

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**March 7, 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. 01-1100  
STATE OF WISCONSIN**

**Cir. Ct. No. 00-FA-1946**

**IN COURT OF APPEALS  
DISTRICT IV**

---

**IN RE THE MARRIAGE OF:**

**BINTA NJAI,**

**PETITIONER-APPELLANT,**

**V.**

**RAY LANG,**

**RESPONDENT-RESPONDENT.**

---

APPEAL from an order of the circuit court for Dane County:  
MARYANN SUMI, Judge. *Reversed and cause remanded.*

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

¶1 DEININGER, J. Binta Njai appeals an order which dismissed her petition for a divorce from Ray Lang. She claims the circuit court erred in

concluding that it lacked jurisdiction to grant Njai a divorce. We agree that the circuit court erred and accordingly we reverse.

### **BACKGROUND**

¶2 Njai married Lang in 1996 in the State of Maryland. She last resided with him in January 1997, at an address in Takoma Park, Maryland, which was the last address of Lang known to Njai. When she filed her divorce petition, however, she learned from Lang's sister that he "was living in New York City." Prior to filing her pro se divorce petition in Dane County, Njai had resided in that county for at least thirty days, and in Wisconsin for not less than six months. It does not appear, however, that Lang ever resided in Wisconsin during the marriage or had any other "connections" to this state.

¶3 Not knowing Lang's current address, Njai mailed an authenticated copy of the summons and petition to Lang at his last known address in Takoma Park, Maryland. She also caused the summons to be published once each week for three weeks in the New York Post, a newspaper of general circulation in New York City. Lang did not respond or otherwise appear in the divorce action.<sup>1</sup>

¶4 The only relief sought by Njai in her "Petitioner's Request" was for a divorce, that the parties' property be awarded on the basis of possession or title,

---

<sup>1</sup> Likewise, Lang has not responded to this appeal. We ordered Njai's counsel to inform us of the measures taken to locate Lang or notify him of the pendency of the appeal. Counsel responded that he had conducted an Internet search for Lang but had obtained no better information than Njai possessed regarding Lang's whereabouts. Accordingly, copies of the notice of appeal and other papers relating to the appeal were sent to Lang at his last known address. We note that the address used on the appellate documents is in Alexandria, Virginia, as opposed to Takoma Park, Maryland. Although there is no explanation for the change in the record, we assume Njai became aware of the later address at some point after she commenced her action.

and that each be responsible for his or her own incurred debts. Njai specifically waived maintenance, and the parties had no children.

¶5 In a “Certificate of Readiness for Trial,” a family court commissioner noted that she “recommends dismissal, as no grounds for personal jurisdiction are of record.” Although the proceeding was not reported, the clerk’s minutes of the subsequent pretrial conference states “Ct explains to Petitioner that WI does not have jurisdiction to divorce parties.” The court entered a form dismissal order which contains a handwritten finding that “[c]ourt lacks jurisdiction over this action.” Although preprinted language allowed for a finding that proper service had not been made on the respondent, this option was *not* checked. Njai appeals the order which dismissed the divorce action without prejudice.

### ANALYSIS

¶6 Although the appealed order does not so specify, it appears that the circuit court concluded that it lacked personal jurisdiction over respondent Lang. There can be no question that the court had subject matter jurisdiction to grant Njai’s petition for divorce. *See* WIS. STAT. §§ 767.01(1) and .02(c). The family court commissioner’s correspondence with Njai inquiring as to Lang’s “connections to the State of Wisconsin,” and her recommendation to dismiss make clear that a perceived lack of personal jurisdiction over Lang prompted the dismissal of Njai’s petition. Whether a court has personal jurisdiction over a defendant or respondent is a question of law which we decide de novo. ***Mendez v. Hernandez-Mendez***, 213 Wis. 2d 217, 219, 570 N.W.2d 563 (Ct. App. 1997).

¶7 As we have noted, the circuit court had subject matter jurisdiction to grant a divorce, and we conclude that it also had jurisdiction “in rem or quasi in

rem” to terminate Njai’s marriage and enter an order awarding her all property in her possession or titled in her name. WISCONSIN STAT. 801.07 provides as follows:

A court of this state having jurisdiction of the subject matter may exercise jurisdiction in rem or quasi in rem on the grounds stated in this section. A judgment in rem or quasi in rem may affect the interests of the defendant in the status, property or thing acted upon only if a summons has been served upon the defendant pursuant to s. 801.12. Jurisdiction in rem or quasi in rem may be invoked in any of the following cases:

....

(5) When the action is an action affecting the family under s. 767.02(1)(a) to (d) and when the residence requirements of s. 767.05(1m) have been met, a court having subject matter jurisdiction may exercise jurisdiction quasi in rem to determine questions of status if the respondent has been served under s. 801.11(1).

¶8 An action for divorce is one of the actions affecting the family cited in § 801.07(5). *See* WIS. STAT. § 767.02(1)(c). Because Njai was a resident of Dane County for thirty days before filing her petition, and had been a resident of Wisconsin for six months prior to filing, she met the “residence requirements” of WIS. STAT. 767.05(1m). Finally, service on Lang was accomplished pursuant to the requirements of WIS. STAT. § 801.11(1), in that “a class 3 notice, under ch. 985” was published in New York City, and an authenticated copy of the summons and petition were mailed to his last known address. *See* § 801.11(1)(c).

¶9 Although there is no transcript of the pretrial conference, it appears that the circuit court’s conclusion that it lacked jurisdiction may have been based on our decision in *Mendez*, where we held that in addition to service under § 801.11(1), a divorce petitioner “was additionally required to show one of the grounds for the exercise of personal jurisdiction set out in § 801.05.” *Mendez*,

213 Wis. 2d at 224. As applicable here, WIS. STAT. § 801.05 requires that a respondent be domiciled here, served here, or to have engaged in “substantial and not isolated activities” in Wisconsin. *See* § 801.05(1). As we have noted, none of these grounds for personal jurisdiction apply to Lang, and Njai does not claim otherwise.

¶10 Njai, like the petitioner in *Mendez*, seeks only a divorce. *See Mendez*, 213 Wis. 2d at 219. That is, she is not seeking remedies beyond a declaration that her marriage is terminated and that the property in her possession or titled in her name is hers. Unlike the respondent in *Mendez*, however, Lang has not appeared and raised jurisdictional objections. Thus, the present facts are distinguishable, a point we emphasized in *Mendez*:

We stress that a plaintiff is not required, on a threshold basis, to establish that one of the grounds for the exercise of personal jurisdiction exists. All the plaintiff need do is properly serve the defendant. Thereafter, it is incumbent upon the defendant to register the jurisdictional objection.

*Id.* at 226. Accordingly, Lang having registered no jurisdictional objection, we conclude that there was no bar to the circuit court’s proceeding on Njai’s petition and entertaining her requested relief.

¶11 We note in closing that although we concluded in *Mendez* that the introductory language of WIS. STAT. § 801.11 requires a showing of grounds for personal jurisdiction even when only “quasi in rem” relief is being sought, the legislature has recently amended WIS. STAT. § 801.07 to provide otherwise. 2001 Wis. Act 42, applicable to actions affecting the family commenced on or after January 5, 2002, amends § 801.07(5) as follows: “Notwithstanding s. 801.11

(intro.), the court need not have grounds for personal jurisdiction under s. 801.05 in order to make a determination of the status of a marriage under this subsection.”

### **CONCLUSION**

¶12 For the reasons discussed above, we reverse the appealed order and remand to the circuit court for further proceedings on Njai’s petition.

*By the Court.*—Order reversed and cause remanded.

Not recommended for publication in the official reports.

