COURT OF APPEALS
DECISION
DATED AND RELEASED

SEPTEMBER 24, 1996

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. 95-2938

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

In the Matter of the Foreclosure of Tax Liens, Pursuant to Section 75.521 Wisconsin Statutes by Shawano County, List of Tax Liens for the Years 1981 through 1985. Proceeding in REM 1986, Number Eleven:

SHAWANO COUNTY,

Petitioner-Respondent,

v.

JOANN REDMAN and DONALD MINNIECHESKE,

Respondents-Appellants.

APPEAL from an order of the circuit court for Shawano County: EARL W. SCHMIDT, Judge. *Affirmed*.

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. JoAnn Redman and Donald Minniecheske—hereafter collectively called "Redman"—appeal a September 13, 1995 trial court order that denied her March 11, 1993 motion to vacate a February 1, 1993 tax lien foreclosure judgment. The trial court issued the February 1, 1993 foreclosure judgment in response to Redman's September 8, 1992 motion seeking to vacate an earlier June 29, 1992 foreclosure judgment and the County's motion in response seeking the entry of a new foreclosure judgment. Redman's September 8, 1992 motion claimed that she had never received notice of the hearing leading to the June 29, 1992 foreclosure judgment. At a December 29, 1992 hearing, the trial court granted Redman's motion and vacated the June 29, 1992 judgment. However, the trial court then orally granted a new foreclosure judgment, over her twin objections that she needed time to obtain a lawyer and that the trial court should recuse itself.

On February 1, 1993, the trial court entered a written foreclosure judgment embodying the oral ruling. Redman did not appeal the February 1, 1993 judgment. Instead, on March 11, 1993, she filed a motion to vacate the trial court's oral December 29, 1992 judgment. On May 1, 1995, she filed an amendment to her March 11, 1993 motion to vacate. By order entered September 13, 1995, the trial court denied her motion without a hearing. The trial court ruled that the motion was not timely and that it was frivolous on the merits. On appeal, Redman argues that the trial court should have recused itself from the December 29, 1992 hearing and should have granted a continuance for her to obtain counsel. She also maintains that the trial court actually issued and backdated the February 1, 1993 judgment sometime in September 1995. On this basis, she claims that her appeal is timely from the February 1, 1993 foreclosure judgment. We reject Redman's arguments and affirm the trial court's September 13, 1995 postjudgment order.

We will not pursue Redman's claim that the trial court backdated the February 1, 1993 judgment sometime in September 1995. Redman did not raise this factual question before the trial court. We do not consider issues litigants have not raised in the trial court. ***Wirth v. Ehly***, 93 Wis.2d 433, 443-44, 287 N.W.2d 140, 145-46 (1980). We also do not make findings of fact. ***Wurtz v. Fleischman***, 97 Wis.2d 100, 107 n.3, 293 N.W.2d 155, 159 n.3 (1980). In addition, we note that Redman has failed to make a prima facie showing of judgment

backdating. While Redman claims that an August 1995 examination of the file in the trial court clerk's office did not reveal the February 1, 1993 judgment, Redman acknowledges the existence of other documents that refer to the judgment. First, Redman expressly referred to the February 1, 1993 judgment in her May 1, 1995 amendment to her motion to vacate. She further made reference to the February 1, 1993 judgment in a notice filed in June 1995. She fails to explain how a judgment not in existence until September 1995 could be referred to in her moving papers filed prior to that date. Her claim is therefore inherently improbable. Courts may summarily reject inherently improbable claims. *See* ***Lazarus v. American Motors Corp.***, 21 Wis.2d 76, 84, 123 N.W.2d 548, 552 (1963).

We have jurisdiction, however, to review the trial court's rejection of Redman's March 11, 1993 motion to vacate, as amended May 1, 1995, because the court order denying the motion was not entered until September 13, 1995. Redman's March 11, 1993 motion to vacate contained material that did not meet the standards of § 806.07, STATS. It raised issues that were raised or should have been raised in the original proceedings and that should have been raised in an appeal from the February 1, 1993 judgment. For example, she alluded to some of the substantive issues and claims she had submitted before judgment, such as the following: (1) her land was tax exempt church property; (2) she held her land free of taxation by virtue of natural rights, homestead rights, and federal land patent rights; (3) Wis. Const. Art. 1, §§ 14 and 17, exempted her land from taxation. She also claimed that the municipality lacked jurisdiction to tax her land and that a statute of limitations barred the tax liens. In addition, she reasserted that the trial court should have recused itself at the December 29, 1992 hearing and should have adjourned the hearing to permit her to obtain counsel.

The trial court's vacation of the June 29, 1992 foreclosure judgment and its issuance of a new one on February 1, 1993 was the final adjudication and res judicata on all such matters. *See* ***State v. Donohue***, 11 Wis.2d 517, 523-24, 105 N.W.2d 844, 847-48 (1960). Redman should have litigated them then, not by postjudgment motion under § 806.07, STATS. Further, if Redman wanted to challenge such matters in the court of appeals, she needed to file a timely appeal the February 1, 1993 judgment, not file a postjudgment motion and appeal the order denying that motion. ***Id***. Under ***Ver Hagen v. Gibbons***, 55 Wis.2d 21, 26, 197 N.W.2d 752, 755 (1972), litigants may not extend the time to appeal the judgment by filing a postjudgment motion and then appealing the trial court

order denying the motion. This is what Redman has done with her postjudgment motion. We therefore will not address any of her issues or defenses from the original tax lien foreclosure proceedings.

The trial court had no duty to recuse itself from Redman's March 11, 1993 motion to vacate. Although Redman sought recusal before judgment, she apparently sought to continue this request in the postjudgment proceedings, and we therefore feel constrained to review the issue. Redman sought recusal on the basis of a third-party complaint Redman had filed against the trial court in a suit brought against her by Orlando Richards. The Richards' lawsuit ultimately ended in dismissal. Redman claims that the trial court's refusal to recuse itself makes the foreclosure judgment void. Trial courts have no duty to automatically grant recusal on the basis of litigant lawsuits. *See* ***In the Matter of Hipp***, 5 F.3d 109, 116 (5th Cir. 1993); ***United States v. Studley***, 783 F.2d 934, 940 (9th Cir. 1985). Otherwise, litigants could disqualify any trial court by simply naming the judge as a defendant. *See* ***Standing Committee v. Yagman***, 55 F.3d 1430, 1443-44 (9th Cir. 1995). Courts have never permitted this and have the power to disregard false or sham pleadings. *See* § 757.19(2)(b), STATS. They must grant recusal on the basis of litigant lawsuits only if the lawsuits cause them to develop actual bias. *Cf.* ***State v. McBride***, 187 Wis.2d 409, 419, 523 N.W.2d 106, 111 (Ct. App. 1994). Here, Redman has provided nothing showing actual trial court bias.

We also specifically reject the merits of one new argument in Redman's March 11, 1993 postjudgment motion, as amended, on why the February 1, 1993 judgment was void. She claimed that the County failed to give notice to various lienholders on her land. She cited ***In Matter of Foreclosure of Tax Liens***, 106 Wis.2d 244, 316 N.W.2d 362 (1982), for the proposition that the judgment is void whenever the County fails to give notice of proceedings to one lienholder of record. The ***Tax Liens*** court held that a land contract vendee who received notice by publication could set aside a tax lien foreclosure judgment on the ground that the land contract vendor did not get notice by mailing or publication. In ***Tax Liens***, the County made no attempt to give the land contract vendor notice by mail or publication. It did unsuccessfully attempt to give the land contract vendee notice by mail, and listed the land contract vendee's interest in the notice given by publication. We reject Redman's claim that the ***Tax Liens*** decision operates to void the February 1, 1993 foreclosure judgment on Redman's land.

Redman has identified no lienholder of record who retained a viable interest in the land yet received no notice by mail or publication. Although the County was unable to give lienholder Orlando Richards notice by mail, it did by publication. This met the terms of the tax lien foreclosure statutes and provided Redman no basis to void the judgment. Redman likewise claimed that Marcella and Delores Lehman had a judgment lien on the land but never received notice of the proceedings. Redman stated, however, that the Lehman judgment dated from 1964. By the time of the foreclosure proceeding's commencement, the twenty-year judgment statute of limitations had expired on the Lehman twenty-two year-old judgment. *See* § 893.40, STATS. By virtue of the statute's expiration, the Lehmans no longer held a viable lien interest in Redman's land. The County therefore had no duty to give them notice of the foreclosure proceedings, and Redman may not rely on their alleged lack of notice as a basis to attack the foreclosure judgment under ***Tax Liens***.

By the Court.—Order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.