

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 6, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

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.

No. 99-3083-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-APPELLANT,

V.

DONNA F. STANISZEWSKI,

DEFENDANT-RESPONDENT.

APPEAL from an order¹ of the circuit court for Washburn County:
EUGENE D. HARRINGTON, Judge. *Reversed and cause remanded.*

Before Cane, C.J., Hoover, P.J., Peterson, J.

¹ The caption of the Findings of Fact and Order Dismissing Information refers to the defendant as Donna F. Herndon.

¶1 PER CURIAM. The State appeals an order dismissing an information charging Donna Staniszewski with three counts of failure to pay child support, contrary to WIS. STAT. § 948.22(2).² The circuit court dismissed the information because Staniszewski had not been properly served with the motion to modify the underlying child support order. Notice of the motion had been given by mail to Staniszewski's last known address. We reverse because the family court had continuing personal jurisdiction in the underlying action and therefore service of the motion by mail was proper.

BACKGROUND

¶2 This case began in 1992 when Staniszewski brought a paternity action against Duane Richard regarding her son, Gerrod. Richard admitted paternity, and the family court ordered joint legal custody. The court also ordered Richard to pay child support. In 1995, while Staniszewski was in jail and Gerrod had become a ward of the State of Michigan, Richard successfully moved the family court for custody after Staniszewski was found in default.³

¶3 The Washburn County Child Support Agency filed a motion to require Staniszewski to pay child support on March 14, 1996. The agency mailed a copy of the motion to Staniszewski's last known address and filed an affidavit with the family court stating that it had done so. Staniszewski failed to appear at

² All statutory references are to the 1997-98 edition unless otherwise noted.

³ The underlying action has not been included as part of the appellate record. Although Staniszewski notes this fact, she contends that the necessary background information can be found in her trial court brief. Nevertheless, the appellant is responsible for ensuring that the record is complete on appeal. See *Fiumefreddo v. McLean*, 174 Wis. 2d 10, 26-27, 496 N.W.2d 226 (Ct. App. 1993). Although we do not choose to impose sanctions in this case, we note that failure to follow appellate procedures may result in sanctions pursuant to WIS. STAT. RULE 809.83(2).

the hearing, which was held on April 9. The court found that Staniszewski was properly served with notice of the hearing and ordered her to make child support payments. In December 1998, the State charged Staniszewski with the present charges: intentionally failing to pay child support for three 120-day periods during 1996, 1997 and 1998.

¶4 Staniszewski moved for dismissal by collaterally attacking the child support order. She claimed that the family court lacked personal jurisdiction because she had not been personally served with the motion to modify and, relying on WIS. STAT. § 767.027(1)(a), that there had been no finding that a diligent effort was made to ascertain her location. The circuit court concluded “that common sense of law require[s] that there be more than just an Affidavit of Mailing,” and that there has to be personal service in child support cases before the State may rely on the order in charging the defendant with felony nonsupport.

DISCUSSION

¶5 Whether the family court had jurisdiction is a question of law that is reviewed without deference to the circuit court. See *Dragoo v. Dragoo*, 99 Wis. 2d 42, 43, 298 N.W.2d 231 (Ct. App. 1980). If the family court lacked personal jurisdiction, then any order rendered by it against the complaining party is void. See *Pettygrove v. Pettygrove*, 132 Wis. 2d 456, 461, 393 N.W.2d 116 (Ct. App. 1986). Once a court with personal jurisdiction grants a paternity and child support judgment, however, neither party can escape jurisdiction in future proceedings that attempt to modify or alter the judgment. See *McAleavy v. McAleavy*, 150 Wis. 2d 26, 34, 440 N.W.2d 566 (1989).

¶6 The circuit court may modify child support orders if future circumstances warrant a revision. See WIS. STAT. § 767.32. Here there is no

dispute that the family court had personal jurisdiction over Staniszewski during the original paternity case. Staniszewski had appeared personally in those proceedings and succeeded in obtaining a paternity judgment and an order for child support. The contacts that were sufficient to initially subject Staniszewski to the personal jurisdiction of the court continued to provide a basis for personal jurisdiction in future proceedings. *See McAleavy*, 150 Wis. 2d at 35.

¶7 Because the family court already had personal jurisdiction over Staniszewski, service by mail was sufficient to notify her of the motion to modify child support. WISCONSIN STAT. § 767.05(1) provides: "A court of this state having jurisdiction to hear actions affecting the family may exercise jurisdiction as provided under ch. ... 801." WISCONSIN STAT. § 801.14(2) requires that every written motion be served on "a party ... by delivering a copy or by mailing it to the last-known address" Staniszewski does not claim that the agency failed to comply with this procedure. Therefore service of the agency's motion was proper.⁴

¶8 Staniszewski argues that the agency's motion to modify child support constitutes a new action pursuant to WIS. STAT. § 767.02(1)(i). Section 767.02(1)(i) provides that an action affecting the family includes an action "[t]o enforce or modify a judgment or order in an action affecting the family granted in this state or elsewhere." We agree with an advisory opinion by the attorney general, which states:

⁴ Although Staniszewski does not develop or even raise the argument on appeal, the circuit court appeared to dismiss the case on grounds of due process and fundamental fairness. We do not address the merits of this issue but note that a person may be charged for failure to support a child even though there is no court order requiring support. *See* WIS. STAT. § 948.22(4)(b).

[T]he Legislature specifically enacted [WIS. STAT. § 767.02(1)(i)] to make a petition to modify a judgment in an action affecting marriage a new and separate action affecting marriage; one which *may* be commenced independently of the original divorce or support proceeding in any court having jurisdiction

68 Wis. Op. Att'y Gen. 106, 109 (1979) (emphasis added). By its terms, § 767.02(1)(i) allows a party to start a new action to enforce or modify another judgment. It does not transform a motion in an already existing action into a new and separate action. See *McAleavy*, 150 Wis. 2d at 34-35.

¶9 Staniszewski also argues that at the time the agency moved to modify child support, there was no provision for giving notice through the mail. WISCONSIN STAT. § 767.027 states in relevant part:

Notice and service of process requirements. (1) In any action under s. 767.02 (1) (i) to enforce a judgment or order with respect to child support, due process requirements related to notice and service of process are satisfied to the extent that the court finds all of the following:

(a) That a diligent effort was made to ascertain the location of the respondent.

(b) That written notice of the action to the respondent has been delivered to the most recent residential address or employer address provided by the respondent under s. 767.263 (2) to the county child support agency under s. 59.53 (5).

Staniszewski notes that the legislature enacted § 767.027 in 1997. She asks why the legislature would have enacted § 767.027 if service by mail was authorized beforehand.

¶10 In addition to the service requirements in this case being controlled by WIS. STAT. § 767.05(1), as discussed above, WIS. STAT. § 767.027 is

inapplicable. Section 767.027 applies only to new actions and only to actions brought to *enforce* existing orders, not actions to *modify* existing orders.

By the Court.—Order reversed and cause remanded.

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

