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DISTRICT III

July 2, 2024

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Donald A. Shrader
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You are hereby notified that the Court has entered the following opinion and order:

2021AP2161

U.S. Bank Trust National Association v. Donald A. Shrader
(L. C. No. 2020CV7)

Before Stark, P.J., Hruz and Gill, 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).

Donald A. Shrader appeals an order confirming a foreclosure sale in this action brought by U.S. Bank Trust National Association (“U.S. Bank”). Shrader raises several challenges to the judgment of foreclosure that led to this sale. 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 (2021-22).¹ Because we have jurisdiction only over the order confirming the sale, and not the underlying judgment, and Shrader has abandoned any argument concerning the circuit court's order confirming the foreclosure sale, we affirm.

U.S. Bank filed an action against Donald and Lisa Shrader² on January 31, 2020, seeking foreclosure and sale of a property located in Mercer, Wisconsin. The complaint was personally served on Shrader at his residence in Hartland, Wisconsin, on February 12, 2020. Shrader did not file an answer to the complaint. According to the circuit court's record, Shrader appeared at a status conference on August 25, 2020, and stated that "he received a 1099 form in the mail that he is confused about" and that "he plans to file for bankruptcy."

U.S. Bank moved for default judgment on September 28, 2020, due to Shrader's failure to answer or respond to the complaint. Two days later, U.S. Bank sent a letter asking the circuit court not to enter default judgment because Shrader had filed for bankruptcy. The court entered default judgment on October 7, 2020, but then vacated the judgment at U.S. Bank's request on October 12, 2020. The court's order stated that U.S. Bank could apply for a new judgment after seeking relief from the automatic stay accompanying the bankruptcy proceeding.

On December 28, 2020, U.S. Bank again moved for default judgment and mailed notice to Shrader at the Mercer address. The notice indicated that a hearing on the default judgment motion was set for January 14, 2021. On that date, the circuit court granted U.S. Bank a judgment of foreclosure and sale. The judgment stated that \$331,807.05 was due to U.S. Bank under the

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

² Lisa Shrader is not a party to this appeal. We therefore refer only to Donald Shrader in our decision.

mortgage and note and that Shrader had six months to redeem the property. The court further stated, “This is a final judgment for the purpose of appeal.”

On February 2, 2021, Shrader sent a letter to the circuit court asking that the judgment be vacated because he was not aware of the January 14, 2021 hearing. Shrader stated that U.S. Bank sent its notice to the Mercer address instead of the Hartland address that had been used as Shrader’s mailing address throughout the proceedings. Shrader informed the court that mail sent to the Mercer address would have been returned to the sender as undeliverable. U.S. Bank asked the court to deny Shrader’s request to vacate the judgment, arguing that WIS. STAT. § 806.02(1) did not require notice of a default hearing when a defendant failed to file a timely answer as required by WIS. STAT. § 802.06(1).³ The court set the matter for a hearing on March 30, 2021.

On March 29, 2021, Shrader sent several submissions to the circuit court raising questions about the amounts owed under the mortgage and note and suggesting that a property manager hired by U.S. Bank had caused damage to the property. During the hearing the following day, U.S. Bank’s attorney agreed to investigate the accuracy of the numbers in the default judgment.⁴ The court denied Shrader’s motion to vacate the default judgment, but it instructed U.S. Bank to submit within three weeks a written statement regarding the amounts owed.

³ The statutory subsection cited by U.S. Bank provides that “[a]ny defendant appearing in an action shall be entitled to notice of motion for judgment.” See WIS. STAT. § 806.02(1). U.S. Bank did not provide the circuit court with any authority to support its representation that Shrader’s failure to file an answer meant that Shrader had not appeared in the action.

⁴ The record does not include any transcripts of motion hearings or status conferences. Shrader has the burden “to provide an appellate record to review the issues [he] raised on appeal.” See *State Bank of Hartland v. Arndt*, 129 Wis. 2d 411, 423, 385 N.W.2d 219 (Ct. App. 1986). “[W]hen an appellate record is incomplete in connection with an issue raised by the appellant, we must assume that the missing material supports the [circuit] court’s ruling.” *Fiumefreddo v. McLean*, 174 Wis. 2d 10, 27, 496 N.W.2d 226 (Ct. App. 1993).

On April 14, 2021, U.S. Bank filed amended default judgment paperwork that changed the amount owed under the mortgage and note to \$291,151.48. On April 21, 2021, the circuit court entered an amended judgment of foreclosure and sale reflecting this lower amount and stating that the six-month redemption period began “nunc pro tunc January 14, 2021.” The court again stated, “This is a final judgment for the purpose of appeal.”

The circuit court held a status conference on April 28, 2021, at which Shrader contested the redemption period identified in the amended judgment. U.S. Bank agreed to extend the redemption period to give Shrader a full six months to redeem the property. On May 4, 2021, the court entered a second amended judgment of foreclosure and sale, which specified that the six-month redemption period would expire on October 21, 2021. The court again stated, “This is a final judgment for the purpose of appeal.”

On October 26, 2021, the Mercer property was sold to U.S. Bank at public auction for \$305,981.16. The following day, U.S. Bank moved for confirmation of the sale of the property. Shrader filed an objection to the confirmation, asserting that the notice of sale was incorrect, that U.S. Bank had ignored attempts to redeem the property, and that U.S. Bank had damaged the property. Shrader also asserted that the circuit court could “set aside the [c]onfirmation if the low sale[] price would prejudice ... the homeowner.” The court held a hearing on November 11, 2021, during which it reviewed each of Shrader’s objections. The court concluded that Shrader had not established any legal basis for denying U.S. Bank’s motion. The court therefore entered an order confirming the sale. U.S. Bank served Shrader with a notice of entry of the order confirming the sale. Shrader filed a notice of appeal on December 13, 2021.

In his appeal, Shrader raises several challenges to the judgment of foreclosure and sale, including that: U.S. Bank lacked standing to pursue this foreclosure action; U.S. Bank’s summons and complaint and supporting documents were misleading; U.S. Bank’s proposed findings of fact were false; Shrader was denied a meaningful opportunity to participate in the judicial process; and U.S. Bank did not submit sufficient documentation to be entitled to a judgment of foreclosure.

The problem for Shrader is that we only have appellate jurisdiction over the order confirming the sale of the foreclosed property. Our supreme court has explained that “[t]he timely filing of a notice of appeal is necessary to give the court of appeals subject matter jurisdiction over an appeal.” *State v. Sorenson*, 2000 WI 43, ¶16, 234 Wis. 2d 648, 611 N.W.2d 240. A “notice of appeal must be filed within the time specified by law.” WIS. STAT. RULE 809.10(1)(e). To determine whether a notice is timely, we look to WIS. STAT. § 808.04, which provides in relevant part:

An appeal to the court of appeals must be initiated within 45 days of entry of a final judgment or order appealed from if written notice of the entry of a final judgment or order is given within 21 days of the final judgment or order as provided in [WIS. STAT. §] 806.06(5), or within 90 days of entry if notice is not given, except as provided in this section or otherwise expressly provided by law.

Here, the circuit court entered the judgment of foreclosure and sale on January 14, 2021, and then entered amended judgments on April 21, 2021, and May 4, 2021. U.S. Bank argues that Shrader had forty-five days following the entry of the May 4 judgment in which to file a timely appeal. Notably, the forty-five-day period in WIS. STAT. § 808.04(1) would apply only if U.S. Bank had given Shrader a timely written notice of entry of judgment, and we see no indication in the record that U.S. Bank did so. As a result, it appears that Shrader had ninety days to file a timely notice of appeal of the judgment of foreclosure and sale. *See id.* This additional time does

not change the outcome, however, because Shrader did not file a notice of appeal until December 13, 2021, which is well past the expiration of the ninety-day period following entry of judgment. Therefore, Shrader's notice of appeal was only timely with respect to the court's order confirming the sale entered on November 11, 2021.

Because we have appellate jurisdiction only over Shrader's appeal of the order confirming the sale, we cannot consider Shrader's challenges to the underlying foreclosure judgment. *See Shuput v. Lauer*, 109 Wis. 2d 164, 172, 325 N.W.2d 321 (1982). In *Shuput*, the appellants argued that they could "contest the judgment of foreclosure and sale on an appeal from an order confirming the sale." *Id.* at 168. Our supreme court disagreed, explaining that the judgment of foreclosure and sale "determines the rights of the parties and disposes of the entire matter in litigation." *Id.* at 172. In contrast, "the sale and confirmation proceedings are more logically characterized as an execution of judgment." *Id.* For these reasons, the court held "that the judgment of foreclosure and sale is a final judgment appealable as a matter of right under [Wis. STAT. § 808.03(1) (1979-80)], which must be appealed within the time prescribed by statute." *Shuput*, 109 Wis. 2d at 172. The court further explained that an appeal from an order confirming a sale "enables the appellant to challenge the proceedings subsequent to the judgment of foreclosure and sale, not the judgment itself." *Id.*

"When reviewing a [circuit] court's decision to confirm a judicial sale following a judgment of foreclosure, we consider whether the court properly exercised its discretion." *Bankers Tr. Co. of Cal., N.A. v. Bregant*, 2003 WI App 86, ¶10, 261 Wis. 2d 855, 661 N.W.2d 498. "Confirmation may be rejected 'if there is an apparent inadequacy in the price which was caused by mistake, misapprehension or inadvertence on the part of the interested parties or possible bidders.'" *Id.* (citation omitted). A circuit court also has discretion to deny confirmation "if the

bid price was so inadequate so as to shock the conscience of the court.” *Id.* (citation omitted). “A circuit court erroneously exercises its discretion when it fails to examine the relevant facts, applies the wrong legal standard, or does not employ a demonstrated rational process to reach a reasonable conclusion.” *Borreson v. Yunto*, 2006 WI App 63, ¶6, 292 Wis. 2d 231, 713 N.W.2d 656.

Shrader makes no argument that the circuit court erroneously exercised its discretion in confirming the sale. “On appeal, issues raised but not briefed or argued are deemed abandoned.” *State v. Ledger*, 175 Wis. 2d 116, 135, 499 N.W.2d 198 (Ct. App. 1993). Moreover, we see no mention of Shrader’s objections to confirmation in his opening brief. In his reply brief, Shrader refers to a police report and his “continual unsuccessful efforts . . . up until the last hour to keep his house.” Although these cursory statements appear to relate to Shrader’s objections to confirmation of the sale, we typically do not consider arguments raised for the first time in a reply brief. *See A.O. Smith Corp. v. Allstate Ins. Cos.*, 222 Wis. 2d 475, 492, 588 N.W.2d 285 (Ct. App. 1998). In addition, Shrader’s reply brief does not develop any argument regarding these objections, which means they are also abandoned. *See State v. Nieves*, 2007 WI App 189, ¶17 n.3, 304 Wis. 2d 182, 738 N.W.2d 125 (when an appellant merely states an issue but fails to develop any argument, the issue may be deemed abandoned).

We therefore conclude that Shrader has abandoned his arguments regarding the circuit court’s order confirming the sale of the foreclosed property. Because this order is the only aspect of the circuit court proceedings over which we have appellate jurisdiction, we affirm.

Upon the foregoing,

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

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

Samuel A. Christensen
Clerk of Court of Appeals