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SUPREME COURT OF FLORIDA

Case No. 85,384
District Court of Appeal
First District No. 94-1047
Circuit Court No. 93-12860

NANCY GALE GARRETT,

Petitioner,

vs.

LARRY ALLEN GARRETT,

Respondent.

PETITIONER'S INITIAL BRIEF ON THE MERITS

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EXPLANATORY STATEMENT

The Petitioner will be referred to as Petitioner, the Wife, or Mrs. Garrett. The Respondent will be referred to as Respondent, the Husband, or Mr. Garrett. The Appendix will be referred to by the abbreviation "App-". All underlining was added by the scrivener unless otherwise indicated.

STATEMENT OF THE CASE AND OF THE FACTS

This case began on November 17, 1994, when the Wife filed her Petition for Dissolution of Marriage, her Residency Affidavit and a Financial Affidavit (App-1-11).

In her Petition, the Wife alleged the following regarding jurisdiction:

> 2. **JURISDICTION:** The Wife has been a resident of the State of Florida for more than six months before filing this Petition. This court has personal jurisdiction of the Husband. The parties were married on November 23, 1974 in Jacksonville, Florida. The parties' daughter, **AMY REBECCA GARRETT**, was born in Jacksonville, Florida in 1978, and the parties lived continuously in Jacksonville from the time they were married until June of 1986. The Husband was born and raised in Jacksonville and his extended family continues to live here. While the parties lived in Jacksonville from 1974 through 1986, they did own real estate together in Jacksonville. The Husband periodically comes to Jacksonville to visit the children and he has business trips in Florida (App-1).

The Wife further alleged that there was one child, **AMY REBECCA GARRETT**, born March 9, 1978, (App-2). The Wife requested custody and alleged that she earned a minimal income and needed child support (App-2). The Wife further requested that the Husband pay all non-covered medical and dental expenses, maintain life insurance as security for support and pay the Wife alimony. She alleged, "During this long term marriage, the Wife has sacrificed her career in order to support the Husband in his career and care for the family" (App-3). The Wife also requested equitable distribution of assets including pension and deferred savings

funds, division of the debts and payment of her attorney fees (App-3).

The parties had moved from Jacksonville, Florida, to Texas in 1986 (App-42). The parties separated in July of 1991, and Mrs. Garrett returned to Jacksonville, Florida on or about August 15, 1992, where she and the child continue to reside (App-6). The Wife had filed a Petition for Dissolution of Marriage in Texas which was dismissed prior to the Wife filing in Florida (App-47).

The Husband, who is a resident of the State of Indiana, was served on or about November 23, 1993, in Franklin, Indiana, (App-13,14).

The Husband responded by filing a Notice of Special Appearance, Husband's Motion to Dismiss For Lack of Jurisdiction and Husband's Motion to Quash Service of Process, wherein he alleged that Florida did not have personal jurisdiction because no sufficient jurisdictional basis had been alleged by the Wife pursuant to §48.193, Fla. Stat. to obtain such jurisdiction (App-15,17).

At the hearing on the Husband's Motion, the Wife attended and filed an Affidavit on February 22, 1994, in which she alleged that the Husband came to Florida frequently for business and then visited their child (App-18). The most recent visit had occurred Saturday, February 12, 1994, (App-18). She further alleged that Mr. Garrett had moved to Greenwood, Indiana, in August of 1992, and had told her it was his desire to move back to Florida and that he was continuously seeking suitable employment in Florida so that he

may return (App-18). A copy of the transcript of that February 22, 1994, hearing is provided in the Appendix (App-20-36). The Husband did not appear nor submit an Affidavit (App-20-36).

On March 11, 1994, the trial court entered a Corrected Order Denying Motion to Dismiss and to Quash Service in which it found that Florida does have personal jurisdiction of Mr. Garrett (App-36,38). The court found that Mr. Garrett had significant contacts with the State of Florida including the duration of the marriage in Florida prior to the parties' move to Texas, the Husband frequently coming to Florida on business, the Husband's voluntary payment of support in this State and the Wife's representation of the Husband's expressed desire to return his residence to Florida (App-38). The Husband timely filed his Notice of Appeal from this Order (App-39) .

On December 1, 1994, the First District Court filed an Opinion in which the trial court's Order concerning personal jurisdiction was vacated and the case remanded for further proceedings consistent with its Opinion (App-41). Judge Benton filed a dissenting Opinion in which he argued that based upon the facts alleged, Florida did have personal jurisdiction over Mr. Garrett (App-46-49). The First District Court entered an Order on Motion for Rehearing En Banc and Suggestion for Certification in which the following question was certified:

> WHEN MAY A RESPONDENT'S PRIOR RESIDENCE IN FLORIDA BE SUFFICIENT TO CREATE PERSONAL JURISDICTION IN AN ACTION CONCERNING ALIMONY, CHILD SUPPORT OR DIVISION OF PROPERTY? (APP-50-52).

The Petitioner filed a Notice to Invoke Discretionary Jurisdiction and on March 23, 1995, this court entered its Order postponing decision on jurisdiction and briefing schedule (App-54).

SUMMARY OF THE ARGUMENT

The authority of the States to exercise long arm jurisdiction is limited by Due Process. This court is being asked to interpret one portion of §48.193(1)(3), Fla. Stat., which deals with the prior residency of defendants in certain divorce and support actions. Case law is unanimous in suggesting that a case by case analysis rather than a quantitative approach be utilized.

The United States Supreme Court cases addressing the issue of *in personam jurisdiction* of non-resident defendants direct that "minimum contacts" by the defendant with the forum State must be such that *in personam jurisdiction* would not offend traditional notions of fair play and substantive justice. Further, the analysis may also include consideration of the plaintiff's interest in obtaining relief, the judicial system's interest in efficient resolution of cases, and the State interest in furthering substantive social policies.

Section 48.193(1)(3), Fla. Stat. is broadly drawn to show that the legislature intended to include jurisdiction of all prior residents so long as due process was not violated. Section 48.193(1)(g), Fla. Stat., authorizes jurisdiction over a non-resident who engages in sexual intercourse in Florida which may produce a child. The statute also emphasizes business contacts in Florida as a basis for jurisdiction of non-residents. These examples indicate other actions by non-residents which qualify as minimum contacts subjecting them to *in personam jurisdiction* in

Florida. Mr. Garrett possess these same aforesaid minimum contacts to Florida.

Florida case law, which has addressed this issue, indicates the necessity of the proximity of the prior residence, considering the totality of the circumstances. The Respondent never denied any of Petitioner's verified allegations and those allegations must, therefore, be taken as true. In the instant case where Respondent has a very lengthy and intimate past relationship with the State and continuing present contacts with the State, especially his business contacts, *in personam jurisdiction* is justified. The necessity of a brief proximity of prior residence is more appropriately emphasized when the non-resident's prior residence was of short duration and there are no continuing contacts with the State. In the instant case, the Petitioner can only afford to seek relief in a Florida court for her own support, attorney's fees and equitable distribution of assets. Florida has a substantive interest in supporting the interests of dependent spouses so that they do not becomes charges of the State. Judicial economy would be advanced if custody along with all other issues raised in the divorce were litigated in Florida. Consideration of all of these relevant factors result in a conclusion that Respondent is subject to *in personam jurisdiction* in Florida.

ARGUMENT

ISSUE I: WHEN IS THE RESPONDENT'S PRIOR RESIDENCE IN FLORIDA SUFFICIENT TO CREATE PERSONAL JURISDICTION IN AN ACTION CONCERNING ALIMONY, CHILD SUPPORT, OR DIVISION OF PROPERTY?

This court is being asked for the first time to interpret the "prior residence" portion of §48.193(1)(e), Fla. Stat. (1993).

> **48.193 Acts subjecting person to jurisdiction of courts of state.--**
>
> (1) Any person, whether or not a citizen or resident of this state, who personally or through an agent does any of the acts enumerated in this subsection thereby submits himself and, if he is a natural person, his personal representative to the jurisdiction of the courts of this State for any cause of action arising from the doing of any of the following acts:
>
> ....
>
> (e) With respect to a proceeding for alimony, child support, or division of property in connection with an action to dissolve a marriage or with respect to an independent action for support of dependents, maintaining a matrimonial domicile in this State at the time of the commencement of this action or, <u>if the defendant resided in this State preceding the commencement of the action, whether cohabiting during that time or not.</u> This paragraph does not change the residence requirement for filing an action for dissolution of marriage.

A straight forward reading of the statute indicates that personal jurisdiction is acquired if "the defendant resided in the State preceding the commencement of the action, whether cohabitating during that time or not" §48.193(1)(e), Fla. Stat. Seemingly, <u>any</u> prior residence, no matter how remote, would establish jurisdiction.

The Petitioner did allege Mr. Garrett's prior residence in Florida, and therefore met the test for a valid service of process. In Hargrave v. Hargrave, 495 So.2d 904 (Fla. 1st DCA 1986), the court stated the particular requirements necessary to effect service of process under §48.193(1)(e), Fla. Stat.:

> In particular, §48.193, Fla. Stat. (1993) requires that a complaint must allege that either the defendant (the wife in this case) had resided in the State previous to the commencement of the action or that the parties had maintained a matrimonial domicile in this State at the time of the commencement of the action. A complaint must allege one of these factors and if it does not, any attempted service of process is void. [Bar cites omitted.] Hargrave at 904.

See also Kilvington v. Kilvington, 632 So.2d 701 (Fla. 1st DCA 1994).

At the hearing before the trial court, the former Husband took the position that "The only issue for determining -- for evaluating the totality of the circumstances is to determine whether or not the Husband lived in Florida proximately in time before commencement of the action" (App-32). In its Order on rehearing and suggestion for certification, the majority below also indicated that a time calculation was needed to apply this rule. "It is unclear what amount of time may pass between the respondent's residence in the State and the filing of the action where jurisdiction is claimed." (App-52). It is Appellee's position that an analysis of a prior resident's continuing contacts with the State is also required and is more important than a quantitative measurement of time elapsed since residency. A review of the case

law in Florida, interpretation of §48.193(1)(a),(e),(g) and (2), Fla. Stat. and opinions of the United States Supreme Court support the trial court's Order determining that Florida has personal jurisdiction of Mr. Garrett.

A. REVIEW OF UNITED STATES SUPREME COURT CASES

The United States Supreme Court has frequently addressed the interaction of due process and State long arm jurisdiction. The due process clause of the 14th Amendment limits State courts' ability to enter judgments affecting the rights and interests of non-residents. In the landmark case of International Shoe Co. v. Washington, 326 U.S. 310, 66 S.Ct. 154, 90 L. Ed. 95 (1945), the United States Supreme Court held:

> Due process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he had certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice'.

In Kulko v. Superior Court of California, 436 U.S. 84, 56 L Ed 132, 98 S.Ct. 1690, reh den 438 U.S. 908, 57 L Ed 2d 1150, 98 S.Ct. 3127 (1978), Mr. Kulko, a New York resident challenged the *in personam jurisdiction* ruling of a California court in an action brought by his former Wife, a California resident, to establish her Haitian divorce and increase child support from Mr. Kulko. Mr. Kulko had never resided in California. He had only been present in the State twice - many years ago on two (2) brief military stopovers. The lower court decisions which affirmed a finding of personal jurisdiction referred to the fact that Mr. Kulko had

purposely availed himself of the benefits and protection of the laws of California by voluntarily sending his daughter to live with her mother in California. The California decisions had not relied upon the fact that the Kulkos had married in California (on a stopover) nor upon the fact that Mr. Kulko had agreed that the children could visit their mother in California. The Kulko decision referred to the International Shoe Co., supra, holding and stressed that any minimum contacts test cannot be mechanically applied.

> ... the facts of each case must be weighed to determine whether the requisite "affiliating circumstances" are present. Hanson v. Denckla, 357 U.S. 235, 246, 78 S.Ct. 1228, 1235, 2 L.Ed.2d 1283 (1958). We recognize that this determination is one in which few answers will be written "in black and white. The grays are dominant and even among them the shades are innumerable". Estin v. Estin, 334 U.S. 541, 545, 68 S.Ct. 1213, 1216, 92 L.Ed. 1561 (1948). Kulko at 1697.

The court found that Mr. Kulko did not purposefully derive benefit from any activities relating to California. The circumstances of the case rendered unreasonable California's assertion of personal jurisdiction. Basic considerations of fairness pointed to New York as the proper forum for adjudication. Mr. Kulko had resided continuously in New York. The children and Mrs. Kulko did not leave New York until the separation. The court also found that because of the Revised Uniform Reciprocal Enforcement of Support Act, Mrs. Kulko could file for child support in California and the merits could be litigated in New York without either party having

to leave his or her own State. The California Supreme Court decision finding personal jurisdiction of Mr. Kulko was reversed.

The United States Supreme Court has summarized the relevant factors to be considered in this area to include the burden on the defendant, the plaintiff's interest in obtaining convenient and effective relief, the judicial system's interest in obtaining the most efficient resolution of the controversy, and the State's interest in furthering substantive social policies. Worldwide Volkswagen Corp. v. Woodson, 444 U.S. 286, 292, 62 L.Ed.2d 490, 100 S.Ct. 559,586 (1980).

In Kulko, California had an interest, recognized by the Supreme Court, of protecting resident children and in facilitating child support actions on behalf of those children. (Kulko at 1701) Child support was the only relief sought and because of the Uniform Reciprocal Enforcement of Support Act, the wife could sue in California and the merits could be adjudicated in New York. Such relief is not available to Mrs. Garrett regarding alimony, attorney's fees and equitable distribution. Her Financial Affidavit indicates that Mrs. Garrett earns $1,283.75 per month, gross. She is claiming to be entitled to alimony and seeks equitable distribution of marital assets including the Husband's pension. There is no evidence that Mrs. Garrett has ever had any connection with Indiana. Unless Mrs. Garrett can pursue this divorce in Florida, her financial circumstances limit her ability to pursue her rights out of State. Florida clearly has a substantive State interest in protecting dependent wives and

avoiding their impoverishment and possible later State dependency if they aren't able to establish alimony and equitable distribution rights in a dissolution action.

This court has affirmed District court cases holding that there is a two part analysis of long arm jurisdiction; first the activity of the defendant must fall within the ambit of the State statute, and second, the assertion of long arm jurisdiction must include sufficient minimum contacts to satisfy federal due process requirements. Venetian Salami Co. v. Parthenais, 554 So.2d 504 (Fla. 1989).

As this court pointed out in Venetian Salami Co., id, the filing of a motion to dismiss challenging personal jurisdiction does nothing more than raise the legal sufficiency of the pleadings. "A defendant wishing to contest the allegations of the complaint concerning jurisdiction or to raise a contention of minimum contacts must file affidavits in support of his position". Venetian Salami Co. at 502. In the instant case, the respondent filed no affidavit. Therefore, all of the facts alleged by the petitioner in her pleadings must be accepted as true and the second part of the Venetian Salami Co. test should be applied. In Husband's Motion to Dismiss, the first six (6) numbered paragraphs contain allegations concerning the Texas dissolution action. The Husband never pursued any of those allegations concerning Texas jurisdiction in this case because his attorney acknowledged that the dismissal of the Texas lawsuit had been upheld (App-21).

Respondent's Motion to Dismiss was not verified. Paragraph 7 of his Motion alleged:

> The courts of Florida do not have personal jurisdiction over the husband in any event because the husband is not a resident of the State of Florida, and there is no sufficient jurisdictional basis alleged by the wife, pursuant to §48.193, Fla. Stat. to obtain such jurisdiction. As a result service of process herein should be quashed (App-__).

The Husband's Motion contains no other allegations.

B. OTHER PROVISIONS OF §48.193, FLA. STAT. 1993

It is helpful to consider some of the other acts subjecting a non-resident to Florida *in personam jurisdiction* as set forth in §48.193. These acts include "operating, conducting, engaging in, or carrying on a business or business venture" in Florida [Section (1)(a)] and

> (1)(h) With respect to a proceeding for paternity, engaging in the act of sexual intercourse within this state respect to which a child may have been conceived.
> (2) A defendant who is engaged in substantial and not isolated activity within this state, whether such activity is wholly interstate, intrastate, or otherwise, is subject to the jurisdiction of the courts of this state, whether or not the claim arises from that activity.

Clearly, engaging in a business activity in Florida is considered to bring non-residents within the *in personam jurisdiction* of Florida courts. Also, even if the claim does not arise from the business activity, because of the benefits and protections afforded such persons, they are then subjected to defending a suit brought upon other grounds. Since Mr. Garrett never denied that he

does engage in business in Florida, he should not be allowed to complain of being subject to the *in personam jurisdiction* of the State in a dissolution of marriage action.

Engaging in sexual intercourse in Florida with respect to which a child may have been conceived is sufficient connection with the State to result in a non-resident man defending a paternity action. An unmarried mother with an illegitimate child is enabled to sue a non-resident father for paternity and support if the child was conceived in Florida, pursuant to §48.193(1)(h), Fla. Stat., with no restriction on how long ago conception occurred. However, in the instant case, a married mother of a legitimate child conceived in Florida has not been allowed to sue the non-resident father for child support in a dissolution action. Certainly equal protection guarantees under the Fourteenth Amendment would indicate that married mothers and legitimate children should be treated on the same basis as unmarried mothers and illegitimate children in this regard.

The argument for equal treatment is even stronger when the non-resident father has so many connections to Florida, past and present, as in the instant case. It is also evident that providing for the support of Florida children is in the public interest and furthers substantive social policies of Florida.

C. COURT OPINIONS INTERPRETING §48.193(1)(e)

Although the Florida Supreme Court has never addressed this issue, several District Courts of Appeal have held that a person's former residence in Florida is not, standing alone, sufficient to

establish personal jurisdiction over a party by a Florida Court.

A New Jersey court interpreted this section in Squitieri v. Squitieri, 481 A.2d 585 (N.J. Super.Ch. 1984). The Squitieris were married in 1961 in Nevada. For the first 13 years of their marriage they lived in four (4) different states. Between 1972 and 1974 they resided in Florida at different times. They built a home and resided continuously in New Jersey from 1975 to 1980. Then Mr. Squitieri moved to Florida. In December, 1983, Mr. Squitieri filed for divorce in Florida, and Mrs. Squitieri was served in New Jersey on January 5, 1984. On January 18, 1984, Mrs. Squitieri filed for divorce in New Jersey. Since 1974, Mrs. Squitieri had visited in Florida for four (4) days in 1979 or 1980 and claimed that was her only subsequent contact with Florida. In determining that the Florida court had erred in ruling that it had *in personam jurisdiction* of Mrs. Squitieri, the New Jersey court found that a mere fortuitous residence in Florida more than ten (10) years before filing of the suit did not grant Florida *in personam jurisdiction* of Mrs. Squitieri. A literal reading of the statute would mean that Florida had continuing lifetime *in personam jurisdiction* of all prior residents. "Due process cannot be stretched to this point". Squitieri at 591. After listing the many continuing and purposeful contacts which Mr. Squitieri had with the State, the New Jersey court held that New Jersey had *in personam jurisdiction* of both parties and could afford full in personam relief.

In Soule v. Rosasco-Soule, 386 So.2d 862 (Fla. 1st DCA 1980), the trial court's denial of Mr. Soul's motion to dismiss was

reversed. This husband and wife had lived together in Florida during their marriage from 1934 to 1938 while he was on military duty. In 1971, when they separated, they were both residents of Florida. The wife returned to Florida, and Mr. Soule stayed in Virginia. She filed in Florida and sought, among other things, alimony, equitable distribution of property and attorney's fees. The First District justified its decision on the basis that the acts or omissions from which the action arose did not occur in Florida. This decision does not directly refer to proximity. Section 48.193(3), Fla. Stat. (1977), upon which this decision rests was deleted in 1984. However, if it is assumed that this holding still applies, the facts of the instant case justify *in personam jurisdiction* of Mr. Garrett. Seventy percent (70%) of the marriage prior to separation occurred in Florida. Conception occurred in Florida. Length of a marriage and contributions of each party are factors to be considered by the court for determining issues of alimony and equitable distribution. See §61.08(2)(b)(f), Fla. Stat. and §61.075(1)(c)(e), Fla. Stat. (1993). Most of this relevant activity occurred in Florida. Therefore, the Soule rationale supports *in personam jurisdiction* of Mr. Garrett.

The primary business basis for Respondent's argument that Florida cannot properly exercise jurisdiction over the Husband is a line of cases beginning with Shammay v. Shammay, 491 So.2d 284 (Fla. 3d DCA 1986), where the court held:

> We construe this section as meaning that the Defendant's residency in this State must

> proximately precede the commencement of an action...Proximity is to be determined in light of the totality of the circumstances. Shammay at 285.

See also Durand v. Durand, 569 So.2d 838 (Fla. 3d DCA 1990), rev. denied, 583 So.2d 1034 (Fla. 1991) and Bofonchik v. Smith, 622 So.2d 1355 (Fla. 1st DCA 1993).

The Shammays were married in 1973, and took up residence in Florida for two (2) brief periods, once for a year at the beginning of their marriage and again for eight (8) months beginning in 1978. Neither of the parties' children were born in Florida, and only one of them had any connection with the State at all. Thus, no *in personam jurisdiction* of Mr. Shammay was established.

In Durand, supra, we find an example of sufficient contacts by a non-resident to justify *in personam jurisdiction*. Mrs. Durand brought an action requesting relief with respect to jointly-owned property in Miami as well as child support. Mr. Durand challenged Florida's exercise of personal jurisdiction. Accordingly to the husband, the parties and their five (5) children lived in Miami for several years in the 1970's. He and his wife separated during that period of time. The husband asserted that he changed the State of his residence in 1983, while his wife and children continued to live in their jointly-owned Miami home. The case contains no information as to what year Mrs. Durand filed the action, so no precise information as to proximity is unavailable. In finding that the trial court appropriately exercised personal jurisdiction, the court noted that the wife and children lived in Florida, the husband made voluntary support payments, there was jointly-owned

real estate in Florida, and the parties lived together for three to five years in Florida prior to the husband's asserted change in residence. The court noted that the circumstances "differ substantially from those involved in Shammay," and concluded that the test for jurisdiction had been met. Id. at 839.

The Garretts' case presents a factual situation much closer to Durand than to Shammay. In the instant case, the Garretts were married in Florida. Their marital domicile was Florida for a period of 12 years, which was 70% of the length of the marriage until separation. Mr. Garrett was born and raised in Florida and his extended family lives here. Both of their daughters were in Florida and have spent the majority of their lives in this State. The Garretts once owned real estate in Florida. Mr. Garrett continues to have contacts with Florida as he periodically comes to this State for business and for visitation. Mr. Garrett voluntarily pays child support in Florida. Mr. Garrett's Florida connections are much stronger than were Mr. Shammay's.

The most recent pronouncement on proximity as it relates to personal jurisdiction came from the First District in Bofonchik v. Smith, 622 So.2d 1355, 1357 (Fla. 1st DCA 1993), where the analysis focused upon the "totality of the circumstances" as it related to all of the husband's contacts to Florida. In Bofonchik, the former wife moved to Florida three (3) years after the husband's relocation from his two (2) year stay in Florida for military duty. His only acts pertaining to the children while he was in Florida were payment of child support, correspondence from Florida and

occasional trips from Florida to visit the children. The parties never cohabitated in Florida nor ever lived in Florida at the same time. The First District made special note of the fact that movement with the military does not necessarily affect choice of residence. In light of the total circumstances, the court concluded that the husband's residence during the two (2) year period after dissolution of the marriage "lacked the necessary proximity and/or connexity to the former wife's cause of action to justify a finding of personal jurisdiction." Id. at 1357.

The facts in the instant case are so distinguishable that Bofonchik cannot control. Clearly, the wife and children in Bofonchik had no contact with Florida until after Mr. Bofonchik had moved. Mr. Bofonchik had no continuing contacts with Florida after moving. In such a situation where the non-resident has no continuing contact with the State, emphasis upon proximity and a quantitative test are more appropriate.

It is important to note that in none of the Florida decisions cited was the non-resident spouse voluntarily visiting Florida on a regular basis in order to engage in business as does Mr. Garrett. Mr. Durand had the continuing contact of property ownership.

In the instant case, the majority determined that the Respondent's contacts were not sufficient to bring him into the bounds of personal jurisdiction. The majority opinion focused on the fact that the parties voluntarily left the State of Florida to set up a marital residence in the State of Texas. The majority was of the opinion that this one factor outweighs numerous other

factors present in this case and worked to divest the State of Florida of jurisdiction, due primarily to the lack of proximity of the residence in Florida to the commencement of the action. The majority didn't consider the State's interest in protecting Florida wives and Mrs. Garrett's interest in proceeding in Florida.

The proper test for personal jurisdiction examines the totality of the circumstances. Proximity of a party's residence in the State of Florida, however, is but one factor to be analyzed in light of the total circumstances a case presents.

The dissent construed the instant case with an eye toward the historical treatment of jurisdiction in the State of Florida as well as with a great understanding of due process concepts embodied in the federal jurisdiction cases as applied to and adopted by Florida. The instant case does not present a situation where ruling that Mr. Garrett was subject to *in personam jurisdiction* would offend "traditional notions of fair play and substantial justice" primarily due to the Respondent's numerous and continuing contacts with the State of Florida.

The dissenting opinion also points out that the Respondent enjoys the benefits and protection of Florida law similar to jobbers and drummers. The basic premises of the case law the dissenting opinion cites is that a party who regularly enjoys the protection and benefit of this State's laws should not be able to deny that the State has jurisdiction over him for other proceedings. The Respondent, even after relocating to Indiana, continued to purposefully avail himself of the privilege of conducting

business activity in Florida. His continuing business in the State qualifies as purposeful availment, and as such, the State of Florida properly exercised jurisdiction over the Respondent.

No one has questioned that Florida is the child's home State and the proper forum for determining the custody issue (App-42,24). Therefore, judicial economy would be advanced by trying all issues in Florida.

Lastly, the dissenting opinion pays respect to the fact that the Petitioner should have the right to bring her case in Florida. The marriage that she is seeking to have dissolved is a Florida marriage. The rights she is invoking regarding child support are for a child born in the State of Florida. A Florida wife is seeking alimony based mainly upon events which occurred in Florida. The Petitioner should not be denied these rights merely because her Florida marriage "did not survive transplantation to Texas, especially given the Husband's recent visits to Florida." (App-49).

CONCLUSION

No simple quantitative test is appropriate to determine *in personam jurisdiction* of non-residents. Due process requires that the trial court examine the facts of each case individually in order to determine significant contacts. A generalization suggested by this review of the law is that on a continuum, if there is a brief residence and no continuing contact by the non-resident spouse only a very short break between prior residence and filing of the action would be allowed in order to sustain *in personam jurisdiction*. (As in Squitieri and Shammay, supra.) When there is a longtime residence and voluntary continuing current contacts after leaving the State (as in the instant case), then a very long, even lifetime period between the prior residence and the filing of the action would be required.

Personal jurisdiction of Mr. Garrett is not based merely upon his present voluntary payment of child support in Florida nor upon his current visits to the parties' child in Florida. Mr. Garrett was born and raised in Florida. Presumably all his schooling occurred in Florida. Mr. Garrett obviously spent the majority of his life as a resident of Florida. He married in Florida and lived the first 12 years of the marriage here with his wife and family. Besides the fact that his extended family continues to live in Florida, his minor daughter was born in Florida and has spent most of her life here. Florida is her home State and is the appropriate forum to litigate her custody. Considering all of those significant contacts with Florida in Mr. Garret's past, the

Petitioner alleges that Mr. Garrett should not now be surprised that he is being sued in Florida. Mr. Garrett visits Florida regularly in order to pursue his business interests. He avails himself of the protection of Florida law in conducting his business and avails himself of any resulting financial benefits. Due process requirements are well met in this case and Florida certainly has *in personam jurisdiction* of Respondent.

For the foregoing reasons of fact and law, the First District Court's Order reversing the trial court's decision should be reversed and the trial court's Order denying Motion to Dismiss and Quash service should be affirmed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to **Gary A. Benson, Esquire**, 2955 Hartley Road, Suite 101, Jacksonville, Florida 32257, by United States mail this 17th day of April, 1995.

ZISSER, ROBISON, BROWN, & NOWLIS, P.A.

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