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DISTRICT II

January 15, 2014

To:

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Circuit Court Judge
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Waukesha, WI 53188

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You are hereby notified that the Court has entered the following opinion and order:

2013AP253

Cornerstone Community Bank v. John L. McCardle
(L.C. #2011CV1764)

Before Brown, C.J., Neubauer, P.J., and Reilly, J.

John and Michelle McCardle appeal *pro se* from a circuit court order confirming the sheriff's sale of their foreclosed property. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2011-12).¹ We affirm.

¹ All subsequent references to the Wisconsin Statutes are to the 2011-12 version.

In May 2011, Cornerstone Community Bank commenced a foreclosure action against the McCardles after they defaulted on a promissory note secured by a mortgage on their home. Cornerstone elected not to seek a deficiency judgment. WIS. STAT. § 846.101. The McCardles never answered the complaint, despite having been served with the summons and complaint. In July 2011, the circuit court entered a judgment of foreclosure and ordered a sheriff's sale.² On January 8, 2013, the circuit court entered an order confirming the sheriff's sale. On January 29, 2013, the McCardles made their first appearance in the circuit court when they sought relief pending appeal relating to a writ of restitution authorizing the sheriff to evict them from the property. The circuit court denied the requested relief. The McCardles appeal.

On appeal, the McCardles argue that the sheriff's sale was not for a fair and reasonable value. We do not address this issue because it is raised for the first time on appeal. *Segall v. Hurwitz*, 114 Wis. 2d 471, 489, 339 N.W.2d 333 (Ct. App. 1983). The McCardles never appeared in the circuit court before entry of the judgment of foreclosure or the order confirming the sheriff's sale. When the McCardles filed pleadings on January 29, 2013, they did not seek relief relating to the valuation of the property.³

The McCardles also raise an issue pertaining to tenants' rights. Because the McCardles did not timely raise this issue in the circuit court, we do not address it. *Segall*, 114 Wis. 2d at 489.

² The respondent's brief does not contain any citations to the record on appeal as required by WIS. STAT. RULE 809.19(3)(a)2. The brief violates the Rules of Appellate Procedure. In the future, counsel shall file briefs that comply with the applicable rules.

³ We note that where a foreclosing creditor does not seek a deficiency judgment, the property is presumed to be sold at fair value. *Bank of New York v. Mills*, 2004 WI App 60, ¶15, 270 Wis. 2d 790, 678 N.W.2d 332.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed pursuant to WIS.
STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals