

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 17, 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. 2005AP991

Cir. Ct. No. 2004CV572

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

**IN THE MATTER OF THE FORECLOSURE OF TAX
LIENS UNDER SEC. 75.521, WIS. STATS., BY
WAUKESHA COUNTY, LIST OF TAX LIENS FOR
THE YEAR 2000 & PRIOR, NUMBER 38:**

DANIEL SAGERT,

APPELLANT,

V.

WAUKESHA COUNTY TREASURER,

RESPONDENT.

APPEAL from orders of the circuit court for Waukesha County:
MARK A. GEMPELER, Judge. *Affirmed.*

Before Snyder, P.J., Brown and Nettesheim, JJ.

¶1 PER CURIAM. Daniel Sagert has appealed from an order entered in the trial court on January 18, 2005, denying his motion to vacate a default foreclosure judgment. He has also appealed from an order entered on April 8, 2005, denying his motion to reconsider the January 18, 2005 order and to vacate the default judgment. We affirm both orders.

¶2 The material underlying facts are undisputed. On March 8, 2004, Waukesha County commenced an action in rem pursuant to WIS. STAT. § 75.521 (2003-04)¹ for foreclosure of a tax lien on a parcel of vacant land owned by Sagert in the town of Genesee, Wisconsin. On that date, the county treasurer, Pamela Reeves, filed in the office of the clerk of the circuit court a list of parcels of property affected by unpaid tax liens, including Sagert's property. *See* § 75.521(3)(a). Sagert was listed as the owner of the property pursuant to § 75.521(3)(am).2, which provides that the list shall contain "[t]he name ... of the last owner ... of the parcel as the ownership ... appears of record in the office of the register of deeds of the county in which the parcel is situated" Sagert's address was listed as 227 Northwest St., Palmyra, WI, which was the address listed for him in the records of the register of deeds.

¶3 Along with the list of properties affected by unpaid tax liens, the County filed a petition for foreclosure and judgment vesting title to the properties in the County. *See* WIS. STAT. § 75.521(3)(am)4. Pursuant to § 75.521(3)(c), the treasurer sent Sagert notice of the commencement of the foreclosure proceedings related to his Genesee property. Notice was sent by certified mail to Sagert at the

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

Palmyra address. The certified mail was returned with a notation from the post office indicating that Sagert had moved and left no forwarding address. Three prior notices regarding the delinquent taxes had also been sent by the treasurer to Sagert at the Palmyra address, and had been returned by the post office with similar notations.

¶4 On August 2, 2004, a hearing was held on the County's motion for default judgment of foreclosure on the properties listed in the March 8, 2004 filing that remained unredeemed. Sagert's Genesee property was included.

¶5 At the time of the hearing, the treasurer filed an affidavit dated July 13, 2004, stating that on March 16, 2004, she had mailed a copy of the petition by certified mail to the last known post office address of each of the last owners and mortgagees of record in the office of the register of deeds of Waukesha County, and so much of the list of tax liens as included the description of the particular parcel in which each owner or mortgagee held any interest. The treasurer's affidavit also stated that beginning on March 16, 2004, the list of tax liens, together with a notice in the form required by WIS. STAT. § 75.521(6), had been published once a week for three consecutive weeks in the *Milwaukee Journal Sentinel*, said notice fixing May 7, 2004, as the final date for redemption of the delinquent tax liens described in the list.

¶6 Default judgment was ordered at the hearing, and the foreclosure judgment was entered on August 11, 2004. On December 16, 2004, Sagert filed a pro se motion to vacate the default judgment as to his property, and to stay the foreclosure sale scheduled for December 17, 2004. In his motion, Sagert alleged that he had been incarcerated in the Waukesha County Huber facility from December 2003 until December 7, 2004. He alleged that statutory requirements

for service by certified or registered mail were not complied with, that he never received a certified or registered letter regarding the foreclosure proceedings as required by statute, and that he had no notice of the proceedings until his release from the Huber facility. He alleged that his actual address had been readily ascertainable through CCAP or other circuit court records during this period. He also alleged that the county clerk had accepted the tender of delinquent taxes by other parties after the redemption deadline and the default judgment hearing, but had refused his tender of the unpaid taxes after his release.

¶7 An order granting a stay of the foreclosure sale was signed and entered in the circuit court on December 17, 2004.² Although Sagert had served his motion on the corporation counsel's office, he failed to serve a copy of the order granting the stay on the corporation counsel or the treasurer. The sale therefore went forward, and a bid was accepted by the County. Subsequently, at the December 28, 2004 hearing on Sagert's motion to vacate the default judgment, the trial court held that the order for a stay was null and void due to Sagert's failure to serve it on the treasurer or corporation counsel. It further held that Sagert's motion to vacate the default judgment was moot because the property had been sold on December 17, 2004. The property was subsequently conveyed by deed to the third-party bidder on December 30, 2004. A written order denying Sagert's motion to vacate the default judgment was entered on January 18, 2005.

¶8 After the December 28, 2004 hearing, a notice of retainer was filed by Sagert's current counsel. On February 7, 2005, Sagert, by counsel, filed a

² The circuit court judge assigned to this case was unavailable on the day Sagert sought the stay, so the order was signed by another circuit court judge.

motion for reconsideration of the January 18, 2005 order, and a motion to vacate the judgment of foreclosure under WIS. STAT. § 806.07. In the motion and an affidavit filed by his counsel in support of the motion, Sagert argued that reconsideration was warranted because, even though the order granting the stay was not served by him on the corporation counsel or treasurer, his December 16, 2004 motion to vacate was timely served on opposing counsel, a fact conceded by the corporation counsel. Citing *Waukesha County v. Young*, 106 Wis. 2d 244, 316 N.W.2d 362 (1982), Sagert also argued that the sale of the land did not render the motion to vacate moot. He repeated his contention that vacating the foreclosure judgment was required because his current address was readily ascertainable and the treasurer therefore failed to sufficiently comply with WIS. STAT. § 75.521(3)(c) when she sent notice of the foreclosure proceedings to the Palmyra address. He also alleged that because the County permitted redemption by other property owners after the May 7, 2004 deadline set for redemption, it failed to strictly comply with § 75.521, rendering the foreclosure judgment void. Finally, Sagert contended that he was denied due process and equal protection when the County accepted payments from other property owners after the redemption deadline, but refused to accept payment from him in December 2004.

¶9 Sagert reiterated these arguments in briefs filed on March 15 and 17, 2005. In the March 15 brief, he also contended that WIS. STAT. § 75.521 requires publication as a class 3 notice under WIS. STAT. CH. 985, and that “the court file reflects that no affidavit of publication has been filed from any newspaper or any publisher.” While acknowledging that the treasurer had filed an affidavit alleging compliance through publication with the *Milwaukee Journal Sentinel*, he contended that the representation in the treasurer’s affidavit regarding publication in the *Milwaukee Journal Sentinel* “may be erroneous” because the material sent

by the treasurer to Sagert included a newspaper clipping showing initial publication in the *Waukesha Freeman*, not the *Milwaukee Journal Sentinel*.

¶10 A hearing was held on Sagert's motion on March 21, 2005. At the conclusion of the hearing, the trial court denied both the motion to reconsider and the motion to vacate the foreclosure judgment. It concluded that the motion to vacate was filed under WIS. STAT. § 806.07, but that Sagert had failed to show excusable neglect for his failure to redeem the property or answer the petition for foreclosure. It concluded that Sagert had an affirmative duty to keep his address current in the records of the register of deeds, and that the treasurer appropriately relied on the records of the register of deeds in determining Sagert's address for the purpose of mailing notice of the foreclosure proceedings under WIS. STAT. § 75.521. It found full compliance with § 75.521 as to Sagert, and that there were "discernible differences" in treatment between Sagert and the Barnhills and Sharpleys, owners who redeemed their property. It concluded that the foreclosure judgment was not void or voidable, and declined to reconsider the January 18, 2005 order or vacate the portion of the foreclosure judgment related to Sagert.

¶11 On March 29, 2005, Sagert's counsel sent a letter to the trial court in response to a proposed order submitted by the corporation counsel. Among other things, Sagert's counsel stated that after the March 21, 2005 hearing, he received a letter from an attorney at the *Milwaukee Journal Sentinel*, verifying that the *Milwaukee Journal Sentinel* did not publish the notice referenced in the treasurer's July 13, 2004 affidavit. In the letter, Sagert's counsel requested "that opposing counsel take appropriate remedial measures as required by SCR 20:3.3(a)(4)."

¶12 Sagert sent the trial court a second letter dated April 7, 2005, and filed on April 8, 2005, acknowledging receipt of a revised proposed order

submitted by the corporation counsel. In the letter, Sagert included a final paragraph stating:

I wish to further advise the Court that I received no indication of a willingness by opposing counsel to take any remedial measures regarding the publication affidavit filed in this action as would appear to be required under SCR 20:3.3(a)(4). I would respectfully submit that under Section 75.521(9), Wis. Stats., an affidavit of publication, by the publisher, should as a matter of course be filed with the court file in the Office of the Clerk of the Circuit Court.

¶13 On April 8, 2005, a written order was entered denying Sagert's motion for reconsideration of the January 18, 2005 order, and denying his second motion to vacate the judgment of foreclosure. Sagert then appealed the January 18 and April 8, 2005 orders. We affirm both orders.

¶14 We review a trial court's decision on a motion for reconsideration under an erroneous exercise of discretion standard. *Koepsell's Olde Popcorn Wagons, Inc. v. Koepsell's Festival Popcorn Wagons, Ltd.*, 2004 WI App 129, ¶6, 275 Wis. 2d 397, 685 N.W.2d 853. A trial court's decision to grant or deny a motion for relief from judgment under WIS. STAT. § 806.07 is reviewed under the same standard. See *Franke v. Franke*, 2004 WI 8, ¶54, 268 Wis. 2d 360, 674 N.W.2d 832. An appellate court will affirm a trial court's discretionary decision provided the trial 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. *Id.* The record must reflect the trial court's reasoned application of the appropriate legal standard to the relevant facts of the case. *Id.* However, when a trial court fails to provide an adequate reason for its discretionary decision, this court will uphold the decision if, upon an examination of the record, the facts support the exercise of discretion. *Id.*, ¶55.

¶15 Sagert's initial arguments on appeal relate to the January 18, 2005 order. First, he contends that the trial court did not reach the substance of his motion at the December 28, 2004 hearing because it mistakenly believed that he had failed to serve his motion for a stay and to vacate judgment on the corporation counsel and treasurer. He also contends that the trial court erred in concluding that the foreclosure sale rendered his motion moot.

¶16 Sagert's arguments provide no basis to disturb the January 18, 2005 order. In the order and at the December 28, 2004 hearing, the trial court concluded that the order staying the foreclosure sale was null and void because, as acknowledged by Sagert on appeal, the order was not served on the corporation counsel, treasurer, or other representative of the County before the scheduled sale. Regardless of whether the trial court may also have mistakenly believed that the motion for a stay and to vacate the judgment was not served on the corporation counsel or treasurer, this factor provides no basis for relief because the trial court subsequently addressed a motion to vacate the foreclosure judgment from Sagert. Because the trial court addressed Sagert's motion to vacate on March 21, 2005, his substantial rights were not affected by any confusion as to whether the December 16, 2004 motion for a stay and to vacate judgment was served on opposing counsel. *See* WIS. STAT. § 805.18(2).

¶17 Sagert's challenge to the trial court's finding of mootness also provides no basis for relief. At the December 28, 2004 hearing, Sagert cited no law to support his contention that the matter was not moot merely because the foreclosure sale had occurred. Although he now relies on *Young* to argue that his motion was not moot, he did not cite this case law to the trial court until after the December 28, 2004 hearing. Because he did not bring this case law to the court's

attention, the trial court did not erroneously exercise its discretion by failing to consider it when it denied Sagert's motion at the December 28, 2004 hearing.

¶18 In any event, assuming *arguendo* that the trial court erred in concluding that the December 16, 2004 motion to vacate was moot, the trial court addressed Sagert's motion to vacate on March 21, 2005. Sagert's substantial rights therefore were not affected by its determination that his original motion was moot, and no basis for relief exists. *See* WIS. STAT. § 805.18(2).

¶19 Sagert's next argument is that the trial court was required to vacate the foreclosure judgment because the County failed to strictly comply with WIS. STAT. § 75.521. Unless the statutory procedures of § 75.521 are strictly complied with, a court has no jurisdiction to render a foreclosure judgment. *Young*, 106 Wis. 2d at 249. A county's failure to fully comply with § 75.521 renders a foreclosure judgment void. *Topps v. County of Walworth*, 2003 WI App 30, ¶19, 260 Wis. 2d 225, 659 N.W.2d 177.

¶20 Sagert contends that the treasurer failed to comply with § 75.521(3)(c) because she failed to exercise due diligence to ascertain his correct address, either by checking motor vehicle records, which would have provided a North Prairie, Wisconsin address, or by checking CCAP, jail records, or circuit court records, which would have revealed his incarceration in the Huber facility. He contends that the treasurer was not entitled to send the certified mail required by § 75.521(3)(c) to the Palmyra address because earlier notices regarding delinquent taxes had been sent to that address and returned by the post office with a notation that Sagert no longer lived there.

¶21 The trial court properly rejected this argument. WIS. STAT. § 75.521(3)(c) provides:

A copy of the petition and so much of the list of tax liens as shall include the description of a particular parcel shall be mailed by registered or certified mail, return receipt requested, by the county treasurer to the last-known post-office address of each owner and mortgagee of record An affidavit of the treasurer setting forth the names of the owners [and] mortgagees ... for whom a post-office address has been ascertained, giving the addresses and stating that notice was mailed, giving the date of mailing, and stating that no present post-office address was ascertainable for the other owners and mortgagees, shall be filed and constitute full compliance with this paragraph.

¶22 Pursuant to WIS. STAT. § 75.521(3)(am)2., the list of properties that must be filed by the treasurer for foreclosure by proceeding in rem must contain “the name ... of the last owner ... of the parcel as the ownership ... appears of record in the office of the register of deeds of the county in which the parcel is situated” The notice requirements of § 75.521(3)(am)2. apply to the last owner or mortgagee as indicated by the records of the register of deeds. *See Young*, 106 Wis. 2d at 250 (discussing § 75.521(3)(a)2. (1977), the predecessor to § 75.521(3)(am)2., the current version of the statute). Because Sagert’s address was listed as 227 Northwest St., Palmyra, WI, in the records of the register of deeds, the treasurer correctly relied upon this address when sending the certified mail required by § 75.521(3)(c).

¶23 Contrary to Sagert’s argument, nothing in WIS. STAT. § 75.521 compelled the treasurer to search for a new address for him after the prior notices or certified letter were returned as undeliverable. The reference in § 75.521(3)(c) to owners “for whom a post-office address has been ascertained,” when read in conjunction with § 75.521(3)(am)2., indicates that the names and addresses of the owners are derived from the records of the register of deeds. Nothing in § 75.521 or any other statute cited by Sagert places a duty upon the treasurer to search other sources for a property owner’s address when the address in the records of the

register of deeds becomes outdated or invalid.³ The burden was on Sagert to keep the register of deeds or treasurer advised of his correct address. Because he failed to do so, and because the treasurer had no statutory duty to search for a new address for Sagert when the notices and certified letter were returned by the post office, no basis exists to disturb the foreclosure judgment on the ground that the treasurer failed to comply with § 75.521(3)(c) when she relied upon the Palmyra address. *Cf. Pocius v. Kenosha County*, 231 Wis. 2d 596, 609-10, 605 N.W.2d 915 (Ct. App. 1999)(in tax deed foreclosure case under WIS. STAT. § 75.12, the county and village were entitled to rely on address information provided by taxpayer until the taxpayer provided new information).

¶24 Sagert's remaining arguments also fail. He cites *Mennonite Board of Missions v. Adams*, 462 U.S. 791 (1983), and cases from other jurisdictions for the proposition that the treasurer was required to take additional measures to ascertain his correct address when it became apparent that the address of record with the register of deeds was invalid. However, in *Mennonite Board*, the court indicated that notice by mail would be constitutionally adequate. *See Pocius*, 231 Wis. 2d at 609. Because the treasurer complied with the statute providing for notice by mail to a delinquent taxpayer, and because she was entitled to rely on the address in the records of the register of deeds until Sagert gave notice of a

³ Sagert relies upon the portion of the treasurer's July 13, 2004 affidavit in which she states that she mailed a copy of the petition to the last known post office address of each of the last owners and mortgagees of record in the office of the register of deeds, "except as to those owners and mortgagees of record from (sic) whom no post office address could be ascertained after using due diligence for that purpose." Although the treasurer used language regarding due diligence in this affidavit, the burden imposed by the applicable statutes is merely to ascertain information as to ownership as it appears in the records of the register of deeds. When an address for an owner is contained in the records of the register of deeds, the treasurer does not need to search for a new address, even if mailings are returned with no forwarding address.

different address, no constitutional defect exists. *See id.* at 609-10. Because the treasurer was statutorily entitled to rely on the records of the register of deeds for Sagert's address, his claim that knowledge of his incarceration in the Huber facility must be imputed to her under the law of agency also fails.

¶25 The trial court also reasonably rejected Sagert's contention that the foreclosure judgment must be vacated because the notice sent by the treasurer under WIS. STAT. § 75.521(3)(c) was inaccurate. Specifically, he objects that the newspaper publication stated that May 7, 2004, was the last day for redemption, while the certified letter sent by the treasurer stated that property owners could redeem their property under one procedure applicable to the period between May 7, 2004, and the date of the court hearing, and under another procedure for sixty days after the court date. Sagert's theory is that § 75.521 does not authorize the County to extend the time for redemption, and that the County therefore failed to strictly comply with § 75.521(5) and (8), rendering the foreclosure judgment void.

¶26 WISCONSIN STAT. § 75.521(5) and (8) provide that a property owner's rights and interest in a property are barred and foreclosed and a foreclosure judgment may be taken if timely redemption does not occur before the expiration of the redemption period specified in the notice published under § 75.521(6). However, nothing in § 75.521 precludes the County from extending the time permitted for redemption, nor does Sagert show how he was prejudiced by the County's policy of granting extensions. Consequently, no basis exists to conclude that the County violated § 75.521 by its extension policy, rendering the foreclosure judgment void.

¶27 In a related argument, Sagert contends that the trial court erroneously exercised its discretion by failing to consider whether he was denied equal protection when the County refused his tender of the delinquent taxes in December 2004, but accepted late payment from other property owners. He cites *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000), for the principle that an equal protection claim may be maintained when the plaintiff alleges that he or she has been intentionally treated differently from others similarly situated and there is no rational basis for the difference in treatment.

¶28 The defect in Sagert's argument is that, by his own admission, he did not attempt to tender payment until after his release from the Huber facility on December 7, 2004. The record indicates that other parties who were permitted to redeem tendered payment before the August 2, 2004 default judgment hearing or otherwise within the redemption period permitted by the County.⁴ Sagert was given notice that payment would be accepted from him within this period, but

⁴ Except as to the Barnhills and Sharpleys, the record indicates that the other redemptions occurred before the August 2, 2004 foreclosure hearing. Sagert objects that the Barnhills were permitted to redeem after that date, and after the default judgment was entered on August 11, 2004. However, in the County's September 3, 2004 motion to vacate the default judgment as to the Barnhills, the assistant corporation counsel represented that the delinquent taxes had been paid, and that the motion to remove the Barnhills' property from the August 11, 2004 judgment was not made sooner because of counsel's absence from the office. At the March 21, 2005 hearing, counsel indicated that the Barnhills' payment had been postmarked several days before the August 2, 2004 hearing. It is thus clear that redemption by the Barnhills occurred within the period allowed by the County under the policy described in the notice to Sagert.

Like the Barnhills', the Sharpleys' situation was also different from Sagert's. Entry of a foreclosure judgment against them was stayed as a result of bankruptcy proceedings. In addition, in November 2004, a reserve judge temporarily continued a stay of entry of a foreclosure judgment against their property over the County's objections. The difference in treatment of the Sharpleys and Barnhills thus provides no basis for concluding that Sagert was denied equal protection when the County refused to accept payment allegedly tendered by him in December 2004, four months after entry of the foreclosure judgment against his property.

failed to receive the notice because he had not provided the register of deeds or treasurer with an updated address, and failed to tender payment within the time provided. No basis therefore exists to conclude that he was intentionally treated differently from others similarly situated, or that there was no rational basis for any difference in treatment.

¶29 Sagert's final argument is that the treasurer failed to file an affidavit of the person who performed the publication required by WIS. STAT. § 75.521(6), and thus failed to comply with § 75.521(9). He also contends that although the treasurer represented in her July 13, 2004 affidavit that the publication required by § 75.521(6) took place in the *Milwaukee Journal Sentinel*, the newspaper clipping mailed to Sagert and filed in the circuit court was from the *Waukesha Freeman*. He contends that no affidavit from the publisher was filed showing compliance with § 75.521(6), nor was an amended affidavit filed by the treasurer.

¶30 To the extent Sagert is contending that the affidavit required under WIS. STAT. § 75.521(9) must be signed by the actual publisher of the newspaper in which publication occurs, we reject his argument. Section 75.521(6) states that the treasurer "shall cause such notice, together with the list of tax liens and petition, to be published as a class 3 notice, under ch. 985." Section 75.521(9) states that "[a]ll affidavits ... of publication ... shall be made by the person performing such acts" Read together, these provisions indicate that the treasurer who causes publication to occur is responsible for filing the affidavit attesting to that fact.

¶31 The remainder of Sagert's publication argument is waived. Sagert contends that the treasurer's affidavit inaccurately stated that publication was made in the *Milwaukee Journal Sentinel*. However, he failed to clearly raise this

issue before or at the March 21, 2005 hearing at which the trial court denied his second motion to vacate.

¶32 As previously noted, in his March 15, 2005 brief, Sagert merely noted that the treasurer's affidavit regarding publication in the *Milwaukee Journal Sentinel* "may be erroneous" because the material sent by the treasurer to Sagert included a newspaper clipping showing initial publication in the *Waukesha Freeman*. Similarly, at the March 21, 2005 hearing, he merely stated that, contrary to the treasurer's affidavit, the publication sent to Sagert was from the *Waukesha Freeman* rather than the Waukesha edition of the *Milwaukee Journal Sentinel*. He did not clearly deny that publication had occurred in the *Milwaukee Journal Sentinel* until after the hearing, in his March 29 and April 7 letters objecting to the proposed order, when he first provided the trial court with the letter from counsel for the *Milwaukee Journal Sentinel* denying publication.

¶33 If Sagert objected to the treasurer's representation that publication occurred in the *Milwaukee Journal Sentinel*, and believed that the alleged error afforded him a right to relief from the foreclosure judgment, it was incumbent upon him to bring his objections to the trial court's attention in such a manner that the trial court would understand that it was being called upon to make a ruling on the issue. See *State v. Salter*, 118 Wis. 2d 67, 79, 346 N.W.2d 318 (Ct. App. 1984). Raising issues in the trial court gives the opposing party and the trial court judge notice of the issue and a fair opportunity to address it, and is necessary to preserve the issue for appeal. See *Allen v. Wisconsin Public Service Corp.*, 2005 WI App 40, ¶20, 279 Wis. 2d 488, 694 N.W.2d 420, review denied, 2005 WI 136, 285 Wis. 2d 627, 703 N.W.2d 376. Because Sagert did not clearly raise this issue until after the trial court orally denied his motion at the March 21, 2005 hearing, it is waived for purposes of appeal.

By the Court.—Orders affirmed.

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

