COURT OF APPEALS
DECISION
DATED AND FILED

November 5, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 98-1004

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

WILLIAM FREDERICK WILLIAMS,

PLAINTIFF-APPELLANT,

V.

RITA LLANAS (WILLIAMS),

DEFENDANT-RESPONDENT,

MCDONALD'S,

GARNISHEE-DEFENDANT.

APPEAL from an order of the circuit court for Dane County: PAUL B. HIGGINBOTHAM, Judge. *Affirmed.*

EICH, J.[1] William Frederick Williams appeals from an order dismissing his small claims action against his wife, Rita Llanas-Williams.

[1] This appeal is decided by a single judge pursuant to § 752.31(2)(c), STATS.

Because we agree with the trial court that his complaint failed to state a claim for relief, we affirm.

William's complaint alleged that Rita violated Wisconsin's marital property law by cashing a refund of her retirement benefits without William's consent and refusing to house or care for him when he was unemployed and in poor health. He also alleged that Rita stole and forged two of his paychecks without his consent while he was incarcerated. A default judgment of $4,250 was entered in William's favor on June 12, 1997, after Rita missed the court date due to illness. Rita subsequently filed a motion to reopen, which was granted by the court commissioner. After a hearing, the commissioner vacated the default judgment and dismissed William's complaint. William then requested, and received, a trial *de novo* in circuit court. The court dismissed his complaint for failure to state a claim, concluding that no valid claim had been asserted under the marital property law, and that Rita had William's permission to cash the paychecks.

William argues on appeal that: (1) his small claims action was arbitrarily and erroneously dismissed; (2) he has a remedy under the marital property law, §§ 766.15 and 766.70(1), STATS.,[2] for Rita's alleged actions; and

[2] Section 766.15(1), STATS., states in part: "Each spouse shall act in good faith with respect to the other spouse in matters involving marital property or other property of the spouse."

Section 766.70(1), STATS., states in part: "A spouse has a claim against the other spouse for breach of the duty of good faith imposed by s. 766.15 resulting in damage to the claimant spouse's property."

(3) the court commissioner lacked jurisdiction to reopen the action. We reject his arguments and affirm the order.[3]

We first conclude that the trial court's decision to dismiss William's complaint was neither erroneous nor arbitrary; rather, it is a well-reasoned decision, supported by the evidence and applicable law. With respect to the retirement benefits, the court found that "[t]here's no cause of action under any law in Wisconsin with regard to [Rita]'s retirement account." It explained that, under the marital property law, "a refund of [Rita's] retirement benefits is marital property," which "can be used entirely for support of one or more persons who are part of the marriage"; and, as such, it was "perfectly permissible" for Rita to take, cash, deposit or use those benefits. We agree.

With regard to William's allegations that Rita failed to care for him when he had a broken ankle, and failed to house and provide support for him when he was unemployed, the court recognized that, inherent in every marriage is "an expectation that each [spouse] is going to take care of each other," and that that is "a reasonable expectation that the state legislature has actually developed into a law." However, the court explained to William that he "can't sue [his] spouse in court for … her failure to do those kind of things." The court explained that, while many of William's claims would be cognizable in a divorce proceeding, the marital property law does not provide for the remedies he was seeking. Again, we agree.

[3] On appeal, we review the circuit court's decision, not the commissioner's. ***State v. Trongeau***, 135 Wis.2d 188, 191-92, 400 N.W.2d 12, 13-14 (Ct. App. 1986).

As for William's allegations that Rita cashed two of his paychecks, the court first explained that the checks, as marital property, do not belong solely to William, but also to Rita. After hearing the evidence put forth by the parties—including a letter written by William's former employer, which the court found corroborated Rita's testimony—the court dismissed William's claim, finding that Rita had William's consent to obtain and cash the checks. In so ruling, the court specifically found Rita's testimony in that regard to be credible. We will only set aside a trial court's factual findings if they are "clearly erroneous," giving due regard to the trial court's ability to assess the credibility of the witnesses. *See* § 805.17(2), STATS. The challenged findings are not clearly erroneous, and we therefore will not disturb them on appeal.

William's argument that he is entitled relief under Wisconsin's marital property law is undeveloped and unsupported by legal authority. He merely lists certain types of property that are considered marital property under § 766.31, STATS.,—including income earned by a spouse and property acquired in exchange for, or from the proceeds of, marital property—and then states that he is thus "entitled to remedy and [has] stated grounds for legal action in his complaint under secs. 799.01(1)(d), 766.15 and 766.70(1), Wis. Stats." We have said that appellate arguments unsupported by authority are inadequate, and we therefore will not consider them. ***State v. Shaffer***, 96 Wis.2d 531, 545-46, 292 N.W.2d 370, 378 (Ct. App. 1980).[4]

[4] In ***Waushara County v. Graf***, 166 Wis.2d 442, 451-52, 480 N.W.2d 16, 19-20 (1992), the supreme court, noting that while *pro se* prisoners "in some circumstances deserve some leniency" in complying with procedural requirements,

> [they] are bound by the same rules that apply to attorneys on appeal. The right to self-representation is not a license not to comply with relevant rules of procedural and substantive law.

(continued)

William's last argument is that the court lacked jurisdiction to reopen the action after entering default judgment because the motion to reopen was not filed "within" the statutory time limit, which in small claims cases is six months. *See* § 799.29(1)(c), STATS. He contends that because the default judgment was entered on June 12, 1997, and the motion to reopen on December 12, 1997, the court lacked authority to reopen the case. First, we note that because William did not raise this issue with the court commissioner at the time the motion to reopen was granted, he has waived his right to argue it on appeal. Even so, his argument is dispelled by the plain terms of § 990.001(4), STATS., which states, in part: "The time within which an act is to be done or proceeding had or taken shall be computed by excluding the first day and including the last." The motion to reopen was thus timely filed.

By the Court.—Order Affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)4, STATS.

While some leniency may be allowed, neither a trial court nor a reviewing court has a duty to walk *pro se* litigants thorough the procedural requirements or point them to the proper substantive law (internal quotation marks and quoted source omitted).