

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 27, 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 Nos. 2010AP1271
2010AP1858**

**Cir. Ct. Nos. 2007CV7035
2009CV13873**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

WAUWATOSA SAVINGS BANK,

PLAINTIFF-RESPONDENT,

v.

LARRY N. SCRUGGS, JR.,

DEFENDANT-APPELLANT,

**ADVANCED PROPERTIES & INVESTMENTS, LLC,
A/K/A ADVANCED PROPERTIES AND INVESTMENTS, LLC
C/O LARRY N. SCRUGGS, JR.,
RELIABLE WATER SERVICES, LLC,
A. J. GRAF PLUMBING AND CITY OF MILWAUKEE,**

DEFENDANTS.

WATERSTONE BANK, SSB , PKA WAUWATOSA SAVINGS BANK,

PLAINTIFF-RESPONDENT,

v.

**ADVANCED PROPERTIES & INVESTMENTS, LLC
AND RELIABLE WATER SERVICES, LLC,**

DEFENDANTS,

LARRY N. SCRUGGS, JR.,

PROPOSED-INTERVENOR-APPELLANT.

APPEAL from orders of the circuit court for Milwaukee County:
WILLIAM SOSNAY and TIMOTHY M. WITKOWIAK, Judges. *Affirmed.*

Before Curley, P.J., Fine and Kessler, JJ.

¶1 PER CURIAM. Larry N. Scruggs, Jr., appeals the circuit court's order denying a motion to reopen brought by Larry N. Scruggs, Jr., personally, and Advanced Properties & Investments, LLC. Scruggs also appeals the circuit court's order denying his motion to intervene in a separate, but related, case. We consolidate these appeals for disposition because they stem from the same underlying facts. We affirm both orders.

¶2 The procedural history of these two actions is cumbersome. As pertains to the appeal from the order denying the motion to reopen, Wauwatosa Savings Bank, n/k/a Waterstone Bank, SSB, commenced a foreclosure action against Advanced Properties & Investments, LLC, Scruggs, Reliable Water Services, LLC, and A.J. Graf Plumbing on June 22, 2007. Advanced Properties

and Scruggs, who is the sole shareholder of Advanced, did not file responsive pleadings. On September 24, 2007, the circuit court entered a judgment of foreclosure by default against Advanced Properties and Scruggs. On March 4, 2009, the bank moved to dismiss Scruggs from the action because he was not a titleholder on the foreclosed property, and thus was not a necessary party. The circuit court granted the motion. On March 9, 2009, an order was entered confirming the sheriff's sale.

¶3 On November 19, 2009, Scruggs filed a motion under WIS. STAT. § 806.07 (2009-10),¹ to reopen on behalf of himself, personally, and Advanced Properties, arguing that he and Advanced Properties had not been properly served. The circuit court held a lengthy evidentiary hearing on March 5, 2010. On April 7, 2010, the circuit court entered an order denying the motion to reopen. On May 24, 2010, Scruggs filed a notice of appeal, listing himself and Advanced Properties as the appellants.

¶4 We conclude that Advanced Properties is not a proper party to the appeal from the order denying the motion to reopen. Scruggs filed the notice of appeal on behalf of Advanced Properties, but he had no authority to do so because Advanced Properties is a corporation. “Only a lawyer can sign and file a notice of appeal on behalf of a corporation.” *Jadair Inc. v. United States Fire Ins. Co.*, 209 Wis. 2d 187, 213, 562 N.W.2d 401 (1997). Where, as here, a person who is not a

¹ All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

lawyer files a notice of appeal on behalf of a corporation, “the notice of appeal is fundamentally defective, and [we are] without jurisdiction.” *Id.*²

¶5 We also conclude that Scruggs, personally, has no standing to appeal the order denying the motion to reopen because he was not a party to the judgment confirming the sheriff’s sale. He was dismissed from the action on the grounds that he did not hold title to the disputed property on March 4, 2009, before the order confirming the sheriff’s sale was entered on March 9, 2009. As a non-party to the order confirming the sheriff’s sale, Scruggs had no right to bring a motion to reopen and, by extension, no right to file an appeal from the order denying the motion to reopen. Scruggs contends that he had a right to initiate this appeal on his own behalf because he was originally named as a party to this action, he is the sole member and owner of Advanced Properties, and “[t]he ultimate loss of property and resources are [his] sole burden.” Scruggs’ argument fails because, although he was originally named as a defendant, he was dismissed from this action as an unnecessary party and his status as shareholder in the corporation does not give him the right to participate personally in the action.

¶6 Turning to the second appeal, Waterstone Bank, SSB, f/k/a Wauwatosa Savings Bank, filed an action against Advanced Properties and Reliable Water Services on September 3, 2009, seeking an order reforming the legal description in the refinance mortgage and in the sheriff’s deed to include all of the West Allis property in dispute, including the parking lot which had been inadvertently omitted from the refinanced mortgage due to a mistake. On

² While Scruggs has apparently attended law school, he is not a member of the State Bar of Wisconsin.

November 11, 2009, the bank moved for default judgment. On November 13, 2009, Scruggs moved to intervene. He also sought an order dismissing Advanced Properties on the grounds that he was the sole owner of the disputed parcel. On January 20, 2010, the circuit court ordered default judgment in favor of the bank. The circuit court held a hearing on Scruggs' motion to intervene on March 15, 2010, and denied the motion on June 15, 2010. Scruggs then filed a notice of appeal from that order.

¶7 A movant seeking to intervene in an action must meet four requirements. *Helgeland v. Wisconsin Municipalities*, 2008 WI 9, ¶38, 307 Wis. 2d 1, 745 N.W.2d 1. The movant must show: (1) that the motion to intervene is timely; (2) that the movant has an interest sufficiently related to the subject of the action; (3) that disposition of the action may impair the movant's ability to protect that interest; and (4) that the existing parties do not adequately represent the movant's interest. *Id.*; see also WIS. STAT. § 803.09(1). "A movant must meet each of these four criteria to claim a right of intervention." *Helgeland*, 307 Wis. 2d 1, ¶39.

¶8 Scruggs contended he should be allowed to intervene because he owns the parking lot, but he presented no evidence to show that he had a personal ownership interest in the property, despite the fact that he had repeated opportunities to present evidence of ownership to the circuit court. Because Scruggs did not show that he had a personal ownership interest in the property, and thus had "an interest sufficiently related to the subject of the action," the circuit court properly denied his motion. Scruggs had no right to intervene personally in the action against Advanced Properties based solely on his status as shareholder in Advanced Properties.

By the Court.—Orders affirmed.

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

