

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**October 3, 2006**

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. 2006AP1077-FT**

**STATE OF WISCONSIN**

Cir. Ct. Nos. 2000FA977  
2006FA83

**IN COURT OF APPEALS  
DISTRICT III**

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**IN RE THE MARRIAGE OF:**

**ROBERT H. MILLER,**

**PETITIONER-RESPONDENT,**

**V.**

**TAMMY L. MILLER,**

**RESPONDENT-APPELLANT.**

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APPEAL from an order of the circuit court for Brown County:  
RICHARD J. DIETZ, Judge. *Reversed and cause remanded for further proceedings.*

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

¶1 PER CURIAM.<sup>1</sup> Tammy Miller appeals an order dismissing for lack of jurisdiction her motion to revise a domesticated child support order entered in the State of Wyoming. Tammy argues the circuit court erred by dismissing her motion. We agree and, therefore, reverse the order and remand for further proceedings.

### BACKGROUND

¶2 On May 30, 2001, Robert and Tammy Miller divorced in Brown County, Wisconsin. On June 10, 2003, Robert Miller filed a motion in Brown County to address child support and placement issues of their three children. Tammy, who was living in Laramie, Wyoming, petitioned the court to transfer jurisdiction to Wyoming. On August 13, 2003, Tammy filed a motion in Albany County, Wyoming, requesting the Wyoming court assume jurisdiction. In February 2004, the Brown County circuit court held a hearing on Tammy's motion for leave to file in Wyoming. At that hearing, the court denied the request to release jurisdiction to Wyoming.

¶3 Following the Wisconsin court's ruling, Tammy again petitioned a Wyoming court to assume jurisdiction over child support and placement. Robert stipulated to jurisdiction in Wyoming and, on November 10, 2005, the Wyoming district court entered an order regarding placement and support. Prior to this order, Tammy moved to South Dakota. On November 18, 2005, Tammy filed a motion in Brown County seeking to revise the child support and placement order. After filing the Brown County motion, Tammy obtained a copy of the Wyoming

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<sup>1</sup> This is an expedited appeal under WIS. STAT. RULE 809.17. All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

order and domesticated it in Wisconsin. Tammy again moved to revise the child support judgment in Brown County.

¶4 On February 24, 2006, Tammy filed a motion to determine whether Wisconsin had jurisdiction to revise the child support judgment. At the hearing on her jurisdiction motion, the court ruled Wyoming was the appropriate jurisdiction to resolve the presented issues and dismissed her motion. Tammy appeals that order.

### DISCUSSION

¶5 Whether a court has subject matter jurisdiction is a question of law this court reviews de novo. *Van Deurzen v. Yamaha Motor Corp. USA*, 2004 WI App 194, ¶9, 276 Wis. 2d 815, 688 N.W.2d 777. Robert reasons that Wisconsin does not have jurisdiction for two reasons. First, Robert asserts WIS. STAT. § 769.611(1)(a), when narrowly read, does not allow Wisconsin courts to modify orders that originate in Wisconsin but are then modified in other jurisdictions. Second, Robert asserts even if § 769.611(1)(a) were to apply, Tammy moved back to Wyoming, thereby negating one of the requirements of § 769.611(1)(a). We disagree with Robert's interpretation of § 769.611(1)(a). Furthermore, contrary to Robert's assertion, the record establishes Tammy resided in South Dakota at the time she made the motion. Therefore, the order is reversed.

¶6 WISCONSIN STAT. § 769.611(1)<sup>2</sup> contains the requirements of how an order for child support or placement from another jurisdiction may be modified

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<sup>2</sup> WISCONSIN STAT. § 769.611(1) reads as follows:

(continued)

in Wisconsin. Robert argues the Wyoming order is not subject to modification in Wisconsin because WIS. STAT. § 769.612<sup>3</sup> controls and the Wyoming order is not

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(1) After a child support order issued in another state has been registered in this state, unless s. 769.613 applies the responding tribunal of this state may modify that child support order only if, after notice and hearing, it finds at least one of the following:

(a) That all of the following requirements are met:

1. The child, the individual obligee and the obligor do not reside in the issuing state.

2. A petitioner who is a nonresident of this state seeks modification.

3. The respondent is subject to the personal jurisdiction of the tribunal of this state.

(b) That an individual party or the child is subject to the personal jurisdiction of the tribunal and that all of the individual parties have filed a written consent in the issuing tribunal providing that a tribunal of this state may modify the child support order and assume continuing, exclusive jurisdiction over the child support order. However, if the issuing state is a foreign jurisdiction that has not enacted this chapter, the written consent of the individual party residing in this state is not required for the tribunal to assume jurisdiction to modify the child support order.

<sup>3</sup> WISCONSIN STAT. § 769.612 reads as follows:

A tribunal of this state shall recognize a modification of its earlier child support order by a tribunal of another state that assumed jurisdiction under a law substantially similar to this chapter and, upon request, except as otherwise provided in this chapter, shall do all of the following:

(1) Enforce the order that was modified only as to amounts accruing before the modification.

(2) Enforce only nonmodifiable aspects of that order.

(3) Provide other appropriate relief only for violations of that order that occurred before the effective date of the modification.

(4) Recognize the modifying order of the other state, upon registration, for the purpose of enforcement.

the original order. We disagree. Section 769.612 controls how Wisconsin courts must recognize modifications of its orders by another state. However, it does not restrict Wisconsin courts from following the procedures of § 769.611 to modify orders entered in other states.

¶7 It is WIS. STAT. § 769.611 that limits the circumstances in which a Wisconsin court may modify a child support order from another jurisdiction. Despite what Robert asserts is the plain meaning of this section, § 769.611 does not limit modification to “original” orders of other jurisdictions. The legislature does not use the word “original” in § 769.611. Rather, it refers to the issuing state, which in this case is Wyoming. Therefore, under § 769.611, a Wisconsin court may modify a child support order entered in another jurisdiction even if that order is modifying a Wisconsin order, as long as all statutory requirements are met.

¶8 Robert also argues WIS. STAT. § 769.611 does not apply because Tammy moved back to Wyoming. While it is true that § 769.611 requires the parents and children to not live in the issuing state, the record establishes Tammy and the children lived in South Dakota at the time of the motion in Brown County. Other than Robert’s unsupported assertion in his briefs, the record contains no reference to Tammy moving back to Wyoming. Therefore, the requirements of § 769.611 have been met, and the circuit court has jurisdiction to hear her motion to revise. The order is reversed and cause remanded.

*By the Court.*—Order reversed and cause remanded for further proceedings.

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

