

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**January 31, 2002**

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. 01-0638  
STATE OF WISCONSIN**

**Cir. Ct. No. 99-CV-340**

**IN COURT OF APPEALS  
DISTRICT IV**

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**WMC MORTGAGE CORPORATION,**

**PLAINTIFF-RESPONDENT,**

**V.**

**JOHN HENRY BURCKHARDT,**

**DEFENDANT-APPELLANT.**

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APPEAL from an order of the circuit court for Sauk County:  
PATRICK J. TAGGART, Judge. *Order affirmed; motion granted and cause  
remanded for further proceedings.*

Before Dykman, Deininger and Lundsten, JJ.

¶1 PER CURIAM. John Burckhardt appeals an order which confirmed a sheriff's sale following a foreclosure action on Burckhardt's property. WMC Mortgage Corporation held the outstanding mortgage and successfully bid \$84,144.06 for the property. Burckhardt contends: (1) he should have been

granted a default judgment when WMC appeared by telephone rather than in person at the initially scheduled confirmation hearing; (2) the sale was prohibited by the United States Land Grant Act; (3) Burckhardt's own bid of \$26.10 should have taken precedence because it was offered in silver coin; and (4) the trial court improperly precluded Burckhardt from offering evidence. WMC moves for an award of costs and attorney fees on the basis that the appeal is frivolous. We agree with WMC that the appeal is frivolous. Accordingly, we affirm the order of the trial court and remand the matter for a determination of the amount of WMC's costs and attorney fees.

¶2 First, Burckhardt's claim that he should have been granted a default judgment is flawed in several respects. WISCONSIN STAT. § 806.02(5) (1999-2000)<sup>1</sup> provides that "[a] default judgment *may* be rendered against any *defendant* who has appeared in the action but *who fails to appear* at trial." (Emphasis added.) Here, WMC was the plaintiff, not the defendant, and WMC appeared by telephone as authorized by WIS. STAT. § 807.13. Burckhardt has cited no authority which would have required WMC to appear in person.<sup>2</sup> Thus, the trial court did not have any basis to grant a default judgment. And, even if such a basis had existed, Wisconsin law has long recognized that default judgments are disfavored and trial courts have discretion whether to grant or deny them. *See*

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<sup>1</sup> All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

<sup>2</sup> Burckhardt's reliance on *City of Sun Prairie v. Davis*, 217 Wis. 2d 268, 579 N.W.2d 753 (Ct. App. 1998), is misplaced both because the factual situation in that case was significantly different from the situation here and because *Davis* was overruled by the Wisconsin Supreme Court. *See City of Sun Prairie v. Davis*, 226 Wis. 2d 738, 595 N.W.2d 635 (1999).

*Wisconsin Pub. Serv. Corp. v. Krist*, 104 Wis. 2d 381, 395, 311 N.W.2d 624 (1981).

¶3 Next, Burckhardt's assertions regarding United States land grant violations also fail. To begin with, there is not just one federal land grant act. Rather, there have over the years been a series of congressional acts regarding land grants or patents to public lands, dealing with topics ranging from homesteading and railroad rights to swamps and mineral mining. Current federal legislation on the topic of public lands is located in Title 43 of the United States Code and encompasses three volumes. Burckhardt has not identified what specific federal provision he believes has been violated. However, as the current dispute does not involve any public land, we are satisfied that none of the federal land grant acts have any bearing on the transfer of title from Burckhardt to WMC.

¶4 Burckhardt's claim that only bids made in gold or silver coin are proper is without merit because Federal Reserve notes have been made legal tender by virtue of 31 U.S.C. § 5103 (previously numbered 31 U.S.C. § 392). *See Kauffman v. Citizens State Bank of Loyal*, 102 Wis. 2d 528, 533, 307 N.W.2d 325 (Ct. App. 1981). That statute does not violate U.S. CONST. art. I, § 10, which provides that "[n]o state shall ... make any thing but gold and silver coin a tender in payment of debts," because the statute was enacted by Congress, not a state.

¶5 Finally, Burckhardt complains that the trial court refused to let him present evidence. Again, Burckhardt fails to specify what particular evidence was excluded, or what rule of evidence he believes the exclusion violated. It appears from the transcript that the trial court accepted a packet of motions which Burckhardt filed the morning of the confirmation hearing, and explained on the

record that all but one of them were irrelevant because the only issue before the court was whether the bid represented fair value for the property. We see no error of law or misuse of discretion in the trial court's rulings on the motions.

¶6 We are persuaded that Burckhardt should have known from the trial court's comments that his arguments were without any reasonable basis in law. We deem the appeal frivolous. Accordingly, we grant WMC's motion for costs and attorney fees under WIS. STAT. RULE 809.25(3), and remand the matter to the circuit court for a determination of the amount of the award.

*By the Court.*—Order affirmed; motion granted and cause remanded for further proceedings.

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

