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DISTRICT IV

October 7, 2016

To:

Hon. Ellen K. Berz
Circuit Court Judge
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Madison, WI 53703

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

2015AP744

CitiMortgage, Inc. v. Richard Burris, Jane Doe Burris and Keri Shahidi (L.C. # 2009CV5408)

Before Lundsten, Sherman and Blanchard, JJ.

Richard Burris appeals postjudgment orders in this foreclosure action. 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).¹ We summarily affirm.

On January 21, 2015, Burris filed a motion to reopen and vacate a January 2014 order that denied Burris's challenges to a prior summary judgment of foreclosure. Burris argued that the January 2014 order rendered the prior summary judgment void by making material factual

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

findings that confirmed that those issues of fact remained in dispute when summary judgment was granted. On February 17, 2015, the court denied Burris's motion to reopen its January 2014 order.

Meanwhile, on January 29, 2015, Burris moved to stay the writ of assistance issued following confirmation of sale. He argued that the writ was not properly obtained or issued under WIS. STAT. § 815.63. On February 3, 2015, the circuit court denied the motion to stay the writ of assistance in an oral ruling. On February 23, 2015, Burris filed a motion for reconsideration and a motion to vacate the court's oral ruling. On March 2, 2015, the court issued a decision denying Burris's motion.

Burris contends that the court's January 2014 decision recognized that material facts remained in dispute at the time summary judgment was granted, rendering the summary judgment void. On this premise, Burris argues that extraordinary circumstances warrant relief from the January 2014 order denying Burris's challenges to the summary judgment. *See* WIS. STAT. § 806.07(1)(d) and (h); *Shirk v. Bowling, Inc.*, 2001 WI 36, ¶14, 242 Wis. 2d 153, 624 N.W.2d 375. Burris further relies on his voidness argument to contend that none of his arguments challenging the summary judgment have been decided in a final, appealable order, and thus may be reviewed in this appeal. We disagree.

First, we reject Burris's argument that the summary judgment order is void. Burris's assertion that material issues of fact remained in dispute when summary judgment was granted is a challenge to the correctness of the court's decision to grant summary judgment, not an argument that affects whether the decision is legally binding. Even if Burris's argument constituted a meritorious challenge to the merits of that decision, it would not show that the order

is void. *See Reading v. Reading*, 268 Wis. 56, 60, 66 N.W.2d 753 (1954) (holding that an erroneous determination of law or fact does not render a judgment void); *Wengerd v. Rinehart*, 114 Wis. 2d 575, 578–79, 338 N.W.2d 861 (Ct. App. 1983) (explaining that an order is not “void,” warranting relief under WIS. STAT. § 806.07(1), unless the court rendering it lacked subject matter or personal jurisdiction or denied a party due process).

Second, to the extent that Burris argues, in his motion and on appeal, that the circuit court’s January 2014 order wrongly rejected Burris’s challenges to the summary judgment of foreclosure based on arguments rejected in the January 2014 order, we lack jurisdiction to review those arguments. *See* WIS. STAT. § 808.04(1) and RULE 809.10(1)(e) (appeal must be initiated within ninety days of entry of judgment, and filing of timely notice of appeal is necessary to give this court jurisdiction); *Ver Hagen v. Gibbons*, 55 Wis. 2d 21, 25, 197 N.W.2d 752 (1972) (“[A]n order entered on a motion to modify or vacate a judgment or order is not appealable where, as here, the only issues raised by the motion were disposed of by the original judgment or order.”). Further, to the extent that Burris asserts that some of his specific arguments were previously raised but not explicitly addressed and decided by the court’s January 2014 order, and that those arguments are therefore reviewable in this appeal, we deem that argument insufficiently developed to warrant a response. *See State v. Pettit*, 171 Wis. 2d 627, 646–47, 492 N.W.2d 633 (Ct. App. 1992).

Next, Burris contends that the circuit court erred by entering confirmation of sale on May 29, 2014. However, the notice of appeal in this case—filed on April 16, 2015—was not timely as to the circuit court’s May 29, 2014 order confirming sale. Accordingly, we lack jurisdiction to review Burris’s arguments arising from confirmation of sale. *See* WIS. STAT. § 808.04(1) and RULE 809.10(1)(e)

Burris also contends that the circuit court erred by denying his motion to stay the writ of assistance and his motions to reconsider or to vacate that decision. However, Burris's arguments are conclusory and lack proper citations to the record or legal authority. Accordingly, we deny them as undeveloped. *See Pettit*, 171 Wis. 2d at 646–47.

Therefore,

IT IS ORDERED that the orders are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals