# "Minimum Contacts" Concept of In Personam Jurisdiction Extended to Domestic Relations Litigation

In *Whitaker v. Whitaker,*[1] the Georgia Supreme Court held that full faith and credit must be given to a Florida domestic relations judgment in its entirety when service has been perfected upon the wife in Georgia pursuant to Florida's domestic relations "long-arm" statute.[2]

Mr. and Mrs. Whitaker lived as husband and wife in Florida. After separating from her husband, Mrs. Whitaker left Florida with their minor daughter and moved to Georgia. Subsequently, Mr. Whitaker began divorce proceedings in Florida and personal service of process was perfected upon his wife by a service officer in Georgia.[3] Mrs. Whitaker made neither a response nor an appearance and a Florida judgment was rendered granting a divorce to both parties. Custody of the minor daughter, child support, and certain personal property were granted to Mrs. Whitaker, and title to the Florida family residence was granted to Mr. Whitaker. Mrs. Whitaker thereafter began divorce proceedings in Georgia, where she was domiciled. Mr. Whitaker appeared in the Georgia court proceedings, contending that the entire Florida judgment was subject to "full faith and credit" by the Georgia court. The Georgia trial judge granted full faith and credit only to the part of the Florida judgment awarding a divorce to the parties and proceeded to award Mrs. Whitaker a one-half undivided interest in the Florida home as alimony. Mr. Whitaker appealed, asserting that the prior Florida judgment constituted a bar to the Georgia action.

In deciding *Whitaker,* the trial judge relied on the U.S. Supreme Court decision of *Estin v. Estin,*[4] which set up the compromise known as divisible divorce.[5] Divisible divorce allows a state to change the marital status of a

1. 237 Ga. 895, 230 S.E.2d 486 (1976).

2. "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 that person 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:. . . (e) With respect to proceedings 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, maintains a matrimonial domicile in this state at the time of the commencement of this action or, if the defendant resided in this state preceeding the commencement of the action, whether cohabiting during that time or not." FLA. STAT. ANN. §48.193(1) (1976).

3. FLA. STAT. ANN. §48.194 (1976) provides for personal service on persons outside of the territorial limits of Florida.

4. 334 U.S. 541 (1948).

5. "The result in this situation is to make the divorce divisible—to give effect to the Nevada decree insofar as it affects marital status and to make it ineffective on the issue of alimony." *Id.* at 549.

party domiciled there without necessarily affecting other legal incidences of the marriage. The compromise in *Estin* was a result of the Court's attempt to reconcile the *Estin* factual situation with a prior decision, *Williams v. North Carolina.*[6] *Williams* involved a criminal prosecution for bigamy of two North Carolina residents who had obtained Nevada divorces. The Court ruled that each state had power over the marital status of persons domiciled within its borders, and could grant an *ex parte* divorce decree which would be valid in all states.

In *Estin,* however, the question was not whether the defendant was a bigamist, but whether he would be allowed to escape supporting his wife by obtaining an *ex parte* divorce in Nevada. The wife's right to alimony had been determined in a New York separation proceeding prior to the husband's *ex parte* divorce in Nevada, which had awarded her no alimony. While, under New York law, a support order did not survive divorce, the New York court in this case nevertheless awarded the wife a judgment for the alimony in arrears. The case was appealed to the U.S. Supreme Court and New York was required "to give effect to the Nevada decree insofar as it affects marital status and to make it ineffective on the issue of alimony."[7] The rule in *Estin* was expanded in the U.S. Supreme Court decision of *Vanderbilt v. Vanderbilt,*[8] in which the wife's right to support had not been reduced to judgment prior to the divorce.[9] The Court held that this difference was not material[10] and that the Nevada court "was as powerless to cut off the wife's support right as it would have been to order the husband to pay alimony if the wife had brought the divorce action and he had not been subject to the divorce court's jurisdiction."[11] The Nevada decree, insofar as it affected the wife's right to support, was declared void. Although the *Whitaker* case appears to fit into the factual situations of the *Estin-Vanderbilt* line of cases, there is one substantial difference. The Court in both *Estin* and *Vanderbilt* relied on the fact that constructive service of process had been utilized. In *Whitaker,* the appellant claimed that personal service of process had been perfected pursuant to Florida's long-arm statute.

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6. 317 U.S. 287 (1942).

7. 334 U.S. at 549.

8. 354 U.S. 416 (1957).

9. The Vanderbilts had separated while living in California. The wife moved to New York in February, 1953; in March the husband filed suit for divorce in Nevada; and in June a decree was granted him which by its terms freed him from all bonds of matrimony. The wife had not been served with process in Nevada and did not appear before the divorce court. In April 1954, Mrs. Vanderbilt commenced an action in a New York court asking for a separation and alimony, at which Mr. Vanderbilt appeared and pleaded that the Nevada divorce destroyed any duty of support to Mrs. Vanderbilt. The New York court found the Nevada decree valid, but entered an additional order for the support of Mrs. Vanderbilt.

10. *Id.* at 418. However, Mr. Justice Frankfurter in his dissent disagrees on this point, calling the prior New York proceedings crucial to the decision in *Estin. Id.* at 420.

11. *Id.* at 419.

Personal service is required before a court can render in personam judgments. Constructive service, on the other hand, is sufficient only when such service is calculated to reach the individual involved. The Supreme Court's decision in *Pennoyer v. Neff*[12] set limits upon a state's power to render in personam judgments against non-residents who did not voluntarily submit to the jurisdiction of its courts. After *Pennoyer*, a defendant had to be served process within the physical boundaries of a state. This strict rule failed to meet the needs of a growing economy, and exceptions soon emerged.

One exception was made in the domestic relations area in *Williams v. North Carolina*,[13] in which the Court held that a divorce decree could be handed down without personal jurisdiction over both spouses as long as one spouse was domiciled in the forum state.[14] This exception apparently exempted divorce from the realm of in personam actions. But later decisions made it evident that alimony and child custody rights would be considered in personam actions.[15]

Another exception to *Pennoyer* developed in the corporate area. Here the question was not whether the action was in personam but whether the corporation was present. While an individual's presence is fairly easy to determine, the presence of a corporation is a question of legalistic proportions. An opportunity for the U.S. Supreme Court to define the presence of a corporation arose in the case of *International Shoe Co. v. Washington*.[16] International Shoe Co., a Delaware corporation which employed several salesmen in Washington, was sued by the State of Washington to recover unpaid contributions to the State unemployment compensation fund. Notice was given by personally serving a salesman employed by the defendant within the State, and a copy of the notice was sent by registered mail to the defendant's office in St. Louis. The Court, realizing the difficulty of defining a corporation's presence, shifted the focus of due process from strict *Pennoyer* requirements to the more flexible concept of "minimum contacts." According to Chief Justice Stone, who delivered the opinion in *International Shoe*, "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 have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.' "[17]

While the decision in *International Shoe*, strictly applied, deals only with a corporate fact situation, the rule regarding minimum contacts has been extended to include individual defendants. This extension, however,

12. 95 U.S. 714 (1877).
13. 317 U.S. 287 (1942).
14. *See* note 6, *supra*, and accompanying text.
15. *Estin* and *Vanderbilt* are representative of this group.
16. 326 U.S. 310 (1945).
17. *Id.* at 316.

has been on an area-by-area basis. The most common of these are the long-arm statutes which allow for in personam jurisdiction in the tort and contract areas.[18] The Supreme Court has refused to rule on whether minimum contacts are sufficient to establish jurisdiction in the domestic relations area,[19] and state law on this subject is of extreme importance. The issue in *Whitaker,* therefore, was whether Georgia would follow the lead of an increasing number of states and apply the minimum contacts concept of in personam jurisdiction to domestic relations. Had the Georgia Supreme Court proceeded on the theory that all service outside the territorial boundaries is constructive, there would have been no personal service and the Florida court could not have rendered a valid in personam judgment. The court held instead that personal service had been accomplished and the entire judgment was valid.

Compared to Georgia's prior decisions, *Whitaker* appears to be a radical change in position. Similar facts were involved in *Daniel v. Daniel,*[20] where service for a Nevada divorce was made by publication and the personal handing of the divorce papers to the wife in Atlanta by a private individual. The Georgia court found the decree void, it having been procured by fraud,[21] and found that the wife would not have been bound as to alimony anyway because she was not personally served and did not appear. The court stated, "There can be no such thing as legal personal service of a suit in Nevada upon a resident of the State of Georgia inside the limits of this state. No matter what form it takes, and no matter how solemnly that State might legislate to the contrary, all service of process of another state is 'substituted' and is not 'personal.' "[22] The decision in *Daniel* rested upon a much more solid basis than the previous quote,[23] but several cases following *Daniel* picked up the definition of substituted process and emphasized that no service of process from another state could be anything but substituted.[24] The Supreme Court of Georgia, in *Otwell v. Otwell,*[25] a custody

18. *See, e.g.,* GA. CODE ANN. §24-113.1 (1971).

19. Mizner v. Mizner, 84 Nev. 268, 439 P.2d 679, *cert. denied,* 393 U.S. 847 (1968).

20. 222 Ga. 861, 152 S.E.2d 873 (1967).

21. Mr. Daniel's testimony in the Nevada court was fraudulent on two grounds. First, he had procured a divorce from his wife in Mexico but swore in the Nevada court that they were husband and wife. In addition, he claimed a premarital agreement settled his liability to his wife, but this agreement involved his first, not his second, marriage to Mrs. Daniel. Also, all premarital agreements in Georgia were void and he was chargeable with that knowledge.

22. 222 Ga. at 866, 152 S.E.2d at 877.

23. Besides the fraud upon the court, there is no statute involved which, given proper safeguards, would make the service personal instead of constructive.

24. *Daniel* also dealt with GA. CODE ANN. §30-226 (1969) which gives a wife who was served constructively and who did not appear the right to file for permanent alimony despite the fact that the decree is entitled to full faith and credit in dissolving the marriage. This statute was not involved in *Whitaker,* however, because by its own terms it applies only where the wife was served constructively and the issue in *Whitaker* was whether personal service was made.

25. 228 Ga. 172, 184 S.E.2d 461 (1971).

action, cited *Daniel* as authority saying "[s]ubstituted service as to the issue of custody is not valid. Personal service is required. Therefore the Nevada decree which shows service outside of its jurisdiction is not entitled to full faith and credit as to this issue."[26]

The court in *Whitaker*[27] was presented with a better factual situation for the adoption of a liberalized view of personal service. The pertinent Florida jurisdictional statute provides that a person submits to the jurisdiction of the Florida courts' domestic relations actions by maintaining a matrimonial domicile in the state. Personal service is provided for by a service officer of the state where the person is served, and it is required that the service officer return an affidavit stating the time, place, and manner of service. Mrs. Whitaker conceded that service of the Florida process was properly perfected by a service officer. After reviewing these facts, the court stated the issue as whether "the Florida procedures that culminated in the in personam judgment were fundamentally fair to Mrs. Whitaker, or were such procedures violative of her due process rights?"[28] The court made an analogy to non-resident motorist statutes and long-arm statutes in the tort and contract areas, where in personam jurisdiction has been conferred, provided the party sought to be bound has sufficient contacts with the forum state and, in addition, that adequate notice and service were provided the non-resident. The court held that both provisions were met by the Florida procedure. Since this was a case of first impression, the court cited as authority the decisions in *Dillon v. Dillon,*[29] and *Mizner v. Mizner*[30] in which the high courts in Wisconsin and Nevada, respectively, made the same ruling. The court also acknowledged that the ruling was necessary as a matter of practicality "[i]n a country comprising fifty state judicial systems plus the District of Columbia's system, in an age of great mobility of persons and families, and in an era of vastly increasing domestic relations litigation. . . ."[31]

The practical necessity of the decision in *Whitaker* is apparent. Domestic relations has long been a troublesome field with regards to jurisdiction and a strict application of *Pennoyer* "has encouraged migratory divorce by

26. *Id.* at 172. The same court in Boggus v. Boggus, 236 Ga. 126, 233 S.E.2d 103 (1976), while still following *Daniel,* did hint that something short of a *Pennoyer* service might be accepted. Mrs. Boggus appeared in a Georgia custody action and argued she had been granted custody in a California action where personal jurisdiction had been obtained over her husband by the California long-arm statute. The court said only that there was "no legal basis for this assertion in the record."

27. *Id.* at 629, 50 L. Ed. 2d at 544; *See* United States v. Biswell, 406 U.S. 311 (1972)

28. 237 Ga. at 897, 230 S.E.2d at 487.

29. 46 Wis.2d 659, 176 N.W.2d 362 (1970). The Wisconsin Supreme Court upheld the validity of its own domestic relations long-arm statute.

30. 84 Nev. 268, 439 P.2d 679 (1968). The Supreme Court of Nevada accorded full faith and credit to a California in personam domestic relations judgment in which extra-territorial personal service had been made in accordance with a California statute.

31. 237 Ga. at 898, 230 S.E.2d at 488.

offering a shield to a spouse wishing to avoid financial responsibility."[32] While the rulings in *Estin* and *Vanderbilt* have helped assure that a wife will have some recourse against becoming single and penniless,[33] they have done so at the expense of finality. Justice Frankfurter, in his dissent to *Vanderbilt*, said, "Whereas previously only the state of 'matrimonial domicile' could grant an *ex parte* divorce and alimony, now any domiciliary state can grant an *ex parte* divorce, but no state, even if domiciliary, can grant alimony *ex parte* when it grants a divorce *ex parte*."[34] Long arm statutes like Florida's can provide an effective alternative to divisible divorce. If the basis of in personam jurisdiction is to be "minimum contacts . . . such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice,' "[35] then it is only logical that the state in which a couple have been living together, and not a distant state to which one party has fled to escape responsibility, should handle the divorce and concurrent matters such as custody and alimony.

JEANNETTE LITTLE

32. 84 Nev. at 271, 439 P.2d at 680 (1968).

33. Justice Frankfurter, in his dissent in *Vanderbilt*, wrote, "We are also told that 'the interest of the wife in not becoming single *and* penniless is greater than her interest in not becoming single.'" 354 U.S. at 427 (emphasis in original).

34. 354 U.S. at 420.

35. 326 U.S. at 316.