

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**January 30, 2002**

Cornelia G. Clark  
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. 01-2709-FT  
STATE OF WISCONSIN**

**Cir. Ct. No. 99-CV-294**

**IN COURT OF APPEALS  
DISTRICT II**

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**LYLE SCHURICHT,**

**PLAINTIFF-APPELLANT,**

**V.**

**MAZ GUARDIANSHIP SERVICES, INC.,**

**DEFENDANT-RESPONDENT.**

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APPEAL from an order of the circuit court for Manitowoc County:  
DARRYL W. DEETS, Judge. *Affirmed.*

Before Nettesheim, P.J., Brown and Anderson, JJ.

¶1 PER CURIAM. Lyle Schuricht appeals from the order dismissing his action against MAZ Guardianship Services, Inc., for failure to prosecute. The issue on appeal is whether the circuit court properly dismissed the action. We conclude that the circuit court properly dismissed the action and affirm.

¶2 This action was begun on October 1, 1999, with a filing of a summons and complaint and a motion for a restraining order. The court denied the motion for a restraining order on October 6, 1999. The defendant filed an answer on November 23, 1999, and a scheduling conference was set for March 23, 2000. On March 10, the plaintiff's attorney asked to be allowed to withdraw because he had been appointed a judge. The order granting that motion was signed on March 21, 2000. A scheduling or status conference was held on June 8, 2000, and trial was set for October 2.

¶3 On September 25, the court received a note from Schuricht saying that he wanted a copy of the scheduling order because nothing had been done by his attorney. On September 27, the case was once again adjourned and a status conference was set for November 2. The circuit court's records do not indicate what happened at the November 2 conference. In February 2001, the court issued an order stating that the case would be dismissed on the court's own motion on March 27, 2001, unless prior to that time any party showed good cause in writing why the order should not be entered. This order was sent to Schuricht's second counsel.

¶4 On March 23, 2001, the court received a letter from a third attorney asking the court not to dismiss the case and stating that he would vigorously prosecute the action. Apparently another scheduling conference was set. Before that conference, however, the third attorney also moved to withdraw because of a lack of "financial cooperation." The court required a formal motion and a hearing on that motion was held on May 14, 2001. Schuricht was not at the hearing. The court granted counsel's request to withdraw. The defendant then moved to dismiss for failure to prosecute. The court held a hearing on the motion to dismiss on June 27, 2001, at which Schuricht appeared without counsel. The court granted

the motion, finding that the matter had not been diligently prosecuted since the filing of the summons and complaint. It is from this order that Schuricht appeals.

¶5 Schuricht argues that the circuit court erred when it dismissed his case without finding that he had violated a court order. Schuricht misunderstands the order entered by the circuit court. The court dismissed the action under WIS. STAT. § 805.03 (1999-2000), which states in relevant part:

For failure of any claimant to prosecute *or* for failure of any party to comply with the statutes governing procedure in civil actions *or* to obey any order of court, the court in which the action is pending may make such orders in regard to the failure as are just .... Any dismissal under this section operates as an adjudication on the merits .... A dismissal on the merits may be set aside by the court on the grounds specified in and in accordance with s. 806.07. (Emphasis added.)

¶6 The statute provides three grounds for dismissing an action: failure to prosecute, failure to comply with the rules of civil procedure, or failure to obey an order of the court. In this case, the circuit court dismissed for failure to prosecute. The statute does not require that the court find that Schuricht violated a court order to dismiss on this basis.

¶7 Schuricht cites to *Trispel v. Haefer*, 89 Wis. 2d 725, 279 N.W.2d 242 (1979), to argue that the court must find egregious conduct before it can dismiss his case. His reliance on *Trispel*, however, is misplaced. That case involved a dismissal for failure to comply with a court order, and not a failure to prosecute. *Id.* at 729. *Trispel* is clear, however, that in order to demonstrate that the circuit court erroneously exercised its discretion when it entered an order of dismissal under WIS. STAT. § 805.03, no matter what the grounds, “the aggrieved

party must show ‘a clear and justifiable excuse’ for the delay.” *Trispel*, 89 Wis. 2d at 733. That Schuricht has not done.

¶8 While some of the responsibility for the delay rests with Schuricht’s attorneys, it was Schuricht’s responsibility to make sure his attorneys were pursuing his case. The case was pending for twenty months. The court ordered the case dismissed unless good cause was shown. Schuricht’s third attorney wrote the court shortly before the deadline was going to expire, and asked that he be allowed to prosecute the case. The court gave Schuricht another chance and allowed the case to proceed again. This third attorney then withdrew, and Schuricht never advised the court who, if anyone, would be representing him. It was Schuricht who let the case languish and Schuricht who ultimately must bear that responsibility.

¶9 As we have previously stated, perhaps in earlier and more leisurely times, the courts may have been more tolerant of delays. See *Eden Stone Co. v. Oakfield Stone Co.*, 166 Wis. 2d 105, 114, 479 N.W.2d 557 (Ct. App. 1991). “However, given the volume of litigation burdening the trial courts, the bar and litigants must understand that Wisconsin trial judges will monitor their calendars to avoid the damaging effects of unwarranted delay.” *Id.* We conclude that the circuit court properly exercised its discretion when it entered the order dismissing the case. The court has adopted a proactive approach in managing its calendar and we commend that effort.

*By the Court.*—Order affirmed.

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

