

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 19, 2015

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2014AP1585

Cir. Ct. No. 2010CV667

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

CITY OF PLATTEVILLE,

PLAINTIFF-RESPONDENT,

V.

DARREL L. KALLEMBACH,

DEFENDANT,

LEONARD KALLEMBACH,

INTERESTED PARTY-APPELLANT.

APPEAL from an order of the circuit court for Grant County:
DAVID T. FLANAGAN, III, Judge. *Affirmed.*

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

¶1 PER CURIAM. Interested party Leonard Kallembach appeals the order of the circuit court denying his motion for relief from the court’s order confirming execution sales of real property under WIS. STAT. § 806.07(1)(h) (2013-14).¹ The circuit court denied the motion in part based on the fact that it was filed more than 12 months after the execution sales, and therefore after expiration of the period of redemption for a judgment debtor or his or her grantee under WIS. STAT. § 815.39. For the following reasons, we affirm.

BACKGROUND

¶2 This action was commenced by the City of Platteville in November 2010, but only the tail end of its long history is pertinent to issues purportedly raised in this appeal. The tail end involves execution sales of real property based on docketed money judgments against Darrel Kallembach, Leonard Kallembach’s son.²

¶3 On three occasions between September 2011 and April 2012, the City obtained money judgments against Darrel. The three money judgments against Darrel were docketed, in turn, by the Grant County Clerk of Court on the following dates: October 7, 2011, November 7, 2011, and July 10, 2012. In order to satisfy these judgments, on November 21, 2012, the circuit court issued a writ of execution, which described the docketed judgments, and directed the sheriff to sell 19 parcels of property “belonging to the judgment debtor,” Darrel, each

¹ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

² Because they share a surname, for the balance of this decision we refer to the Kallembachs by their first names. The son’s first name is variously spelled Darrel and Darrell in the record and briefs on appeal; we use the spelling from the case caption.

identified by a Platteville street address and legal description, “after proper posting and advertisement of sale.”³

¶4 On November 30, 2012, the sheriff effectuated a levy on the 19 parcels by endorsing the writ of execution, and on the same day recorded the writ of execution with the Grant County register of deeds.⁴

¶5 On January 15, 2013, at the county courthouse, the sheriff executed separate sales of the 19 parcels, then filed a report of execution sale with the court. In this report, the sheriff explained, and provided proof, that the sale had been publicly advertised for three weeks before the sale in the Grant County Herald Independent and that he had posted printed notices. The sheriff also promptly recorded a certificate of execution sale, identifying the properties sold, the prices, and noting a statutory redemption period granted by law to Darrel.

¶6 A word of background is necessary on redemption, since as referenced above it is a primary basis for the challenged circuit court decision. Under WIS. STAT. ch. 815, a judgment debtor such as Darrel has one year

³ The writ of execution was issued pursuant to provisions of WIS. STAT. ch. 815 (“Executions”). More specifically, WIS. STAT. § 815.05(1s) provides:

If the execution is against the property of the judgment debtor, the execution shall require the officer to whom it is directed to satisfy the judgment out of the personal property of the debtor, and if sufficient personal property cannot be found, out of the real property belonging to the judgment debtor on the day when the judgment was entered in the judgment and lien docket in the county or at any time thereafter.

⁴ WIS. STAT. § 815.195 states in its entirety: “Levy of execution on real property is made by endorsing on the execution a description of the property on which the levy was made, and recording the execution, so endorsed, in the office of the register of deeds.”

following an execution sale of the type at issue here to redeem the property by paying the purchaser of the property the amount that the purchaser paid for it, adding interest from the time of the sale. *See* WIS. STAT. § 815.39(1). Further, this right of redemption belongs not only to “a person whose right and title was sold,” such as Darrel, but to “any grantee of such person who shall have acquired an absolute title to the premises sold,” such as Leonard. *See* WIS. STAT. § 815.40(1).⁵

¶7 Although the City tells us, without contradiction from Leonard, that it was not required to seek confirmation of the execution sales under WIS. STAT. ch. 815, on February 25, 2013, the court entertained and granted a request from the City to confirm the sales.

¶8 On April 14, 2014, Leonard, through an attorney, filed a “motion for relief from confirmation of execution sale,”⁶ with an affidavit by Leonard attached. The motion sought relief under WIS. STAT. § 806.07(1)(h), which is the catch-all provision allowing a court to order relief from judgment upon a timely motion.⁷ Leonard averred that Darrel had executed quit claim deeds transferring

⁵ As the City explains in its briefing, unrebutted by Leonard, there is an additional three-month redemption period, beyond the initial one year, available to creditors or mortgagees with liens, but under no view of the facts here could Leonard qualify as a creditor or mortgagee with a lien. *See* WIS. STAT. § 815.44(2); *see also Varco-Pruden Div. AMCA Int’l Corp. v. Hansen*, 152 Wis. 2d 266, 270-71, 448 N.W.2d 262 (Ct. App. 1989) (timeliness for motion of judgment debtor to set aside execution sale measured by one-year redemption period).

⁶ More precisely, the motion was filed on behalf of “Leonard Kallembach, LLC,” as the purported owner of property. However, Leonard himself now refers interchangeably to himself and the LLC as “Leonard,” and we follow that usage, because neither party suggests that the LLC status is pertinent to any issue on appeal.

⁷ WISCONSIN STAT. § 806.07 provides, in pertinent part:

(continued)

three of the 19 parcels referenced above to Leonard on the following dates: November 12, 2012; December 4, 2012; March 11, 2013. Leonard further averred that he was “unaware of any liens” on any of these parcels and he “was told by Darrell that there were no liens on the property” in each instance when Leonard bought these parcels from Darrel. “[O]nly recently, within the past three weeks,” did Leonard “discover[] that a judgment lien existed on” the three parcels, and Leonard did not receive notice of the execution sales or the sheriff’s report of the execution sales.

¶9 On July 21, 2014, the circuit court denied Leonard’s motion for relief in the order now appealed by Leonard as an interested party. The court cited two factors in declining to grant relief under WIS. STAT. § 806.07(1)(h). First, the court concluded that the docketed judgments

were full and sufficient notice to any prospective purchaser of real property from Darrel Kallembach that all parcels of real estate owned by Darrel were burdened by and subject to these judgments..., whether or not the purchaser actually went to the trouble to find out about them or actually knew about the prior judgments.

(1) On motion and upon such terms as are just, the court, subject to subs. (2) ..., may relieve a party or legal representative from a judgment, order or stipulation for the following reasons:

....

(h) Any other reasons justifying relief from the operation of the judgment.

(2) The motion shall be made within a reasonable time,

....

Second, the court concluded that Leonard “at this late date has no right of redemption as to the sheriff’s sale of the three properties. Any possible right of redemption expired on January 15th, 2014, 12 months after sheriff’s sale,” based on WIS. STAT. §§ 815.39 and 815.40.

DISCUSSION

¶10 It is fatal to Leonard’s appeal that he misconstrues our standard of review, ignores the applicable substantive legal standard, and fails to frame the issues in the form of legal arguments that fit these circumstances. Separately, it is also fatal that he fails to reply to a developed argument of the City that follows one of the circuit court’s grounds for its decision, thereby conceding the City’s position on the issue.

¶11 A circuit court has wide discretion in determining whether to grant relief from judgment under WIS. STAT. § 806.07. *See Miller v. Hanover Ins. Co.*, 2010 WI 75, ¶29, 326 Wis. 2d 640, 785 N.W.2d 493. We review such determinations under the erroneous exercise of discretion standard, which we will sustain if the record shows that discretion was in fact exercised and we can perceive a reasonable basis for the court’s decision. *Id.*, ¶¶29-30. We search for reasons to sustain a circuit court’s discretionary determination. *Id.*

¶12 Leonard completely ignores this well-established standard of review, incorrectly beginning his argument by telling us that we are reviewing a question of law, using the de novo standard of review. In a seeming contradiction to his own approach, he concludes his argument by stating, “[T]he *findings* of the trial court are not supported by the *facts* or law of this case.” (Emphasis added.) Because Leonard fails to come to terms with our standard of review, he does not

develop an argument as to why it was an erroneous exercise of discretion for the circuit court to deny his motion for relief pursuant to WIS. STAT. § 806.07(1)(h).

¶13 Turning to the substantive legal standard, in order to obtain relief under the catchall provision found at WIS. STAT. § 806.07(1)(h), the moving party must show ““extraordinary circumstances.”” *Johns v. County of Oneida*, 201 Wis. 2d 600, 607, 549 N.W.2d 269 (Ct. App. 1996) (quoted source omitted). Leonard effectively ignores this legal standard, and fails to identify extraordinary circumstances that the circuit court was obligated to take into account, based on legal authority that should be but is not provided by Leonard.

¶14 Leonard makes arguments about what “should have” happened (“Leonard should have been joined in this action when the City discovered Leonard’s interest in the property”; “Leonard should have received notice of the sale of the properties and confirmation of sale”), without filling in the blanks about why we should conclude from what “should have” happened that the circuit court did not exercise discretion or lacked a reasonable basis to deny his motion for relief based on less than extraordinary circumstances. Put differently, even if we were to assume that Leonard is correct about what should have happened, Leonard fails to explain why one or more of these failures to do what should have been done obligated the court under the correct legal standard to grant his motion for relief, based on the pertinent facts.

¶15 We now note only one of the many potential issues raised by this appeal that Leonard fails to address. As noted above, Leonard moved the circuit court “for relief from confirmation of execution sale.” As also noted above, the City explains, and Leonard does not contest, that the detailed statutory scheme in WIS. STAT. ch. 815 does not contemplate court confirmations of execution sales,

but the City sought confirmation anyway and it was granted by the court. It is not apparent to us why the circuit court's discretionary decision denying relief could not be affirmed on the simple ground that Leonard's motion explicitly challenged a circuit court order that, by definition, had no effect on the rights of the parties, because it was not an order contemplated in the detailed statutory scheme and presumably created no rights or obligations for anyone. The confirmation would seem to have been, at most, judicial acknowledgement of whatever rights and obligations already existed at that time under the statutes. We do not mean to suggest that we have concluded that Leonard could not provide a viable legal position on this particular issue, consistent with our standard of review and the correct substantive legal standard. This is just an example of an area in which Leonard leaves us in the dark.

¶16 For these reasons, we affirm. Leonard fails to present developed legal arguments under a well-established standard of review, applying the correct substantive legal standard. *See State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992).

¶17 As a separate ground, we affirm based on Leonard's effective concession that the City is correct in arguing that the circuit court's discretionary decision is supported by *Varco-Pruden Div. AMCA International Corp. v. Hansen*, 152 Wis. 2d 266, 271, 448 N.W.2d 262 (Ct. App. 1989) (motion to set aside execution sale untimely because motion was brought after the one-year redemption period established in WIS. STAT. § 815.39, absent a showing of special circumstances of fraud or mistake). *See United Coop. v. Frontier FS Coop.*, 2007 WI App 197, ¶39, 304 Wis. 2d 750, 738 N.W.2d 578 (appellant's failure to respond in reply brief to an argument made in response brief may be taken as a concession). The City presents a developed legal argument, based on provisions

in WIS. STAT. ch. 815 and *Hansen*'s application of those provisions, and Leonard fails to reply to that argument. We would have to guess what fraud or mistake Leonard would say should have been evident to the circuit court, or on what other basis Leonard would distinguish *Hansen*. We will not abandon our neutral, judicial role to make guesses in favor of Leonard.

¶18 For all of these reasons, we affirm.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

