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DISTRICT III

March 14, 2023

To:

Hon. Scott R. Needham
Circuit Court Judge
Electronic Notice

Gary Sukowatey
Electronic Notice

Kristi Severson
Clerk of Circuit Court
St. Croix County Courthouse
Electronic Notice

Nancy Sukowatey
905 120th Street
Roberts, WI 54023

Heather Marie Amos
Electronic Notice

You are hereby notified that the Court has entered the following opinion and order:

2022AP63

St. Croix County v. Gary Sukowatey
(L. C. No. 2001CV153)

Before Stark, P.J., Hruz and Gill, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. Rule 809.23(3).

Gary and Nancy Sukowatey appeal from an order that denied their motion for relief from a prior order regarding the reimbursement of special master expenses in a zoning case. Based upon our review of the briefs and the record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2021-22).¹ We summarily affirm.

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

St. Croix County filed suit against the Sukowateys seeking, among other things, to enjoin them from operating a junk yard on their property without a zoning exception permit and to require them to remove all junk from their property. The circuit court eventually appointed Attorney Lars Loberg as a special master to oversee the removal of the junk. The appointment order provided that the Sukowateys would be responsible for paying “[a]ll costs associated with removal of the items identified as junk,” including any special master fees. After Loberg filed a report, was discharged from his special master appointment, and was paid² for services rendered to that point, the Sukowateys sued St. Croix County and Loberg in federal court for alleged errors committed in the zoning case. Loberg tendered his defense of the federal lawsuit to his malpractice insurance carrier.

Loberg subsequently submitted an additional Petition for Special Master Referee Expenses in the zoning case seeking reimbursement from St. Croix County and the Sukowateys for the \$9,058.50 deductible Loberg paid to his insurer to defend against the Sukowateys’ federal lawsuit. On October 11, 2021, after holding the petition for thirty days without a response from the Sukowateys, the circuit court issued an order directing St. Croix County to reimburse Loberg, and the Sukowateys to reimburse St. Croix County.

The Sukowateys did not appeal the October 11, 2021 order. Instead, they filed a motion for relief from judgment under WIS. STAT. § 806.07. As grounds for relief, the Sukowateys claimed that the October 11 order “should be deemed void for failure to establish a party on which to issue payment.” The Sukowateys argued that the circuit court lacked jurisdiction over

² The circuit court ordered St. Croix County to “advance payment” to Loberg, and the Sukowateys assert that they reimbursed the County by check on September 6, 2018.

Loberg’s request for additional reimbursement of special master expenses because the court had already dismissed Loberg as special master before the claimed expenses were incurred, the court had not provided notice that it “reopen[ed]” the zoning case, and Loberg had not initiated a new case by serving a complaint for damages against the Sukowateys. The court denied the Sukowateys’ motion for relief in an order entered on January 4, 2022. It is from that order that the Sukowateys now appeal.

We first note that the circuit court mistakenly analyzed the Sukowateys’ motion under the legal standard for reconsideration motions,³ rather than the legal standard for relief from a judgment or order. The principle of efficient judicial administration allows us to affirm proper decisions by the circuit court even when they were reached for the wrong reasons. *Bence v. Spinato*, 196 Wis. 2d 398, 417, 538 N.W.2d 614 (Ct. App. 1995). We will therefore independently review the Sukowateys’ claim for relief from the October 11, 2021 order, pursuant to WIS. STAT. § 806.07.

WISCONSIN STAT. § 806.07(1) allows the circuit court to grant relief from a final order for any of the following reasons:

- (a) Mistake, inadvertence, surprise, or excusable neglect;
- (b) Newly discovered evidence which entitles a party to a new trial under [WIS. STAT. §] 805.15(3);

³ Specifically, the circuit court considered whether the Sukowateys had presented newly discovered evidence or demonstrated a manifest error of law or fact under *Koepsell’s Olde Popcorn Wagons, Inc. v. Koepsell’s Festival Popcorn Wagons, Ltd.*, 2004 WI App 129, ¶44, 275 Wis. 2d 397, 685 N.W.2d 853, rather than considering whether any of the grounds under WIS. STAT. § 806.07 had been satisfied.

- (c) Fraud, misrepresentation, or other misconduct of an adverse party;
- (d) The judgment is void;
- (e) The judgment has been satisfied, released or discharged;
- (f) A prior judgment upon which the judgment is based has been reversed or otherwise vacated;
- (g) It is no longer equitable that the judgment should have prospective application; or
- (h) Any other reasons justifying relief from the operation of the judgment.

The Sukowateys first contend that Loberg “violated due process by misrepresenting [the lawsuit] in federal court as a special master’s expense.” The Sukowateys do not explain how this claim would fall within the scope of one of the enumerated grounds for relief under WIS. STAT. § 806.07(1). The question whether Loberg’s insurance deductible qualified as a valid expense arising from Loberg’s special master appointment goes to the merits of the October 11, 2021 order granting Loberg’s petition for additional expenses. Because the Sukowateys did not appeal the October 11 order, we have no jurisdiction to review whether the insurance deductible fell within the scope of Loberg’s special master appointment. *See generally* WIS. STAT. RULE 809.10(1)(e) (stating that a timely notice of appeal is necessary to provide jurisdiction). Our review is limited to determining whether the circuit court properly decided in its January 4, 2022 order that the Sukowateys had failed to show grounds for relief from the October 11 order under § 806.07, and does not encompass whether the October 11 order was properly decided. We therefore conclude the court did not err in refusing to grant relief based upon any of the various reasons the Sukowateys claimed that the insurance deductible was not a valid special master expense.

The Sukowateys’ second contention is that the October 11, 2021 order was “void” because neither Loberg nor the circuit court moved to “reopen” the zoning case pursuant to WIS. STAT. § 800.115(2). A void order is grounds for relief under WIS. STAT. § 806.07(1)(d). However, the Sukowateys have not shown that the October 11 order was, in fact, void. As a general rule, a judgment or order is void if the court entering it lacks personal or subject matter jurisdiction or fails to provide sufficient notice to satisfy due process. *See Mercado v. GE Money Bank*, 2009 WI App 73, ¶18, 318 Wis. 2d 216, 768 N.W.2d 53. Here, the court had personal jurisdiction over the Sukowateys and subject matter jurisdiction over the zoning case when it issued the order appointing Loberg as a special master and directing the Sukowateys to pay all costs associated with the removal of junk from the Sukowateys’ property—including the special master fees. Loberg, through his subsequent filing of a petition for reimbursement of expenses he claimed to have incurred due to the special master appointment, merely sought to enforce the prior order; it did not “reopen” the underlying zoning case, transform Loberg into a party in that case, or require him to be a party in the case over whom jurisdiction needed to be established. Furthermore, the Sukowateys had more than thirty days’ notice of the petition for expenses. In short, § 800.115(2) has absolutely no bearing on this case, and any claimed error in following the statute does not render the October 11 order void.

Finally, the Sukowateys contend that Loberg failed to file a motion to “intervene” in the zoning action pursuant to WIS. STAT. § 803.09. This contention is based upon the same false premise that a special master is a party to the underlying case. The failure to file a motion for intervention did not render the October 11, 2021 order void.

Upon the foregoing,

IT IS ORDERED that the order is summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals