

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**May 2, 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. 01-0157  
STATE OF WISCONSIN**

**Cir. Ct. No. 00-PR-799**

**IN COURT OF APPEALS  
DISTRICT IV**

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**IN THE MATTER OF THE CAROL ELAINE KRUG TRUST  
FOR THE BENEFIT OF CAROL ELAINE KRUG:**

**GREGORY C. KRUG,**

**APPELLANT,**

**v.**

**CAROL ELAINE KRUG,**

**RESPONDENT.**

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APPEAL from a judgment of the circuit court for Dane County:  
GERALD C. NICHOL, Judge. *Affirmed.*

Before Vergeront, P.J., Dykman, and Lundsten, JJ.

¶1 PER CURIAM. Gregory Krug appeals from a judgment terminating a trust for which he is trustee. We affirm.

¶2 This action commenced with a petition by Carol Krug to terminate a trust and distribute its assets to her. The terms of the trust provide that it shall be terminated if the trustees become incapacitated. Gregory is the sole remaining trustee, and Carol alleged that he is incapacitated due to his incarceration in Texas. The trust was established in Tennessee, and one of its terms is that the “validity, construction, and affect of this agreement and of the trust created hereunder and its enforcement shall be determined by the laws of the State of Tennessee.” The circuit court entered an order dissolving the trust and ordering distribution of its assets to Carol.

¶3 Gregory argues that the court erred by denying his last request for a continuance of the time to respond to Carol’s petition. The court had previously granted Gregory continuances that he sought on the ground that Carol had not yet provided him with a complete copy of the petition and applicable law. In its letter dated October 30, 2000, granting Gregory an extension to November 25, 2000, the court stated: “There will be no further extensions in this matter.” In a letter that was received in the court on November 16, 2000, Gregory requested an extension to December 4, 2000, on the grounds that he did not receive the court’s previous letter granting an extension until November 7, and also to allow time for the brief he hand wrote to be typed at the office of an attorney in Atlanta. The court did not respond to this letter, and on December 1, 2000, it issued a decision in Carol’s favor. Gregory’s typed response to her petition was filed on December 12, 2000, and on December 14, 2000, the court entered the final judgment in this case without acknowledging receipt of Gregory’s response. The judgment stated that Gregory had not refuted the petition’s allegations.

¶4 Gregory argues that the court erred by not responding to his last request for a continuance, and then by implicitly denying it. We disagree. At the

time Gregory sought the last continuance, he was bound by the previously set date of November 25, until such time as a further continuance was granted. The request for an extension, by itself, did not relieve him from the existing deadline. Therefore, Gregory should have regarded the trial court's failure to respond as a potential denial of the request, and acted to comply with the existing deadline. As to the court's implicit denial of the motion, even when the record does not show an exercise of discretion, we may affirm if the record provides a basis for the trial court's exercise of discretion. *State v. Pharr*, 115 Wis. 2d 334, 343, 340 N.W.2d 498 (1983). In this case, Gregory's final continuance request could reasonably be denied. There had already been several extensions, and the grounds in his last request were not compelling and did not prevent him from meeting the November 25 deadline.

¶5 Gregory argues that the court lacked jurisdiction. He does not clearly state whether he is referring to subject matter jurisdiction or personal jurisdiction, but it appears that he may be arguing both. To the extent he is arguing that the court lacked subject matter jurisdiction, he cites to no authority supporting this assertion. A state court does not lack subject matter jurisdiction simply because the law of another state governs the action. "Circuit court jurisdiction is general and extends to all matters civil and criminal." *Eberhardy v. Circuit Court for Wood County*, 102 Wis. 2d 539, 550, 307 N.W.2d 881 (1981). With respect to personal jurisdiction, he did not raise this issue in the circuit court until he submitted his untimely response to the petition, which we have concluded the court properly disregarded. We do not usually consider issues raised for the first time on appeal. *Wirth v. Ehly*, 93 Wis. 2d 433, 443-44, 287 N.W.2d 140 (1980). We decline to do so in this case.

¶6 Gregory argues that Carol failed to join a necessary party, their sister Catherine Krug Crudup. According to the terms of the trust, upon Carol's death the corpus and accumulated income would be distributed to Gregory and Catherine. Therefore, according to Gregory, Catherine is a contingent remainder beneficiary. Gregory's argument is based on a Tennessee case, *Nickas v. Capadalis*, 954 S.W.2d 735 (Tenn. 1997). Gregory relies on that portion of the opinion in which the court reversed an order terminating a trust, on the ground that the termination petition failed to name certain necessary persons as parties. *Id.* at 740. One necessary party was a person who had a current vested interest in the trust income, and the others were persons who had contingent interests in the income and corpus. *Id.* Gregory argues that the order in this case should be reversed because, although the text of Carol's petition identified Catherine, Catherine was not named as an actual party.

¶7 We reject the argument. A Tennessee statute provides that notice of a termination petition need be given only to those "having an income interest in the trust," which would not include Catherine. TENN. CODE ANN. § 35-1-113(2). Furthermore, Carol asserts that Catherine was provided with proper notice. That

assertion appears to be supported by a hearing notice sent by the court during the action, which shows that a copy of the notice was sent to Catherine.<sup>1</sup>

¶8 Gregory next argues that the circuit court improperly prevented him, as trustee for the trust, from hiring local counsel to oppose the termination petition. The court issued a temporary restraining order that prohibited Gregory from withdrawing or transferring any assets of the trust. But that did not prevent Gregory from hiring local counsel himself. If Gregory was unable to do so, or chose not to do so, he is in a position no different than that faced by many potential litigants. There is no merit to Gregory's argument. Gregory's opposition to Carol's petition is based on his personal interest in the remainder, rather than defense of the trust itself.

¶9 Finally, Gregory addresses the question of whether he is incapacitated by his incarceration, as the circuit court found. However, Gregory has raised this issue for the first time in his reply brief, leaving Carol without an opportunity to respond. We decline to address an issue raised for the first time in

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<sup>1</sup> In Carol's brief, she supports her claim that Catherine received notice by citing to a copy of a cover letter in the record. It appears to be a cover letter from Carol's attorney to Catherine, accompanying copies of the termination petition and other documents, fifteen days after the petition was filed in court. The letter is accompanied by an affidavit of mailing. However, we note that this cover letter and affidavit were not filed in circuit court until some five months after the court had decided the petition, and during briefing for this appeal. These items were included in the appellate record as a supplemental return after we granted Carol's motion to correct the record. In that motion, Carol did not inform us that these documents were not actually before the circuit court at the time of its decision. As grounds for the motion, Carol stated only "that such supplementation is necessary to accurately reflect what occurred in the trial court." This statement is of questionable accuracy. The documents do not reflect anything that "occurred in the trial court." They reflect an event that occurred only between Carol's attorney and Catherine. With this motion, Carol attempted to place new evidence in the court record on the question of notice, five months after the court's decision. We discourage counsel from misusing motions to correct the record in this manner, and we encourage the filing of motions that candidly and fully set forth the relevant facts.

a reply brief. See *Swartwout v. Bilsie*, 100 Wis. 2d 342, 346 n.2, 302 N.W.2d 508 (1981).

*By the Court.*—Judgment affirmed.

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

