintiff-Respondent,**

v.

**Richard H. Gumz, a/k/a Richard Gumz, and Edith
A. Gumz Wisconsin Dells Muck Farms, Inc., d/k/a
Farmer in the Dells, Inc., State of Wisconsin,
Defendants,**

**Marcus Gumz,
Defendant-Appellant,**

**Northwestern Mutual Life Ins. Co., Barbara A.
Gumz-Patterson, Griffin & Brand of McAllen,
Inc., Curt Page, Jr., Matthew Gumz, Richard H.
Gumz, Francis W. Murphy, Glacier Farms, Inc.,
Third Party Defendants.**

APPEAL from an order of the circuit court for Sauk County: JAMES
EVENSON, Judge. *Affirmed.*

Before Eich, C.J., Vergeront and Deininger, JJ.

DEININGER, J. Marcus J. Gumz appeals from an order confirming sale of real estate subsequent to a mortgage foreclosure judgment. He claims that the trial court erred in ordering a substitution of plaintiffs after the judgment but prior to the sale. He also argues that the amount originally adjudged due had been reduced by a payment made subsequent to the judgment of foreclosure. We reject both arguments and affirm the order confirming sale.

BACKGROUND

This case dates from 1982 when Northwestern Mutual Life Insurance Company commenced a foreclosure action against Gumz and others. The subject real estate consists of over 1,000 acres of agricultural land devoted for the most part to “muck” farming: the production of vegetables and other commodities on moist lowlands. Neither party has provided a comprehensive recitation of the facts necessary for an understanding of the history of this litigation. We set forth only the facts we believe relevant to the issues on this appeal that we have been able to glean from the record before us.

Before the foreclosure judgment was entered on July 29, 1986, the original plaintiff had assigned the subject mortgage to Barbara Patterson, who then was made the plaintiff in this action. The foreclosure judgment lists the following defendants as personally bound on the underlying note for \$350,000 plus interest: Richard H. Gumz, Edith A. Gumz, Wisconsin Dells Muck Farms, Inc. and Marcus J. Gumz.

A sale was noticed for November 3, 1987, but it never took place. Instead, a stipulated order was entered on October 30, 1987 directing that Glacier Farms, Inc., an entity apparently controlled by Marcus Gumz and his sons, was “substituted as plaintiff in the above entitled action in place of and instead of Barbara A. Patterson for all intents and purposes.” The stipulation recites that Glacier Farms had paid Patterson \$280,000,

“the amount due and owing on such mortgage,” as consideration for the assignment of the judgment. The stipulation also provided:

3. That the defendants’ [sic] Richard H. Gumz and Edith A. Gumz, be, and they are hereby released from any and all obligations of the Judgment of the court, entered as of July 28, 1986.

A standard form “Satisfaction of Judgment,” signed by Barbara Patterson, was filed concurrently with the stipulation. It recited that Patterson “does hereby acknowledge full payment and satisfaction of said judgment and does hereby release and discharge the same.” The “Satisfaction” lists only Richard H. Gumz and Edith A. Gumz as parties against whom the judgment was entered, and it makes no mention of the assignment to Glacier Farms, or the release of any other defendants or of the subject real estate.

In October 1988, Griffin & Brand of McAllen, Inc. (GB), paid delinquent real estate taxes on the subject real estate in the amount of \$157,679.07 and received a note and mortgage for that amount from Gumz and/or a corporate entity Gumz controlled. Then, on June 7, 1989, Glacier Farms executed and recorded an agreement to substitute GB as plaintiff in this action, apparently as additional security for the amount GB had advanced for taxes on the property.

On April 17, 1995, on GB’s motion, the trial court entered an order substituting GB as plaintiff and declaring the 1986 foreclosure judgment in “full force and effect.” The order also set forth the amounts then due GB on the judgment: \$157,679.07 plus interest from October 18, 1988. At the April 17, 1995 hearing, Gumz unsuccessfully argued that the foreclosure judgment had been satisfied by Patterson in 1987. In subsequent motions, Gumz claimed that the assignment from Glacier Farms to GB was void because the person signing for Glacier Farms, one of Gumz’ sons, did not have authority to do so. Gumz, and/or corporate entities controlled by him, also made

several unsuccessful attempts to delay the foreclosure sale and confirmation by filing bankruptcy petitions in Wisconsin and Iowa.

A sheriff's sale was conducted on September 12, 1995. Roderick G. Gumz and Richard A. Gumz, who are apparently nephews of Gumz, were the successful bidders. The order confirming the sale for \$607,000 was entered March 14, 1996, over Gumz' objection. The order fixed the amount due GB for principal, interest, costs and attorney fees at \$326,889.21 and directed that the surplus be held pending further order of the court. Gumz appeals the order confirming sale.

ANALYSIS

Although Gumz objected at the confirmation hearing to the sale price, to the amount of interest accrued on the judgment, and to the attorney fees allowed, he does not attack any aspects of the March 14, 1996 order confirming sale on this appeal. Rather, he argues that the April 14, 1995 order substituting GB as plaintiff and confirming the status of the foreclosure judgment was error because the judgment had been satisfied by Patterson in 1987, prior to the 1995 substitution order in favor of GB.

GB moved this court for dismissal of the appeal because Gumz had not timely appealed from the April 14, 1995 substitution order. We denied the motion. GB again argues in its brief that the substitution order was "final" in that it terminated the litigation with respect to Glacier Farms. As we explained in our order denying GB's motion, the litigation between GB and Gumz continued after April 14, 1995. Had Glacier Farms wished to challenge its replacement by GB as plaintiff, it could have appealed the April 14, 1995 order. As between GB and Gumz, however, that order was interlocutory to the finalization of the post-judgment litigation by way of a sale and confirmation. See *Shuput v. Lauer*, 109 Wis.2d 164, 172, 325 N.W.2d 321, 326 (1982)

(order confirming sale is final order appealable of right enabling appellant to challenge proceedings subsequent to judgment of foreclosure).

Gumz' challenge of the April 14, 1995 order is therefore properly before us, but we nonetheless reject his argument that Patterson had satisfied the foreclosure judgment in 1987 by giving Richard H. and Edith A. Gumz a "satisfaction of judgment." The language of the concurrent stipulation makes it clear that Patterson's intent at the time was to release those two parties from any personal liability for amounts due on the judgment. We agree with GB that satisfaction of the entire judgment of foreclosure and sale "would be inconsistent with Patterson assigning the judgment of foreclosure to Glacier Farms." Furthermore, if Patterson's intent had been to satisfy the judgment *in toto*, that intent would have been manifested by the execution and filing of one or more other documents: e.g., a satisfaction of mortgage, dismissal of the foreclosure action, and/or a release of *lis pendens*.¹

Gumz also argues that since the stipulation between Patterson and Glacier Farms recited receipt by Patterson of \$280,000, the principal amount due under the original judgment of foreclosure should be reduced from \$350,000 to \$70,000. We fail to see the logic of this argument. The stipulation recites that Glacier Farms paid Patterson \$280,000 and was substituted for her as plaintiff "for all intents and purposes." We agree with GB that the consideration passing from an assignee to the assignor does not affect the amount of the judgment assigned. Glacier Farms was not a defendant in the

¹ GB provided an affidavit to the trial court from Patterson's attorney stating that the satisfaction of judgment was filed "pursuant to the said stipulation to release Richard H. Gumz and Edith A. Gumz from any personal liability for any deficiency which might arise," and that it was "not intended to discharge the underlying indebtedness upon which the pending foreclosure action was premised." Gumz argues the affidavit should not be relied upon to interpret the satisfaction and Stipulation Substituting Plaintiff in Action because it is barred by the parol evidence rule. Since we do not rely on the affidavit to determine the effect of the two documents, we do not address the parol evidence issue.

action. Its recited payment to Patterson was not made in redemption or partial redemption, but for purchase of the judgment by a stranger to the litigation. In return, Patterson assigned all of her rights as plaintiff in the action to Glacier Farms, which subsequently assigned those rights to GB.²

By the Court.—Order affirmed.

Not recommended for publication in the official reports.

² Although Gumz made various other arguments in the trial court (lack of authority for the execution of the June 7, 1989 assignment to GB; a claim for offset for \$1,450 received by GB; improper interest computation on the amount due GB; and excessive award of attorney fees), he does not raise them on this appeal.

