

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 3, 2011

A. John Voelker
Acting Clerk of Court of Appeals

NOTICE

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

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

Appeal No. 2009AP3088

Cir. Ct. No. 2008CV181

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

RIVER VALLEY BANK,

PLAINTIFF-RESPONDENT,

V.

SEAN T. CORSTEN,

DEFENDANT-APPELLANT,

NORTH CENTRAL INVESTORS, LLC AND ROBERT W. WARNKE,

DEFENDANTS.

APPEAL from an order of the circuit court for Lincoln County:
ROBERT E. KINNEY, Judge. *Affirmed.*

Before Hoover, P.J., Peterson and Brunner, JJ.

¶1 PER CURIAM. Sean Corsten appeals an order vacating an order confirming a sheriff's sale and voiding the sheriff's deed. Although the issues he

raises on appeal are not adequately developed,¹ he contends that the doctrines of invited error and claim preclusion should be applied. Because we conclude that the trial court properly exercised its discretion, we affirm the order.

¶2 After River Valley Bank secured a judgment of foreclosure and the redemption period expired, the bank's credit manager bid \$228,248 for the property. He mistakenly believed that he was required to bid an amount equal to the total debt owed to the bank and that deficiency, if any, would be entered against the defendants based on the amount not recovered by the bank after its subsequent sale of the property to third parties. Less than one month after the court confirmed the sale to the bank, the bank filed a motion to vacate the order based on its credit manager's mistake. The court granted the motion, finding no equitable reason to deny the bank's request.

¶3 The circuit court's decision on a motion to vacate an order or judgment under WIS. STAT. § 806.07 is reviewed for erroneous exercise of discretion. *Family Sav. & Loan Ass'n v. Barkwood Landscaping Co.*, 93 Wis. 2d 190, 204, 286 N.W.2d 581 (1980). In addition, foreclosure proceedings are equitable in nature and the court has equitable authority to exercise discretion throughout the proceedings to prevent injustice to any party. *Id.* at 202.

¶4 The court properly exercised its discretion by granting relief from the order confirming the sheriff sale because it considered the relevant facts and applied the correct legal standard. *See Sukala v. Heritage Mut. Ins. Co.*, 2005 WI

¹ Corsten's brief does not provide citations to the record, acknowledge the deferential standard of review or cite any authority to establish applicability of invited error or claim preclusion to a motion to vacate a judgment pursuant to WIS. STAT. § 806.07. All references to the Wisconsin Statutes refer to the 2009-10 version unless otherwise noted.

83, ¶8, 282 Wis. 2d 46, 698 N.W.2d 610. The bank’s bid was based on a mistaken view of what the law required. The bank’s credit manager actually “upped his own bid” to meet what he believed was required by law. The bid significantly exceeded the assessed value on the property. Corsten presented no evidence contradicting the bank’s factual assertions.

¶5 The doctrine of invited error does not preclude the court from granting relief from the order. That doctrine applies when a party asks an appellate court to reverse a circuit court’s ruling after the party urged the circuit court to make that ruling. That is not what occurred here, and Corsten cites no case in which the doctrine of invited error was used to prohibit the circuit court from granting relief from its prior order. To the contrary, in *Family Savings*, the court authorized granting relief from a judgment based on unilateral mistake. *Family Sav.* 93 Wis. 2d at 205.

¶6 Likewise, the doctrine of claim preclusion does not apply to prevent a circuit court from granting relief from an order. Corsten argues that the value of the property was already determined at the confirmation hearing, and therefore relitigation of that issue is not permitted. WISCONSIN STAT. § 806.07 allows the court to grant relief from a judgment regardless of whether issues were previously litigated. This court has recognized that a motion under § 806.07 is an appropriate method for seeking relitigation of a claim that would otherwise be barred by claim preclusion. *Schauer v. DeNevea Homeowners Ass’n*, 187 Wis. 2d 32, 37, 522 N.W.2d 246 (Ct. App. 1995).

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

