

*This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A07-1753**

Michael James Brouillette,  
Appellant,

vs.

Jennifer Lee Lund,  
Respondent.

**Filed September 9, 2008  
Affirmed  
Muehlberg, Judge\***

Dakota County District Court  
File No. C9-07-13513

Michael James Brouillette, P.O. Box 111004, St. Paul, MN 55111-0004 (pro se appellant)

Jennifer Lund, 2125 Sapphire Lane, Eagan, MN 55122 (pro se respondent)

Considered and decided by Hudson, Presiding Judge; Stoneburner, Judge; and Muehlberg, Judge.

**UNPUBLISHED OPINION**

**MUEHLBERG, Judge**

Pro se appellant challenges the district court's dismissal of his case, which involved a conciliation-court claim that had been removed to the district court, because appellant failed to appear in district court when the case was called for trial. We affirm.

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\* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

## FACTS

In February 2007, pro se appellant Michael James Brouillette sued respondent Jennifer Lee Lund in conciliation court for \$5,000. As the basis of his claim, Brouillette alleged that while he was hospitalized for a period of time during 2003, Lund used his credit card and checkbook and withdrew money from his bank account without his permission and that, as a result, he incurred overdraft fees, his bank account was closed, and his credit rating was ruined. Brouillette also alleged that Lund “forged my signature to my paycheck and signed it over to herself.”

On April 20, 2007, the conciliation court ordered judgment in the amount of \$2,479.07 to Brouillette, explaining that “[t]he judgment is only for check expenditures by [Lund] wherein she signed [Brouillette’s] name on checks solely in [Brouillette’s] name without any evidence that the account money was hers.” Lund removed the case to the district court for a trial de novo, and a trial date was set for July 16, 2007 at 1:30 p.m. Brouillette moved for a continuance of the trial date, but the district court denied the motion.

When the district court called the trial calendar on the afternoon of July 16, it announced that “[t]he first matter for trial this afternoon will be the matter of Michael James Brouillette [sic] and Jennifer Lund.” The district court then stated, “Ms. Lund, apparently Mr. Brouillette [sic] did not come today . . . [s]o his underlying claim will be dismissed with prejudice.” That same day, the district court ordered judgment dismissing Brouillette’s case with prejudice due to his failure to appear. Brouillette appeals.

## DECISION

When a party aggrieved by a conciliation-court judgment properly removes the case to the district court, the district court, as it did here, vacates the conciliation-court judgment and then holds a “trial de novo (new trial).” *See* Minn. R. Gen. Pract. 521(a), (d). When Brouillette failed to appear at that trial de novo, the district court dismissed Brouillette’s case. Brouillette argues that the dismissal was “wrong” and that the district court “should have waited or given [him] at least a few minutes . . . to make sure he wasn’t there or coming” before dismissing the case. In support of his argument, Brouillette asserts that (1) he “was told [that] his [case] was the second case” on the July 16 afternoon calendar, not the first case; (2) he told “the clerk [that he] may be a few minutes late that afternoon”; (3) the district court “should have know[n]” that he “was still actively persueing [sic] this case” based on the fact that he had moved for a continuance less than a week before the July 16 trial date<sup>1</sup> and on the fact that he prevailed in conciliation court; and (4) he was only six minutes late.

There is nothing in the record that supports Brouillette’s claims. There simply is nothing in the record showing that Brouillette was told that his case was second on the calendar, that he told a “clerk” that he might be a few minutes late, or that he was in fact only six minutes late. In addition, Brouillette does not provide any citation to legal

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<sup>1</sup> Brouillette also points to a motion that he claims he filed to quash a subpoena of his bank records, and Brouillette’s appendix contains a copy of the motion. There is nothing in the record confirming that such a motion was ever in fact filed, and, therefore, we will not consider it on appeal. *See Thiele v. Stich*, 425 N.W.2d 580, 582-83 (Minn. 1988) (“An appellate court may not base its decision on matters outside the record on appeal, and may not consider matters not produced and received in evidence below.”).

authority to support his position that the district court's dismissal was "wrong" under the circumstances that he alleges took place. Because of these failures, therefore, we need not address the issues that Brouillette raises in his pro se brief. *See Thiele*, 425 N.W.2d at 582-83 ("An appellate court may not base its decision on matters outside the record on appeal, and may not consider matters not produced and received in evidence below."); *Ganguli v. Univ. of Minn.*, 512 N.W.2d 918, 919 n.1 (Minn. App. 1994) (stating that this court declines to address issues that are unsupported by legal analysis or citation). Nevertheless, we will briefly address the propriety of the district court's dismissal of Brouillette's case.

Under Minnesota Rules of Civil Procedure 41.02(a), a district court "may upon its own initiative . . . dismiss an action or claim for failure to prosecute or to comply with these rules or any order of the court." Unless the district court specifies otherwise, such a dismissal operates as an adjudication on the merits, and thus is with prejudice. *See Minn. R. Civ. P. 41.02(c)*. A dismissal under rule 41.02 is discretionary. *Scherer v. Hanson*, 270 N.W.2d 23, 24 (Minn. 1978). Appellate courts, therefore, will reverse such a dismissal "only when the [district] court abused its discretion." *Bonhiver v. Fugelso, Porter, Simich & Whiteman, Inc.*, 355 N.W.2d 138, 144 (Minn. 1984); *see also State v. St. Paul Fire & Marine Ins. Co.*, 434 N.W.2d 6, 8 (Minn. App. 1989) (holding that a dismissal under rule 41.02 is an exercise of discretionary authority that this court will sustain on appeal "absent a showing of clear abuse when the record is reviewed in the light most favorable to the [district] court's order"), *review denied* (Minn. Mar. 17, 1989).

The supreme court has instructed that a dismissal under rule 41.02 is appropriate when: (1) the plaintiff's delay in pursuing the claim prejudiced the defendant; and (2) the delay was unreasonable and inexcusable. *Modrow v. JP Foodservice, Inc.*, 656 N.W.2d 389, 394 (Minn. 2003). A district court's decision to dismiss for failure to prosecute "necessarily depends upon circumstances peculiar to each case, considered with reference to the right of the parties to the action to a 'just, speedy, and inexpensive' disposition of the case and the policy underlying the dismissal rules of preventing harassment and unreasonable delays in litigation." *Firoved v. General Motors Corp.*, 277 Minn. 278, 283, 152 N.W.2d 364, 368 (1967) (citation omitted).

We conclude that the district court was well within its discretion in dismissing Brouillette's case. First, dismissal with prejudice under rule 41.02 is appropriate when a plaintiff is aware of the trial date but does not attend. *See O'Neil v. Kelly*, 307 Minn. 498, 499, 239 N.W.2d 231, 232 (1976); *Liedtke v. Ferguson*, 370 N.W.2d 477, 478 (Minn. App. 1985), *review denied* (Minn. Sept. 13, 1985). It is undisputed that Brouillette was aware of the July 16 trial date and that he was not present when the case was called for trial. And, as previously noted, Brouillette has failed to identify any record evidence to support his accusations regarding the circumstances of the July 16 proceedings.

Second, a dismissal under rule 41.02 is also appropriate "when there are considerations of willfulness and contempt for the authority of the court or of the litigation process." *Bonhiver*, 355 N.W.2d at 144; *see also Firoved*, 277 Minn. at 283, 152 N.W.2d at 368 (noting that the policy underlying dismissal under rule 41.02 is to

“prevent harassment . . . in litigation”). The district court file contains various documents showing that (1) Lund has obtained an order for protection against Brouillette; (2) Brouillette has brought other conciliation-court claims against Lund that have also been dismissed; (3) Dakota County has filed criminal charges against Brouillette for harassing Lund; and (4) the City of Eagan has warned Brouillette that he will be prosecuted if he continues to violate the order for protection. The district court file also contains numerous police reports showing that Brouillette has allegedly stolen Lund’s car, burglarized her home, and repeatedly made harassing telephone calls to her. Furthermore, Brouillette has initiated two other appeals that are currently pending before this court in which Lund is the other party. It is apparent, therefore, that Brouillette is attempting to use the court systems to harass Lund, and based on the fact that the district court file includes materials detailing Brouillette’s history of harrassing Lund, we have no doubt that the district court considered the particular facts and circumstances surrounding this case when it made its decision. *See Kielsa v. St. John’s Lutheran Hosp. Ass’n*, 287 Minn. 187, 192-93, 177 N.W.2d 420, 423-24 (1970) (affirming a dismissal for failure to prosecute when the district court “without doubt took into account” the facts and circumstances peculiar to the case); *Zuleski v. Pipella*, 309 Minn. 585, 586-87, 245 N.W.2d 586, 586-87 (1976) (noting that no findings of fact or conclusions of law were included in a district court’s order dismissing an action under rule 41.02 but nevertheless concluding, after having “carefully reviewed the records and proceedings herein,” that the dismissal “was a proper exercise of [the district court’s] discretion”).

**Affirmed.**