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DISTRICT II

July 21, 2021

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

2020AP556

U.S. Bank Trust National Association v. Karen A. Felt
(L.C. #2019CV164)

Before Neubauer, C.J., Reilly, P.J., and Gundrum, J.

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).

Christopher Stoller appeals dismissal of various motions by which he sought to enforce an alleged assignment of claims he entered into with Karen A. and Richard K. Felt after a default judgment was entered against them 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 (2019-20).¹ The circuit court did not erroneously exercise its discretion in declining to provide Stoller with relief from the default foreclosure judgment and denying his motions to intervene and stay pending appeal, nor did it err in confirming the sale of the mortgaged property. We affirm.

Karen Felt signed a note for \$360,000 with U.S. Bank Trust National Association (the Trust)² and Karen and Richard signed a mortgage securing the note on property at N3030 Marshall Lane, Town of Geneva, WI. The Felts defaulted on the note and mortgage by failing to make the required monthly payments. The Trust filed this foreclosure action and, after the Felts failed to appear, the circuit court entered a default judgment on July 22, 2019. The Trust waived any deficiency against the Felts. After the six-month redemption period, the Trust scheduled a sheriff's sale of the property. The Trust filed a lis pendens on June 6, 2019 and recorded it with the register of deeds.

On February 28, 2020, Stoller filed a motion to intervene pursuant to WIS. STAT. § 803.09, and various motions seeking to vacate the default judgment, primarily under WIS. STAT. § 806.07, as well as a motion to stay the scheduled sheriff's sale on March 5, 2020, pending appeal under WIS. STAT. § 808.075. Stoller contended that he had a right to intervene, to relief from the default foreclosure judgment and to a stay pending appeal, based on his "Assignment of Claims and Causes of Action" from the Felts.

¹ All references to the Wisconsin Statutes are to the 2019-20 version.

² The Trust brings this action as owner trustee for Legacy Mortgage Asset Trust 2018-GSI.

After a hearing on March 3, 2020, the circuit court denied the motions on March 4, 2020. The sheriff's sale took place. Stoller filed a notice of appeal challenging the denial of his motions on March 23, 2020.

Stoller subsequently moved in opposition to confirmation of the sale. The circuit court denied Stoller's motion. The court confirmed the sale in an order dated April 16, 2020. Stoller also appeals that confirmation.

Whether to grant relief from judgment lies in the discretion of the circuit court. *See Mullen v. Coolong*, 153 Wis. 2d 401, 406, 451 N.W.2d 412 (1990). We also review the circuit court's decision to confirm a sheriff's sale for an erroneous exercise of discretion. *Security State Bank v. Sechen*, 2005 WI App 253, ¶5, 288 Wis. 2d 168, 707 N.W.2d 576. We will sustain a discretionary determination if the facts of record and correct legal standards are stated and considered together to achieve a reasoned and reasonable decision. *Rodak v. Rodak*, 150 Wis. 2d 624, 631, 442 N.W.2d 489 (Ct. App. 1989).

The circuit court did not erroneously exercise its discretion. Stoller's arguments are based on his claimed interest in the property as a result of an assignment from the Felts in February 2020. As the circuit court aptly, thoroughly, and patiently explained at the motion hearing, any interest Stoller may have acquired is subject to, and junior to, the Trust's mortgage and lis pendens. *See* WIS. STAT. § 840.10. Stoller stepped into the shoes of the Felts, who defaulted, and as such, any assignment is subject to the default.

Stoller's conclusory allegations of fraud based on his challenges to the Trust as the holder of the note and as a proper entity to enforce the note, were properly denied, as these contentions could have been raised by the Felts, who failed to appear over the entire course of the year that

the foreclosure action was pending. The Felts did not appeal the foreclosure judgment, and the right to cure had passed over a month before the scheduled sheriff's sale.

Stoller offered nothing substantive to the circuit court to support reconsideration of, or relief from, the default judgment, failing entirely to address the Felts' failure to raise any issues, much less those Stoller apparently believes they should have challenged. Likewise, on appeal Stoller fails to develop any argument that the court erred in denying his motion to vacate the default foreclosure judgment given the Felts' failure to appear or appeal the judgment, the redemption period had passed, and the property was scheduled to be sold within the week. His appellate brief fails to address the Felts' absence, up to and including at the time Stoller moved and his motions were heard. There is no mention of any facts justifying relief from judgment under WIS. STAT. § 806.07, nor does Stoller develop any legal argument supporting relief. *See State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) (arguments that are unsupported or undeveloped need not be considered).

Stoller has also failed to provide the circuit court with any facts or develop any argument that the Felts' due process rights were denied in the course of the foreclosure judgment, an argument he has abandoned on appeal. Consequently, Stoller has failed to show that he was a necessary party given his failure to establish grounds for relief from the default judgment. The circuit court did not erroneously exercise its discretion in denying Stoller's motion to reopen the foreclosure judgment, nor did it err in denying Stoller's other challenges prior to the sheriff's sale.

Likewise, the circuit court did not err in denying Stoller's subsequent challenge to confirmation of the sheriff's sale. First, the court properly declined Stoller's untimely request for

judicial substitution, an issue Stoller has abandoned on appeal. Stoller's notice of appeal and motion to stay pending appeal of the foreclosure judgment did not deprive the circuit court of its jurisdiction to confirm the sale, another issue Stoller has abandoned on appeal. The court appropriately declined to revisit Stoller's continued challenges to the note and the mortgage. The court found that the notice of the sale was properly given, and the sale price reflected the fair value of the property, neither of which were contested by Stoller, nor does he raise any challenge on appeal.

Additionally, Stoller failed to raise several issues he now asserts on appeal, including his contention that the Trust did not demonstrate that it owned the note, and additional challenges relating to Fannie Mae and MERS, neither of which were raised before the circuit court. Beyond Stoller's failure to demonstrate entitlement to relief from the default judgment, we additionally reject these arguments as forfeited because they were not developed in a clear manner before the circuit court, instead being argued for the first time on appeal. *See Schonscheck v. Paccar, Inc.*, 2003 WI App 79, ¶¶10-11, 261 Wis. 2d 769, 661 N.W.2d 476.

For the above reasons, we conclude that the circuit court did not err in denying Stoller's motions seeking to intervene, to vacate the default judgment, to stay the sheriff's sale pending appeal, and objecting to confirmation of the sheriff's sale.³ The order confirming the sale is affirmed.

³ To the extent we have not addressed an argument raised on appeal, the argument is deemed rejected. *See State v. Waste Mgmt. of Wis., Inc.*, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978) ("An appellate court is not a performing bear, required to dance to each and every tune played on an appeal.").

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

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

Sheila T. Reiff
Clerk of Court of Appeals