

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA**

JT,	Plaintiff	: No. 20-20,090
		:
vs.		: CIVIL ACTION - LAW
		:
JJS,	Defendant	: CUSTODY

OPINION AND ORDER

AND NOW, this 5th day of **March, 2020**, the parties appeared before the Court on February 18, 2020, for a 2nd Abuse Hearing. At the time of the Hearing, the Plaintiff, JT, was present with her counsel, Michael Morrone, Esquire. The Defendant, JJS, appeared by telephone and was unrepresented. The Defendant, JJS, currently resides in St. Thomas, Virgin Islands, and contacted the Court in advance of the Hearing indicating that he was objecting to Pennsylvania jurisdiction in this matter and requested that he be able to participate in the Hearing by phone. The Court granted the Defendant's request to participate by phone in order to argue the jurisdiction issue. Testimony was taken on February 18, 2020. The Court permitted both parties to submit a letter brief outlining their legal position, which both parties submitted.

The Defendant, JJS, testified and was questioned by both the Court and by Plaintiff's counsel. Plaintiff's counsel offered no evidence or testimony from his client.

The Defendant testified that from 2007 through September, 2018, Plaintiff and Defendant resided in multiple places in the state of Colorado. From September, 2018, through December, 2018, the Plaintiff and Defendant resided in the Virgin Islands. From January, 2019, through March, 2019, Plaintiff and Defendant resided in Lycoming County,

Pennsylvania, with Plaintiff's family. From March, 2019, through July, 2019, Plaintiff and Defendant resided in Massachusetts with Defendant's family. Commencing July, 2019, the Plaintiff and Defendant again resided in the Virgin Islands. On or about February 2, 2020, the Plaintiff left St. Thomas, Virgin Islands with the parties' minor child and returned to Lycoming County, Pennsylvania. The Defendant explained that he and the Plaintiff were living in Colorado in 2018 and were in the process of building a home when Defendant lost his job. The parties then moved to the Virgin Islands for Defendant to take employment. Thereafter, the parties moved to Pennsylvania to live with the Plaintiff's family. The Defendant stated that there were alcohol issues and he had to remove his family from the situation in Pennsylvania and move with his family in Massachusetts. Plaintiff and Defendant then moved to the Virgin Islands with their child in July of 2019. The Defendant testified that during the few months that he resided in Pennsylvania, he worked for Quality Air Mechanical as a plumber. During that time, he and Plaintiff also had a joint bank account at Muncy Bank, Lycoming County, Pennsylvania. At this time, he does not know if the bank account still exists.

Defendant alleges that Plaintiff kidnapped the parties' child from him in St. Thomas, Virgin Islands and fled to Pennsylvania. Plaintiff is seeking a Protection from Abuse Order on behalf of herself and the parties' minor child, IS, born March 10, 2016, as well as Plaintiff's son to another relationship, OS, born March 16, 2013. Plaintiff's Petition was filed on February 5, 2020, and alleges specific incidents of abuse that occurred in St. Thomas leading up to February 2, 2020, including the Defendant stating he was going to kill the Plaintiff and the child, the Defendant strangling the Plaintiff and throwing her on the bed, and the Defendant hitting the Plaintiff in the face. The Plaintiff's Petition states that

when Defendant fell asleep, she took the parties' child and left. Plaintiff's Petition also alleges past abuse without indicating where it occurred. Plaintiff alleges that the Defendant has thrown items around the home, punched holes in the wall, and has been verbally abusive towards the Plaintiff. It is also alleged that Defendant had a history of verbally abusing Plaintiff's son and kicked him in the rib in the past. The Petition contains no allegations of abuse occurring in Pennsylvania.¹

Pursuant to 23 Pa.C.S.A. §6103(b), the right of a Plaintiff to relief under the Protection from Abuse Act is not affected by the Defendant's absence from the Commonwealth or the Defendant's non-residence in the Commonwealth. The Statute is clear, however that, in order for a petitioner to obtain relief against an absent, non-resident defendant, a court must have personal jurisdiction over that defendant in accordance with 42 Pa.C.S. §5322, Pennsylvania's long-arm statute. Section 5322(a) contains ten paragraphs that specify particular types of contact with Pennsylvania deemed sufficient to warrant the exercise of specific jurisdiction. In addition, Section 5322(b) operates a "catchall," providing jurisdiction over persons who do not fall within the express provisions of Section 5322(a) to the fullest extent permitted by the Due Process Clause of the United States Constitution. "Once it is determined that jurisdiction is authorized by the Long-Arm Statute, the party seeking relief must demonstrate that the exercise of jurisdiction is proper under the Due Process Clause. Whether specific jurisdiction is proper under the Due Process Clause requires a two-part analysis: first, the plaintiff must demonstrate that the defendant purposefully established minimum

¹ Plaintiff's counsel submitted a letter brief to the Court on February 25, 2020. In his letter brief, Plaintiff's counsel provides additional facts and explanation of the allegations in the Petition. The Court cannot consider the additional facts raised by Plaintiff's counsel as they were not presented at the hearing and are not part of the record before the Court.

contacts with the forum state; and second, the maintenance of the suit must not offend 'traditional notions of fair play and substantial justice.'" Mendel v. Williams, 53 A.3d 810, 821 (Pa. Super. 2012).

A defendant purposefully establishes minimum contacts with the forum state when its contacts are:

[s]uch that the defendant could reasonably anticipate being called to defend itself in the forum . . . Random, fortuitous, and attenuated contacts cannot reasonably notify a party that it may be called to defend itself in a foreign forum and, thus, cannot support the exercise of personal jurisdiction. That is, the defendant must have purposefully directed its activities to the forum and conducted itself in a manner indicating that it has availed itself of the forum's privileges and benefits such that it should be subjected to the forum state's laws and regulations.

Id. Regardless, if a defendant's activities in Pennsylvania only give rise to jurisdiction under Section 5322(a) or (b), the plaintiff's cause of action is limited to those activities which formed the basis of jurisdiction. See 42 Pa.C.S. §5322(c). "A relationship among the defendant, the forum, and the litigation is the essential foundation of *in personam* jurisdiction." Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 414 (1984) (providing that "mere purchases, even if occurring at regular intervals, are not enough to warrant a State's assertion of *in personam* jurisdiction over a nonresident corporation in a cause of action not related to those purchase transactions.").

The case of N.T., and on Behalf of Minor Children K.R.T. and J.A.T. v. F.F., 118 A.3d 1130 (Pa. Super. 2015), is similar to the present case. In this case, N.T. filed a PFA petition against F.F. The trial court overruled F.F.'s preliminary objections and granted a temporary PFA order to N.T. F.F.'s preliminary objections indicated they lived

in California from February 2011 to October 2012 with their child, J.C., as well as N.T.'s children K.R.T. and J.A.T. On October 4, 2012, without notice, N.T. moved all three children to Pennsylvania. In November of 2012, F.F. instituted a custody action in California with regard to custody/visitation of J.C. and seeking his return to California. In May of 2013, the California Court held a hearing and entered an order setting forth a shared custody arrangement for J.C. On June 17, 2013, F.F. applied in California for an emergency transfer of physical and legal custody of J.C. N.T. left J.C. with F.F. and took her other two children to Pennsylvania. A hearing was scheduled for July 2, 2013, and N.T. did not appear. The Court found that N.T. abandoned J.C. to F.F. and awarded F.F. sole legal and physical custody of J.C. On February 19, 2014, N.T. filed a PFA petition in Pennsylvania, wherein she alleged multiple instances of abuse by F.F. throughout the course of their relationship. N.T. alleged the most recent incident of abuse occurred on June 15, 2013, when F.F. pinned her against her car and stated that he would have killed her if she interfered with his attempt to gain full custody of J.C.

In his preliminary objections, F.F. indicated that he had never lived or visited Pennsylvania, had no colleagues in Pennsylvania, and had never conducted business in Pennsylvania. His sole involvement with Pennsylvania was to serve N.T. in Pennsylvania with paperwork ordering her to appear for a custody proceeding in California. F.F. had hired a private investigator in California, who transferred the case to another private investigator in Pennsylvania, who ultimately located N.T. and served her with the California custody paperwork. The trial court found that despite never residing in Pennsylvania, F.F. had "reached out to Pennsylvania by hiring the private investigator" and that F.F. "entered into a contract specifically related to the

Pennsylvania subject matter” and the contract “induced the private investigator to take part in significant activity within the Commonwealth.” The trial court found that F.F.’s contacts were such that the exercise of personal jurisdiction was proper. On appeal, the Superior Court found that not only was F.F.’s single contact with Pennsylvania tenuous, it also is not clear that it is related to N.T.’s PFA petition filed in Pennsylvania more than eight months after the contact ceased. The Superior Court also found that N.T. did not meet her burden to prove F.F. has availed himself of Pennsylvania’s “privileges and benefits such that he should be subjected to its laws and regulations,” nor did she show that he could “reasonably anticipate being hauled into court in Pennsylvania in light of the activities at issue here. Id. at 1136. The Superior Court reversed the trial court’s order overruling F.F.’s preliminary objections, vacated the temporary PFA order, and vacated N.T.’s Protection from Abuse petition.

In the present case, based upon the testimony presented at the time of the hearing and the allegations contained in the Petition for PFA filed by Plaintiff, the extent of the relationship between the Defendant and Pennsylvania consists of a two-month stay with Plaintiff’s family a year ago, Defendant’s brief employment, and a joint bank account. While these contacts are slightly more than the contacts in N.T., the Court does not find that the contacts are sufficient enough for Pennsylvania’s exercise of personal jurisdiction over the Defendant. Plaintiff has also failed to meet the burden of proof that the Defendant has availed himself to Pennsylvania “privileges and benefits” such that he should be subjected to its laws and regulations, nor did she show that he could reasonably anticipate being hauled into Pennsylvania in light of the activities at issue. The Defendant’s contacts with Pennsylvania are not sufficiently related to

Plaintiff's PFA Petition, which was filed in Pennsylvania nearly, a year after Defendant's contacts with the state ceased.

Plaintiff argues that Section 5322(a)(1) applies in this situation, in that Pennsylvania has jurisdiction over the Defendant because he transacted business in the Commonwealth while he was employed as a plumber for a short period of time in Pennsylvania. Plaintiff argues that the Defendant should have reasonably anticipated being brought into court for a civil action if something went wrong with the work he had done or if he had not completed the work for which he was hired. The Court does not agree that this confers personal jurisdiction over the Defendant when his work as a plumber for a maximum of two months in Pennsylvania has no relation to whether or not he harmed the Plaintiff and the children as alleged in the Petition.

Based upon the foregoing, it is therefore ORDERED and DIRECTED that the Court lacks personal jurisdiction over the Defendant. The Temporary Protection from Abuse Order entered in this matter on February 5, 2020, is hereby VACATED and the Petition for Protection from Abuse filed on the same date is hereby DISMISSED.

By The Court,

Joy Reynolds McCoy, Judge