

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 26, 2016

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. 2015AP937

Cir. Ct. No. 2014SC025956

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

MILWAUKEE CITY,

PLAINTIFF-RESPONDENT,

V.

MELVIN SHELTON,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: GLENN H. YAMAHIRO, Judge. *Affirmed.*

¶1 BRENNAN, J.¹ Melvin Shelton, *pro se*, appeals from the circuit court's decision to deny his motion to reopen a judgment awarding the City of

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2013-2014). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

Milwaukee \$6,468.20 for delinquent property taxes and special assessments. Shelton makes various statements for reopening: (1) he did not receive the Summons and Complaint; (2) he suffers from mental illness; (3) the default judgment entered against him was not valid because it was not signed by a judge and instead was signed by Milwaukee Circuit Court Clerk; and (4) his income is exempt.²

¶2 We review a denial of a motion to reopen a judgment for an improper exercise of discretion. It is appellant's burden to file a copy of the transcript of the circuit court's decision. *See Austin v. Ford Motor Co.*, 86 Wis. 2d 628, 641, 273 N.W.2d 233 (1979). *See also State Bank of Hartland v. Arndt*, 129 Wis. 2d 411, 423, 385 N.W.2d 219 (Ct. App. 1986); *State v. Holmgren*, 229 Wis. 2d 358, 362 n2, 599 N.W.2d 876 (Ct. App. 1999). Shelton failed to do so, saying in his Statement on Transcript that one was "not necessary" for resolution of the appeal. Shelton is wrong. A transcript of the circuit court's reasoning is necessary for a discretionary review. When an appellant fails to file a transcript, we presume that the circuit court properly exercised its discretion. *Fiumefreddo v. McLean*, 174 Wis. 2d 10, 26-27, 496 N.W.2d 226 (Ct. App. 1993).

¶3 We could stop our review with the presumption, but instead, in the interest of completeness, have reviewed the rest of the record and conclude, based

² To the extent Shelton makes other statements which he believes entitle him to reopening the judgment, we conclude that we were unable to determine his point, and they were undeveloped. We need not address undeveloped arguments. We will not develop his argument for him. *See League of Women Voters v. Madison Cmty. Found.*, 2005 WI App 239, ¶19, 288 Wis. 2d 128, 707 N.W.2d 285.

on the presumption and record, that the circuit court properly exercised its discretion in denying Mr. Shelton's motion to reopen, and we affirm.

BACKGROUND

¶4 On September 22, 2014, the City filed a complaint in Milwaukee County Circuit Court against Mr. Shelton for unpaid property taxes, including interest and penalties, for the levy year 2012. Mr. Shelton owns and resides at 4734 N. 31st Street, Milwaukee, Wisconsin 53209, the property for which the City claims delinquent taxes. The affidavit filed by the City's process server shows that he attempted service of process on Mr. Shelton at his residence on eight separate occasions between September 25, 2014 and October 8, 2014 and at various hours of the day, to no avail. The City then mailed an authenticated Summons and Complaint to Mr. Shelton's residence and on December 11, 2014, and filed an affidavit of mailing. On December 5, 2014, the City issued a publication summons, and on December 16, 2014, the summons was printed and published notifying Mr. Shelton to appear at a hearing to be held on December 30, 2014. On December 29, 2014, the City confirmed that Mr. Shelton was not on active duty status with the U.S. Armed Forces and submitted an Affidavit of Nonmilitary Service. On December 30, 2014, Mr. Shelton failed to appear, and a default judgment was entered against him. On January 14, 2015, the judgment was signed by John Barrett, Milwaukee Circuit Court Clerk.

¶5 On January 28, 2015, Mr. Shelton filed a motion for relief from judgment pursuant to WIS. STAT. § 806.07(1)(h). He signed his motion and listed 4734 N. 31st Street, Milwaukee, Wisconsin 53209 as his address. In his motion, he argued that: (1) he never received notification, and (2) "exempt income is exempt," citing WISCONSIN STAT. § 806.07(1)(h). A hearing was held on April

28, 2015, and the court denied his motion. On May 8, 2015, Mr. Shelton filed a motion to appeal the court's decision and order.

DISCUSSION

¶6 The decision whether to reopen a default judgment is committed to the sound discretion of the circuit court. *See Kovalic v. DEC Int'l*, 186 Wis. 2d 162, 166, 519 N.W.2d 351 (Ct. App. 1994). A circuit court's decision on a motion to reopen will not be disturbed absent an erroneous exercise of discretion. *See Dugenske v. Dugenske*, 80 Wis. 2d 64, 68, 257 N.W.2d 865 (1977). “A circuit court erroneously exercises its discretion if it applies an improper legal standard or makes a decision not reasonably supported by the facts of record.” *Johnson v. Cintas Corp. No. 2*, 2012 WI 31, ¶22, 339 Wis. 2d 493, 811 N.W.2d 756 (citation omitted).

¶7 Because Shelton failed to file the transcript of the circuit court's oral ruling denying his motion to reopen, we are unable to review the circuit court's reasoning. An appellant is responsible for ensuring that the record on appeal contains the material necessary for this court to review the issues. *See State Bank of Hartland*, 129 Wis. 2d at 423. *See also Holmgren*, 229 Wis. 2d at 362 n2. We assume that the missing material supports the circuit court decision under attack on appeal. *Fiumefreddo*, 174 Wis. 2d at 26–27.

¶8 We have reviewed the record on appeal and conclude that in addition to the presumption favoring the circuit court's exercise of discretion due to the absence of a transcript, this record shows that Shelton has failed to allege, or support, any reason for reopening the judgment. In his motion to reopen below and in his appellant briefs, Shelton makes various statements, some addressed to his defense to the underlying judgment, (which we do not address here because

they are not relevant), and others to the issue on appeal, namely reopening the judgment.³

¶9 Shelton fails to develop any argument in support of any of his statements for reopening. We do not decide undeveloped arguments, nor do we develop them for the litigant. *See League of Women Voters v. Madison Cmty. Found.*, 2005 WI App 239, ¶19, 288 Wis. 2d 128, 707 N.W.2d 285. However, we will briefly address each of the appellant’s statements in turn.

¶10 First as to Shelton’s claim he never received service or notice, the record shows that the City’s process server made numerous attempts to serve Mr. Shelton – eight attempts in person at his residence, then by mail, and finally by publication – all pursuant to statute. *See* WIS. STAT. § 801.11. The City further confirmed that Mr. Shelton was not on active military duty. All motions, briefs, and other paperwork Mr. Shelton filed in conjunction with this case list his address as 4734 N. 31st Street, Milwaukee, Wisconsin 53209, which is the same address the City used for its service attempts. Shelton never offers any explanation for why he failed to receive notice at the very address he agrees is his residence.

³ Shelton’s principle claim in defense of the judgment award is that the City impermissibly took judgment for *unpaid municipal code violation fees*. However, he is factually wrong. The charges that are the basis for this judgment are for *unpaid property taxes and special assessments*, not municipal code violations. WISCONSIN STAT. § 66.0703(1)(a) permits municipalities to levy special assessments against real property for “special benefits conferred upon the property by any municipal work or improvement,” for example, cutting grass that exceeds the permissible height where the owner had failed to do so within the time specified. Fines and fees charged for work done to the property are distinct from citations for municipal code violations. The City was empowered by WISCONSIN STAT. § 74.53 to bring a civil action against Mr. Shelton to recover unpaid property taxes and special assessments and by WISCONSIN STAT. § 799.01(2) to use the small claims procedure to do so.

¶11 As to his second assertion, Mr. Shelton claims that WIS. STAT. § 803.01(3) requires reopening the judgment because he is mentally ill. The statute he cites simply provides that a guardian ad litem shall appear for an incompetent person. Shelton has neither supported with any evidence his allegation that he is mentally ill, nor has he even asserted, much less supported, that he is incompetent. His statement that he receives Social Security Disability (SSD) is not sufficient to prove mental illness under WISCONSIN STAT. § 893.16. *See Storm v. Legion Ins. Co.*, 2003 WI 120, ¶27, 265 Wis. 2d 169, 665 N.W.2d 353 (2003).

¶12 Shelton's next assertion, that the default judgment entered against him was invalid because it was not lawfully signed by the judge, fails as well. The judgment entered did not need to be signed by a judge and is valid if signed by the clerk of circuit court, which this was. *See* WISCONSIN STAT. § 799.24(1) (“[w]hen a judgment or an order is rendered, the judge, circuit court commissioner or clerk of circuit court shall immediately enter it in the court record”).

¶13 Mr. Shelton's final claim that the City is barred from taking action against him because creditors are prohibited from taking Supplemental Security Income (SSI) to satisfy a debt is not relevant to the motion to reopen or underlying judgment, but only to attempts at collection, which this is not.

¶14 For all of the foregoing reasons we affirm.

By the Court.—Judgment and Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.

