

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**March 15, 2005**

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. 04-0579**

**Cir. Ct. No. 03SC021889**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**ROBERT ROBINSON,**

**PLAINTIFF-APPELLANT,**

**V.**

**CITY OF MILWAUKEE,**

**DEFENDANT-RESPONDENT.**

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APPEAL from orders of the circuit court for Milwaukee County: M. JOSEPH DONALD, Judge. *Affirmed.*

¶1 FINE, J. Robert Robinson appeals the trial court's order of February 18, 2004, denying his motion to reconsider the trial court's January 9, 2004, denial of his motion to reopen a default judgment against him when he did not appear timely for a scheduled trial on his claim that the City of Milwaukee improperly towed his truck. See WIS. STAT. § 799.22(1) (court may dismiss action if plaintiff does not appear). The appeal has been delayed by various

proceedings relating to whether Robinson is entitled to free transcripts for his appeal. *See State ex rel. Girouard v. Jackson County Circuit Ct.*, 155 Wis. 2d 148, 159, 454 N.W.2d 792, 797 (1990) (indigent appellant entitled to transcript without payment if he or she “has an arguably meritorious claim”). On remand from this court, the trial court held on July 2, 2004, that Robinson’s claim lacked arguable merit because he did not “provide the [trial] court with any case law, statute, or administrative code that would lend authority to his assertions” that the City improperly towed his truck, although he was directed to do so by the trial court. This latter ruling is also properly before us on this appeal. *See* WIS. STAT. § 808.04(8) (“If the record discloses that the judgment or order appealed from was entered after the notice of appeal was filed, the notice of appeal shall be treated as filed after such entry and on the day thereof.”).

¶2 Robinson recognizes that the trial court’s decision on both issues (relief from his default and his entitlement to free transcripts to challenge on appeal the trial court’s decision denying his motion to reopen) is vested in the trial court’s discretion. *See Franke v. Franke*, 2004 WI 8, ¶54, 268 Wis. 2d 360, 391, 674 N.W.2d 832, 846 (reopening).<sup>1</sup> We affirm an exercise of discretion if the trial court relies on facts of record and the appropriate legal standards to reach a reasonable conclusion. *See Nehls v. Nehls*, 151 Wis. 2d 516, 518, 444 N.W.2d 460, 460–461 (Ct. App. 1989).

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<sup>1</sup> There is no Wisconsin authority that says specifically that a decision applying *State ex rel. Girouard v. Jackson County Circuit Ct.*, 155 Wis. 2d 148, 454 N.W.2d 792 (1990), is within the trial court’s discretion. We read *Girouard*’s remand direction, however, as incorporating that standard of review: “We remand the matter to the circuit court, directing that court to make the determination whether or not the admittedly indigent Girouard has an arguably meritorious claim that will warrant waiver of the fees for payment of a transcript.” *Id.*, 155 Wis. 2d at 159, 454 N.W.2d at 797. Moreover, that is the standard of review in federal court. *See Carlile v. South Rountt Sch. Dist. RE-3J*, 739 F.2d 1496, 1501 (10th Cir. 1984).

¶3 It is the appellant's burden to show that he or she is entitled to relief, and Robinson has not explained how or why the trial court erroneously exercised its discretion on either issue. Moreover, it appears from the record that the City offered to settle this case for everything that Robinson wanted initially—the return of his truck at the City's expense. Robinson has rejected that offer, claiming that he is entitled to costs and what appears to be calculations for his time, apparently, because he is *pro se*, as surrogate attorney's fees. A *pro se* litigant is not, however, entitled to attorney's fees, *see* WIS. STAT. §§ 799.25(10)(d); 814.04(1)(c); *State ex rel. Young v. Shaw*, 165 Wis. 2d 276, 295–296, 477 N.W.2d 340, 348 (Ct. App. 1991), and, further, the “American Rule” would prevent an award of actual attorney's fees, other than those authorized by § 814.04(1), if Robinson were represented by counsel, *Milwaukee Teacher's Education Association v. Milwaukee Board of School Directors*, 147 Wis. 2d 791, 795, 433 N.W.2d 669, 671 (Ct. App. 1988). Additionally, there is no authority that supports his contention that he is entitled to be paid for the time he has spent on his legal fight with the City. Insofar as Robinson seeks costs under § 799.25, those costs, if he were permitted to recover them, could be applied against the filing and service fees that were waived at the commencement of this action against the City. *See* WIS. STAT. § 814.29(3)(a) (“A request for leave to commence or defend an action, proceeding, writ of error or appeal without being required to pay fees or costs or to give security for costs constitutes consent of the affiant and counsel for the affiant that if the judgment is in favor of the affiant the court may order the opposing party to first pay the amount of unpaid fees and costs, including attorney fees under ss. 802.05, 804.12 (1) (c) and 814.025 and under 42 USC 1988 and to pay the balance to the plaintiff.”). Additionally, although he seeks them, punitive damages in tort actions may not be awarded against the City. *See* WIS. STAT. § 893.80(3).

¶4 Robinson has not demonstrated on this appeal that the trial court erroneously exercised its discretion in connection with its decisions denying his motion to reopen the default judgment and to reconsider that determination, and, also, to deny him free transcripts under the mandate of *Girouard*. Accordingly, we affirm.<sup>2</sup>

*By the Court.*—Orders affirmed.

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

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<sup>2</sup> The City says in its brief: “The City does not oppose the motion of plaintiff to return this case to the trial court. The City will attempt again to resolve this matter.” The City is free to renew its offer to settle this case, pending Robinson’s decision whether to seek review by the Wisconsin Supreme Court.

