



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 IV

November 29, 2017

To:

Hon. Steven G. Bauer
Circuit Court Judge
210 West Center Street
Juneau, WI 53039

Lynn M. Hron
Clerk of Circuit Court
Dodge Co. Justice Facility
210 West Center Street
Juneau, WI 53039

Carla O. Andres
Godfrey & Kahn, S.C.
200 S. Washington St., Ste. 100
Green Bay, WI 54301-4298

Shane Gale
Rausch, Sturm, Israel, Enerson & Hornik LLC
250 N. Sunnyslope Rd., Ste. 300
Brookfield, WI 53005

Nina Gerda Beck
Godfrey & Kahn, S.C.
833 E. Michigan St., Ste. 1800
Milwaukee, WI 53202-5615

Jonathan R. Ingrisano
Godfrey & Kahn, S.C.
833 E. Michigan St., Ste. 1800
Milwaukee, WI 53202-5615

Mark G. Ryczek
W6402 State Road 33
Juneau, WI 53039

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

2016AP2460

The Bank of New York Mellon Trust Company v. Mark G. Ryczek
(L.C. # 2011CV233)

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

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Mark Ryczek, pro se, appeals an order denying his motion to reopen a judgment of foreclosure. Ryczek argues that the circuit court erred in determining that his claim of fraud on the court lacked merit and was untimely. 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 (2015-16).¹ We reject Ryczek’s arguments and affirm.

Although both parties present a lengthy procedural history that encompasses Ryczek’s bankruptcy proceedings, there are few relevant facts, which we now recite.

Bank of New York Mellon Trust (“the Bank”) filed a foreclosure action against Ryczek in 2011. The circuit court granted summary judgment to the Bank, and entered an order for foreclosure and sale in 2012. Ryczek did not appeal this judgment.

In early 2016, Ryczek filed what purported to be a motion in circuit court. The full text of the discussion in that motion reads: “Motion to reopen the fraud claim per Judge Sciacia’s order [in] case no. 15-cv-164.” Ryczek attached an order from a separate circuit court action that Ryczek had filed against the Bank, in which Ryczek alleged that the Bank had committed a fraud on the court in the foreclosure action. Upon receiving Ryczek’s motion to reopen the foreclosure case, the circuit court ordered Ryczek to supplement his motion within 10 days or the motion would be summarily dismissed. Ryczek asked the court for more time and, having received no response, eventually filed over 200 pages of additional materials, including materials filed in the separate circuit court action as well as decisional law. The circuit court determined that these documents did not specify Ryczek’s claim of fraud on the court. Moreover, the court determined that Ryczek’s motion was not timely. *See* WIS. STAT. § 806.07(2) (motions for relief from judgments based on fraud must be filed within one year after entry of judgment). Accordingly, the circuit court denied Ryczek’s motion. Ryczek appeals.

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

Ryczek does not argue that his motion was timely under WIS. STAT. § 806.07(2). Rather, Ryczek argues that the circuit court should have considered his fraud claim as an independent action, which has no express time limit. *See Dekker v. Wergin*, 214 Wis. 2d 17, 570 N.W.2d 861 (Ct. App. 1997); § 806.07(2) (“This section does not limit the power of a court to entertain an independent action to relieve a party from judgment, order, or proceeding, or to set aside a judgment for fraud on the court.”). The elements of an independent action are:

- (1) a judgment which ought not, in equity and good conscience, to be enforced;
- (2) a good defense to the alleged cause of action on which the judgment is founded;
- (3) fraud, accident, or mistake which prevented the [appellant] in the judgment from obtaining the benefit of his [claim];
- (4) the absence of fault or negligence on the part of [appellant];
and
- (5) the absence of any remedy at law.

Dekker, 214 Wis. 2d at 21 (quoted sources omitted).

Ryczek faces an uphill battle in convincing us that the circuit court erred in denying his motion to bring an independent action for relief from the foreclosure judgment. This is because an independent action is an equitable remedy that is entrusted to the sound discretion of the circuit court. *See Walker v. Tobin*, 209 Wis. 2d 72, 78, 568 N.W.2d 303 (Ct. App. 1997) (“Such relief may be had, not as of right, but in the exercise of sound legal discretion, and each case must stand on its own peculiar merits.”).

In this appeal, Ryczek argues in conclusory fashion that the Bank lied to the circuit court, but he cites no record evidence to support this proposition. It appears to us that Ryczek is simply trying to reargue allegations that he made in the original foreclosure action. Ryczek concedes as

much when he states that “[m]y foreclosure counsel raised all these issues and put the court on notice but the court granted summary judgment anyway.”

But even if Ryczek believes that he has a new claim of fraud on the court that he did not previously raise in the foreclosure action, he has failed to specify his new claim. He argues that the circuit court erred by not considering “the assembled record” when it determined that his new claim of fraud lacked merit. He contends that, if the circuit court had conducted a sufficiently thorough search of the hundreds of pages of documents and case law he submitted, the circuit court would have found a basis for entertaining an independent action to reopen the foreclosure judgment.² But this is not the role of the circuit court. See *State v. Jackson*, 229 Wis. 2d 328, 337, 600 N.W.2d 39 (Ct. App. 1999) (“A party must do more than simply toss a bunch of concepts into the air with the hope that either the [circuit] court or the opposing party will arrange them into viable and fact-supported legal theories.”). Nor is it the role of an appellate court. See *Alswager v. Roundy’s Inc.*, 2005 WI App 3, ¶15, 278 Wis. 2d 598, 692 N.W.2d 333 (2004) (“[I]t is not the duty of this court to sift and glean the record *in extensor* to find facts which will support an [argument].” (quoted source omitted)).

Because Ryczek has not specified any new claim of fraud on the court, the circuit court did not err in denying his motion to reopen the foreclosure judgment. See *Dekker*, 214 Wis. 2d at 21 (an independent action requires a showing of a “fraud, accident, or mistake which

² Although we afford some latitude to pro se litigants, this does not excuse Ryczek from complying with the procedural rule that requires the parties’ briefs to contain “citations to the ... parts of the record relied on.” See WIS. STAT. RULE 809.19(1)(e); *Waushara Cty. v. Graf*, 166 Wis. 2d 442, 452, 480 N.W.2d 16 (1992) (pro se litigants are required to comply with procedural standards).

prevented the [appellant] in the judgment from obtaining the benefit of his [claim]” (quoted sources omitted)).

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Diane M. Fremgen
Clerk of Court of Appeals