

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

August 7, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-0710

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

In re the Marriage of:

GREGORY J. KASUBASKI,

Petitioner-Appellant,

v.

MAUREEN DESMOND KASUBASKI,

Respondent-Respondent.

APPEAL from a judgment of the circuit court for Green Lake County: WILLIAM M. MC MONIGAL, Judge. *Reversed and cause remanded.*

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

PER CURIAM. Gregory J. Kasubaski appeals from a judgment dismissing his petition for a divorce for lack of personal jurisdiction over Maureen Desmond Kasubaski. The issue on appeal is whether Maureen waived jurisdictional objections when she sought a postponement of the action under the Soldiers' and Sailors' Civil Relief Act of 1940 (SSCRA), 50 App. U.S.C.A. §§ 501-591 (West 1990). We conclude that under *Artis-Wergin v. Artis-Wergin*, 151 Wis.2d 445, 444 N.W.2d 750 (Ct. App. 1989), Maureen waived

jurisdictional objections. We reverse the judgment and remand the action for further proceedings.

The parties were married in 1989 while both were in active military service in South Carolina. They then served four years in Turkey. Upon his military discharge in January 1994, Gregory returned to Berlin, Wisconsin from Turkey. In July 1994, Maureen was served in Turkey with the divorce petition. She sent the clerk of the circuit court a "memorandum" asking for the postponement of a hearing set for July 25, 1994, based on the SSCRA. She requested that the motion be moved to October 31, 1994, "to allow for my overseas travel and to obtain counsel."

A temporary order was entered appointing counsel for Maureen. On October 18, 1994, Maureen moved for dismissal contending that the requirement of § 801.05(11), STATS.,¹ was not satisfied. The trial court concluded that Maureen had not waived her rights under the SSCRA and that she timely objected to personal jurisdiction. It dismissed the action based on lack of personal jurisdiction over Maureen.

Gregory argues that when Maureen responded to the clerk of court asking for affirmative relief in the form of a postponement without reserving a jurisdictional objection, she submitted to the jurisdiction of the circuit court. The circumstances are similar to the facts in *Artis-Wergin*. There a Wisconsin divorce proceeding was commenced while the husband was on military duty in Paris. At the husband's request, a legal services officer wrote the clerk of court indicating that the husband did not waive his rights under the SSCRA and that the husband requested a delay of six months before a response was due. The holding is:

We conclude that a party cannot enter an appearance, request affirmative relief from the court, and then later argue

¹ Section 801.05(11), STATS., provides that a court acquires personal jurisdiction over a respondent "in any action affecting the family ... when the respondent resided in this state in marital relationship with the petitioner for not less than 6 consecutive months within the 6 years next preceding the commencement of the action and the respondent is served personally"

that the court was without personal jurisdiction. Therefore [the letter on behalf of the husband] to the trial court requesting a stay of proceedings under the SSCRA and failing to reserve a jurisdictional objection served as an appearance and gave the court personal jurisdiction.

Artis-Wergin, 151 Wis.2d at 453, 444 N.W.2d at 753-54.

Maureen did the same thing here. She wrote a letter asking for a postponement to a definite date. She sought relief from the court and did not reserve a jurisdictional objection. We are bound by *Artis-Wergin*.² Therefore, we conclude that Maureen waived any objection to personal jurisdiction.

In her pro se response before this court, Maureen argues that the trial court lacks jurisdiction because Gregory did not reside in this state for six months prior to filing for divorce. We assume Maureen's argument refers to § 801.05(11), STATS., which gives the court personal jurisdiction in an action for divorce when the married couple has lived at least six months in the last six years in this state. This is an alternative method of acquiring personal jurisdiction and not an absolute requisite. See *McAleavy v. McAleavy*, 150 Wis.2d 26, 33, 440 N.W.2d 566, 569 (1989). Here, both parties waived the requirement of personal jurisdiction by submitting to the jurisdiction of the court. See §§ 801.06 and 802.06(8), STATS., 1993-94.

Gregory suggests that we need to determine whether the SSCRA prevents the Wisconsin court from obtaining jurisdiction over Maureen because the trial court's reasons for dismissing the action were not clear. We deem it sufficient to point out that the SSCRA is not a jurisdictional shield in and of

² This case illustrates the harshness of the *Artis-Wergin v. Artis-Wergin*, 151 Wis.2d 445, 444 N.W.2d 750 (Ct. App. 1989), decision. Here, Maureen proceeded without counsel and asked for the relief the SSCRA provides—that is, a postponement until the rigors of military service no longer interfere with the serviceperson's ability to give attention to the matter. In our opinion, *Artis-Wergin* is wrongly decided. However, we are bound by the published decisions of this court. See *Ranft v. Lyons*, 163 Wis.2d 282, 299-300 n.7, 471 N.W.2d 254, 261 (Ct. App. 1991); *In re Court of Appeals*, 82 Wis.2d 369, 371, 263 N.W.2d 149, 149-50 (1978).

itself. The SSCRA provides for the appointment of counsel before entry of a default judgment or a stay of proceedings when warranted by the nature of military service. See *Artis-Wergin*, 151 Wis.2d at 453-54, 444 N.W.2d at 754.

By the Court. – Judgment reversed and cause remanded.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.