COURT OF APPEALS
DECISION
DATED AND FILED

March 5, 2013

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2011AP2658 **Cir. Ct. No. 2010CV98**

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

HOUSEHOLD FINANCE CORPORATION III,

PLAINTIFF-RESPONDENT,

V.

DUNCAN R. KENNEDY AND ANN KENNEDY,

DEFENDANTS-APPELLANTS.

APPEAL from an order of the circuit court for Sawyer County: GERALD L. WRIGHT, Judge. *Affirmed*.

Before Hoover, P.J., Mangerson, J., and Thomas Cane, Reserve Judge.

¶1 PER CURIAM. Duncan and Ann Kennedy (collectively referred to as "Kennedy"), pro se, appeal an order denying a motion to vacate a foreclosure judgment granted in favor of Household Finance Corporation III ("HFC").

Because Kennedy stipulated to the judgment of foreclosure, failed to appeal the judgment, and did not present issues in the motion to vacate other than those that could have been raised from an appeal of the original judgment, we affirm.

¶2 On July 13, 2010, Kennedy stipulated to entry of judgment of foreclosure, with a six-month period of redemption. The following day, the circuit court entered Findings of Fact, Conclusions of Law and Judgment of Foreclosure. Kennedy did not appeal from the judgment.

¶3 During the redemption period, Kennedy allegedly became aware of news about "robo-signed"[1] affidavits and notarizations. Kennedy claims he then took a closer look at the foreclosure complaint, and noticed the "loan number" on the first page of the note attached to the complaint was redacted. Kennedy contends "all the digits, except a tiny speck, had been blotted out with correction fluid, intentionally – but there was no way of knowing why." Kennedy insists the exhibit did not match "Kennedy's duplicate copy of their note."

¶4 Kennedy suggested that HFC "might not be the holder in due course of the Note or the real party in interest." Kennedy reasoned that obscuring the numbers on the note was done intentionally to "conceal over-markings, stampings, or other identifying notations that would indicate the Kennedy's loan documents were assigned," pledged to a trust for an asset-backed security, or sold to a government sponsored enterprise such as Fannie Mae. According to Kennedy,

[1] "Robo-signing" is a pejorative term, which has come to mean the signing of foreclosure affidavits without personal knowledge. The term apparently evolved from an October 21, 2010 Wall Street Journal article entitled, "Niche Lawyers Spawned Housing Fracas."

"[t]hat ambiguity leaves a door open for the possibility that at some prior time HFC III may not have been an owner and holder of the note and mortgage."

¶5 Kennedy moved to stay the sheriff's sale and demanded HFC produce the original "wet ink" note so the "white out degrading could be seen and the extent of the concealment revealed." The circuit court denied the motion after a hearing, but indicated any underlying issues could be dealt with at the confirmation hearing.

¶6 During the week prior to the confirmation sale, Kennedy visited HFC's counsel's office and viewed the note with a mortgage broker. Two days prior to the confirmation hearing, Kennedy allegedly learned that HFC's "presumed parent corporation" had agreed to a consent order with the Federal Reserve and the Comptroller of the Currency, in which it allegedly agreed to a voluntary moratorium on foreclosures.

¶7 After a hearing on April 27, 2011, the court confirmed the sale. The court noted that it had allowed Kennedy to personally examine the original note. The court further stated:

> He has now done that. He is on the record as having done that and confirms that based upon his review it appears to be the original note. And there is no reason to believe that based upon the appearance of that note that it has ever been assigned to any third party.

¶8 On May 13, 2011, Kennedy filed a pro se motion for reconsideration and stay of proceedings. In the affidavit supporting the motion, Kennedy asserted, "it is a distinct possibility that due to 'robo-signers' and other defective documents and concealments, that [HFC] is not the true beneficial owner of the Note my wife and I signed; thus, this matter arguably should be dismissed." After a hearing, the

court denied the motion. The court noted no evidence was presented, "[t]here's simply speculation and conjecture."

¶9 On July 7, 2011, Kennedy filed a "Motion to Vacate Judgment and For An Immediate Stay of The Writ of Assistance." Kennedy requested the circuit court "vacate or reconsider its decision granting a Summary Judgment of foreclosure, as '*genuine issues of material fact are in dispute*.'" (Emphasis in original.) Essentially, Kennedy alleged that a different corporation funded the loan and therefore HFC was not the custodian of Kennedy's loan. The court denied the motion after a hearing. This appeal follows.

¶10 It is well accepted that a party may waive the right to appeal in civil cases where it has caused or induced a judgment to be entered, or has consented or stipulated to the entry of a judgment. *See* ***Racine County v. Smith***, 122 Wis. 2d 431, 437, 362 N.W.2d 439 (Ct. App. 1984).[2] In any event, it is axiomatic that a party who contests the judgment of foreclosure must appeal from that judgment. Although a party may move a circuit court to reconsider a judgment, the order denying reconsideration is appealable only if the reconsideration motion presents issues not already determined by the original judgment. *See* ***Ver Hagen v. Gibbons***, 55 Wis. 2d 21, 26, 197 N.W.2d 752 (1972).

¶11 Here, the ownership of the note was decided in the foreclosure judgment. The judgment was entered pursuant to Kennedy's stipulation, and the judgment was not appealed. In any event, Kennedy was subsequently provided

[2] We note both parties cite unpublished decisions in their briefs to this court. We admonish the parties that improper citations to unpublished opinions in the future may result in sanctions.

the opportunity to inspect the original note. Kennedy acknowledged on the record in open court there was no reason to believe, based on the appearance of that note, that it was ever assigned to any third party.

¶12 The circuit court also correctly determined there was no new evidence presented. Indeed, Kennedy provides no legitimate reason why discovery could not have been completed prior to summary judgment to determine the proper party in interest. That Kennedy subsequently became aware of "robo-signings" does not ameliorate this deficiency. Moreover, as the court pointed out, Kennedy's subsequent arguments were rendered irrelevant by his inspection of the note and his own testimony that there was no reason to believe the note had ever been assigned. As pertains to the present case, the court properly characterized Kennedy's assertions of fraud and concealment, as "simply speculation and conjecture."

¶13 Kennedy insists without citation to authority that the circuit court, "in examining issues as if for the first time, rendered his original order moot, including his Findings of Fact, Conclusions of Law, and Judgment of Foreclosure." We will not consider arguments unsupported by citation to legal authority. *See* ***Kruczek v. DWD***, 2005 WI App 12, ¶32, 278 Wis. 2d 563, 692 N.W.2d 286 (Ct. App. 2004). However, even if we considered the issue, the record is clear that the court merely provided Kennedy "an awful lot of leeway" to provide evidence to support his contentions. Ultimately, the court correctly observed, "there is no new evidence here."

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2011-12).