



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

January 4, 2013

To:

Hon. Amy Smith
Circuit Court Judge
Br. 4, Rm. 8107
215 South Hamilton
Madison, WI 53703

Carlo Esqueda
Clerk of Circuit Court
215 South Hamilton, Room 1000
Madison, WI 53703

William A. Abbott
Bell, Moore & Richter, S.C.
P.O. Box 1807
Madison, WI 53701-1807

Amy M. Kieffer
Gray & Associates, LLP
16345 W. Glendale Dr.
New Berlin, WI 53151-2841

Roger A. Sage
Roger Sage Law Office
30 W. Mifflin, #1001
Madison, WI 53703-2591

BMO Harris Bank NA
111 W. Monroe St.
Chicago, IL 60603-4096

Marek Dudka
Antoniowka 128
23-145 Wysokie
woj.lubelskie,
Poland

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

2011AP2807

PHH Mortgage Corporation v. Marek Dudka
(L.C. # 2011CV1422)

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

Marek Dudka, pro se appellant, appeals a circuit court order denying his motion to reopen the default judgment of foreclosure entered against him and in favor of PHH Mortgage Corporation ("PHH"). 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(1) (2009-10).¹ We summarily affirm.

PHH initiated this action to foreclose a mortgage executed by Dudka. The mortgage secured property located at 1037 Williamson Street, Unit 207, in the City of Madison, Dane County, Wisconsin. The circuit court entered a default judgment of foreclosure after Dudka failed to file a timely answer or other responsive pleading. Dudka then filed a motion to reopen the judgment, arguing that he was never served. PHH filed a brief in opposition to the motion, along with an affidavit from PHH's counsel stating the steps that had been taken to serve Dudka personally, without success, prior to publishing a copy of the summons in a newspaper in the locality of his last known address. The circuit court denied the motion to reopen, finding that Dudka had been properly served and failed to present a meritorious defense to the foreclosure action. Dudka now appeals.

A circuit court's decision to grant or deny relief under WIS. STAT. § 806.07(1) is a discretionary one. *McFarland State Bank v. Sherry*, 2012 WI App 4, ¶20, 338 Wis. 2d 462, 809 N.W.2d 58. We will not reverse a circuit court's discretionary decision absent an erroneous exercise of discretion. *Sukala v. Heritage Mut. Ins. Co.*, 2005 WI 83, ¶8, 282 Wis. 2d 46, 698 N.W.2d 610. On appeal, Dudka fails to acknowledge the discretionary standard of review applicable in this case. Instead, his appellant's brief contains several complaints about the circuit court proceedings in this matter, without explaining how the circuit court erroneously exercised its discretion in denying relief from the judgment.

¹ All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

Dudka fails to develop coherent arguments that apply relevant legal authority to the facts of record, and instead relies largely upon conclusory assertions. “A party must do more than simply toss a bunch of concepts into the air with the hope that either the trial court or the opposing party will arrange them into viable and fact-supported legal theories.” *State v. Jackson*, 229 Wis. 2d 328, 337, 600 N.W.2d 39 (Ct. App. 1999). Consequently, this court need not consider arguments that are unsupported by adequate factual and legal citations or are otherwise undeveloped. See *Dieck v. Antigo School Dist.*, 157 Wis. 2d 134, 148 n.9, 458 N.W.2d 565 (Ct. App. 1990) (unsupported factual assertions), *aff’d*, 165 Wis. 2d 458, 477 N.W.2d 613 (1991); *State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (undeveloped legal arguments). While we make some allowances for the failings of parties who, as here, are not represented by counsel, “[w]e cannot serve as both advocate and judge,” *Pettit*, 171 Wis. 2d at 647, and will not scour the record to develop viable, fact-supported legal theories on the appellant’s behalf, *Jackson*, 229 Wis. 2d at 337. Here, the appellant has failed to develop his arguments legally or to support them factually. Therefore, we affirm the circuit court on that basis.

IT IS ORDERED that the order is summarily affirmed under WIS. STAT. RULE 809.21(1).

Diane M. Fremgen
Clerk of Court of Appeals