

(2015-16)¹ (in a civil matter in which no notice of entry of judgment is given, a notice of appeal must be filed within ninety days after entry of the judgment or order appealed from); *see also* WIS. STAT. RULE 809.10(1)(e) (this court lacks jurisdiction if notice of appeal is not timely filed).

Although the notice of appeal was timely filed as to the December 21, 2015 order denying reconsideration, we noted an appeal cannot be taken from an order denying a motion for reconsideration that presents the same issues as those determined in the order sought to be reconsidered.² *See Silvertown Enters., Inc. v. General Cas. Co.*, 143 Wis. 2d 661, 665, 422 N.W.2d 154 (Ct. App. 1988). The concern is that a reconsideration motion should not be used to extend the time to appeal from a judgment or order when that time has expired. *Id.*; *see also Ver Hagen v. Gibbons*, 55 Wis. 2d 21, 25-26, 197 N.W.2d 752 (1972). Because it was unclear from the record whether the motion for reconsideration presented issues that could have been raised in an appeal from the October 21, 2015 foreclosure judgment, we directed the parties to address jurisdiction as the first issue in their appellate briefs. Whether a party's motion for reconsideration raised a new issue "presents a question of law that this court reviews de novo." *State v. Edwards*, 2003 WI 68, ¶7, 262 Wis. 2d 448, 665 N.W.2d 136.

In December 2013, Johnson Bank filed suit against Stincic to foreclose a mortgage on Stincic's home. Johnson Bank moved for summary judgment and Stincic opposed the motion, claiming the Bank failed to establish it was the holder of the note and mortgage. Johnson Bank

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

² Although Stincic moved for reconsideration, the motion did not affect the time for appealing because it was not filed after a trial to the court or other evidentiary hearing. *See Continental Cas. Co. v. Milwaukee Metro. Sewerage Dist.*, 175 Wis. 2d 527, 533-35, 499 N.W.2d 282 (Ct. App. 1993) (WISCONSIN STAT. § 805.17(3) does not apply to reconsideration motions in a summary judgment context.).

responded that it was the maker of the note and mortgage, but after their execution, the note and mortgage were sold to Federal Home Loan Mortgage Corporation (“Freddie Mac”). Johnson Bank asserted that because it remained the servicer of the note and mortgage, it was authorized to initiate the foreclosure action.

At a hearing scheduled for the circuit court to rule on the bank’s summary judgment motion, Stincic raised a new argument opposing the motion. Citing *Jesinoski v. Countrywide Home Loans, Inc.*, 135 S. Ct. 790 (2015), Stincic asserted he had exercised his right to rescind the mortgage contract pursuant to the Truth in Lending Act. The circuit court adjourned the hearing to give the parties an opportunity to brief whether Stincic had forfeited this argument by failing to raise it “under the timelines that were established” by the circuit court. After additional briefing, the circuit court concluded that had Stincic “actually thought that he rescinded and wanted to push that issue,” he would have raised it more clearly and earlier. Finding that Stincic failed to timely and properly raise his rescission argument, the circuit court granted summary judgment in favor of Johnson Bank. Stincic moved for reconsideration, reiterating his rescission argument and claiming his rights under the Truth in Lending Act would be violated if Johnson Bank was allowed to pursue foreclosure of what Stincic deemed to be a void mortgage.

On appeal, Stincic first appears to seek reconsideration of this court’s order determining we lack jurisdiction to review the October 21, 2015 foreclosure judgment. Stincic asserts that the October 21 foreclosure judgment was not final for purposes of appeal because it did not include finality language as required under *Wambolt v. West Bend Mutual Insurance Co.*, 2007 WI 35, ¶44, 299 Wis. 2d 723, 728 N.W.2d 670. Stincic further claims that because the December 21, 2015 order denying reconsideration included finality language, he could not appeal as of right until entry of that order. We are not persuaded. In the absence of finality

language on a judgment or order, we must liberally construe ambiguities to preserve the right to appeal. *Sanders v. Estate of Sanders*, 2008 WI 63, ¶33, 310 Wis. 2d 175, 750 N.W.2d 806. In this instance, however, we see no ambiguity in light of clear case law. Foreclosure actions result in two separate and final appealable orders: a judgment of foreclosure and a subsequent order of confirmation of sale. See *Shuput v. Lauer*, 109 Wis. 2d 164, 172, 325 N.W.2d 321 (1982). The foreclosure judgment was therefore final for appeal purposes despite the absence of finality language.

Stincic nevertheless claims we have jurisdiction to review the order denying reconsideration because his reconsideration motion raised issues “not addressed” by the circuit court. Although the circuit court refused to reach the merits of Stincic’s rescission argument, its refusal to consider what it deemed to be an untimely argument could have been challenged in a timely appeal from the October 21, 2015 foreclosure judgment. Rather than presenting any new issues, Stincic’s reconsideration motion reveals a litigant hoping the court would come to a different conclusion on an argument that had been raised and rejected as untimely. Accordingly, we lack jurisdiction to review the order denying reconsideration. See *Silverton*, 143 Wis. 2d at 665.

Citing *Koepsell’s Olde Popcorn Wagons, Inc. v. Koepsell’s Festival Popcorn Wagons, Ltd.*, 2004 WI App 129, 275 Wis. 2d 397, 685 N.W.2d 853, Stincic alternatively contends that dismissal for lack of jurisdiction “would render the holding in *Koepsell’s* superfluous.” The *Koepsell’s* court held that “[t]o prevail on a motion for reconsideration, the movant must present either newly discovered evidence or establish a manifest error of law or fact.” *Id.*, ¶44. Stincic thus asserts that “[t]o find that this court only has jurisdiction over motions to reconsider presenting a new issue or newly discovered evidence obviates the second option: a manifest error of law or fact.” The grounds to prevail on a reconsideration motion in the circuit court, however, do not

inform the scope of this court's jurisdiction. Because we lack jurisdiction to review the only order from which Stincic timely appealed, we must dismiss this appeal.

Upon the foregoing,

IT IS ORDERED that the appeal is dismissed for lack of jurisdiction.

Diane M. Fremgen
Clerk of Court of Appeals