

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

MAY 7, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-2157

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

**In the Matter of the
Foreclosure of Tax
Liens, Pursuant to
Section 75.521 Wisconsin
Statutes by Shawano County,
List of Tax Liens for the
years 1983 through 1987.
(Proceeding in Rem 1988,
Number Thirteen)**

DONALD MINNIECHESKE

Appellant,

v.

SHAWANO COUNTY,

Respondent.

APPEAL from a judgment and an order of the circuit court for Shawano County: EARL W. SCHMIDT, Judge. *Appeal dismissed.*

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. Donald Minniecheske appeals (1) a tax lien foreclosure judgment issued on his default and (2) a postjudgment order that denied him an evidentiary hearing on the § 806.07, STATS., motion he filed to vacate the foreclosure judgment. He challenges the foreclosure judgment's merits and the trial court's refusal to grant him an evidentiary hearing on his postjudgment motion. We reject both arguments. First, Minniecheske did not appear at the foreclosure judgment hearing and therefore has no right to attack it on appeal. See *Wirth v. Ehly*, 93 Wis.2d 433, 443-44, 287 N.W.2d 140, 145-46 (1980). Rather, those who would challenge a default judgment but did not appear before judgment must file a trial court postjudgment motion to vacate the judgment that furnishes sufficient excuse for their default. See *Maier Const., Inc. v. Ryan*, 81 Wis.2d 463, 473, 260 N.W.2d 700, 704 (1978). They have no right to challenge the judgment by appeal.

Second, Minniecheske has no right to appeal the postjudgment proceedings. They are not final under § 808.03(1), STATS. At the time of his appeal, the trial court had not disposed of the entire matter in litigation in the postjudgment proceedings. Rather, the trial court had merely denied Minniecheske's request for an evidentiary hearing, while deferring resolution of the postjudgment motion's merits until the parties filed briefs. The trial court stated that it would "decide the issue of service on briefs pursuant to scheduling letter." Minniecheske may not appeal the trial court's decision to deny him an evidentiary hearing unless and until the trial court issues an order denying his postjudgment motion on the merits. Such an order would dispose of the entire matter in postjudgment litigation and thereby permit an appeal of prior nonfinal rulings. RULE 809.10(4), STATS. The record contains no indication that the trial court has issued such an order. As a result, we dismiss Minniecheske's appeal from both the foreclosure judgment and the trial court's interlocutory postjudgment ruling.

By the Court. – Appeal dismissed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.