Nova Law Review

Volume 21, *Issue* 1 1996 *Article* 13

Personal Jurisdiction in a Dissolution of Marriage Action: Garrett v. Garrett

Gregory P. McMahon*

*

Copyright ©1996 by the authors. *Nova Law Review* is produced by The Berkeley Electronic Press (bepress). https://nsuworks.nova.edu/nlr

Personal Jurisdiction in a Dissolution of Marriage Action: *Garrett v. Garrett*

TABLE OF CONTENTS

I. INTRODUCTION

Nancy and Larry Garrett were married in Jacksonville, Florida on November 23, 1974. On March 9, 1978, their daughter Amy Rebecca was born in Jacksonville, and the parties lived continuously in Jacksonville from the time they were married until June of 1986.[1] The Garrett family subsequently moved to Arlington, Texas and resided there until the couple's separation in July of 1991.[2] Shortly thereafter, Nancy and Amy Garrett returned to Jacksonville and have remained there ever since leaving Texas. Larry Garrett also left Texas after the separation and took up residence in Greenwood, Indiana in August of 1992.[3]

On November 17, 1993, Nancy Gale Garrett petitioned the Circuit Court of the Fourth Judicial Circuit in and for Duval County, Florida, for dissolution of marriage from her husband, Larry Allen Garrett.[4] Her husband, while residing out of state, was served in Indiana with the petition for

1. Brief for Petitioner at 1, Garrett v. Garrett, 668 So. 2d 991 (Fla. 1996) (No. 85,384).
2. Petitioner's Brief at 2, *Garrett* (No. 85,384).
3. *Id.*
4. *See* Garrett v. Garrett, 652 So. 2d 378 (Fla. 1st Dist. Ct. App. 1994).

dissolution of marriage.[5] In her petition, Nancy Garrett alleged that Florida jurisdiction was proper for various reasons.[6] The husband responded by filing a motion to dismiss for lack of personal jurisdiction stating that section 48.193 of the *Florida Statutes* did not confer personal jurisdiction over him in Florida.[7] The trial court denied the husband's motion and ruled that Florida did have personal jurisdiction in the matter due to the husband's significant contacts with the state.[8]

On appeal, the First District Court of Appeal reversed the decision of the trial court, holding that the criteria of Florida's long arm statute had not been met.[9] Accordingly, the trial court could not have properly exercised personal jurisdiction over Larry Garrett.[10] The appellate court cited to three cases of precedent[11] in determining that personal jurisdiction was lacking over Mr. Garrett. In each of these cases, the gap in time between the defendant's prior residence in Florida and the commencement of the action was determined to be too remote, thus barring exercise of personal jurisdic-

5. *Id.*

6. Garrett v. Garrett, 668 So. 2d 991, 992–93 (Fla. 1996). Among her reasons were that: 1) she had been a resident for six months prior to the filing of the petition for dissolution of marriage; 2) she married Larry Garrett in Florida in 1974 and lived in Florida until the couple moved to Texas in 1986 with their Florida born daughter, Amy Rebecca Garrett; 3) her husband was born in Florida and currently travels to Florida to visit the daughter and other family members; and 4) her husband visits Florida to conduct business within the state. *Id.*

7. *Id.* at 993.

8. *Id.* Judge Hugh A. Carithers, Jr. based his denial of Mr. Garrett's motion on the duration of the parties' marriage in Florida before moving to Texas, Mr. Garrett's personal and business trips to Florida, and the child support payments made by Mr. Garrett in Florida. *Id.* at 993 n.1.

9. *Garrett*, 652 So. 2d at 378. The First District Court of Appeal construed section 48.193(1)(e) of the *Florida Statutes* to mean that the defendant's residency must proximately precede the commencement of the action for dissolution of marriage. *Id.* at 379. This was a rejection of the argument proffered by Nancy Garrett that proximity is not merely a temporal determination, but must be determined by the totality of the circumstances. *Id.*

10. *Id.*

11. First, in Shammay v. Shammay, 491 So. 2d 284 (Fla. 3d Dist. Ct. App. 1986), the court interpreted section 48.193 to mean that the defendant's residency in the state must proximately precede the commencement of the action. *Id.* at 285. Second, in Soule v. Rosacco-Soule, 386 So. 2d 862 (Fla. 1st Dist. Ct. App. 1980), the court rejected the position that merely because a defendant resided in Florida sometime prior to the commencement of the action, personal jurisdiction could be invoked under section 48.193. *Id.* at 863. Third, in Bofonchik v. Smith, 622 So. 2d 1355 (Fla. 1st Dist. Ct. App. 1993), the court found that a husband's residence in Florida from 1984 to 1986 was insufficient to support personal jurisdiction under section 48.193 in an action for child support filed by the wife in Florida in 1989. *Id.* at 1357.

tion over the defendant.[12] On rehearing *en banc*,[13] the First District Court of Appeal reaffirmed the reasoning in their original opinion, but certified a question of great public importance to the Supreme Court of Florida.[14]

The Supreme Court of Florida, answering a revised certified question,[15] stated that Mrs. Garrett could not obtain personal jurisdiction over her husband and, as a result, affirmed the decision of the First District Court of Appeal.[16] Although recognizing the minimum contacts that a nonresident might have with a state so as to allow a court to obtain personal jurisdiction consistent with the Due Process Clause,[17] the court chose to rely on whether Larry Garrett's conduct fell within one of the statutory grounds for jurisdiction found in Florida's long arm statute.[18] The court stated that the language of section 48.193(1)(e) of the *Florida Statutes* does not allow a Florida court to obtain personal jurisdiction over any parties to a dissolution proceeding where the spouses once resided in Florida but "abandoned Florida as their state of residence" for any length of time.[19] In other words, Mrs. Garrett could not simply return to Florida, file for dissolution of marriage, and obtain personal jurisdiction over her husband once she abandoned the protection of Florida's laws by taking up residence in another state. Finally, the court stated that Mr. Garrett's frequent trips to Florida for business and his voluntary payment of child support were not relevant facts when applied to the issue of whether section 48.193(1)(e) of the *Florida Statutes* allows

12. *See Bofonchik*, 622 So. 2d at 1355; *Shammay*, 491 So. 2d at 284; *Soule*, 386 So. 2d at 862.

13. *Garrett*, 652 So. 2d at 381.

14. *Id.* The question, as originally certified, asked: "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?" *Id.* at 381–82.

15. The Supreme Court of Florida reworded the question: "WHEN A MARRIED COUPLE RESIDING IN FLORIDA MOVES TO ANOTHER STATE, MAY ONE SPOUSE, AFTER SEPARATION, SUBSEQUENTLY RETURN TO FLORIDA AND OBTAIN PERSONAL JURISDICTION OVER THE OTHER SPOUSE BASED ON THE 'PRIOR RESIDENCE' SECTION OF FLORIDA'S LONG ARM STATUTE?" Garrett v. Garrett, 668 So. 2d 991, 992 (Fla. 1996).

16. *Id.* at 994.

17. The Due Process Clause of the Fourteenth Amendment to the *United States Constitution* states: "nor shall any State deprive any person of life, liberty, or property, without due process of law." U.S. CONST. amend. XIV, § 1.

18. *Garrett*, 668 So. 2d at 994.

19. *Id.*

for a resident spouse to obtain personal jurisdiction over a nonresident spouse in a dissolution of marriage action.[20]

This comment will focus on the potential harmful ramifications this decision will have on the law of personal jurisdiction with regard to a dissolution of marriage action in Florida. Part II will discuss the modern concept of *minimum contacts* between a defendant and the forum state, and it will examine how specific long arm statutes can restrict the outside limits of due process established through the minimum contacts analysis. Part III will focus on the reasoning of the Supreme Court of Florida in deciding *Garrett*. Part IV will criticize the decision in light of a minimum contacts approach which would have allowed the trial court to obtain personal jurisdiction over the nonresident husband. Furthermore, this part will discuss the impact of the decision on dissolution of marriage cases involving families in transition and the possible consequences suffered by a resident spouse denied the opportunity to litigate in Florida. Part V will conclude that the Florida Legislature should amend section 48.193 of the *Florida Statutes* to allow Florida courts jurisdiction over a nonresident defendant in a dissolution of marriage action who has minimum contacts with the state, such that the suit does not offend the notions of substantial justice.

II. IN PERSONAM JURISDICTION

A. *The Modern Development of Personal Jurisdiction*

Over fifty years ago, the United States Supreme Court held, in *International Shoe Co. v. Washington*,[21] that due process only requires that "in order to subject a defendant to a judgment *in personam*, if he not be present within the territory of the forum, he have certain *minimum contacts* with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'"[22] Since *International Shoe*, there has been a line of cases[23] interpreting the minimum contacts a nonresident defendant must have

20. *Id.*

21. 326 U.S. 310 (1945).

22. *Id.* at 316 (quoting Milliken v. Meyer, 311 U.S. 457, 463 (1940)) (second emphasis added).

23. *See, e.g.*, Burnham v. Superior Ct. of Cal., 495 U.S. 604 (1990); Asahi Metal Indus. Co. v. Superior Ct. of Cal., 480 U.S. 102 (1987); Burger King Corp. v. Rudzewicz, 471 U.S. 462 (1985); Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408 (1984); World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980); Kulko v. Superior Ct. of Cal., 436 U.S. 84 (1978).

with the forum state before a court can obtain personal jurisdiction consistent with the Due Process Clause.[24] These cases explored the outer boundaries of personal jurisdiction under due process. Many states have narrowed these outer boundaries for obtaining personal jurisdiction over a nonresident defendant by enacting long arm statutes that limit a plaintiff's ability to hale a defendant into court. For example, in Florida, a court cannot find personal jurisdiction over a nonresident defendant unless allowed by a grant of statutory authorization pursuant to Florida's long arm statute.[25] Florida's long arm statute specifies in detail the acts or conduct which allow for the court to exercise personal jurisdiction over a nonresident defendant.

From the beginning of our federal system, courts have had to grapple with the problem of the authority of a state to assert jurisdiction over parties and property in cases involving transactions not occurring entirely within the boundaries of a single state. Regardless, in every case, the court must have power over the parties to the lawsuit to render an enforceable judgment. Due process is the principal limit on the scope of this power.[26] By commencing the action in a particular forum, the plaintiff consents to personal jurisdiction. The defendant however, is brought into the litigation involuntarily, and the exercise of personal jurisdiction over the defendant must satisfy constitutional due process standards.[27]

Historically, presence within the territorial jurisdiction of a court established personal jurisdiction over a nonresident defendant, thus satisfying constitutional due process standards. In *Pennoyer v. Neff*,[28] the notion of

---

24. In this context, the Court has referred solely to the Due Process Clause of the Fourteenth Amendment.

25. Section 48.193 of the *Florida Statutes* provides in pertinent part:

> (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 or herself and, if he or she is natural person, his or her 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, if the defendant resided in this state preceding the commencement of the action, whether cohabiting during that time or not.

FLA. STAT. § 48.193(1)(e) (1995).

26. *See* International Shoe Co. v. Washington, 326 U.S. 310 (1945).

27. *Id.*

28. 95 U.S. 714 (1877).

personal jurisdiction of a state court over a defendant was limited to persons served within the state, persons domiciled in the state, and persons consenting to jurisdiction.[29] In *Pennoyer*, the Court stated that "[t]he authority of every tribunal is necessarily restricted by the territorial limits of the State in which it is established."[30] *Pennoyer* established the nineteenth century constitutional doctrine that every state possesses exclusive jurisdiction and sovereignty over persons and property served with process within the territory of the forum court.[31]

More recently, the United States Supreme Court affirmed the proposition that service within the forum state subjects a nonresident defendant to the personal jurisdiction of the court.[32] In the plurality opinion of *Burnham v. Superior Court of California*,[33] the Court clearly followed the precedent established in *Pennoyer*, holding that if a party is served properly with process while present in the forum, a court has personal jurisdiction over that party regardless of the existence or nonexistence of minimum contacts with the forum.[34] Justice Scalia, writing for the plurality, stated that "[a]mong the most firmly established principles of personal jurisdiction ... is that the courts of a State have jurisdiction over nonresidents who are physically present in the State."[35] Consequently, the Court rejected the notion that in the absence of continuous and systematic contacts with the forum, a nonresident defendant can be subjected to judgment only as to matters that arise out of or relate to his contacts with the forum.[36]

---

29. *Id.* at 714.
30. *Id.* at 720.
31. *Id.* at 722.
32. *See* Burnham v. Superior Ct. of Cal., 495 U.S. 604 (1990).
33. *Id.*
34. *Id.* at 618.
35. *Id.* at 610. In *Burnham*, the Court referred to matters that arise out of or relate to a defendant's contacts with the forum. *See generally* Burnham v. Super. Ct. of Cal., 495 U.S. 604 (1990). These terms are synonymous with "general" and "specific" jurisdiction. General jurisdiction exists when the number and quality of a defendant's contacts with the forum state are sufficiently substantial such that one may litigate any dispute in the courts of the forum, whether or not that dispute grows out of those contacts. Arthur T. Von Mehren and Donald T. Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 HARV. L. REV. 1121, 1136 (1966) [hereinafter Von Mehren and Trautman]. Specific jurisdiction exists when the contacts with the forum are related to the dispute sought to be adjudicated. *Id.* More recently, Professor Mary Twitchell proposed to replace the terms general and specific with "dispute-blind" and "dispute-specific." *See* Mary Twitchell, *The Myth of General Jurisdiction*, 101 HARV. L. REV. 610, 613 (1988) [hereinafter Twitchell].
36. *Burnham*, 495 U.S. at 616.

The opinion also recognized the weakening of *Pennoyer's* rationale.[37] This weakening was due to changes in the technology of transportation and communication and the tremendous growth of interstate business activity.[38] These changes led to a "'relaxation of the strict limits on state jurisdiction'"[39] over nonresident individuals. Furthermore, the Court noted that many state courts were focusing their attention on the minimum contacts analysis and overlooking the simple fact that a defendant might have been present in the forum, no matter how fleeting his presence. Nevertheless, in *Burnham*, the Court held that obtaining personal jurisdiction by complying with *Pennoyer's* requirement of presence within the forum satisfied the constitutional requirements of due process.[40] The plurality concluded that jurisdiction based on presence alone constitutes due process because presence is one of the continuing traditions that defines the due process standard of "'traditional notions of fair play and substantial justice.'"[41]

Unlike physical presence, the minimum contacts analysis developed by the Court in *International Shoe Co. v. Washington*[42] involves a balancing of the quality and nature of the defendant's contacts in the forum state, his or her connection with the cause of action, and the interests of the forum in protecting citizens from nonresidents.[43] The development of the minimum contacts analysis expanded the Nineteenth Century view of personal jurisdiction found in *Pennoyer v. Neff*. Under *International Shoe*, the amount of contact with a forum state necessary to justify an exercise of jurisdiction depends on the relationship between the defendant's contacts with the forum and the plaintiff's cause of action.[44]

International Shoe eliminated the need to resort to a finding of consent to jurisdiction or a finding of presence within the jurisdiction. Two new criteria were set forth by the Court, such that personal jurisdiction would be proper if the cause of action arose from the party's activities within the state, or if the cause of action arose from conduct outside the forum state by a party who engaged in continuous and systematic business within the state.[45] These two standards of *International Shoe* have evolved into the concepts of

37. *Id.* at 617.
38. *Id.*
39. *Id.* (quoting Hanson v. Denckla, 357 U.S. 235, 260 (1958) (Black, J. dissenting)).
40. *Id.* at 618.
41. *Burnham*, 495 U.S. at 619.
42. 326 U.S. 310 (1945).
43. *See id.* at 319–20.
44. *See id.* at 320.
45. *See id.* at 319–21.

specific and general jurisdiction. Specific jurisdiction exists over an out of state party when the cause of action arose out of that party's contacts with the forum, regardless of whether those contacts occurred within the state.[46] General jurisdiction exists over any cause of action if an out of state party has engaged in continuous and systematic contacts with the forum state.[47] The most important contribution to the personal jurisdiction analysis by the Court in *International Shoe* was the determination that the Due Process Clause "does not contemplate that a state may make binding a judgment *in personam* against an individual or corporate defendant with which the state has no contacts, ties, or relations."[48]

The State of Washington claimed that International Shoe owed the state unemployment compensation fund contributions.[49] The State of Washington filed suit in a Washington court in an attempt to collect the unpaid funds. The issue in the case became whether, within the limitations of the Due Process Clause of the Fourteenth Amendment, the State of Washington could assert personal jurisdiction over the International Shoe Company.[50]

The Court's widely quoted holding stated that due process required only that a defendant "have certain minimum contacts [with the forum] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'"[51] Using the facts of the case, the Court applied this new standard of *minimum contacts* and found that the activities and conduct of the International Shoe Company were "neither irregular nor casual."[52] The company's activities resulted in a large volume of business, in the course of which the International Shoe Company received "the benefits and protections of the laws of [Washington], including the right to resort to the courts for enforcement of [the company's] rights."[53] The Court also held that the company's conduct was "systematic and continuous throughout the years in question."[54] Accordingly, the Court felt that the International Shoe Company's operations established sufficient contacts with the State of

46. *See* Twitchell, *supra* note 35, at 613.
47. *See* Von Mehren and Trautman, *supra* note 35, at 1136.
48. *International Shoe*, 326 U.S. at 319.
49. *Id.* at 311.
50. *Id.*
51. *Id.* at 316 (quoting Milliken v. Meyer, 311 U.S. 457, 463 (1940)).
52. *Id.* at 320.
53. *International Shoe*, 326 U.S. at 320.
54. *Id.*

Washington to permit the state to enforce any obligations or debts which the company incurred in Washington.[55]

Several cases since *International Shoe* have further defined the scope and meaning of a defendant's minimum contacts with the forum state. In *World-Wide Volkswagen Corp. v. Woodson*,[56] the Court held that personal jurisdiction was improper unless the defendant purposefully availed himself of the privileges and protection of the forum's laws by conducting activities within the forum state.[57] The Court also stated that when a defendant purposefully directs activities at the forum state, the defendant has notice of the possibility of being haled into the forum's courts.[58]

Additionally, in *Kulko v. Superior Court of California*,[59] the United States Supreme Court found that a California court had no personal jurisdiction over a nonresident father living in New York who paid child support to his daughter living in California.[60] The Court reasoned that the mere act of sending his daughter to live in California and paying child support suggested no intent by the father to purposefully avail himself of any benefits from the

---

55. *Id.* at 319–20.

56. 444 U.S. 286 (1980). In *World-Wide Volkswagen Corp.*, Harry and Kay Robinson purchased a new Audi car from Seaway Volkswagen, Inc. in Massena, New York in 1976. During their move to Arizona the following year, the Robinsons were struck in the rear by another car while driving in Oklahoma. An alleged defect in their Audi left Mrs. Robinson and her two children severely burned from a fire caused by the accident. Subsequently, the Robinsons joined World-Wide Volkswagen Corp. as a defendant in the products liability litigation. The Court held that this defendant had no ties, contacts, or relations with the State of Oklahoma and that the lower court lacked personal jurisdiction over World-Wide Volkswagen Corp. *Id.* at 299.

57. *Id.* at 297 (citing Hanson v. Denckla, 357 U.S. 235, 253 (1958)).

58. *Id.*

59. 436 U.S. 84 (1978).

60. *Id.* at 96. Under a separation agreement executed by Sharon and Ezra Kulko in 1972, their children were to remain in New York with the father during the school year and spend vacations in California with the mother. Ezra Kulko agreed to pay $3,000 per year in child support for the periods that the children were with Sharon in California. In 1976, Sharon, now remarried, filed an action in Superior Court of California asking for permanent custody of the children. The father appeared specially and moved to quash service of the summons, claiming that he was not a California resident and lacked sufficient minimum contacts with California as formulated in *International Shoe*. *Id.* at 88. The trial court denied his motion, which he appealed to the California Court of Appeal. *Id.* The appeals court affirmed the trial court ruling, reasoning that by allowing his children to live in California, and by paying child support, he had caused an effect in the state warranting the exercise of personal jurisdiction over him. *Id.* at 88–89. The Supreme Court of California granted review and affirmed the rulings of the lower state courts. *Kulko*, 436 U.S. at 89. Thereafter, Ezra Kulko petitioned for certiorari with the United States Supreme Court. *Id.* at 90.

forum state.[61] Writing for the majority, Justice Marshall stated that, "the state courts in the instant case failed to heed our admonition that 'the flexible standard of *International Shoe*' does not 'heral[d] the eventual demise of all restrictions on the personal jurisdiction of state courts.'"[62]

Also, in *Hanson v. Denckla*,[63] the Court held that personal jurisdiction was proper only if the defendant purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protection of that state's laws.[64] The Court held that Florida had not satisfied this test in attempting to assert jurisdiction over a Delaware trustee in a dispute over the validity of a trust that had been established by a Pennsylvania domiciliary who subsequently moved to Florida.[65] The majority's conclusion that minimum contacts was not a mechanical application, but rather a factual determination of the requisite "affiliating circumstances" of the case, broadened the scope of obtaining personal jurisdiction under due process.[66]

In *Burger King Corp. v. Rudzewicz*,[67] however, Justice Brennan took the minimum contacts analysis one step further by stating that even if minimum contacts with the forum exist, other factors may be considered that would prevent a court from obtaining personal jurisdiction over the defendant.[68] These factors led to a reformulation of the minimum contacts analysis in that, depending on the presence or absence of these factors, more or fewer contacts will suffice. Applying the reformulated approach to the minimum contacts analysis, the Court held that personal jurisdiction existed over Rudzewicz, a Michigan franchisee of Burger King, in a suit in Florida based on a franchise agreement.[69] The Court emphasized that Rudzewicz's ongoing contractual relationship with Burger King's corporate headquarters in Miami was purposefully directed to the forum and gave Rudzewicz fair

61. *Id.* at 96.
62. *Id.* at 101 (quoting Hanson v. Denckla, 357 U.S. 235, 251 (1958)).
63. 357 U.S. 235 (1958).
64. *See id.* at 235.
65. *Id.* at 254.
66. *Id.* at 246.
67. 471 U.S. 462 (1985).
68. *Id.* at 476. These factors include: "'the burden on the defendant,' 'the forum State's interest in adjudicating the dispute,' 'the plaintiff's interest in obtaining convenient and effective relief,' 'the interstate judicial system's interest in obtaining the most efficient resolution of controversies,' and the 'shared interests of the several States in furthering fundamental substantive social policies.'" *Id.* at 477 (quoting World-Wide Volkswagen v. Woodson, 444 U.S. 286, 292 (1990)).
69. *Id.* at 487.

warning of being subject to suit in Florida.[70] Justice Brennan also cited to the fact that Florida had a legitimate interest in protecting a resident corporation from a breach of contract by a nonresident franchisee.[71]

In the complex case of *Helicopteros Nacionales de Colombia, S.A. v. Hall*,[72] the Court held that Helicol's[73] contacts with the State of Texas were insufficient to satisfy the requirements of the Due Process Clause of the Fourteenth Amendment.[74] In *Helicopteros*, all the parties conceded that the claims against Helicol did not arise out of, and were not related to, Helicol's activities with Texas.[75] Because of this concession, the Court explored the nature of Helicol's contacts with the State of Texas to determine whether those contacts were the kind of systematic and continuous business activities that would allow the Court to exercise personal jurisdiction over the defendant.[76] Using this approach, the majority concluded that Helicol's contacts with Texas were insufficient to satisfy due process and reversed the judgment of the Supreme Court of Texas which earlier held that Helicol was subject to the jurisdiction of the Texas court system.[77]

In Justice Brennan's dissent, the suggestion was made that the majority made no distinction between controversies that relate to a defendant's contacts with a forum and those that arise out of such contacts.[78] Justice Brennan believed that the undisputed contacts between Helicol and the State of Texas were sufficiently important and sufficiently related to the underlying cause of action.[79] Justice Brennan stated that Helicol had purposefully

---

70. *Id.* at 482.

71. *Burger King*, 471 U.S. at 482-83.

72. 466 U.S. 408 (1984).

73. Helicol is the common trade name of Helicopteros Nacionales de Colombia, S.A.

74. *Helicopteros*, 466 U.S. at 418–19. On January 26, 1976, a helicopter owned by Helicol crashed in Peru. Four United States citizens were among those who lost their lives in the accident. Helicol is a Colombian corporation with its principal place of business in the city of Bogota, Colombia. The decedents of the crash were employed by a Peruvian consortium headquartered in Houston, Texas. This consortium, through Helicol, purchased helicopters, spare parts, and accessories for more than four million dollars from Bell Helicopter Company in Fort Worth, Texas. Helicol also sent pilots to Fort Worth for training and received into its New York City bank accounts over five million dollars in payment from the consortium for the purchase of the helicopters. Despite these contacts, the majority opinion of the Court was unwilling to analyze *Helicopteros* as a "specific" jurisdiction case based on these specific contacts with the United States. *Id.*

75. *Id.* at 415.

76. *Id.* at 415–16.

77. *Id.* at 418–19.

78. *Helicopteros*, 466 U.S. at 420 (Brennan, J., dissenting).

79. *Id.*

availed itself of the benefits and obligations of Texas law, and that these contacts would not "'offend [the] 'traditional notions of fair play and substantial justice.'"'[80] In response to Justice Brennan's dissent, the majority stated that the distinction between controversies that relate to a defendant's contacts with a forum and those that arise out of such contacts was never raised as an issue in the case.[81] The majority cited to the fact that the decedents' representatives made no argument that their cause of action either arose out of or was related to Helicol's contacts with the State of Texas.[82]

In the most recent personal jurisdiction case, *Asahi Metal Industry Co. v. Superior Court of California*,[83] a divided Court revisited the issue of personal jurisdiction based on a defendant's minimum contacts with the forum state.[84] Asahi, a Japanese corporation, manufactured a valve assembly used by a Taiwanese corporate defendant in a motorcycle tire tube.[85] The Taiwanese corporation, Cheng Shin, impleaded Asahi in a personal injury suit filed in California.[86] Asahi was aware that the valves were used in products sold in California, but knew of no other contacts with the State of California.[87]

The opinion, written by Justice O'Connor and joined only by three other Justices, concluded that merely injecting a product into the stream of commerce, even knowing that the product might end up in the forum state, is insufficient for a finding of personal jurisdiction over the defendant.[88] This portion of the plurality opinion further stated that absent more purposeful conduct, such as advertising designed specifically for the market, or providing service facilities in the forum, the minimum contacts analysis could not be met in this case.[89]

---

80. *See id.* at 420 (quoting International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945) (quoting Milliken v. Meyer, 311 U.S. 457, 463 (1940))).

81. *Id.* at 416.

82. *Id.*

83. 480 U.S. 102 (1987).

84. *Id.* at 105.

85. *Id.* at 106.

86. *Id.* On September 23, 1978, in California, Gary Zurcher lost control of his Honda motorcycle and collided with a tractor. In September of the following year, Zurcher filed a product liability action against Cheng Shin, the Taiwanese manufacturer of the bicycle tube. *Id.* Cheng Shin impleaded Asahi Metal Indus. Co., the manufacturer of the tubes' valve assembly. *Asahi*, 480 U.S. at 106.

87. *Id.* at 107.

88. *Id.* at 112. Chief Justice Rehnquist, and Justices Powell and Scalia, concurred in this portion of the opinion.

89. *Id.*

In another part of Justice O'Connor's opinion, eight of the Justices joined in holding that, regardless of the existence of minimum contacts, an exercise of personal jurisdiction over Asahi would "offend 'traditional notions of fair play and substantial justice.'"[90] In *Asahi*, the Court explained that the determination of the reasonableness of the exercise of jurisdiction in each case will depend on an evaluation of several factors.[91] A court must consider the burden on the defendant, the interests of the forum state, and the plaintiff's interest in obtaining relief. It must also weigh in its determination "'the interstate judicial system's interest in obtaining the most efficient resolution of controversies.'"[92] The Court considered these factors in *Asahi* and held that, even apart from the question of the placement of goods in the stream of commerce, it would be unreasonable to allow the assertion of jurisdiction over Asahi.[93] The Court concluded that the burden on the defendant was unreasonable, particularly because Asahi was an international defendant, and the only claim remaining before the California court was the third party indemnification claim by Cheng Shin against Asahi.[94]

The decision in *Asahi* called for a court to consider the procedural and substantive policies of other nations whose interests are affected by the assertion of jurisdiction by a state court.[95] In every case, those interests, as well as the federal government's interest in foreign relations, will be better served by a careful inquiry into the reasonableness of the assertion of jurisdiction in the particular case.[96] By viewing this case in an international context, the Court managed to find that the heavy burden on Asahi, weighed against the slight interest of the plaintiff, Gary Zurcher, and the forum state, was too great to allow the exercise of personal jurisdiction by a California court over an alien defendant.[97] Thus, in similar cases, perhaps limited to foreign parties, the reasonableness of jurisdiction must be examined even though the party has minimum contacts with the forum state.

90. *Id.* at 113 (quoting *International Shoe Co.*, 326 U.S. 310, 316 (1945)).
91. *Asahi*, 480 U.S. at 113.
92. *Id.* (quoting World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 292 (1980)).
93. *Id.* at 116.
94. *Id.* at 114.
95. *Id.* at 115.
96. *Asahi*, 480 U.S. at 115.
97. *Id.* at 116.

B. *Long Arm Statutes Narrow Minimum Contacts*

Statutes conferring the power to exercise personal jurisdiction over persons outside the state are called long arm statutes. To assert personal jurisdiction over a nonresident defendant, a state court must satisfy the requirements enumerated in the state's personal jurisdiction statute.[98] Long arm statutes allow personal jurisdiction whenever federal due process is satisfied or they allow personal jurisdiction on narrower grounds, such as by performing specific acts within the forum state. Even though due process may be satisfied, personal jurisdiction may be improper if the state long arm statute's requirements are not met.

A number of states, such as California,[99] have enacted statutes that permit courts in those states to exercise personal jurisdiction to the full extent permitted by the Due Process Clause of the Fourteenth Amendment. The proper analysis under this type of coextensive long arm statute is simply to evaluate whether the defendant has minimum contacts with the forum. Other states, such as Florida,[100] have long arm statutes that set forth particular circumstances that permit courts in those states to allow an exercise of personal jurisdiction over persons outside the state. In these states, the outer boundary of the statutorily conferred jurisdiction is the maximum extent of jurisdiction that a court can assume.

III. *GARRETT V. GARRETT*

In the First District Court of Appeal opinion of *Garrett v. Garrett*,[101] the court addressed the issue of whether the trial court lawfully acquired personal jurisdiction over Larry Garrett pursuant to Florida's long arm statute.[102] The trial court cited several factors that established sufficient contacts with Florida which allowed the court to obtain personal jurisdiction over Mr. Garrett. Among these factors were the duration of the marriage in Florida before the parties moved to Texas, the husband's frequent trips to Florida for business, the husband's voluntary payment of support in Florida, and the wife's representation that the husband expressed a desire to return

98. *See* Kulko v. Superior Ct. of Cal., 436 U.S. 84 (1978).

99. CAL. CIV. PROC. CODE § 410.10 (Deering 1991). This section states that: "A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States." *Id.*

100. *See* FLA. STAT. § 48.193 (1995).

101. 652 So. 2d 378 (Fla. 1st Dist. Ct. App. 1994).

102. *Id.*

his residence to Florida.[103] The appellate court disagreed with the trial court's finding and stated that long arm jurisdiction may be exercised only if the cause of action is based on conduct or omissions of the nonresident defendant that arose out of his residency in Florida.[104] The First District Court of Appeal further stated that both parties voluntarily left Florida for their new residence in Texas and left no real property in Florida.[105] Also, the couple remained in Texas for five years prior to their separation. These factors created an insufficient showing of residential proximity in Florida to support a finding of personal jurisdiction pursuant to Florida's long arm statute.[106]

Nancy Garrett argued that the determination of proximity is not merely a temporal determination but must be examined in light of the totality of the circumstances.[107] Mrs. Garrett cited *Durand v. Durand*,[108] a case in which the Third District Court of Appeal found long arm jurisdiction over a husband who had not resided in the state for over six years prior to the commencement of the action.[109] In *Durand*, the court based its decision on the totality of the circumstances, which encompassed several facts including the wife and children's continued residence in Florida and the parties ownership of real property in Florida.[110] Furthermore, the court focused on the fact that the marital home was in Florida and the separation of the marriage occurred in Florida.[111] However, the First District Court of Appeal ruled that, unlike the situation in *Durand*, Mr. Garrett's residency was too far remote in time from the cause of action.[112] As a result, no Florida court could have obtained personal jurisdiction over Mr. Garrett.[113]

In dissent, Judge Benton stated that when personal service has been accomplished, as was the case with Mr. Garrett, the only limitation on the grant of personal jurisdiction was that the husband have sufficient minimum

---

103. *Id.*
104. *Id.* at 379.
105. *Id.*
106. *Garrett*, 652 So. 2d at 379.
107. *Id.*
108. 569 So. 2d 838 (Fla. 3d Dist. Ct. App. 1990), *review denied*, 583 So. 2d 1034 (Fla. 1991).
109. *Id.* at 839.
110. *Id.*
111. *Id.*
112. *Garrett*, 652 So. 2d at 379. Again, Mr. Garrett had not been a resident of Florida since 1986.
113. *Id.*

contacts with Florida.[114] Moreover, Judge Benton believed that the totality of the circumstances in the present case satisfied the minimum contacts analysis required for due process.[115] Nevertheless, the First District Court of Appeal rejected this position, stating that a defendant's residency in the state must proximately precede the commencement of the action.[116] Alternatively, the majority concluded that the totality of the circumstances insufficiently supported a finding of personal jurisdiction over Larry Garrett, and it vacated the trial court's order denying the motion to dismiss for lack of personal jurisdiction.[117]

When the Garrett case reached the Supreme Court of Florida,[118] the court distinguished between the minimum contacts analysis and the strict language codified in Florida's long arm statute in determining when a nonresident defendant may be subject to the power of a state court.[119] The court began the analysis by establishing that a state's power to exercise personal jurisdiction is limited by the Due Process Clause of the Fourteenth Amendment.[120] Next, the court acknowledged that the United States Supreme Court had decided many cases using the minimum contacts approach in determining when a state court can exert personal jurisdiction consistent with due process.[121] The court concluded that a state has the power to enact statutes governing the exercise of jurisdiction over nonresidents as long as the statutes are either "coextensive with or more restrictive than" the outside limits of due process established by the United States Supreme Court.[122] Finally, the court pointed to the fact that Florida's long arm statute[123] enumerates the specific situations in which jurisdiction over a nonresident defendant is proper.[124]

First, the court focused on the language of section 48.193(1)(e) of the *Florida Statutes*, the specific part of the long arm statute dealing with proceedings connected to a dissolution of marriage action.[125] The court

114. *Id.* at 380 (Benton, J., dissenting).
115. *Id.* at 380–81.
116. *Id.* at 379.
117. *Garrett*, 652 So. 2d at 379.
118. Garrett v. Garrett, 668 So. 2d 991 (Fla. 1996).
119. *Id.* at 993–94.
120. *Id.* at 993 (relying on Asahi Metal Indus. Co. v. Superior Ct. of Cal., 480 U.S. 102 (1987)).
121. *Id.*
122. *Id.*
123. *See* FLA. STAT. § 48.193 (1995).
124. *Garrett*, 668 So. 2d at 994.
125. *Id.* at 993 (citing FLA. STAT. § 48.193(1)(e)).

quoted a section of the statute that reads, "if the defendant resided in this state preceding the commencement of the action,"[126] and it stated that this portion of the statute cannot be taken "quite so literally."[127] Turning to the facts of the case, the court stated that when the Garretts left Florida in 1986 to set up residence in Texas, they effectively "abandoned" Florida.[128] The opinion went on to state that, "[t]o allow the court to obtain personal jurisdiction under these circumstances would empower the Florida courts to exercise jurisdiction over any party to a dissolution proceeding if the couple had *ever* lived in this state, for however brief a time."[129]

In defense of this position, the court cited two district court of appeal cases which allowed personal jurisdiction under section 48.193(1)(e) of the *Florida Statutes*.[130] In each of those cases, the matrimonial domicile had been in Florida and one spouse continued to maintain residence in Florida after the parties separated. By contrast, the Garretts lived in Texas as a married couple for five years after leaving Florida and maintained no residence or real property in Florida until Nancy Garrett returned to Florida after the separation in 1992.[131] Based on the dissimilarities between the *Garrett* case and the two district court cases interpreting section 48.193(1)(e), the court stated that obtaining personal jurisdiction over Mr. Garrett was not possible under Florida's long arm statute.[132]

Nancy Garrett alternatively argued that the Florida courts could exercise jurisdiction over her husband under a minimum contacts analysis. Mrs. Garrett stated that her husband had sufficient contacts with Florida which allowed her to file suit in Florida.[133] First, she alleged that her husband periodically came to Florida to visit their daughter, Amy Rebecca, and also to visit other family members living in Jacksonville.[134] Second, Mrs. Garrett stated that her husband often traveled to Florida to conduct business in preparation for his possible return to Florida.[135] Finally, Mr. Garrett was

126. *Id.* at 994 (quoting FLA. STAT. §48.193(1)(e)).
127. *Id.*
128. *Id.*
129. *Garrett*, 668 So. 2d at 994.
130. *See* Durand v. Durand, 569 So. 2d 838 (Fla. 3d Dist. Ct. App. 1990); Binger v. Binger, 555 So. 2d 373 (Fla. 1st Dist. Ct. App. 1989), *review denied*, 560 So. 2d 232 (Fla. 1990).
131. *Garrett*, 668 So. 2d at 994.
132. *Id.*
133. *Id.* at 992–93.
134. *Id.* at 993.
135. *Id.*

directly making child support payments in Florida on behalf of Amy Rebecca.[136] Despite these contacts with Florida, the court stated that a minimum contacts analysis was not legally relevant to the issue of whether the prior residence provision of section 48.193(1)(e) applied to a grant of personal jurisdiction over Mr. Garrett in a dissolution of marriage action.[137] The court concluded the opinion by holding that because the Garretts jointly abandoned Florida as their state of residence, Mrs. Garrett lost the "'protection' of section 48.193(1)(e)."[138] Accordingly, the decision of the First District Court of Appeal was affirmed.[139]

IV. IMPACT OF GARRETT

A. *Disregard for Minimum Contacts*

If a person freely and expressly consents to the jurisdiction of a state, there can be no question that the state may legitimately exercise authority over him. However, if a person does not consent to the jurisdiction of a state, a court may exercise personal jurisdiction over a nonresident defendant without violating any procedural due process right[140] by applying a minimum contacts analysis to the facts of the case. Despite the approval of the minimum contacts analysis by the United States Supreme Court, many state legislatures have enacted long arm statutes that limit the situations in which a state may obtain jurisdiction over a nonresident defendant. The Florida Legislature enacted section 48.193 which limits personal jurisdiction to the acts enumerated in the statute.[141]

As a result, a defendant's minimum contacts with Florida may not become legally relevant in resolving the final determination of a court's power over a nonresident spouse in a dissolution of marriage action.[142] This was the problem that Nancy Garrett encountered when her case came before the Supreme Court of Florida.[143] Indeed, Larry Garrett had the requisite minimum contacts with the State of Florida[144] to allow a Florida court to

136. *Garrett*, 668 So. 2d at 993.
137. *Id.* at 994.
138. *Id.*
139. *Id.*
140. For a discussion of procedural due process, see Mathews v. Eldridge, 424 U.S. 319 (1976).
141. *See* FLA. STAT. § 48.193.
142. *See generally Garrett*, 668 So. 2d at 991.
143. *Id.*
144. *See id.* at 991.

obtain personal jurisdiction over him pursuant to section 48.193(2).[145] By narrowly focusing the *Garrett* decision on the language of section 48.193(1)(e), the Supreme Court of Florida failed to recognize that Larry Garrett's activities within the state subjected him to the jurisdiction of the court pursuant to section 48.193(2).

Section 48.193(2) of Florida's long arm statute is defined as a "general jurisdiction" statute. When a defendant has systematic and continuous contacts with the forum state, a court in that state may exercise jurisdiction over the defendant regardless of the connection to the defendant's activities within the forum.[146] In *Garrett*, the husband periodically visited his daughter in Florida, paid voluntary child support in Florida, and frequently visited Florida on business trips. This type of continuous contact satisfies the due process analysis articulated in *Burger King Corp. v. Rudzewicz*[147] and *Helicopteros Nacionales de Colombia, S.A. v. Hall*.[148] This conduct also falls within the language of Florida's restrictive long arm statute.[149]

The court's decision in *Garrett* failed to look beyond the issue of Mr. Garrett's residential proximity to the underlying cause of action. In fact, the court should have analyzed Mr. Garrett's numerous contacts with the state which were sufficient to support Mrs. Garrett's claim that the trial court had proper jurisdiction over the dissolution proceeding. The real issue in *Garrett* was whether a nonresident had consented to personal jurisdiction in Florida based on his purposeful availment of the protections and benefits of the forum. This affiliation with Florida was free and knowing because, by intentionally establishing a relationship with Florida, the defendant had voluntarily submitted to the sovereign authority of the state.

Mr. Garrett was voluntarily paying child support to his daughter in Florida. Furthermore, Mr. Garrett conducted business activities in Florida during various trips throughout the year. Finally, his frequent visits to see his family in Florida demonstrated his purposeful and continuous contacts with the state. Due process only requires that a defendant have a reasonable expectation that he may be haled into court in the forum state as a result of

145. Subsection (2) of section 48.193 states that: "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." FLA. STAT. § 48.193(2) (1995).

146. *See* Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408 (1984).

147. 471 U.S. 462 (1985).

148. 466 U.S. 408 (1984).

149. *See* FLA. STAT. § 48.193(2) (1995).

his activities within the state.[150] Again, Mr. Garrett purposefully availed himself of the benefits of Florida's laws by freely conducting business and personal visits within the state. After all, nonresidents cannot be denied entry into a state,[151] and nonresidents cannot be refused the opportunity to engage in economic activity within a state.[152] Accordingly, Larry Garrett's contacts with Florida were such that the Supreme Court of Florida could have allowed for a grant of personal jurisdiction by the trial court under a minimum contacts analysis.

In addition, none of the policy factors that weigh against a grant of jurisdiction, despite a finding of minimum contacts with the forum, would have denied the exercise of personal jurisdiction over Mr. Garrett. These factors include the burden on the defendant, the interests of the forum state, and the plaintiff's interest in obtaining relief.[153] Moreover, a court must also consider the interstate judicial system's interest in obtaining efficient resolution to controversies and the shared interest of the several states in furthering social policies.[154] In *World-Wide Volkswagen*[155] and *Asahi*,[156] the Court explained that the reasonableness of the exercise of jurisdiction in each case will depend on an evaluation of these factors. Finally, the Court clearly stated that when minimum contacts have been established, the interests of the plaintiff and the forum in the exercise of jurisdiction will justify "even the serious burdens placed on the alien defendant."[157]

Turning to the facts in *Garrett*, Mr. Garrett had voluntarily placed himself within Florida's jurisdiction many times prior to the filing of the dissolution of marriage action. The burden on Mr. Garrett to physically appear in a Florida court was substantially lessened by his ongoing willingness to visit Florida for various reasons. Also, Nancy Garrett submitted an affidavit to the court alleging that Mr. Garrett desired to move back to Florida and that he was continuously seeking suitable employment in Florida.[158] In this case, the defendant's contacts were established, and the defendant showed a desire to return to the forum state permanently. Thus, the burden on the defendant was minimal, if not non-existent.

---

150. *See* World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980).
151. *See* Edwards v. California, 314 U.S. 160 (1941).
152. *See* Toomer v. Witsell, 334 U.S. 385 (1948).
153. Asahi Metal Indus. Co. v. Superior Ct. of Cal., 480 U.S. 102, 113 (1987).
154. *World-Wide Volkswagen*, 444 U.S. at 292.
155. *Id.*
156. *Asahi*, 480 U.S. at 114.
157. *Id.*
158. Brief for Petitioner at 2, Garrett v. Garrett, 668 So. 2d 991 (Fla. 1996) (No. 85,384).

Second, Florida's strong public policy favoring parental responsibility[159] was impaired by denying the trial court the authority to obtain personal jurisdiction over a nonresident father who voluntarily paid child support in Florida for the benefit of his daughter. The Supreme Court of Florida ignored Florida's strong social policy[160] of protecting a child's parental support. Therefore, since the burden on the defendant was minimal and the state's interest was great, the court erred by not affirming Mrs. Garrett's claim of personal jurisdiction over her nonresident husband.

Mrs. Garrett had a compelling interest in her litigation with her husband. First, her monthly salary of $1,283.75[161] was grossly insufficient to cover her living expenses. Unless Mrs. Garrett was granted the divorce in Florida, her financial circumstances limited her ability to pursue her rights out of state.[162] Florida clearly has an interest in protecting dependent wives and their children from impoverishment and possible dependency on state services due to the inability to obtain relief in a dissolution of marriage action.[163] This compelling interest in the litigation was never thoroughly considered by the court anywhere in the *Garrett* decision.

Second, a denial of personal jurisdiction over her husband would unduly impede Mrs. Garrett's ability to seek the financial settlement necessary to alleviate her financial shortfall. Again, if a spouse is unable to

---

159. *See* Morris v. Morris, 672 So. 2d 622 (Fla. 1st Dist. Ct. App. 1996). In *Morris*, the first district, following the supreme court decision in *Garrett*, rejected a grant of personal jurisdiction over a nonresident husband in a dissolution of marriage action. Specially concurring, Justice Booth stated:

> The facts of the instant case appear to be more egregious than those in *Garrett* in that Appellee's minor child, who was born in this state and resided here for ten of his twelve years, suffers from Down's Syndrome. The child is now effectively deprived of parental support, contrary to this state's strong public policy favoring parental responsibility and jurisdiction of courts based on the presence of the child.

Id. at 624 (Booth, J., specially concurring). Justice Booth criticized the decision in *Garrett* which held that, "'[b]ecause the Garretts jointly abandoned Florida as their state of residence, the wife lost the 'protection' of section 48.193(1)(e).'" *Id.* Justice Booth stated, "There is no mention in *Garrett* of the child's right to the protection of the statute, and this was, I believe, a major oversight. A minor child's right to parental support is not readily subject to waiver or abandonment." *Id.*

160. *See id.* at 622.

161. Brief for Petitioner at 11, Garrett v. Garrett, 668 So. 2d 991 (Fla. 1996) (No. 85,384).

162. *Id.*

163. Telephone Interview with Nancy N. Nowlis, Attorney at Law (Aug. 7, 1996) (Nowlis was the attorney for Nancy Garrett in the case at issue in this case comment).

establish alimony or equitable distribution rights in a dissolution of marriage action, then the ability to obtain effective relief is diminished, resulting in a devastating effect on dependent children. Despite this sincere need by Mrs. Garrett to obtain relief, the Supreme Court of Florida disregarded these factors in the analysis of whether personal jurisdiction over her husband in Florida was proper.

B. *The Cost of Ongoing Litigation*

Mrs. Garrett's first attempt to litigate this matter occurred in Texas where she filed a petition for dissolution of marriage.[164] Shortly thereafter, she dismissed her petition in Texas and moved to Florida. Then, in 1994, Mrs. Garrett filed a second petition for dissolution of marriage in the Circuit Court for Duval County, Florida. After the trial court found that Florida did have personal jurisdiction over her husband, Mr. Garrett filed an appeal with the First District Court of Appeal.[165]

This appeal added further cost to Mrs. Garrett's strained financial budget. As a result of the appellate decision in *Garrett*, Mrs. Garrett was forced to appeal her case to the Supreme Court of Florida.[166] After the final decision by the Supreme Court of Florida, Mrs. Garrett was left with the costly prospect of filing a third dissolution of marriage action in her husband's state of residence, Indiana. Certainly, the interstate judicial system would not be harmed by allowing a spouse the opportunity to litigate in Florida with a nonresident spouse who clearly meets the minimum contacts analysis developed by the United States Supreme Court and meets the statutory criteria of Florida's long arm statue. In fact, the efficient resolution of the case in Florida would have put an end to the litigation and prevent the potentially costly litigation in the Indiana court system.

V. CONCLUSION

There is confusion "in respect to Florida courts having personal jurisdiction and Florida courts obtaining personal jurisdiction over a nonresident defendant by service of process pursuant to the 'long arm statute.'"[167] Even the United States Supreme Court has acknowledged the difficulty of defining when a forum state can exercise personal jurisdiction

164. Brief for Petitioner at 2, Garrett v. Garrett, 668 So. 2d 991 (Fla. 1996) (No. 85,384).
165. *See Garrett*, 668 So. 2d at 993.
166. *See id.*
167. *Id.* at 994 (Wells, J., concurring).

over a nonresident defendant.[168] Furthermore, long arm statutes that enumerate the contacts which subject a defendant to jurisdiction within a state may prevent a plaintiff from obtaining judicial relief over a nonresident defendant whose minimum contacts with the state do not meet the long arm statute's narrow list of acceptable contacts. One solution is to use a purposeful affiliation analysis for all personal jurisdiction cases in the State of Florida.[169] This solution focuses attention on the extent to which the person has freely and knowingly associated himself with the state in a way that subjects him to the sovereign power of that state.[170] However, this solution fails to take into account other factors such as the defendant's burden to litigate in a foreign state, the plaintiff's interest in the litigation, and the state's interest in protecting its own citizens.

In Florida, the better solution is to clearly enact a statute that allows a plaintiff spouse in a dissolution of marriage action to obtain personal jurisdiction over a defendant spouse when the defendant spouse has minimum contacts with Florida such that the "maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'"[171] By using the minimum contacts analysis developed by the United States Supreme Court, Florida's courts can go beyond the restrictive language of the long arm statute and consider other factors relevant to the determination of personal jurisdiction. These factors include "'the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and the shared interest of the several States in furthering fundamental substantive social policies;'" and the interest of the plaintiff in seeking adequate relief.[172] The Florida Legislature must amend section 48.193(1)(e) to allow for the use of a minimum contacts approach in replacement of the current language which states in part, "if the defendant resided in this state preceding the

168. *See, e.g.*, Burnham v. Superior Ct. of Cal., 495 U.S. 604 (1990); Asahi Metal Indus. Co. v. Superior Ct. of Cal., 480 U.S. 102 (1987); Burger King Corp. v. Rudzewicz, 471 U.S. 462 (1985); Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408 (1984); World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980); Kulko v. Superior Ct. of Cal., 436 U.S. 84 (1978); International Shoe Co. v. Washington, 326 U.S. 310 (1945); Pennoyer v. Neff, 95 U.S. 714 (1877).

169. For a good discussion on adopting a purposeful affiliation test nationwide, see Roger H. Trangsrud, *The Federal Common Law of Personal Jurisdiction*, 57 GEO. WASH. L. REV. 849, 890 (1989).

170. *Id.*

171. *International Shoe*, 326 U.S. at 316 (quoting Milliken v. Meyer, 311 U.S. 457, 463 (1940)).

172. *Asahi*, 480 U.S. at 113.

commencement of the action."[173] The current language is ambiguously written, causing confusion as to the residential proximity a defendant must have in Florida prior to the commencement of the action. The minimum contacts approach alleviates this confusion and allows the court to properly focus on the conduct of the defendant within the state, thus permitting the court to examine other factors relevant to the maintenance of the suit and due process.

Gregory P. McMahon

173. *See* FLA. STAT. § 48.193(1)(e) (1995).