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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 I

Amended as to distribution Sept. 27, 2022
September 27, 2022

To:

Hon. David C. Swanson
Circuit Court Judge
Electronic Notice

George Christenson
Clerk of Circuit Court
Milwaukee County Safety Building
Electronic Notice

Hannah R. Jahn
Electronic Notice

Tearman Spencer
Office of the Milwaukee City Attorney
200 East Wells Street
800 City Hall
Milwaukee, WI 53202

Maria Melendez
5613 W. Leroy Avenue
Milwaukee, WI 53220

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

2021AP1110

Maria Melendez v. Milwaukee City Clerk (L.C. # 2021CV1959)

Before Brash, C.J., Dugan and White, 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).

Maria Melendez, *pro se*, appeals from an order of the circuit court that dismissed, with prejudice, her complaint against the Milwaukee City Clerk. 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 order is summarily affirmed.

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

In March 2021, Melendez filed a complaint against the Milwaukee City Clerk (“the City”). She asserted, “I own my properties, land and properties are paid off and recorded,” and alleged that the City had illegally taken six properties. The City responded with a motion to dismiss. It stated that the taxes for the six parcels “were outstanding and delinquent for levy year 2014 and all subsequent years.”² As a result, the City began tax lien foreclosure proceedings in March 2020. Melendez never appeared, answered, or redeemed the properties in the foreclosure case. After the City obtained a default judgment on the foreclosures in July 2020, Melendez did not seek to vacate, ask for reconsideration of, or appeal the foreclosure judgment. The motion to dismiss asserted that Melendez’s claim was barred by claim preclusion as well as by noncompliance with WIS. STAT. § 893.80(1d), the notice of claim statute. After a June 7, 2021 motion hearing, the circuit court entered an order dismissing Melendez’s complaint “in its entirety and with prejudice” based on “the reasons set forth at the Hearing.” Melendez appeals.

As an initial matter, we observe that Melendez failed to obtain a transcript of the motion hearing. It is the appellant’s responsibility to ensure the record on appeal is complete. *See Fiumefreddo v. McLean*, 174 Wis. 2d 10, 26-27, 496 N.W.2d 226 (Ct. App. 1993); *see also* WIS. STAT. RULE 809.11(4)(a) (“The appellant shall request a copy of the transcript ... for each of the parties to the appeal[.]”). When transcripts are missing from the record, we assume that they support affirming the circuit court’s determinations. *See Austin v. Ford Motor Co.*, 86 Wis. 2d 628, 641, 273 N.W.2d 233 (1979). Here, the circuit court granted the City’s motion to

² In her appellant’s brief, Melendez acknowledges that she “stopped paying tax all together because [she] knew it would be impossible to keep up with [her] bills.”

dismiss for the reasons stated on the record; without a transcript, we presume those reasons appropriately support the circuit court's determination.

Melendez's assertion that the City could not foreclose because she "fully own[s] the] property plus the land" is barred by claim preclusion. "The doctrine of claim preclusion provides that a final judgment on the merits in one action bars parties from relitigating any claim that arises out of the same relevant facts, transactions, or occurrences." *Kruckenberg v. Harvey*, 2005 WI 43, ¶19, 279 Wis. 2d 520, 694 N.W.2d 879. Three elements must be present before we will apply claim preclusion to bar an action: "(1) an identity between the parties or their privies in the prior and present lawsuits; (2) an identity of the causes of action in the two lawsuits; and (3) a final judgment on the merits in a court of competent jurisdiction." See *Teske v. Wilson Mut. Ins. Co.*, 2019 WI 62, ¶25, 387 Wis. 2d 213, 928 N.W.2d 555.

An owner may contest an *in rem* tax foreclosure for only three reasons: (1) the land is not subject to taxation; (2) the tax was in fact paid; or (3) the tax lien is barred by the statute of limitations. See WIS. STAT. § 75.521(7)(a). Melendez's arguments, in the circuit court and on appeal, are best construed as arguments that her property was not subject to taxation. However, whether Melendez's property was subject to taxation could have, and should have, been litigated within the foreclosure action. See *DSG Evergreen Fam. Ltd. P'ship v. Town of Perry*, 2020 WI 23, ¶18, 390 Wis. 2d 533, 939 N.W.2d 564 (stating that claim preclusion applies "even if the claim was not actually litigated, so long as the party *could have* raised it"); see also *Menard, Inc. v. Liteway Lighting Prods.*, 2005 WI 98, ¶27, 282 Wis. 2d 582, 698 N.W.2d 738 (stating that claim preclusion "may operate to preclude a plaintiff from asserting claims in a subsequent action that the party failed to assert in a previous action in which it was a defendant").

Further, WIS. STAT. § 893.80 “prohibits a claimant from bringing an action against a governmental body or its ... employees for acts done in their official capacity unless a [timely] notice of claim is first presented and the claim is disallowed.” See *Gillen v. City of Neenah*, 219 Wis. 2d 806, 818, 580 N.W.2d 628 (1998); see also *Yacht Club at Sister Bay Condo. Ass’n v. Village of Sister Bay*, 2019 WI 4, ¶21, 385 Wis. 2d 158, 922 N.W.2d 95. Melendez points to no evidence that shows she provided the City with the required notice, nor does she argue that she had substantially complied with the statute and triggered the “savings clause.” See *Clark v. League of Wis. Municipalities Mut. Ins. Co.*, 2021 WI App 21, ¶¶9, 14, 397 Wis. 2d 220, 959 N.W.2d 648. Her claim against the City is, therefore, also barred for lack of notice.

Finally, Melendez appears to be claiming that her properties were exempt from taxation because she recorded “federal land patents.” This “land patent” argument, aside from the fact that it should have been raised in the foreclosure action, is wholly undeveloped, so we need not consider it. See *State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992). In any event, the federal courts have rejected this line of argument, holding that “federal patents do not prevent the creation of later interests and have nothing to do with claims subsequently arising under state law.” See *Wisconsin v. Glick*, 782 F.2d 670, 672 (7th Cir. 1986).

Upon the foregoing, therefore,

IT IS ORDERED that the order is summarily affirmed. See 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