

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 6, 2011

A. John Voelker
Acting 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. 2010AP2503

**Cir. Ct. Nos. 2010SC15232
2010SC15233**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

THOMAS VITRANO,

PLAINTIFF-APPELLANT,

V.

MONIQUE LESSARD,

DEFENDANT-RESPONDENT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: JANE V. CARROLL, Judge. *Affirmed.*

¶1 CURLEY, P.J.¹ Thomas Vitrano appeals a judgment dismissing his claim against Monique Lessard for the unlawful taking of his personal property while he was incarcerated. He also appeals the order denying his waiver of

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c).

transcript fee. Vitrano argues that his claim was improperly dismissed because the trial court did not grant him an adjournment when he was unprepared to proceed at trial. This court affirms the trial court's judgment.

I. BACKGROUND.

¶2 Vitrano's case concerns the whereabouts of his personal property during and immediately following his incarceration. Vitrano was incarcerated in 2002. Shortly thereafter, police contacted his mother, Patricia Grasic, to inform her that Vitrano's landlord had contacted them. The landlord wanted Vitrano's personal property removed from his apartment within thirty days. Grasic was physically unable to remove the property, so she called her daughter, Candice Hein, for help. Hein spoke with Vitrano over the phone and told him that she would clear out his apartment and store his belongings. She also told him that she could not do the job alone and would need to ask the family for help. Vitrano did not object. Hein asked Vitrano's daughter, Monique Lessard, to help clear out the apartment and to store what she could not. Lessard helped clear the apartment, and then stored the property.

¶3 While Lessard has explained that she is simply storing Vitrano's property and that he may have it back at any time if he would only arrange to have it transported, Vitrano claims that Lessard took his property and refuses to give it back. Consequently, Vitrano filed a claim for the unlawful taking of his property (conversion)² on April 13, 2010.

² See WIS JI—CIVIL 2200 (2010) (“A conversion is committed by a person who[,] without consent of the owner[,] [takes or controls] property of another in such a way that it seriously interferes with the right of the owner to control the property permanently or for an indefinite period of time.”).

¶4 Several months later, on the day the trial was set to begin, Vitrano requested an adjournment. He explained that he was not prepared for trial because he did not have his “paperwork,” which he described as his summons and complaint. The trial court denied Vitrano’s request, and the case was dismissed.

¶5 Vitrano appealed the dismissal and this court remanded the case so that, pursuant to *State ex rel. Girouard v. Circuit Court for Jackson County*, 155 Wis. 2d 148, 159, 454 N.W.2d 792 (1990), the trial court could determine whether Vitrano was indigent and/or whether the appeal was arguably meritorious for purposes of granting a transcript fee waiver. See *Vitrano v. Lessard*, No. 2010AP2503, unpublished slip op. (WI App Dec. 27, 2010). This court explained, “if the [trial] court finds that the appellant is not indigent or that there is no arguably meritorious claim on appeal, the [trial] court shall deny [Vitrano’s] request for free transcripts.” *Id.* On remand, the trial court, finding that Vitrano was indigent but that his appeal lacked “even arguable merit,” denied Vitrano’s request for a transcript fee waiver. Vitrano appeals.

II. ANALYSIS.

¶6 On appeal, Vitrano challenges the trial court’s decision to dismiss his case based on his lack of preparedness to proceed at trial. The trial court’s decision to dismiss Vitrano’s claim was discretionary and therefore will not be disturbed unless Vitrano establishes that the trial court erroneously exercised its discretion. See *Monson v. Madison Family Inst.*, 162 Wis. 2d 212, 223, 470 N.W.2d 853 (1991). “A discretionary decision will be sustained if the [trial] court has examined the relevant facts, applied a proper standard of law, and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach.” *Johnson v. Allis Chalmers Corp.*, 162 Wis. 2d 261, 273, 470 N.W.2d 859

(1991) (overruled on other grounds by *Indus. Roofing Services, Inc. v. Marquardt*, 2007 WI 19, 299 Wis. 2d 81, 726 N.W.2d 898).

¶7 The obligation to bring the case to trial within a reasonable time lies with the plaintiff. *Taylor v. State Highway Comm.*, 45 Wis. 2d 490, 494, 173 N.W.2d 707 (1970). A trial court has the power to dismiss a claim if it is not being prosecuted in a reasonably timely manner. *See Cukrowski v. Mt. Sinai Hosp., Inc.*, 67 Wis. 2d 487, 500, 227 N.W.2d 95 (1975) (holding that the trial court did not abuse its discretion in dismissing for failure to prosecute). The trial “judge’s responsibility is to properly try cases that are ready for trial” and to dismiss those cases that “clog judicial calendars.” *Id.* at 497 (citation and quotation marks omitted).

¶8 Thus, this court concludes that the trial court properly exercised its discretion in dismissing Vitrano’s claim when Vitrano was unprepared to try his case. Vitrano was in no way prepared to proceed at trial. The documents Vitrano claimed were necessary consisted of the summons and complaint—documents which, as the trial court explained, did not constitute admissible evidence proving his claim. While this court recognizes that Vitrano was proceeding *pro se*, it also recognizes that the trial court had no duty to walk him through the procedural requirements of his claim. *See Waushara Cnty. v. Graf*, 166 Wis. 2d 442, 452, 480 N.W.2d 16 (1992). Therefore, because Vitrano was responsible to prosecute his case in a reasonable manner and because the trial court had the authority to dismiss the case when Vitrano was unprepared to proceed, the trial court did not erroneously exercise its discretion by dismissing Vitrano’s claim.

¶9 This court also concludes that the trial court did not err in denying Vitrano’s request for a waiver of transcript fee. “[A] meritless assertion by a

putative appellant will not furnish a foundation for a judicially ordered waiver of fees.” *Girouard*, 155 Wis. 2d at 159. “The individual must be found to be indigent by the court, *and* the person must present a claim upon which relief can be granted.” *Id.* (emphasis added). Although Vitrano may have been indigent, he did not prosecute his claim in a reasonable manner, and the trial court had the authority to dismiss his case; therefore—for all of the reasons explained above—Vitrano did not present a claim on appeal upon which relief could be granted. *See id.*

¶10 Moreover, because the trial court did not err, this court need not consider any of the numerous additional arguments Vitrano presents regarding the merits of his conversion claim. *See* WIS. STAT. § 805.03 (a court is permitted to dismiss a claim for failure to prosecute); *see also State v. Zien*, 2008 WI App 153, ¶3, 314 Wis. 2d 340, 761 N.W.2d 15 (cases should be decided on narrowest possible ground).

¶11 As a final matter, this court notes that Lessard asserts in her brief that Vitrano’s claim is barred by the statute of limitations—an assertion Vitrano denies. For the reasons noted above, because this court has already affirmed the trial court’s decision on other grounds, it will not analyze the merits of this contention. *See id.*

¶12 In conclusion, because the trial court properly exercised its discretion in dismissing Vitrano’s claim against Lessard, this court affirms the dismissal on appeal.

By the Court.—Judgment and order affirmed.

This opinion will not be published. See WIS. STAT. RULE
809.23(1)(b)4.

