

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 30, 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. 2015AP925

Cir. Ct. No. 2014CV197

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

FIRST NATIONAL BANK OF AMERICA,

PLAINTIFF-RESPONDENT,

V.

DAVID L. HANSON AND DIANA C. HANSON,

DEFENDANTS-APPELLANTS.

APPEAL from a judgment of the circuit court for Dunn County:
JAMES M. PETERSON, Judge. *Affirmed.*

Before, Stark, P.J., Hruz and Seidl, JJ.

¶1 PER CURIAM. David and Diana Hanson appeal a default judgment of foreclosure. The Hansons argue the circuit court erroneously permitted First National Bank of America (FNBA) to reopen the case, which

FNBA had voluntarily dismissed without prejudice. We reject the Hansons' argument and affirm.

BACKGROUND

¶2 FNBA initiated this lawsuit in August 2014, to foreclose a mortgage the Hansons granted in favor of FNBA. In September, FNBA moved for default judgment and scheduled an October 28 hearing in the circuit court. On October 21, 2014, the Hansons filed for chapter 7 bankruptcy.

¶3 FNBA filed a “notice of dismissal and order to discharge lis pendens” in this case in December 2014. FNBA sought dismissal under WIS. STAT. § 805.04(1), which allows voluntary dismissal of a cause of action “without order of court ... at any time before service by an adverse party of responsive pleading or motion ...” The notice sought dismissal “without prejudice.” The court granted FNBA’s motion in mid-December 2014, and the file was closed.

¶4 The bankruptcy court issued the Hansons a discharge in January 2015. In February, FNBA moved to reopen this lawsuit and for default judgment. FNBA’s affidavit in support of its motion informed the court of the Hansons’ discharge in bankruptcy and alleged “that defendants neither reaffirmed [n]or surrendered the property/mobile home which is the subject of this foreclosure.” The circuit court held a motion hearing in March 2015 and granted the motion in both respects. Following entry of a written judgment, the Hansons appeal.

DISCUSSION

¶5 The Hansons challenge the circuit court’s decision to reopen the case, asserting FNBA instead should have been required to file a new lawsuit. The

Hansons emphasize that FNBA’s motion to reopen did not cite any legal authority, much less identify the particular provision of WIS. STAT. § 806.07¹ that FNBA deemed applicable.

¶6 A decision whether to grant relief from judgment or order under WIS. STAT. § 806.07 is subject to the circuit court’s discretion. *Sukala v. Heritage Mut. Ins. Co.*, 2005 WI 83, ¶8, 282 Wis. 2d 46, 55, 698 N.W.2d 610; *State ex rel. M.L.B. v. D.G.H.*, 122 Wis. 2d 536, 541, 363 N.W.2d 419 (1985). A circuit court’s discretionary decision will not be reversed unless the court erroneously exercised its discretion.² *Sukala*, 282 Wis. 2d 46, ¶8. A discretionary decision contemplates a process of reasoning that depends on facts that are in the record, or reasonably derived by inference from facts of record, and a conclusion based on the application of the correct legal standard. *Id.* We will not reverse a discretionary determination if the record shows that discretion was in fact exercised and we can perceive a reasonable basis for the decision. *Id.* “Because the exercise of discretion is so essential to the [circuit] court’s functioning, we generally look for reasons to sustain discretionary determinations.” *Id.* (citations omitted).

¶7 The Hansons contend “no grounds whatsoever” were provided to the circuit court in support of FNBA’s motion to reopen. While FNBA’s written motion was initially deficient under WIS. STAT. § 802.01(2)(a), for failing to “state with particularity the grounds therefor,” the FNBA affidavit filed with the motion

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

² The Hansons inappropriately argue the circuit court abused its discretion. Wisconsin courts abandoned that terminology decades ago. See *Shirk v. Bowling, Inc.*, 2001 WI 36, ¶9 n.6, 242 Wis. 2d 153, 624 N.W.2d 375.

did state the particular grounds for the motion. *See supra* ¶4. In addition, the court held a hearing on the motion.³

¶8 At the motion hearing, the circuit court ruled as follows:

Well, again, although it was not specifically in the order dismissing without prejudice, this is not uncommon in these cases to voluntarily dismiss for various reasons, bankruptcy or voluntary work-out attempts and that sort of thing. And, again, I believe that given the equities pointed out by [FNBA's attorney] that it would be—the Court's going to exercise its discretion to reopen this matter and put the parties back where they were when this was voluntarily dismissed, and for a number of reasons.

First, [FNBA's attorney] is correct that the courts do not want these cases sitting as dead wood while we're waiting for ... bankruptcy matters to unfold. And again, there was a bankruptcy. That does seem to be an extraordinary circumstance. ... [T]he motion to reopen after the conclusion of the bankruptcy, it seems like it's reasonable. And it would seem unreasonable to require additional filing fees, and for preparation of documents, and an entirely new case, and having the parties served.

All that ... would do ... is provide additional delay, and if these folks aren't paying to be there [it] would allow them to continue in the property for a much longer period of time at the expense of the plaintiff. So the Court is going to reopen this matter.

¶9 The partial transcript of the motion hearing in the appellate record commences at the court's rationale set forth above. FNBA asserts "the Hansons completely omit that portion of the hearing transcript in which the court and

³ The Hansons do not develop an argument that they were unprepared for the motion hearing due to FNBA's failure to cite Wis. STAT. § 806.07 or identify the provision(s) upon which FNBA was relying. Rather, they merely assert, "the omission prevented the Hansons from making specific arguments against the motion's grant." "We will not decide issues that are not, or inadequately, briefed." *State v. Flynn*, 190 Wis. 2d 31, 39 n.2, 527 N.W.2d 343 (Ct. App. 1994).

counsel, at length, discuss the legal and factual basis for the Bank’s motion.” We therefore must presume that the full transcript supports the circuit court’s discretionary decision.⁴ See *Butcher v. Ameritech Corp.*, 2007 WI App 5, ¶¶34-35, 298 Wis. 2d 468, 727 N.W.2d 546 (2006) (“[I]n the absence of a transcript we presume that every fact essential to sustain the circuit court’s decision is supported by the record.”). An appellant has the duty to ensure that the record is sufficient to review the issues raised on appeal. *State Bank of Hartland v. Arndt*, 129 Wis. 2d 411, 423, 385 N.W.2d 219 (Ct. App. 1986). Moreover, the Hansons’ argument fails because they do not identify how the court’s oral decision was erroneous in any respect. See *State v. Flynn*, 190 Wis. 2d 31, 39 n.2, 527 N.W.2d 343 (Ct. App. 1994) (issue raised but not briefed or argued is deemed abandoned).

By the Court.—Judgment affirmed.

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

⁴ The Hansons failed to file an appellate reply brief.

