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DISTRICT IV

November 12, 2015

To:

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

2014AP2350

Gene Ganta v. Ellen Mobry (L.C. # 2008CV686)

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

Gene Ganta, pro se, appeals circuit court orders denying his motion to reopen a judgment on damages and an order denying reconsideration. 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 (2013-14).¹ We summarily affirm.

Ganta initiated this small claims eviction action in July 2008. In April 2009, the circuit court entered a final judgment recognizing defendant Ellen Mobry as the purchaser of the subject

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

property under a land contract, and finding Mobry in default. The court directed the parties to take steps to allow the court to determine the net pay-off under the land contract, and set a corresponding redemptive period.

In February 2014, Ganta informed the circuit court that he had obtained the deed for the property, and requested that the court schedule a hearing to determine Ganta's damages. Mobry objected, arguing that there were no damages to determine per the court's April 2009 judgment. On May 20, 2014, the circuit court entered an order denying Ganta's request for damages.

On June 3, 2014, Ganta moved to reopen the court's May 20, 2014 judgment. *See* WIS. STAT. § 806.07(1) ("On motion and upon such terms as are just, the court ... may relieve a party ... from a judgment ..."). The circuit court held a hearing on August 6, 2014, and then denied Ganta's motion to reopen by order dated August 11, 2014. Ganta moved for reconsideration, which the court denied on September 5, 2014. Ganta filed a notice of appeal on October 6, 2014.

At the outset, we note that our jurisdiction over this appeal is limited to review of the court's August 11, 2014 order denying Ganta's motion to reopen and its September 5, 2014 order denying reconsideration. While the parties discuss whether the circuit court erred by denying Ganta damages in its May 20, 2014 order, that order is not within the scope of this appeal. The May 20, 2014 order was a final, appealable order, and Ganta did not timely appeal that order. *See* WIS. STAT. §§ 808.03(1) (judgment is final for purposes of appeal if it disposes of the entire matter in litigation as to one or more of the parties); 808.04(1) (appeal must be initiated within ninety days of entry of judgment). The filing of a timely notice of appeal is necessary to give this court jurisdiction over the judgment appealed. WIS. STAT. RULE 809.10(1)(e). Because

Ganta did not file a notice of appeal within ninety days of entry of the May 20, 2014 judgment, we lack jurisdiction to review that judgment.

We turn, then, to whether Ganta has established that the circuit court erroneously exercised its discretion by denying Ganta's motion to reopen the judgment under WIS. STAT. § 806.07(1) or by denying Ganta's motion for reconsideration. *See Nelson v. Taff*, 175 Wis. 2d 178, 187, 499 N.W.2d 685 (Ct. App. 1993) (we review an order denying relief under WIS. STAT. § 806.07 for an erroneous exercise of discretion); *Koepsell's Olde Popcorn Wagons, Inc. v. Koepsell's Festival Popcorn Wagons, Ltd.*, 2004 WI App 129, ¶6, 275 Wis. 2d 397, 685 N.W.2d 853 (court's decision on motion for reconsideration is reviewed for erroneous exercise of discretion). We conclude that Ganta has not established that the circuit court erroneously exercised its discretion.

Ganta argues that the circuit court should have granted him damages for property taxes and other costs following Mobry's default on the land contract. However, Ganta fails to develop coherent arguments that apply legal authority to the facts in the record under the proper standards of review. "A party must do more than simply toss a bunch of concepts into the air with the hope that either the [circuit] 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). This court need not consider arguments that either are unsupported by adequate factual and legal citations or are otherwise undeveloped. *See State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992). While we make some allowances for the failings of parties who, like Ganta, appear pro se, "[w]e cannot serve as both advocate and judge," *id.* at 647, and we will not scour the record to develop arguments for an appellant, *see Jackson*, 229 Wis. 2d at

337. Here, Ganta has failed to develop his arguments legally or to support them factually. Therefore, we affirm the circuit court on that basis.

Additionally, Ganta has failed to provide this court with a transcript of the circuit court's August 6, 2014 hearing on Ganta's motion to reopen. When the transcript is not part of the record, we assume that it supports every fact essential to the circuit court decision. *Austin v. Ford Motor Co.*, 86 Wis. 2d 628, 641, 273 N.W.2d 233 (1979). We therefore assume that the circuit court made the necessary factual findings to support its decision to deny Ganta's motions to reopen and for reconsideration.

Therefore,

IT IS ORDERED that the orders are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals