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DISTRICT IV

March 12, 2026

To:

Hon. William V. Gruber
Circuit Court Judge
Electronic Notice

Cindy Hamre Incha
Clerk of Circuit Court
Jefferson County Courthouse
Electronic Notice

Thomas Richard Loonan
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Nicholas J. Vivian
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Chad M. Johnstone
214 S. Kranz Avenue
Jefferson, WI 53549

Jan M. Johnstone
Electronic Notice

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

2024AP1922 Old National Bank v. Chad M. Johnstone (L.C. # 2023CV24)

Before Graham, P.J., Nashold, and Taylor, JJ

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Appellants Chad M. Johnstone and Jan M. Johnstone, pro se, appeal a circuit court order confirming the sheriff's sale of a property in Jefferson County. Based on 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 (2023-24).[1] We summarily affirm.

[1] All references to the Wisconsin Statutes are to the 2023-24 version.

Old National Bank ("the Bank") brought a foreclosure action against the Johnstones in 2023. The circuit court granted summary judgment and judgment of foreclosure in favor of the Bank in August 2023, which was summarily affirmed by this court in Case No. 2023AP1720 in June 2024 based on the Johnstones' failure to develop a coherent argument as to any error in the circuit court's order.

Following that appeal, the Bank proceeded with a sheriff's sale pursuant to WIS. STAT. ch. 846. The subject property was sold to a third-party bidder in August 2024. The Bank then moved for an order confirming the sale and directing the circuit court to disburse the sale proceeds. The Johnstones submitted multiple motions and filings opposing confirmation and seeking to cancel the sale on various grounds. After a hearing, the circuit court found that the Bank satisfied all statutory requirements for a sheriff's sale and that none of the Johnstones' arguments had merit. The court entered an order confirming the sale, and the Johnstones commenced this appeal, appropriately identifying the order confirming the sheriff's sale as the order at issue here.

However, the Johnstones devote much of their appellate briefing to challenging the August 2023 foreclosure judgment, which is not at issue in this appeal. They argue that the Bank "lacked standing to foreclose and obtain confirmation of the sale," relying on the complaint and prejudgment facts for support. The Johnstones are barred from relitigating the legality of the foreclosure by the law-of-the-case doctrine; the issue of foreclosure has already been litigated and decided by this court. *See* ***Ash Park, LLC v. Alexander & Bishop, Ltd.***, 2014 WI App 87, ¶19, 356 Wis. 2d 249, 853 N.W.2d 618 (explaining the "longstanding rule that a decision on a legal issue by an appellate court establishes the law of the case, which must be followed in all subsequent proceedings in the trial court or on later appeal") (citation omitted). The doctrine

extends to issues that were expressly decided, decided by necessary implication (like standing), or waived in the first appeal. *See* ***Bradley v. Village of Univ. Park, Ill.***, 59 F.4th 887, 896 (7th Cir. 2023). Simply put, the Johnstones are not entitled to a second appeal on any issues that were or could have been decided in their first appeal. *See* ***Olson v. Hardware Dealers Mut. Fire Ins. Co.***, 45 Wis. 2d 569, 579-80, 173 N.W.2d 599 (1970).

While the Johnstones acknowledge our affirmation of the circuit court's order granting summary judgment and judgment of foreclosure, they characterize it as having been based on "a technicality." They urge us to "undertake collateral de novo review of the entire case," asserting that pro se litigants should be held to a less stringent standard than represented parties. Setting aside that an affirmance based on failure to develop a coherent argument is not "a technicality," our decision on foreclosure establishes the law of the case and cannot be attacked in a subsequent appeal.[2] We will therefore not address any grounds the Johnstones assert in arguing that the Bank lacked standing to obtain confirmation of the sale, which are identical to their asserted arguments on the Bank's standing to foreclose and were made or could have been made in the Johnstones' first appeal.

Only new arguments based on postjudgment proceedings related to the order now under review—the one confirming the sheriff's sale—are properly considered in this appeal. *See* ***Shuput v. Lauer***, 109 Wis. 2d 164, 172, 325 N.W.2d 321 (1982) ("[A]n appeal from the order

[2] The Johnstones also suggest that the Bank's allegedly fraudulent conduct justifies relitigation of the judgment of foreclosure. While it is true that our supreme court has stated that "fraud vitiates everything," ***Guzzo v. Guzzo***, 269 Wis. 21, 28, 68 N.W.2d 559 (1955), relief from a judgment due to fraud, misrepresentation, or other misconduct must be pursued with a motion under WIS. STAT. § 806.07(1)(c), *see* ***Johnson v. Johnson***, 157 Wis. 2d 490, 498, 460 N.W.2d 166 (Ct. App. 1990), not an attack on the judgment in a subsequent appeal. We note that a successful motion under § 806.07 requires that the party seeking relief make a "plain case," which the Johnstones have not done here. *See* ***id.***

[confirming sale] enables the appellant to challenge the proceedings subsequent to the judgment of foreclosure and sale, not the judgment itself."). The decision whether to confirm a sale is within the circuit court's discretion. ***JP Morgan Chase Bank, NA v. Green***, 2008 WI App 78, ¶11, 311 Wis. 2d 715, 753 N.W.2d 536.

The Johnstones do not sufficiently develop any argument explaining how the circuit court erroneously exercised its discretion in confirming the sheriff's sale. They identify alleged problems with the sheriff's deed, specifically that the Johnstones should not have been identified as "Grantors" on this document and that the sheriff should not have been identified as the "Grantors' agent," but they do not articulate the legal effect of these alleged errors or cite any authority for the proposition that the sale should not have been confirmed on this basis. "On appeal, 'it is the burden of the appellant to demonstrate that the [circuit] court erred.'" ***Gaethke v. Pozder***, 2017 WI App 38, ¶36, 376 Wis. 2d 448, 899 N.W.2d 381 (alteration in original) (internal citation omitted). It is not this court's role or responsibility to develop an argument for a party. ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992). Because the Johnstones have not met their burden of demonstrating that the circuit court erroneously exercised its discretion, we affirm.

IT IS ORDERED that the order appealed from is summarily affirmed under WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals