

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 16, 2006

Cornelia G. Clark
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. 2005AP786

Cir. Ct. No. 2004CV221

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

JP MORGAN CHASE BANK,

PLAINTIFF-RESPONDENT,

V.

JOSHUA J. MINICH,

DEFENDANT-APPELLANT,

STACY MINICH,

DEFENDANT.

APPEAL from an order of the circuit court for Rock County: JOHN
W. ROETHE, Judge. *Affirmed.*

Before Dykman, Vergeront and Higginbotham, JJ.

¶1 PER CURIAM. Joshua Minich appeals an order confirming the sale of his foreclosed property. The issues are whether the trial court properly determined the fair value of the property and whether notice of the sale was sufficient. We affirm for the reasons discussed below.

BACKGROUND

¶2 Minich defaulted on a mortgage for residential property assessed at \$99,400, and did not contest the resulting foreclosure judgment against him in the amount of \$79,038.87. The judgment provided that the Bank would be barred from collecting any deficiency judgment from him. A foreclosure sale was scheduled for December 29, 2004; a proper notice of the sale was published in the Janesville Gazette. On the appointed date, the sheriff's department adjourned the foreclosure sale to January 5, 2005, without further publication in the newspaper. Instead, the new date was posted at the local library, the Rock County Clerk of Courts' office, the Rock County Sheriff's Department, a local school, the Janesville town hall, and a power pole at a county highway intersection.

¶3 David Sheen entered a high bid of \$38,000 at the adjourned sale, outbidding the foreclosing bank and a third party. Sheen had previously made an accepted offer to purchase the property for \$92,500, but that deal fell through after a title search revealed several outstanding liens on the property. Minich objected to confirmation of the sale upon learning that he would have tax liability for the forgiven deficiency debt—that is, the difference of approximately \$47,300 between the determined fair value of the sale and the amount of the foreclosure judgment, \$85,298.53. The circuit court confirmed the sale over Minich's objections to the fair value of the property and the adequacy of notice, and Minich now appeals.

DISCUSSION

¶4 The decision whether to confirm a foreclosure sale is an equitable determination that rests within the trial court's discretion. *Bank of New York v. Mills*, 2004 WI App 60, ¶8, 270 Wis. 2d 790, 678 N.W.2d 332. A court properly exercises discretion when it considers the facts of record under the proper legal standard and reasons its way to a rational conclusion. See *Burkes v. Hales*, 165 Wis. 2d 585, 590-91, 478 N.W.2d 37 (Ct. App. 1991).

Fair Value of Property

¶5 Minich first contends the \$38,000 sale price did not represent a fair value for the property. Fair value is not the same thing as market value; it merely means "such reasonable value as does not shock the conscience of the court," given the distressed nature of a foreclosure sale which can be expected to reduce the selling price. *Bank of New York*, 270 Wis. 2d 790, ¶¶10-11, 17 (citation omitted). The court may consider a broad array of factors in determining fair value, including any appraisals or tax assessments of the property, any prior offers, and the time the property was offered for sale. *Id.*, ¶18. When no deficiency judgment is being sought, however, there is a presumption that the sale was for fair value. *Id.*, ¶15.

¶6 Here, the court emphasized that there were three bidders for the property and that the bank in particular was motivated to maximize the sale proceeds because it would not be able to obtain a deficiency judgment. The court acknowledged that a higher offer had been made on the property within the preceding year, but chose not to give weight to that offer since that deal fell through due to problems with the title. The court also declined to consider any additional tax liability Minich might incur because Minich had failed to provide

sufficient evidence to support his claim. In short, we are satisfied the trial court's discussion demonstrates a reasonable application of the proper standard to the facts of record.

Notice of Adjourned Sale

¶7 Minich next argues the notice for the adjournment of the foreclosure sale was inadequate. WISCONSIN STAT. § 815.31(5) (2003-04)¹ provides:

If at the time appointed for any such sale the sheriff considers it in the interest of all persons concerned, the sheriff may adjourn the sale from time to time, not exceeding in all 3 months. In case of such adjournment public notice thereof shall be given at the time and place fixed for the sale. If the adjournment shall be for more than one day further notice shall be given by posting or publishing the same, or both, as the time and circumstances may admit.

Minich does not dispute that the sheriff's department gave notice of the adjournment at the originally scheduled time for the sale, and subsequently posted the date and time for the adjourned sale. He contends that "time and circumstances" would have allowed setting a later date for the sale and republishing in the newspaper because there was no urgent need for the sale to be rescheduled within a week. Minich misconstrues the statute. The "time and circumstances" language does not limit when an adjourned hearing may be held, but rather allows posting rather than publishing when a new date is close in time to the originally scheduled date. The procedure followed by the sheriff's department here complied with the statute.

¹ All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

By the Court.—Order affirmed.

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

