OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS
110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT III

May 2, 2017

To:

Hon. Jon M. Theisen
Circuit Court Judge
Eau Claire County Courthouse
721 Oxford Avenue
Eau Claire, WI 54703

Susan Schaffer
Clerk of Circuit Court
Eau Claire County Courthouse
721 Oxford Avenue, Ste. 2220
Eau Claire, WI 54703-5496

Russell J. Karnes
J. Peterman Legal Group Ltd.
165 Bishops Way, Ste. 100
Brookfield, WI 53005-6235

Barbara E. Anderson
4505 W. Cameron Street
Eau Claire, WI 54703

Thomas L. Anderson
4505 W. Cameron Street
Eau Claire, WI 54703

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

2016AP266 Bayview Loan Servicing, LLC v. Barbara E. Anderson
(L. C. No. 2012CV54)

Before Stark, P.J., Hruz and Seidl, JJ.

Thomas Anderson, pro se, appeals orders denying his motions to set aside or vacate a claimed void ab initio foreclosure judgment. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. Because the law of the case doctrine precludes Anderson's arguments, we summarily affirm the orders. *See* WIS. STAT. RULE 809.21 (2015-16).[1]

[1] All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

Bank of America, N.A.,[2] commenced a foreclosure action against Anderson and his wife Barbara on January 23, 2012.[3] Repeated attempts to serve process on the Andersons were unsuccessful. Substituted service by publication was made on April 23, 2012, and, on June 18, 2012, the Andersons filed a pro se "Answer to Complaint and Motion to Dismiss." The circuit court granted the Bank's motion for a default judgment on June 22 and also granted a motion to strike the Andersons' answer and motion to dismiss as untimely. Approximately one year after entry of the default judgment, the Andersons filed a motion for relief under WIS. STAT. § 806.07, seeking to vacate the default judgment. The circuit court denied the motion, and the Andersons appealed.

In that appeal, the Andersons argued the foreclosure judgment was void because it was "founded on a void invocation of personal jurisdiction." The Andersons also insisted they complied with the requirement in the publication summons to request a copy of the summons and complaint within forty days, and their responsive pleading was therefore timely. The Andersons further asserted the affidavits supporting the motion for default judgment were based upon fraud, misrepresentation, or other misconduct on the part of the Bank's attorneys.

We affirmed the order denying the Andersons' motion for relief from the default foreclosure judgment. *See* ***Bank of America, N.A. v. Anderson***, No. 2013AP1726, unpublished slip op. (WI App Aug. 26, 2014). We determined the Andersons had conceded that their WIS.

[2] Bank of America, N.A., initiated the underlying action as servicer of the subject loan; however, servicing of the loan was transferred and the underlying judgment subsequently assigned to Bayview Loan Servicing, LLC, during the pendency of the instant appeal. To reflect the change of the loan servicer, we granted Bank of America's motion to substitute Bayview for Bank of America as respondent in this appeal.

[3] Barbara Anderson is not an appellant in the present appeal.

STAT. § 806.07 motion was not filed within a reasonable time, as required under § 806.07(2). ***Id.***, ¶¶6-7. We rejected the Andersons' claims of fraud, misrepresentation, or misconduct as undeveloped, noting we would not abandon our neutrality to develop their arguments. ***Id.***, ¶8. Because the Andersons' motion to dismiss and answer failed to properly raise a challenge to personal jurisdiction or the sufficiency of service of process, we deemed those issues waived and, thus, "not appropriate on appeal." ***Id.***, ¶9. Further, to the extent the Andersons claimed they were denied due process because their "defenses to this action" had not been heard, we noted that the circuit court had considered their answer and motion to dismiss before ordering the pleading stricken. The Andersons had appealed neither the order striking their answer and motion to dismiss nor the foreclosure judgment itself. ***Id.***, ¶10.

After remittitur, the circuit court denied the Andersons' attempts to block the sheriff's sale. Anderson then filed the underlying motions to set aside or vacate a void ab initio judgment. The circuit court denied the motions and this appeal follows.

In the present appeal, Anderson argues the foreclosure judgment was procured by fraud on the part of the Bank's attorneys and collusion with or manipulation of the circuit court. In requesting that this court order the judgment void pursuant to WIS. STAT. § 806.07, Anderson reargues the merits of issues previously addressed in his earlier appeal, including challenges to the service of process by publication and to the validity of affidavits submitted in support of the motion for default judgment. Anderson again alleges a fraud based upon the Bank's filing for default judgment under the "five day" rule. Anderson also reasserts claims that his answer was timely, and that entry of the default judgment resulted in a denial of his due process rights.

The Bank contends the law of the case doctrine precludes Anderson's arguments. We agree. "[A] decision on a legal issue by an appellate court establishes the law of the case, which must be followed in all subsequent proceedings in the trial court or on later appeal." ***Univest Corp. v. General Split Corp.***, 148 Wis. 2d 29, 38, 435 N.W.2d 234 (1989). Whether a decision establishes the law of the case presents a question of law we review independently. ***State v. Stuart***, 2003 WI 73, ¶20, 262 Wis. 2d 620, 664 N.W.2d 82. Here, Anderson's arguments were raised in his earlier appeal, and our prior decision on these issues is the law of the case. Anderson nevertheless asserts that the issues of his present appeal are distinguishable from the earlier appeal because "[t]his appeal is specifically for a Void Ab Initio Judgment based on fraud." Anderson's attempt to create new issues by simply couching his motion as one to vacate a claimed void ab initio judgment is unavailing. Anderson cannot circumvent the law of the case with his renamed and repackaged, but substantively identical, motions to vacate the default judgment.

We acknowledge that the law of the case doctrine is not absolute. When "'cogent, substantial, and proper reasons exist,'" a court may disregard the doctrine and reconsider prior rulings in a case. ***Id.***, ¶24 (citation omitted). Specifically, our supreme court has stated, "[A] court should adhere to the law of the case 'unless the evidence on a subsequent trial was substantially different, [or] controlling authority has since made a contrary decision of the law applicable to such issues.'" ***Id.*** (citation omitted). More broadly, our supreme court has stated that "[i]t is within the power of the courts to disregard the rule of 'law of the case' in the interests of justice." ***Id.*** (citation omitted). We conclude this case presents no "cogent, substantial, and proper" reason to disregard the doctrine. Anderson has pointed to no change in the law or

substantially different evidence, nor has he persuaded us it is in the interest of justice to revisit issues that were decided in the earlier appeal. Therefore, we affirm the circuit court orders.

Upon the foregoing,

IT IS ORDERED that the orders are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published and may not be cited under WIS. STAT. RULE 809.23(3)(b).

Diane M. Fremgen
Clerk of Court of Appeals