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May 22, 2013

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Bobbie R. Webber Jr.
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You are hereby notified that the Court has entered the following opinion and order:

2012AP1513

U. S. Bank National Association v. Bobbie R. Webber, Jr.
(L.C. # 2010CV13268)

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

Bobbie Webber, Jr., pro se, appeals a default judgment of foreclosure. Webber contends that he filed a timely response to the complaint, that there was insufficient proof to support the foreclosure action, and that the circuit court lacked jurisdiction to enter the 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 (2011-12).¹ We summarily affirm.

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

On August 10, 2010, U.S. Bank² filed this foreclosure action against Webber. Webber was personally served with the summons and complaint on August 29, 2010.³ On September 17, 2010, Webber filed a motion seeking to strike portions of the complaint and to dismiss the action.⁴ U.S. Bank then moved for a default judgment, asserting that Webber had failed to answer the complaint. Following a motion hearing, the circuit court issued a default judgment of foreclosure.

We review a circuit court's decision to grant default judgment for an erroneous exercise of discretion. See *Estate of Otto v. Physicians Ins. Co. of Wis., Inc.*, 2008 WI 78, ¶29, 311 Wis. 2d 84, 751 N.W.2d 805. A circuit court properly exercises its discretion when it reaches a reasonable decision based on the facts in the record and the proper legal standard. *Hartung v. Hartung*, 102 Wis. 2d 58, 66, 306 N.W.2d 16 (1981). We conclude that the circuit court properly exercised its discretion by granting default judgment in this case.

“A default judgment may be rendered ... if no issue of law or fact has been joined and if the time for joining issue has expired....” WIS. STAT. § 806.02(1). A defendant must *serve* the plaintiff with papers disputing the plaintiff's claims in order to join issue. See WIS. STAT. §§ 802.06(1) and 806.02(1); *Split Rock Hardwoods, Inc. v. Lumber Liquidators, Inc.*, 2002 WI

² The full name of the plaintiff below and respondent on appeal is U.S. Bank National Association, not in its individual capacity but solely as trustee for the holders of the Maiden Lane Asset Backed Securities I Trust 2008-1.

³ U.S. Bank asserts, without citation to the record, that Webber was served with the summons and complaint on August 10, 2010. However, the affidavit of personal service in the record indicates that Webber was served on August 29, 2010.

⁴ Webber also filed for bankruptcy, and the circuit court dismissed this case without prejudice. The court then reopened this case following the bankruptcy court's order lifting the automatic stay as to the mortgaged property.

66, ¶31, 253 Wis. 2d 238, 646 N.W.2d 19. The time to serve a responsive pleading (here, an answer) is twenty days from the date of service of the complaint; however, if the defendant serves a defensive motion, a responsive pleading is due ten days after the court acts on the motion. WIS. STAT. § 802.06(1)-(2).

Webber argues that he timely responded to the complaint on September 17, 2010, by filing his motion to strike portions of the complaint and to dismiss the action. We disagree.

When U.S. Bank moved for default judgment, it also filed a motion to strike pleadings and an affidavit by its attorney asserting that: (1) Webber was served with the summons in this case on August 29, 2012; (2) the time for answering had passed; and (3) no answer had been filed or served on U.S. Bank besides the pleadings Webber filed on October 4, 2010, January 24, 2011, and April 11, 2011.⁵ U.S. Bank suggested in these pleadings that Webber never served his September 17, 2010 filing on U.S. Bank.⁶ Because Webber has not provided us with a transcript of the default judgment motion hearing, we assume that the court found that Webber did not

⁵ Webber has not developed an argument that default judgment was improper based on his late filings identified in U.S. Bank's motion to strike, or his additional filings in response to U.S. Bank's motion for default judgment. See WIS. STAT. § 801.15(2)(a) (extension of time for required act after time has expired may only be granted on a showing of excusable neglect); *Split Rock Hardwoods, Inc. v. Lumber Liquidators, Inc.*, 2002 WI 66, ¶37, 253 Wis. 2d 238, 646 N.W.2d 19 ("When a motion is made under WIS. STAT. § 806.02(1)-(4), the movant must show that no issue of law or fact has been joined. Thus, when an answer has been served late or filed late, a motion to strike the late answer is a prerequisite to a default judgment."). While the record on appeal does not include the court's decision on Webber's motion to strike, we note that Webber has not provided a transcript of the default judgment motion hearing. We therefore assume a transcript of the motion hearing would include facts to support the court's decision in this case. See *Austin v. Ford Motor Co.*, 86 Wis. 2d 628, 641, 273 N.W.2d 233 (1979).

⁶ Webber's September 17, 2010 motion includes a certificate of service stating: "I HE[RE]BY CERTIFY that I have served the Plaintiff[']s Attorney a true and correct copy of the Motion to Strike on this 17th Day of September, 2010 by leaving a copy with the Clerk, also filing a copy of said legal document with the Court Clerk on the above specified date." This is not a statement of service on U.S. Bank.

serve U.S. Bank with his September 17, 2010 motion.⁷ *See Austin v. Ford Motor Co.*, 86 Wis.2d 628, 641, 273 N.W.2d 233 (1979) (when the record on appeal does not contain a transcript, we assume the transcript supports every fact essential to the circuit court decision).

Because we conclude that default judgment was properly granted, we do not reach Webber's argument that U.S. Bank presented insufficient proof to support foreclosure. *See* WIS. STAT. § 806.02(1) (no issues of fact or law have been joined in default judgment); *Gross v. Hoffman*, 227 Wis. 296, 300, 277 N.W. 663 (1938) (only dispositive issue need be addressed).

Finally, we reject Webber's argument that the circuit court lacked jurisdiction to enter the judgment of foreclosure. So far as we can tell, Webber is claiming the court lacks jurisdiction because Webber signed the mortgage documents with the purported restriction "all rights reserved" and because Webber informed the court he was invoking the common law. Webber's challenge to the circuit court's jurisdiction lacks legal support.

To the extent Webber raises other arguments on appeal, we deem those arguments insufficiently developed. *See State v. Flynn*, 190 Wis. 2d 31, 39 n.2, 527 N.W.2d 343 (Ct. App. 1994).

Therefore,

⁷ We need not determine whether Webber's September 17, 2010 filing was sufficient in content to join issue because it was never served on U.S. Bank. *See Split Rock Hardwoods*, 253 Wis. 2d 238, ¶¶29-31.

IT IS ORDERED that the judgment is summarily affirmed pursuant to Wis. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals