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 I

February 19, 2013

To:

Hon. Jeffrey A. Conen
Circuit Court Judge
Safety Building
821 W. State St.
Milwaukee, WI 53233

John Barrett
Clerk of Circuit Court
Room G-8
901 N. 9th Street
Milwaukee, WI 53233

Shannon K. Cummings
Christina Demakopoulos
Chaz Rodriguez
Blommer Peterman, S.C.
165 Bishops Way, Ste. 100
Brookfield, WI 53005

Kenneth R. Gehling
1715 N. 68th St.
Wauwatosa, WI 53213-2307

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

2012AP860 Countrywide Home Loans Servicing, LP v. Kenneth R. Gehling (L.C. #2009CV1749)

Before Curley, P.J., Fine and Brennan, JJ.

Kenneth R. Gehling, *pro se*, appeals from an order denying his motion for reconsideration of an order denying his motion for relief from a default judgment of foreclosure. By order dated July 5, 2012, we directed the parties to address, as the first issue in their appellate briefs, whether this court had jurisdiction over the appeal. 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 (2011-12).[1] The appeal is summarily dismissed for lack of jurisdiction.

[1] All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

In February 2009, Countrywide Home Loans Servicing, L.P., filed the underlying foreclosure action against Gehling. Gehling never answered the complaint and, on June 1, 2009, the circuit court granted Countrywide's motion for judgment on the pleadings. The judgment was entered on June 12, 2009.

On January 31, 2011, Gehling moved to reopen the judgment of foreclosure. On March 30, 2011, Gehling filed an amended motion to reopen, this time calling it a motion for relief from judgment. In the one-page motion, he alleged, as relevant here, that Countrywide "withheld material and substantial information that, had the court been made aware, would have ruled" in his favor, and that Countrywide "has misrepresented its standing and consideration in this matter by withholding information regarding fatal defects in the chain of title" and faulty assignments of the note and mortgage.

The circuit court held a hearing on the motion, adjourning twice: first because Gehling had not timely served Countrywide and then to allow Countrywide time to produce the original note and other documentation to address what Gehling perceived as irregularities in the mortgage assignment. The circuit court ultimately denied the motion, however, explaining that Gehling had demonstrated "no excusable neglect for … missing the default date to begin with" and no likelihood of success on the merits of the case. An order denying the motion for relief was entered on July 28, 2011.

On August 16, 2011, Gehling moved for reconsideration. He based his motion on WIS. STAT. § 806.07(1)(h), which allows the circuit court to grant relief from a judgment or order for

"[a]ny other reasons justifying relief from the operation of the judgment."[2] The circuit court denied reconsideration, explaining that Gehling still had shown no extraordinary circumstances and was merely engaging in stall tactics. Gehling's notice of appeal was dated April 17, 2012.

We have no jurisdiction over any appeal that seeks to challenge the June 2009 judgment of foreclosure or the July 2011 order denying the motion for relief. *See* WIS. STAT. § 808.04(1) (appeal from a final judgment or order must be taken within forty-five or ninety days of document's entry). Further, "[n]o right of appeal exists from an order denying a motion to reconsider which presents the same issues as those determined in the order or judgment sought to be reconsidered." *See* ***Silverton Enters., Inc. v. Gen. Cas. Co.***, 143 Wis. 2d 661, 665, 422 N.W.2d 154 (Ct. App. 1988); *see also* ***Ver Hagen v. Gibbons***, 55 Wis. 2d 21, 26, 197 N.W.2d 752 (1972) ("[A]lthough a party may move the trial court to reconsider its orders … he must present issues other than those determined by the order … for which review is requested in order to appeal from the order entered on the motion for reconsideration.").

Gehling does not address the "new issues" standard as identified in our order and as set out in ***Silverton*** and ***Ver Hagen***. Rather, he contends that he raised four "new substantive issues" in his motion for reconsideration and, thus, the July 2011 order denying relief was non-final because it did not dispose of all matters in litigation.[3] *Cf.* WIS. STAT. § 808.03(1) (A final order "disposes of the entire matter in litigation as to one or more of the parties[.]"). We reject

[2] Gehling had also sought relief based on WIS. STAT. § 806.07(1)(a)–(c), though he admitted he was past the one-year time limit on these claims. *See* WIS. STAT. §§ 806.07(2) & 805.16(4).

[3] Gehling also argued that the July 2011 order was not final because it lacked a finality statement. *See, e.g.*, ***Wambolt v. West Bend Mut. Ins. Co.***, 2007 WI 35, ¶4, 299 Wis. 2d 723, 728 N.W.2d 670. We disagree: the order expressly states that "this is the final Order from the Court."

this argument: a final order remains final notwithstanding subsequent actions in the circuit court. *See* ***Harder v. Pfitzinger***, 2004 WI 102, ¶2, 274 Wis. 2d 324, 682 N.W.2d 398.

Nevertheless, we note that Gehling's four "new substantive issues," as identified in his brief, were: (1) that he was invited by the Federal Reserve and Comptroller of the Currency to apply for an "independent foreclosure review;" (2) his objection to the circuit court's "solicitation" of the original mortgage documents from Countrywide; (3) Gehling's claimed first-hand knowledge of mortgage transfer processes; and (4) the circuit court's imposition of a "good faith standard" on his dealings with Countrywide. The reconsideration motion itself had raised only two issues: the duress of various life circumstances that prevented Gehling from properly responding to the original foreclosure actions and the aforementioned objection to the circuit court's solicitation of mortgage documents.

First, Gehling's objection to the circuit court's request for consideration of the original documents, his claim of duress, and his claimed first-hand knowledge of mortgage processes were discussed in some fashion and implicitly rejected during the original hearings that led to the order denying the motion for relief. Therefore, they are not now new issues and they do not provide a basis for an appeal of a denial of reconsideration. Second, the "issue" of the foreclosure review is not a new issue but, rather, an attempt to revive the rejected argument of fraudulent assignment or transfer of the mortgage.[4] Finally, the so-called "good faith" standard is not an issue raised by Gehling, either in the reconsideration motion or at the hearing. Rather,

[4] We note that Gehling did not receive the letter until November 2011. Further, as the circuit court observed, even though there had been several months between Gehling's receipt of the letter and the final hearing on reconsideration, he had not actually applied for the review process to see if it would bear out his claims.

Gehling appears to be complaining about a series of comments the circuit court made which amount to nothing more than its observation that a motion to reopen a judgment under WIS. STAT. § 806.07(1)(h) is essentially a request for equitable relief, and Gehling had not acted consistent with that request.[5]

Gehling has not persuaded this court that new issues were raised in the motion for reconsideration. Thus, appeal may not be had. ***Silverton***, 143 Wis. 2d at 665.

Accordingly,

IT IS ORDERED that this appeal is dismissed for lack of jurisdiction.

Diane M. Fremgen
Clerk of Court of Appeals

[5] For example, the circuit court observed that Gehling had been living rent-free for four years, rather than making his mortgage payments to an escrow account for the benefit of his actual lender.