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**DISTRICT IV**

April 22, 2015

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

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2014AP197

Deutsch Bank National Trust Company v. Melissa A. Klapper  
(L.C. # 2009CV505)

Before Blanchard, P.J., Sherman and Kloppenburg, JJ.

Melissa Klapper and Edward Klapper appeal an order denying their motion to vacate the summary judgment entered against them and in favor of Deutsche Bank National Trust Company in this foreclosure action. On appeal, the Klappers argue that their motion to vacate the judgment should have been granted and that the circuit court judge was biased. 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 (2013-14).<sup>1</sup> We summarily affirm.

Deutsche Bank, as trustee for Soundview Home Loan Trust, initiated this action against the Klappers on May 27, 2009, seeking to foreclose the mortgage on their residence located in Beaver Dam, Wisconsin. On March 20, 2012, the circuit court granted summary judgment against the Klappers and in favor of Deutsche Bank, and entered an order and judgment of foreclosure. The Klappers did not appeal that order and judgment. On November 8, 2013, the Klappers filed a “motion for relief and to vacate summary judgment” pursuant to WIS. STAT. § 806.07(1)(a), (b), and (c). The circuit court denied the motion and the Klappers now appeal.

We review a circuit court’s denial of relief under WIS. STAT. § 806.07(1) for erroneous exercise of discretion. *Schauer v. DeNeveu Homeowners Ass'n, Inc.*, 194 Wis. 2d 62, 70, 533 N.W.2d 470 (1995). We will affirm a discretionary decision of the circuit court if there appears any reasonable basis for the court’s decision. *Gooch v. Gooch*, 107 Wis. 2d 704, 711, 321 N.W.2d 354 (Ct. App. 1982).

WISCONSIN STAT. § 806.07(1)(a) permits a party to move for relief from judgment on the basis of “[m]istake, inadvertence, surprise, or excusable neglect[,]” and § 806.07(1)(c) permits relief from judgment on the basis of “[f]raud, misrepresentation, or other misconduct of an adverse party.” However, motions under § 806.07(1)(a) and (c) must be made “not more than one year after the judgment was entered or the order or stipulation was made.” WIS. STAT. § 806.07(2). The Klappers filed their motion for relief from judgment over nineteen months

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

after the judgment had been entered. Thus, the motion was untimely to obtain relief under § 806.07(1)(a) and (c).

The Klappers also argue that they were entitled to relief from judgment under WIS. STAT. § 806.07(1)(b), on the basis of newly-discovered evidence warranting a new trial. However, a motion made under subsection (1)(b) must be made within the time frame specified in WIS. STAT. § 805.16 which, at its outermost limit, is “within one year after verdict.” *See* WIS. STAT. §§ 806.07(2), 805.16(4). As stated above, the Klappers filed their motion for relief from judgment over a year and a half after the judgment was entered.

Given the untimely nature of the Klappers’ motion to vacate the judgment under WIS. STAT. § 806.07(1), we cannot conclude that there was no reasonable basis for the circuit court’s decision to deny the motion. Therefore, we affirm the order of the circuit court.

We turn next to the Klappers’ argument that the circuit court judge was biased against them and violated their due process rights. Whether a judge was neutral is a question of constitutional fact that we review independently. *State v. McBride*, 187 Wis. 2d 409, 414, 523 N.W.2d 106 (Ct. App. 1994). The presumption against bias must be overcome with a preponderance of evidence. *Id.* at 415. Both subjective and objective factors come into play. *See id.* Here, the Klappers have not pointed to anything in the record that would indicate that the judge believed he was biased, thus ending our inquiry into the subjective test. Under the objective test, one must demonstrate that he or she was treated unfairly and that the judge was actually biased. *Id.* at 416. Again, the Klappers fail to support their argument with any examples from the record that suggest they were treated unfairly or that they were not afforded due process of law. The portions of the record the Klappers cite show only that the court ruled

against them. An adverse ruling, by itself, is generally insufficient to establish bias. *See Liteky v. United States*, 510 U.S. 540, 555 (1994). Thus, we are not persuaded that the circuit court judge was biased.

IT IS ORDERED that the order is summarily affirmed under WIS. STAT. RULE 809.21(1).

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*