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DISTRICT I

May 22, 2013

To:

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

2011AP2209

Waterstone Bank, SSB v. Steven R. Schmidt (L.C. #2010CV4047)

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

Steven R. Schmidt, *pro se*, appeals an order of the circuit court entered October 18, 2011, granting Waterstone Bank, SSB a judgment of foreclosure. 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. We conclude that the appeal is moot. We therefore dismiss the appeal and remand for further proceedings consistent with this opinion.

Waterstone Bank brought this foreclosure action against Schmidt, alleging that he was delinquent on his mortgage. At the date set for trial, September 13, 2011, Waterstone Bank and Schmidt entered into an oral stipulation on the record to resolve the case. The circuit court

directed Waterstone Bank to submit an order reflecting the oral stipulation. The circuit court entered the order on October 18, 2011. Schmidt appealed.

While the appeal was in the initial stages, Waterstone Bank and Schmidt reached a second agreement to resolve the case, which was submitted to this court on April 13, 2012. The stipulation was signed by both Waterstone Bank and Schmidt, and provided that Schmidt would cause the appeal to be dismissed because the stipulation resolved the dispute. We directed Schmidt, as appellant, to inform us if he agreed to voluntary dismissal under WIS. STAT. RULE 809.18. In response, Schmidt submitted a letter to this court indicating that he did *not* agree to voluntary dismissal.

We remanded to the circuit court to determine the effect of the second stipulation on the litigation in light of the fact that Schmidt would not agree to voluntary dismissal of the appeal he initiated. The day of the remand hearing, Waterstone Bank and Schmidt told the circuit court that they had reached a third agreement to resolve the dispute. After a hearing at which Schmidt took inconsistent positions, the circuit court issued an order that provided: (1) that Waterstone Bank and Schmidt had not reached a stipulation that resolved their dispute; (2) that the effect of the parties' multiple stipulations was that there had been no final resolution to the case; (3) that Schmidt did not want to dismiss the instant appeal; (4) that enforcing the stipulation would only prolong complex litigation; and (5) that the circuit court would not accept any further stipulations due to Schmidt's indecisiveness and vacillation.

The circuit court then concluded: "this trial court believes that in the interest of justice and fairness, and to prevent further [complex] litigation, that the only appropriate disposition to create finality and adjudicate the respective rights of the parties, in a fair and impartial way, is to

set aside the oral and written stipulation on the record [dated September 13 and April 13 respectively], vacate the judgment [dated October 18] which was part of the oral stipulation on the record, and set the matter down for a whole new trial on the merits.” In closing, the circuit court stated: “This court now prays that the Court of Appeals accept [these] findings and conclusion; dismiss the appeal without prejudice in light of the circuit court’s findings; and remit the record back down to the trial court so that the case can be fully tried on the merits.” The circuit court also tentatively set a trial date for May 2013.

After the circuit court’s decision and hearing transcript were returned to this court, we ordered that the parties continue briefing the appeal. Based on the briefs and the record, we conclude that the appeal should be dismissed as moot. “An issue is moot when its resolution will have no practical effect on the underlying controversy.” *State ex rel. Olson v. Litscher*, 2000 WI App 61, ¶3, 233 Wis. 2d 685, 688, 608 N.W.2d 425, 427. “We will not consider moot issues absent extraordinary circumstances not present here.” *Id.* The circuit court’s May 3, 2012 order vacated the October 18, 2011 order from which this appeal was taken. Our review of the October 18, 2011 order will have no practical effect on any existing controversy because the order has been vacated. Therefore, we dismiss this appeal as moot.

Upon the foregoing reasons,

IT IS ORDERED that the appeal is dismissed and this case is remanded to the circuit court for further proceedings. *See* WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals