

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 23, 2013

Diane M. Fremgen
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. 2012AP961

Cir. Ct. No. 2011CV11128

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

COUNTY OF MILWAUKEE,

PETITIONER-RESPONDENT,

v.

LIST OF TAX LIENS FOR 2011 #1 AND GARY CHARLES LIZALEK,

RESPONDENTS-APPELLANTS,

KELAZIL RELIGIOUS SOCIETY AND KAREN LIZALEK,

RESPONDENTS.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: WILLIAM S. POCAN, Judge. *Affirmed.*

Before Curley, P.J., Kessler and Brennan, JJ.

¶1 PER CURIAM. Gary Charles Lizalek, *pro se*, appeals a judgment of foreclosure and an order denying his motion for reconsideration. Lizalek

argues: (1) that the County of Milwaukee had no right to tax his land; (2) that the County refused to accept his payment; (3) that the circuit court was biased against him; (4) that the County was not entitled to foreclosure because it did not have a tax certificate as required by § 75.19 (2011-12);¹ and (5) that the foreclosure was an unconstitutional “taking.” We affirm.²

¶2 WISCONSIN STAT. § 75.521(7) allows a County to bring a foreclosure action on county property when the owner fails to pay property taxes. The statute allows the owner to contest the foreclosure for only three reasons: (1) because the land is not subject to taxation; (2) because the tax was in fact paid; or (3) because the tax lien is barred by the statute of limitations. Some of Lizalek’s arguments challenging the foreclosure on his property go beyond the parameters set by § 75.521(7), but we have briefly addressed them because he is proceeding *pro se*.

¶3 Lizalek first contends that the County had no right to tax his land because the federal government conveyed the land with a clear title to an owner “and to his heirs and assigns forever” through a “federal land patent” in 1837. Lizalek contends that he is the assignee of that land patent, so the County cannot encumber the title to his land; his land is not subject to the political jurisdiction of the State of Wisconsin or the County. The federal courts have squarely rejected this argument, ruling that federal government conveyances of property by federal

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

² The appellants in this case are Gary Charles Lizalek and “List of Tax Liens for 2011 No. 1” because this was commenced as an *in rem* action. Karen Lizalek and the Kelazil Religious Society were respondents in the circuit court, but are not parties to this appeal.

land patent in centuries past “do not prevent the creation of later interests and have nothing to do with claims subsequently arising under state law.” See *Wisconsin v. Glick*, 782 F.2d 670, 672 (7th Cir. 1986). The fact that Lizalek’s land, like other land in the State of Wisconsin, was conveyed by federal land patent long ago is irrelevant to the County’s authority to tax the property.

¶4 Lizalek next argues that he attempted to pay the taxes but the County refused to accept his payment. Lizalek contends that he presented both gold coins and a “promissory note” to the County to pay the taxes, but the County refused to accept either one. It is well-established that “all taxes must be paid in cash” and “[t]he taxpayer who claims exceptions or the privilege of paying taxes by other means ... must find authority for that privilege in the statutes.” *Tigerton Lumber Co. v. Village of Tigerton*, 198 Wis. 377, 379, 224 N.W. 124 (1929). Lizalek has pointed to no authority for the proposition that he is allowed to pay his taxes with gold coins, which the circuit court found were of indeterminate value and authenticity, or by promissory note. Lizalek is thus not entitled to relief from the foreclosure judgment on the grounds that he attempted to pay the taxes.

¶5 Lizalek next argues that the circuit court was biased against him. There is a rebuttable presumption that a judge acted fairly and impartially in discharging his or her duties. *State v. Gudgeon*, 2006 WI App 143, ¶20, 295 Wis. 2d 189, 720 N.W.2d 114. Lizalek offers only undeveloped and conclusory statements in support of this argument. He states, for example, that the circuit court assisted the County’s attorney in presenting the County’s case, but did not assist him in presenting his case. However, he provides no specific examples of when this occurred. We will not consider issues that have not been adequately developed. See *Roehl v. American Family Mut. Ins. Co.*, 222 Wis. 2d 136, 149,

585 N.W.2d 893 (Ct. App. 1998). Lizalek has not developed his argument, so we will not consider it further.

¶6 Lizalek next argues that the County was not entitled to foreclosure because it did not have a tax certificate as required by WIS. STAT. § 75.19, which addresses foreclosure on land for which the County holds a tax certificate. As explained by the circuit court in its well-reasoned and thorough oral decision, § 75.19 does not apply to this case because the County did not elect to proceed under § 75.19 to seek redress. The County commenced this action as an *in rem* proceeding under WIS. STAT. § 75.521, and the County followed the procedures required by that statute for foreclosure. Lizalek is not entitled to relief on the grounds that the County did not hold a tax certificate to the property or otherwise fail to comply with § 75.19.

¶7 Lizalek next argues that the foreclosure was an unconstitutional “taking.” “The taking of land by the government from an individual for failure to pay taxes on the land is a very drastic measure” but it is not a violation of due process as long as the County strictly complies with the statutory procedures that allow this type of government action. *See Topps v. County of Walworth*, 2003 WI App 30, ¶19, 260 Wis. 2d 225, 659 N.W.2d 177. Here, the County followed the procedures for foreclosure provided by WIS. STAT. § 75.521. The foreclosure judgment was therefore not a “taking” that violated due process.

¶8 To the extent that Lizalek’s brief could be construed as raising additional appellate arguments, we reject them. “An appellate court is not a performing bear, required to dance to each and every tune played on appeal.” *County of Fond du Lac v. Derksen*, 2002 WI App 160, ¶4, 256 Wis. 2d 490, 647 N.W.2d 922 (citation omitted).

By the Court.—Judgment and order affirmed.

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

