COURT OF APPEALS
DECISION
DATED AND FILED

February 4, 2014

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2013AP1301 **Cir. Ct. No. 2011CV491**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

MINOCQUA LAND INVESTMENTS, LLC A/K/A LINCOLN STATE BANK,

PLAINTIFF-INTERVENOR-RESPONDENT,

V.

RYNDERS REALTY, INC.,

DEFENDANT-APPELLANT,

SETH E. DIZARD,

RECEIVER-RESPONDENT.

APPEAL from an order of the circuit court for Oneida County: MICHAEL H. BLOOM, Judge. *Affirmed*.

Before Fine, Kessler and Brennan, JJ.

¶1 PER CURIAM. Rynders Realty, Inc., appeals from an order of the circuit court that granted receiver Seth Dizard's motion to sell assets and disburse

the proceeds. Rynders contends the circuit court erred when it reopened the case after dismissal for failure to prosecute. We agree with the respondents that the dismissal was void for lack of notice. We therefore affirm the order.

¶2 In October 2011, Minocqua Land Investments, LLC's predecessor petitioned for appointment of a receiver for Rynders. In November 2012, Minocqua Land was formally substituted as plaintiff. On March 15, 2013, the circuit court issued a dismissal order that would take effect after twenty days unless good cause was shown for failure to diligently prosecute the matter. A copy of this order was sent to Rynders' counsel, but neither Minocqua Land nor the receiver were sent a copy. The matter was dismissed on April 8, 2013.

¶3 On April 24, 2013, the receiver moved to sell Rynders' assets and disburse the sale proceeds. A docket entry was made on April 25, 2013, indicating the matter was reopened. On May 14, 2013, the circuit court held a hearing on the motion to sell. Rynders objected, asserting the case could not be reopened without a formal motion and notice and, thus, the motion to sell should not have been accepted for filing by the clerk. The receiver offered to make an oral motion to reopen. When the circuit court asked for substantive objections to the motion to sell and to any motion to reopen, Rynders had none, save for its claim the circuit court had no jurisdiction over the motion to sell because of the lack of a written motion to reopen.

¶4 The circuit court determined that the dismissal was void for lack of notice, so the circuit court had never lost jurisdiction. Further, because Rynders had no substantive objection to the motion to sell, the circuit court granted that motion. In so doing, it gave Rynders ten days to submit any offers to purchase the assets, exceeding the seven days Rynders had requested. Rynders now appeals.

¶5 It is Rynders' position that the circuit court clerk could not file the motion to sell once the case was dismissed[1] and, further, that the circuit court could not reinstate the case in the absence of a written motion and notice thereof. We note, however, that Rynders' brief—which has more issues (six) than it does substantive pages (barely four)—is utterly devoid of any legal argument or authority in support of its position.[2] Even Rynders' claim that "Wisconsin law clearly requires that written notice of motion and motion be filed to vacate or set aside a previous written order of dismissal or order of the court" lacks citation.

¶6 Dismissal of this matter for failure to prosecute was plainly contrary to the statutes: once a receiver is designated, "proceedings under [WIS. STAT. ch. 128, regarding creditors' actions] shall not be dismissed for want of prosecution … *until after notice to creditors*[.]" *See* WIS. STAT. § 128.12(1) (emphasis added). It is undisputed that notice was not provided to Minocqua Land or the receiver: Rynders filed no reply brief. *See* ***Schlieper v. DNR***, 188 Wis. 2d 318, 322, 525 N.W.2d 99 (Ct. App. 1994) (respondent's arguments not disputed in reply brief may be deemed admitted).

[1] This is, of course, an absurd proposition. Foreclosing the circuit court clerk's ability to accept papers for filing upon dismissal of a case would prevent any opportunity for review, because it would mean the clerk could not accept motions for reconsideration, motions to reopen, other motions for relief, and notices of appeal.

[2] The body of Rynders' brief has two sections, labeled "statement of the case" and "conclusion." There is no "argument" section. *See* WIS. STAT. RULE 809.19(1)(d)-(f) (2011-12). The only citations to authority are in a paragraph that recites two contradictory standards of review, with no link between those standards and the facts of this case.

All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

¶7 Statute notwithstanding, dismissals ordered by a circuit court without actual notice before entry preclude an opportunity to be heard and, thus, fail to comport with due process. *See* ***Neyland v. Vorwald***, 124 Wis. 2d 85, 95, 368 N.W.2d 648 (1985). "'Judgments entered contrary to due process are void.'" ***Id.*** (citations omitted). Thus, the circuit court properly concluded that the April 8, 2013 dismissal was void for lack of notice.

¶8 Courts have the inherent authority to vacate void orders and judgments because they have no authority to enter those orders or judgments in the first place. *See* ***City of Sun Prairie v. Davis***, 226 Wis. 2d 738, 750, 595 N.W.2d 635 (1999). "'A judgment or order which is void may be expunged by a court at any time. Such right … is not limited by statutory requirements for … reopening" those judgments or orders. *See* ***Kohler Co. v. DILHR***, 81 Wis. 2d 11, 25, 259 N.W.2d 695 (1977) (citation omitted). Thus, contrary to Rynders' position, a written motion to reopen the void order of dismissal was not required.[3]

¶9 "A void judgment cannot create a right or obligation, as it is not binding on anyone." ***Kett v. Community Credit Plan, Inc.***, 222 Wis. 2d 117, 127-28, 586 N.W.2d 68 (Ct. App. 1998), *aff'd*, 228 Wis. 2d 1, 596 N.W.2d 786 (1999). We therefore reject Rynders' position that the circuit court clerk should not have accepted the motion to sell for filing,[4] and there is no other substantive challenge

[3] *See also* WIS. STAT. § 802.01(2)(a) ("An application to the court for an order shall be by motion which, *unless made during a hearing* or trial, shall be made in writing[.]") (emphasis added); WIS. STAT. § 807.03 ("An order made out of court without notice may be vacated or modified without notice by the judge who made it.").

[4] We also reject as moot Rynders' position that the circuit court could not reinstate proceedings by way of a docket entry. Aside from the fact that the void order for dismissal is a nullity, *see* ***Kett v. Community Credit Plan, Inc.***, 222 Wis. 2d 117, 127, 586 N.W.2d 68 (Ct. App. 1998), *aff'd*, 228 Wis. 2d 1, 596 N.W.2d 786 (1999), the case was subsequently reopened by a written order.

to the order granting the motion to sell raised on appeal.[5] Accordingly, we affirm the order.

By the Court.—Order affirmed.

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

[5] Still pending in the circuit court is a question regarding the validity of real estate transfers that Rynders made in the period between the case's dismissal on April 8, 2013, and its reinstatement on May 14, 2013. We express no opinion on the outcome of that matter.