COURT OF APPEALS
DECISION
DATED AND FILED

May 3, 2012

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2011AP446 **Cir. Ct. No. 2009CV001631**

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

CARMEN J. CROONQUIST, DWAYNE S. CARLSON, AND JOEL C. ELIASON,

PLAINTIFFS-RESPONDENTS,

V.

HISTORIC HUDSON, L.L.C., AND PATT A. COLTEN,

DEFENDANTS-APPELLANTS.

APPEAL from an order of the circuit court for St. Croix County: HOWARD W. CAMERON, JR., Judge. *Affirmed.*

Before Vergeront, Higginbotham and Blanchard, JJ.

¶1 PER CURIAM. Historic Hudson, L.L.C. and Patt Colten appeal an order denying their motion to vacate judgments entered against them in an easement action.[1] We affirm for the reasons discussed below.

BACKGROUND

¶2 Carmen Croonquist, Dwayne Carlson, and Joel Eliason filed this lawsuit alleging that Historic Hudson and Patt Colten were interfering with their recorded easement rights to a driveway straddling their property lines by constructing a fence partitioning the driveway. They sought both temporary and permanent injunctive relief barring construction of the fence and declaratory judgment specifying the parties' respective rights.

¶3 According to Colten, during the pendency of the case, Historic Hudson was administratively dissolved and it quitclaimed to Colten the land upon which the easement ran. However, Historic Hudson did not present the court or opposing parties with evidence of the deed transfer or move to be dismissed from the lawsuit prior to the scheduled trial date. Colten appeared at trial pro se, purporting to represent Historic Hudson's interests as well as her own. The circuit court entered a default judgment against Historic Hudson based upon its failure to

[1] The notice of appeal filed on February 25, 2011, states that the appellants are seeking relief from the "temporary decision and order, entered on January 8, 2010," as well as the order dated January 12, 2011, denying their motion to reopen the judgment. However, the default judgment that was entered on November 3, 2010, was a separately appealable final decision that encompassed all temporary rulings or orders that had been issued prior to that point. *See* WIS. STAT. RULE 809.10(4) (2009-10). Because the notice of appeal was not timely filed with respect to the default judgment, we do not have jurisdiction over any prior orders or rulings and our review is limited to whether the circuit court properly refused to reopen the judgment. *See* WIS. STAT. RULE 809.10(1)(e). Accordingly, we do not address the appellants' arguments on appeal that the terms of the default judgment or any prior orders exceeded the relief demanded in the complaint.

appear by counsel, and dismissed any individual claims against Colten upon the plaintiffs' motion. The circuit court entered a separate final judgment against Colten on the grounds that she was bound by the easement and injunction provisions of the judgment against Historic Hudson as its successor in interest, under the common law doctrine of lis pendens.

¶4 Colten subsequently filed a pro se motion, purportedly on behalf of Historic Hudson as well as herself, seeking to vacate the final judgments. Colten asserted that, as the current owner of the property, she had the right to litigate her own interest in the easements, and she raised various objections to the scope of relief granted in the default judgment against Historic Hudson. The circuit court denied the motion to vacate the judgments, and Colten and Historic Hudson appeal.

STANDARD OF REVIEW

¶5 We review the circuit court's decision whether to reopen a judgment under the standard for discretionary decisions, considering only whether the circuit court reasonably considered the facts of record under the proper legal standard. ***Nelson v. Taff***, 175 Wis. 2d 178, 187, 499 N.W.2d 685 (Ct. App. 1993).

DISCUSSION

¶6 WISCONSIN STAT. § 806.07(1) (2009-10)[2] allows a circuit court to reopen an order or judgment based upon a variety of specified reasons, or upon a catchall provision of "[a]ny other reason justifying relief from the operation of the

[2] All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

judgment." § 806.07(1)(h). The catchall provision should be employed only when extraordinary circumstances are present, taking into account a series of factors. *See* ***Miller v. Hanover Ins. Co.***, 2010 WI 75, ¶36, 326 Wis. 2d 640, 785 N.W.2d 493.

¶7 Colten and Historic Hudson contend that the circuit court erroneously exercised its discretion in denying the motion to reopen the default judgment because it did not address the standard catchall factors in its decision, and did not provide "adequate notice that the result of not obtaining counsel for Historic Hudson would result in a default judgment being entered against [Colten]." We are not persuaded by either argument.

¶8 We first note that the motion to reopen the default judgment against Historic Hudson suffered from the same defect that had precipitated the default judgment against it in the first place—namely, the motion was not signed by an attorney on behalf of Historic Hudson. *See generally* ***Jadair Inc. v. United States Fire Ins. Co.***, 209 Wis. 2d 187, 202, 562 N.W.2d 401 (1997) (only lawyers can appear on behalf of corporations before Wisconsin courts). Colten was not authorized to advance any claims on Historic Hudson's behalf. Therefore, the circuit court had no duty to respond to any claims in the motion made on behalf of Historic Hudson.

¶9 With respect to the separate summary judgment against Colten, Colten did not cite WIS. STAT. § 806.07(1)(h) as grounds to reopen the judgment, much less address how the catchall factors would apply to the circumstances of this case. The circuit court did not erroneously exercise its discretion by failing to address arguments that had not been made before it. *See* ***Schwittay v. Sheboygan Falls Mut. Ins. Co.***, 2001 WI App 140, ¶16 n.3, 246 Wis. 2d 385, 630 N.W.2d

772 ("A party must raise an issue with sufficient prominence that the trial court understands that it is called upon to make a ruling.").

¶10 Nor has Colten convinced us that the circuit court erred in its evaluation of the arguments that she did make. Colten's claim that she was automatically entitled to assert claims on behalf of Historic Hudson once the corporation was administratively dissolved is defeated by statute. Under WIS. STAT. § 183.0903, a dissolved limited liability company continues its legal existence while winding up its affairs. It retains the ability to prosecute and defend ongoing suits and to transfer its property interests. WIS. STAT. § 183.0903(2)(b) and (d).

¶11 Colten's claim that she was entitled to personally defend the claims against Historic Hudson as its successor in interest is also contrary to law. Under ***Gaugert v. Duve***, 2001 WI 83, ¶28, 244 Wis. 2d 691, 628 N.W.2d 861, when one party transfers property to another party during a pending lawsuit relating to that property, the successor in interest takes the property "subject to the final resolution of the … claim." In other words, the transfer of the property to Colten by quitclaim deed did not extinguish the claim that Historic Hudson had been interfering with the plaintiffs' easement rights, and it remained Historic Hudson's responsibility to defend against that claim. Under the common law doctrine of lis pendens, Colten was bound by the resolution of that claim.

¶12 Finally, Colten has not cited any authority to support the proposition that the circuit court had a duty to provide her with legal advice about the effects that a default judgment against Historic Hudson could be expected to have on her own rights as successor in interest to the property.

By the Court.—Order affirmed.

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