COURT OF APPEALS
DECISION
DATED AND FILED

April 14, 2015

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2014AP2168-FT **Cir. Ct. No. 2006SC922**

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

RIPCO CREDIT UNION,

PLAINTIFF-RESPONDENT,

V.

STEVEN BUKOVIC,

DEFENDANT-APPELLANT.

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

¶1 STARK, J.[1] Steven Bukovic appeals an order denying his motion to vacate a 2008 execution sale. Bukovic argues the sale is void because the circuit

[1] This is an expedited appeal decided by one judge. *See* WIS. STAT. RULE 809.17; WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

court had no jurisdiction to levy execution against a fully exempt homestead. We reject his arguments and affirm.

BACKGROUND

¶2 Bukovic defaulted on a loan from Ripco Credit Union. Ripco filed a replevin action and obtained a judgment for replevin on September 27, 2006 in Oneida County. Bukovic's vehicles were subsequently sold as collateral. Orders confirming the sales of two of Bukovic's vehicles were entered January 31, 2007 and February 2, 2007, and a deficiency judgment totaling $15,202.64 was docketed on February 9, 2007. Ripco filed a transcript of that judgment in Forest County where Bukovic owned real estate in joint tenancy with his sister. The circuit court issued an execution against property on April 16, 2007, and directed the Forest County Sheriff to satisfy the judgment against Bukovic out of his personal property, or, if sufficient personal property could not be found, out of Bukovic's real property in Forest County. *See* WIS. STAT. §§ 815.02, 815.05(1g)(a). Ripco assigned its judgment to William Foltz in April of 2008.

¶3 An execution sale took place June 11, 2008. Foltz bid $19,088 for Bukovic's interest in the Forest County real estate, and a sheriff's return of execution was entered June 18, 2008. Following the expiration of the one-year statutory redemption period, a sheriff's deed was issued to Foltz on September 14, 2009. Six years after the execution sale, on June 11, 2014, Bukovic filed a motion in Oneida County to vacate the sale, arguing, in part, that the sale was void due to the homestead exemption.[2] Foltz moved to strike, asserting Bukovic's motion

[2] WISCONSIN STAT. § 815.20 provides an overview of the homestead exemption:

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failed for lack of jurisdiction and laches, among other defenses. At a hearing on July 21, 2014, the circuit court denied Bukovic's motion, concluding it was barred under the doctrine of laches. Bukovic appeals from the corresponding order entered July 31, 2014.

DISCUSSION

¶4 Whether to set aside a sale on execution is a decision committed to the discretion of the circuit court. ***Sensenbrenner v. Keppler***, 24 Wis. 2d 679, 684, 130 N.W.2d 177 (1964). "The exercise of discretion contemplates a process of reasoning based on facts that are of record or that are reasonably derived by inference from the record, and a conclusion based on a logical rationale founded upon proper legal standards." ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). We will not disturb the circuit court's discretionary decision "as long as the circuit court 'examined the relevant facts, applied a proper standard of law, and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach.'" ***Franke v. Franke***, 2004 WI 8, ¶54, 268 Wis. 2d 360, 674 N.W.2d 832 (quoting ***Long v. Long***, 196 Wis. 2d 691, 695, 539 N.W.2d 462 (Ct. App. 1995)).

¶5 WISCONSIN STAT. § 815.40(1) provides that "[r]edemption from execution sale of real estate may be made by a person whose right and title was

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> **(1)** An exempt homestead as defined in s. 990.01(14) selected by a resident owner and occupied by him or her shall be exempt from execution, from the lien of every judgment, and from liability for the debts of the owner to the amount of $75,000, except mortgages, laborers', mechanics', and purchase money liens and taxes and except as otherwise provided ….

sold," and WIS. STAT. § 815.39(1) provides the means by which redemption of real estate sold by execution may occur:

> Except as provided in sub. (2), within one year after an execution sale[,] the real estate sold … may be redeemed by the payment to the purchaser, to the purchaser's personal representatives or assigns, or to the sheriff of the county where the real estate is situated, for the use of such purchaser, of the sum paid on the sale thereof, together with the interest from the time of the sale.

Where an application to set aside a sale of real estate on execution is made after expiration of the redemption period, it is to be denied, absent special circumstances justifying the delay. ***Sensenbrenner***, 24 Wis. 2d at 682. "If [the redemption period] is allowed to expire, and a deed to be executed, the application cannot afterwards be made, unless under special circumstances of fraud or mistake, showing some reasonable excuse for the delay." ***Raymond v. Pauli***, 21 Wis. 531, 534 (1867); *see also* ***Foster v. Hall***, 44 Wis. 568, 569 (1878) (A motion to set aside an execution sale "must be made in a reasonable time after the sale, or it will not be entertained … a delay of over twenty months after the sale, and near the expiration of the time of redemption, is most unreasonable and gross laches, if unexplained and unexcused.").

¶6 Here, Bukovic moved to set aside the sale of his real estate seventy-two months after the sale on execution and long after the redemption period expired and the deed was executed. He did not allege special circumstances of fraud or mistake that prevented him from bringing the motion to set aside the sale earlier. The circuit court denied Bukovic's motion on the basis of the equitable doctrine of laches. The doctrine of laches is satisfied when there is: (1) an unreasonable delay by the party seeking relief; (2) a lack of knowledge or acquiescence by the party asserting laches that a claim for relief was forthcoming;

and (3) prejudice to the party asserting laches caused by the delay. ***Zizzo v. Lakeside Steel & Mfg. Co.***, 2008 WI App 69, ¶7, 312 Wis. 2d 463, 752 N.W.2d 889. After hearing from the parties, the circuit court concluded it would not be equitable to grant Bukovic's motion. It observed that courts "will not afford relief to individuals [who] have slept on their rights and show no excuse," and continued, "[t]here really has been no excuse shown here, to my satisfaction, for the delay of effectively, six years, in bringing this suit."

¶7 On appeal, Bukovic again fails to provide a single justification or explanation for the multiple-year delay in bringing his motion. Instead, he simply asserts that he is entitled to relief now because his property was exempt at the time of the execution sale. WISCONSIN STAT. § 815.21 states the time frame for asserting one's homestead exemption is "at any time before the sale." Bukovic failed to move to set aside the sale of execution within the statutory redemption period and, therefore, his motion is barred.[3] We recognize the homestead

[3] While our primary focus is on Bukovic's failure to timely move to set aside the execution sale, we also observe he failed to avail himself of other opportunities for statutory relief from his deficiency judgment prior to the execution sale. For example, WIS. STAT. § 815.21 explains how a homeowner ought to proceed upon facing a levy of his or her homestead property:

> Whenever a levy shall be made upon lands of any person, the landowner may notify the officer making such levy, *at any time before the sale*, that the landowner claims an exempt homestead in such lands, giving a description thereof, and the landowner's estimate of the value thereof; and the remainder alone shall be subject to sale under such levy, unless the plaintiff in the execution shall deny the right to such exemption or be dissatisfied with the quantity or estimate of the value of the land selected.

(Emphasis added.) In addition, subsection (2) of WIS. STAT. § 815.20 details the proper procedure by which a judgment debtor may redeem his or her exempt homestead property after a deficiency judgment has been docketed:

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exemption is to be construed liberally to protect debtors, ***Reckner v. Reckner***, 105 Wis. 2d 425, 430-31, 314 N.W.2d 159 (Ct. App. 1981); however, it does not give debtors the right to unreasonably extend the time in which they can set aside an execution sale.[4] Here, the circuit court properly determined the first prong of the laches doctrine was satisfied, noting Bukovic had delayed "effectively, six years, in bringing this suit" without an excuse.

¶8 The primary case on which Bukovic relies in his effort to claim the circuit court erred in finding the doctrine of laches barred his claims is ***Rumage v. Gullberg***, 2000 WI 53, 235 Wis. 2d 279, 611 N.W.2d 458, *amended on denial of reconsideration*, 2000 WI 112, 238 Wis. 2d 844, 617 N.W.2d 849. There, the court determined a judgment lien did not attach to fully exempt homestead property at the time the debtor sold the property. ***Id.***, ¶2. The court held "[t]he initial, and critical, step taken when a judgment lien is asserted against homestead

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> Any owner of an exempt homestead against whom a judgment has been rendered and entered in the judgment and lien docket … may proceed under s. 806.04 for declaratory relief if the homestead is less than $75,000 in value and the owner of the judgment shall fail, for 10 days after demand, to execute a recordable release of the homestead from the judgment owner's judgment lien.

[4] Bukovic insists "the homestead exemption can be asserted at any time, even up to six years later." For support, he cites ***Phillips v. Root***, 68 Wis. 128, 31 N.W. 712 (1887) , claiming in that case an execution sale was cancelled six years after the sheriff's deed was recorded. The facts as stated in Bukovic's brief are not reflected in the ***Root*** decision itself. They are set forth in the case syllabus and indicate the court in that case did permit the execution sale to be vacated based upon a homestead exemption claimed after the execution of sale. However, ***Root*** is of no assistance to Bukovic for several reasons. ***Root*** does not hold a sheriff's sale is always void if a homestead exemption is asserted by the debtor at any time after sheriff's sale. ***Root*** does not address the procedures that inform our decision, such as the means by which one may redeem exempt homestead property after a deficiency judgment has been docketed, *see* WIS. STAT. § 815.20(2), or the timing of an action to set an execution sale aside based on an asserted homestead exemption, *see, supra,* ¶5. Finally, and of most importance, no party in ***Root*** raised laches as a defense. Therefore, ***Root*** does not address the considerations involved in this case.

property is to determine if the debtor has equity in the homestead in excess of the amount sheltered by the homestead exemption." ***Id.***, ¶27. It concluded homestead equity could be determined via private sale, levy execution, or declaratory judgment, but when, as there, the equity was less than the statutory maximum, it was fully exempt and no encumbrance on the property had attached. ***Id.***, ¶41.

¶9 Based upon ***Rumage***, Bukovic now argues the judgment lien against his Forest County property should not have attached because it was his homestead, and, further, that Foltz was presumed to know Bukovic was entitled to a homestead exemption for the property.[5] Bukovic also argues the sale of his

[5] WISCONSIN STAT. § 815.18(6) encompasses claims to exemptions and provides:

> (a) A debtor shall affirmatively claim an exemption or select specific property in which to claim an exemption. The debtor may make the claim at the time of seizure of property or within a reasonable time after the seizure, but shall make the claim prior to the disposition of the property by sale or by court order. Exempt property is not exempt unless affirmatively claimed as exempt …. The debtor or a person acting on the debtor's behalf shall make any required affirmative claim, either orally or in writing, to the creditor, the creditor's attorney or the officer seeking to impose a lien by court action upon the property in which the exemption is claimed. A debtor waives his or her exemption rights by failing to follow the procedure under this paragraph ….
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> (b) Notwithstanding sub. (13), this subsection does not apply to any of the following:
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> ….
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> 4. A homestead exempt under s. 815.20.

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property for $19,088 determined his homestead equity at that amount, and he notes that when a debtor's homestead equity is less than the statutory maximum of $75,000, it is fully exempt from execution. *See* ***id.***, ¶28. Together, these contentions lead Bukovic to the conclusion that the circuit court had no jurisdiction to levy execution against his fully exempt homestead.

¶10 However, ***Rumage*** can be distinguished from the facts of Bukovic's case. The original property owner in ***Rumage*** claimed his homestead exemption on the same day the foreclosure action was commenced against him, and the court observed the property at issue "was undisputedly homestead property." ***Id.***, ¶¶4, 37. Whether a homestead exemption rightfully existed or was timely asserted was never at issue in ***Rumage***.

¶11 Bukovic further relies on ***Rumage*** to assert that laches is inapplicable to his case. He asserts "the fully exempt homestead and laches are mutually exclusive," apparently drawing this conclusion from a footnote in which the ***Rumage*** court, after resolving the case on other grounds, merely declined to address the Gullbergs' assertion that the claim of the judgment creditor, Rumage, was barred by laches. *See* ***id.***, ¶45 n.13. Reviewing courts are entitled to

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The parties agree WIS. STAT. § 815.18(6) is consistent with ***Larson v. State Bank of Ogema***, 201 Wis. 313, 230 N.W. 132 (1930), which Bukovic cites for additional support, as our supreme court in that case held a debtor's execution creditors were presumed to know his use and occupancy of property established his homestead rights. The ***Larson*** court allowed for a belated assertion of a homestead exemption, finding it "immaterial that the claim to the land as a homestead was not asserted *until the commencement of the action to set aside the execution sale*." ***Id.*** at 135 (citation omitted) (emphasis added). Like his motion to set aside the execution sale, Bukovic's argument that he is entitled to a presumption of homestead rights is made too late. Bukovic ignores the fact that he failed to abide by the rules for commencement of an action to set aside the execution sale. As discussed above, Bukovic missed the deadline to set aside his execution sale by several years and has not on appeal offered any reason—much less a compelling reason—explaining his delay. Accordingly, whether he had the right to such a presumption at one point in time, he did not have an unlimited amount of time to move to set aside the execution sale.

determine cases on narrow grounds and may decline to review arguments on non-dispositive issues. ***State v. Blalock***, 150 Wis. 2d 688, 703, 442 N.W.2d 514 (Ct. App. 1989). The ***Rumage*** court's comment that it would not consider additional arguments, including one regarding laches, did not create a holding that laches and the homestead exemption are mutually exclusive.

¶12 When considering the second prong of laches, the circuit court stated, "[n]ow we have a situation here where for six years Mr. Foltz or at least from the period of June 11 of 2008 through [Bukovic's] filings, there's been nothing on the record to indicate that he didn't have a basis, reasonably, to believe that he was an owner of the half of this property." Bukovic cites WIS. STAT. § 815.18(6) and ***Larson v. State Bank of Ogema***, 201 Wis. 313, 230 N.W. 132 (1930) for the proposition that he "is entitled to the presumption [that Foltz], as execution creditor, knew of Bukovic's homestead since Bukovic was actually living there." *See* supra fn. 5. Foltz responds that there is insufficient evidence in the record to establish that the property was Bukovic's homestead prior to the execution sale, or to establish the nature of Bukovic's alleged occupancy. Bukovic's failure to assert his homestead exemption in the statutorily prescribed timeframe for setting aside an execution sale further supports Foltz's claimed lack of notice. Indeed, the circuit court determined the record did not support Bukovic's allegations that Foltz should have been on notice that there was "a legal claim being made relative to the validity of the sheriff's sale [in] the underlying judgment." Accordingly, the court implicitly found the presumption was rebutted by Bukovic's delay. The circuit court properly exercised its discretion in determining the second prong of the laches doctrine was satisfied.

¶13 The third prong of laches required the circuit court to determine if Foltz was prejudiced due to Bukovic's delay in asserting his homestead

exemption. *See* ***State ex rel. Coleman v. McCaughtry***, 2006 WI 49, ¶¶ 29, 36, 290 Wis. 2d 352, 714 N.W.2d 900, *opinion clarified on denial of reconsideration*, 2006 WI 121, ¶29, 297 Wis. 2d 587, 723 N.W.2d 424 (prejudice may be established when party asserting laches proves the delay has damaged its ability to defend against a claim). Foltz informed the court there was nothing in the record to support Bukovic's claimed valuation of the property at the time of the 2008 execution sale and questioned whether it was Bukovic's homestead prior to the sheriff's sale. The parties informed the court of intervening events occurring in the six-year gap between the execution sale and the motion to set aside that sale. They included the death of Bukovic's sister, who had owned the other half of the property, and the condemnation of the property by health authorities in Forest County, making it difficult to determine the value of the real property and whether it was truly Bukovic's homestead prior to sale. The circuit court considered the prejudice to Foltz if Bukovic's motion was maintained. The court commented that, based on the record, there was no reason for Foltz to believe his ownership of half of the property was in question or that the execution sale or underlying judgment were invalid, but rather, Foltz had been operating as owner of half the property, "paying taxes over the better half of a six-year period." It reasonably exercised its discretion in concluding there was "prejudice of the type contemplated by the Doctrine of Laches."[6]

[6] Bukovic fails to respond to Foltz's argument that the court properly exercised its discretion in finding the elements of the doctrine of laches, instead relying on his argument that the doctrine of laches was inapplicable because of ***Rumage***. We have already disposed of that argument, and by failing to otherwise meaningfully attack the merits of the doctrine, Bukovic has conceded any arguments he may have had to the contrary. *See* ***Charolais Breeding Ranches, Ltd. v. FPC Secs. Corp.***, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979) (arguments not refuted are deemed admitted).

¶14 Finally, the circuit court considered whether it would be equitable to allow the action to proceed despite having found the three prongs of laches had been met, and it determined it would not be equitable because "there really ha[d] been no excuse shown here, to my satisfaction, for the delay of effectively, six years, in bringing this suit." The court's conclusion was "based on a logical rationale founded upon proper legal standards." ***Ocanas***, 224 Wis. 2d at 248.

¶15 Ripco, for its part, argues we lack jurisdiction to consider Bukovic's appeal at this point in time. It relies on ***Anchor S & L Ass'n v. Week***, 62 Wis. 2d 169, 177, 213 N.W.2d 737 (1972), in which the supreme court stated:

> Viewing the record as we do from the perspective of hindsight, it is apparent that at least one of the real issues affecting the homestead exemption, whether it existed on the date of filing the judgment lien, was not tried at proceedings that led to the entry of the judgment. Had we jurisdiction over the judgment, we might well conclude that, since the real issue of the homestead exemption as it applied to the lien … had not been tried, the judgment of foreclosure should be vacated and the matter remanded for further consideration in the interest of justice …. [The judgment creditor] was a party aggrieved by the judgment of foreclosure. He has made no effort to appeal that judgment, and the appeal brought by the mortgagor from that judgment was not timely. Under these circumstances, this court is without power to correct that judgment. The party aggrieved simply failed to make a timely assertion of his rights.

While we identify with the sentiments expressed, we are in a procedurally distinct posture. ***Week*** involved an appeal from an order issued after a mortgage foreclosure. The court held the foreclosure judgment was a final judgment, which was not timely appealed, and therefore, it had no jurisdiction to "go behind that judgment." ***Week***, 62 Wis. 2d at 177. It concluded, "Hence, after that judgment was entered, and not appealed, the homestead exemption was not an open question." ***Id.***

¶16 The holding from ***Week*** is inapplicable to Bukovic's situation, however, because Bukovic's property was not sold through a sheriff's sale pursuant to a real estate foreclosure. Sales of real property on execution and sheriff's sales on real estate foreclosures are codified in separate chapters of the statutes and involve different requirements for validity and finality. *See* WIS. STAT. §§ 815.05, 846.01(1); *see also* ***Family S & L Ass'n v. Barkwood Landscaping Co.***, 93 Wis. 2d 190, 205, 286 N.W.2d 581 (1980) ("An execution sale is completed when made without any action or approval by the court. A sheriff's sale on foreclosure requires court approval; until the sale is confirmed, the foreclosure action is not completed.").

¶17 The court in ***Week*** emphasized that the aggrieved party had not appealed the final foreclosure judgment that pertained to the sale of the mortgaged property. ***Week***, 62 Wis. 2d at 177. In Bukovic's case, the deficiency judgment pertained to the remaining balance after his vehicles had been sold as collateral in the wake of his default on his loans. His real estate was implicated once the execution was issued by the circuit court instructing the Forest County Sheriff to satisfy the judgment, which was done via execution sale. Unlike mortgage foreclosures, where a judgment of foreclosure and sale is a final judgment appealable as a matter of right under WIS. STAT. § 808.03(1), *see* ***Shuput v. Lauer***, 109 Wis. 2d 164, 172, 325 N.W.2d 321 (1982), a party seeking relief after an execution sale does so through the statutory redemption process described above, or in an application to set aside the execution sale for good reason if the statutory redemption period has expired, *see* WIS. STAT. §§ 815.39(1), 815.40(1).

¶18 Ultimately, both parties miss the mark in their arguments. The appeal turns on whether Bukovic showed sufficient special circumstances to justify setting aside the execution sale long after the redemption period expired.

The circuit court properly found he had not done so. Bukovic claims that he was entitled to a homestead exemption, but he offers no explanation for the six years that passed between the execution sale and his decision to act upon his professed rights. His motion to set aside the execution sale is therefore grossly untimely, and the circuit court's decision that it was barred by laches was not erroneous.

By the Court.—Order affirmed.

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