

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 2, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

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.

No. 99-1646

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

KAYE M. HUGHES,

PLAINTIFF-APPELLANT,

V.

JOSEPH TERRY,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Marinette County:
TIM A. DUKET, Judge. *Reversed and cause remanded with directions.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Kaye Hughes appeals a summary judgment that dismissed her 1997 lawsuit to void a 1996 sheriff's deed. A bank foreclosed Hughes' mortgage in 1991, and the circuit court confirmed the sheriff's sale to Joseph Terry in 1992. Hughes then settled with the bank, receiving the bank's

satisfaction of judgment and quitclaim deed in 1993. Meanwhile, Terry did not pay the sale price and take delivery of the sheriff's deed until 1996.

¶2 Hughes claims a superior interest. She argues that Terry's sheriff's deed is void since Terry failed to pay the sale price within ten days of confirmation of the 1992 sheriff's sale as required by WIS. STAT. § 846.17.¹ The circuit court ruled that it was too late for Hughes to collaterally attack the 1991 foreclosure judgment and 1992 confirmation order. We agree with Hughes' argument and reverse the summary judgment.

¶3 We review summary judgments without deference to the circuit court. See *Gaertner v. Holcka*, 219 Wis.2d 436, 445-46, 580 N.W.2d 271 (1998). The circuit court properly grants summary judgment if there are no disputes of material fact and one party is entitled to judgment as a matter of law. See *id.*

¶4 Both parties agree that the only issues here involve statutory interpretation, which are questions of law that we review without deference to the circuit court. See *Minuteman, Inc. v. Alexander*, 147 Wis. 2d 842, 853, 434 N.W.2d 773 (1989).

¶5 The court concluded that the sheriff's deed "was effective to convey legal title to the real estate ... to Defendant Joseph Terry." To support this conclusion, Terry cites WIS. STAT. § 891.06 for the presumption of validity of a sheriff's deed.

¹ All statutory references are to the 1997-98 edition.

¶6 However, Hughes correctly asserts that the sheriff's deed is void from the outset. WISCONSIN STAT. § 846.17 required Terry to pay the sheriff's sale price to the clerk of court within ten days of the confirmation of the sale. The sale was confirmed by the circuit court on September 21, 1992. Yet, Terry did not pay the sale price to the clerk until October 16, 1996. On the same day, the clerk delivered Terry the sheriff's deed. The ten-day requirement of § 846.17 is mandatory and failure to comply requires resale of the premises. See *GMAC Mortgage Corp. v. Gisvold*, 215 Wis.2d 459, 478-79, 572 N.W.2d 476 (1998). By the words of the statute, the sheriff's deed that was delivered here "shall be of no effect." WIS. STAT. § 846.17.

¶7 Terry claims there may have been "substantial and good reasons" that the money was not paid within ten days. However, that is to no avail. *GMAC* makes clear that the statute is mandatory and that "the circuit court has no equitable authority to grant relief to a purchaser who fails to comply with the ten-day payment period" *Id.* at 481.

¶8 Nevertheless, Terry argues that Hughes should have brought a motion in the foreclosure action rather than filing a separate action. Terry expects the impossible of Hughes. In general, Hughes had only one year to attack the foreclosure judgment or the confirmation order pursuant to WIS. STAT. § 806.07(2). However, the sheriff's deed was not delivered to Terry until four years after the confirmation. By Terry's own logic, that was beyond the one year for attacking either the judgment or confirmation.

¶9 Further, Terry cites no authority supporting his proposition that Hughes cannot attack a sheriff's deed in a separate action. Contrary to Terry's assertion, this action is not really a collateral attack. A collateral attack is an

attempt to avoid the force and effect of a judgment in an indirect manner and not in a direct proceeding prescribed by law. *See Schramek v. Bohren*, 145 Wis.2d 695, 713, 429 N.W.2d 501 (Ct. App. 1988). Hughes questions neither the judgment nor the order in the foreclosure action. Rather, she asserts the invalidity of the sheriff's deed delivered to Terry by the clerk of court four years after the last action by the circuit court. Her action is essentially to quiet title.

¶10 We know of no legal bar to Hughes' action. The summary judgment is reversed, and the cause is remanded with direction to grant summary judgment for Hughes.

By the Court.—Judgment reversed and cause remanded with directions.

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

