Essay: Jurisdiction in Family Law Matters: The Minnesota Perspective

Robert E. Oliphant

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JURISDICTION IN FAMILY LAW MATTERS: 
THE MINNESOTA PERSPECTIVE

Robert E. Oliphant†

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This article adds to the growing library of analysis and commentary on Minnesota family law. It surveys, reviews, analyzes, and comments
on the decisions of Minnesota’s appellate courts in the sometimes challenging and always interesting areas of subject matter and personal jurisdiction.2

The article examines many of the more common issues associated with jurisdiction that impact Minnesota family law in the areas of child support, custody, property division, maintenance, and paternity. It investigates the jurisdictional questions involved when applying Minnesota’s long-arm statute3 and weighs the potential constitutional barriers to its application.4 It also examines relevant provisions of the Parental Kidnapping Prevention Act (PKPA)5, the Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA),6 the Indian Child Welfare Act (ICWA),7 the Uniform Interstate Family Support Act (UIFSA),8 and the Soldiers’ and Sailors’ Relief Act.9 There is a brief review of subject matter issues associated with bringing family lawsuits in federal court.10 Decisions from other jurisdictions are used and discussed where appropriate. Throughout the article one will find suggestions for improving the language of some of Minnesota’s statutes that impact jurisdiction, as well as additional suggestions for reconsidering some of the statutory language applied by Minnesota’s courts to jurisdiction disputes.

II. SUBJECT MATTER—GENERAL

It is axiomatic that a court must possess subject matter jurisdiction to hear any portion of a family law dispute; otherwise, it is powerless to proceed. It also goes without saying that a court must possess personal

(1997).


3. See infra Part XVII.

4. See infra Part XVIII.

5. 28 U.S.C. § 1738A (2000); see infra Part XXII.

6. See MINN. STAT. §§ 518D.101-317 (2002); see infra Part XX.


8. See MINN. STAT. §§ 518C.101-902 (2002); see infra Part XIX.

9. 50 U.S.C §§ 501-591 (2000); see infra Part XXIII.

10. See infra Part XXIV.
jurisdiction over both parties if it is to make a binding order imposing personal obligations on them such as maintenance, child support, or attorneys’ fees. Where both parties cannot be found, a court may still dissolve a marriage so long as it has jurisdiction over one of them and appropriate efforts are made to provide notice of the action to the other spouse.11

The general principles associated with the exercise of subject matter jurisdiction are well known. Subject-matter jurisdiction is described as the court’s power to hear and determine the general subject involved in the action.12 Subject matter jurisdiction may not be waived by failing to raise it before, during, or after trial.13 Furthermore, subject matter jurisdiction may be questioned at any time, even by the court sua sponte for the first time on appeal because “subject matter jurisdiction cannot be conferred upon the court by consent of the parties.”14

In the context of a family law dispute, Minnesota courts have consistently stated that a judgment entered by a court without subject matter jurisdiction is void.15 More precisely, they have declared that a divorce granted absent satisfaction of certain residency requirements is void for lack of subject matter jurisdiction.16 However, should a modern court revisit this issue, it may well conclude that the residency provisions are nothing more, in fact, than elements of a cause of action. The reasons for this conclusion follow in the next section.

III. VOIDING A DIVORCE DECREES WHEN THE PARTIES FAIL TO COMPLY WITH RESIDENCE REQUIREMENTS

Minnesota courts have not recently reassessed the implications of voiding a divorce decree months or years after it was entered because the statutory residency requirements were not met. They have continued to rely upon a more-than-century-old decision, Thelan v. Thelan,17 to

12. See Duennow v. Lindeman, 223 Minn. 505, 511, 27 N.W.2d 421, 425 (1947) (defining subject matter jurisdiction as the “authority to hear and determine the particular questions the court assumes to decide”) (quoting Sache v. Wallace, 101 Minn. 169, 172, 112 N.W. 386, 387 (1907)).
16. Wyman v. Wyman, 297 Minn. 465, 467, 212 N.W.2d 368, 369 (1973) (“A divorce granted without complying with the statute is void for lack of jurisdiction”); see also Thelan, 75 Minn. at 436, 78 N.W. at 109.
17. Thelan, 75 Minn. at 433, 78 N.W. at 108.
support the proposition that failure to meet residency requirements is the equivalent of an absence of subject matter jurisdiction. However, a reasonable argument can be made that the residence provisions contained in the Minnesota Statutes have been historically misunderstood.

Support for this view is found in the Minnesota Constitution and in the Minnesota legislature’s grant of subject matter jurisdiction. The language in these provisions is significantly different from that found in Minnesota Statutes section 518.07, which Minnesota courts have used to support the voidness theory.

The Minnesota Constitution contains the following language that provides district courts with subject matter jurisdiction: “The district court has original jurisdiction in all civil and criminal cases and shall have appellate jurisdiction as prescribed by law.” The legislature, in response to this constitutional provision, enacted the following:

The district courts shall have original jurisdiction in all civil actions within their respective districts, in all cases of crime committed or triable therein, in all special proceedings not exclusively cognizable by some other court or tribunal, and in all other cases wherein such jurisdiction is especially conferred upon them by law. They shall also have appellate jurisdiction in every case in which an appeal thereto is allowed by law from any other court, officer, or body.

Minnesota Statutes section 518.07, upon which the view of subject matter in a dissolution action rests, reads as follows:

No dissolution shall be granted unless (1) one of the parties has resided in this state, or has been a member of the armed services stationed in this state, for not less than 180 days immediately preceding the commencement of the proceeding; or (2) one of the parties has been a domiciliary of this state for not less than 180 days immediately preceding commencement of the proceeding.

Although one can argue that the phrase in chapter 484 declaring that courts have jurisdiction when it is “especially conferred on them by law” makes section 518.07 a subject matter statute, one can also argue that had

20. See MINN. STAT. § 484, subd. 1 (2002).
21. MINN. CONST. art. VI, § 3.
22. MINN. STAT. § 484, subd. 1 (2002).
23. MINN. STAT. § 518.07 (2002).
the legislature intended that Minnesota Statutes section 518.07 be jurisdictional, it would have included specific language to that effect in the statute. While the underlying purpose of Minnesota Statutes section 518.07 is to establish residency requirements for commencing a dissolution, there is no language suggesting that a failure to meet the requirements divests a court of subject matter jurisdiction or that a judgment entered without meeting the requirements is void.24

The New York Court of Appeals considered a similar question in Lacks v. Lacks.25 In the case, the plaintiff had obtained a divorce in New York on the ground of cruelty.26 Under New York law, one of the parties to the divorce action must have resided in the state for one year.27 Two years after the decree was entered, and after the time to appeal had passed, the original defendant moved to vacate the judgment on the ground that the court was without subject matter jurisdiction to entertain the action.28 She alleged that the plaintiff had not been a resident in New York State for a full year preceding the commencement of the divorce action as required by New York law and that the judgment was void.29 In rejecting the claim, the court made a penetrating analysis of the difference between a substantive element of a cause of action and subject matter jurisdiction.

[T]he principal issue [is] whether an otherwise valid divorce judgment depends, jurisdictionally, upon a correct determination of the statutory residence requirements, that is,

24. See id.
26. Id. at 385-86.
27. N.Y. DOM. REL. LAW § 230 (McKinney 1999). The entire New York statute, regarding the required residence of parties reads:
An action to annul a marriage, or to declare the nullity of a void marriage, or for divorce or separation may be maintained only when: 1. The parties were married in the state and either party is a resident thereof when the action is commenced and has been a resident for a continuous period of one year immediately preceding, or 2. The parties have resided in this state as husband and wife and either party is a resident thereof when the action is commenced and has been a resident for a continuous period of one year immediately preceding, or 3. The cause occurred in the state and either party has been a resident thereof for a continuous period of at least one year immediately preceding the commencement of the action, or 4. The cause occurred in the state and both parties are residents thereof at the time of the commencement of the action, or 5. Either party has been a resident of the state for a continuous period of at least two years immediately preceding the commencement of the action.
28. Lacks, 359 N.W.2d at 386.
29. Id.
whether the competence of the court depends upon a correct determination of the residence requirements.

The confusion, if there be confusion, starts with a line of decisions dating back to the last century and continuing into the present in which this court has said with less than perfect meticulousness that “jurisdiction” of New York courts in matrimonial cases is limited to the powers conferred by statute . . . . Jurisdiction is a word of elastic, diverse, and disparate meanings.

A statement that a court lacks “jurisdiction” to decide a case may, in reality, mean that elements of a cause of action are absent . . . .

In Thrasher v. United States Liab. Ins. Co., this court, in discussing subject matter jurisdiction, drew a clear distinction between a court’s competence to entertain an action and its power to render a judgment on the merits. Absence of competence to entertain an action deprives the court of “subject matter jurisdiction”; absence of power to reach the merits does not.

The implications of this distinction are serious. It is blackletter law that a judgment rendered without subject matter jurisdiction is void, and that the defect may be raised at any time and may not be waived . . . . Thus stated, the rule is grossly oversimple. The problem requires better analysis, and one long overdue . . . . Nevertheless, the breadth with which the rule is often stated indicates the importance traditionally attached to so-called subject matter jurisdiction, really competence of courts, and the grave consequences, including denial of Res judicata effect to judgments, which may result from a lack of true subject matter jurisdiction or competence. Beyond the confusion engendered by a misapplication of the terminology and concept of subject matter jurisdiction, there is more created by the locution that in this State the courts’ power in matrimonial actions is exclusively statutory. Yet in counterpoint, it has often been said: “the Supreme Court is a court of original, unlimited and unqualified jurisdiction” and “competent to entertain all causes of action unless its jurisdiction has been specifically proscribed.”

. . . .

In sum, the overly stated principle that lack of subject matter jurisdiction makes a final judgment absolutely void is not applicable to cases which, upon analysis, do not involve
jurisdiction, but merely substantive elements of a cause for relief. To do so would be to undermine significantly the doctrine of Res judicata, and to eliminate the certainty and finality in the law and in litigation which the doctrine is designed to protect.\[30\]

The Lacks court concluded that proof of the requisite period of residence was necessary to establish a cause of action for divorce but that failure to make the proof did not strip the court of subject matter jurisdiction.

Other jurisdictions considering somewhat similar issues appear to agree with the New York court’s analysis.\[31\] For example, in Daly v. Daly,\[32\] the Connecticut Court of Appeals rejected a subject matter challenge to a nineteen-year-old judgment, saying:

[W]e have also recognized that “[t]he modern law of civil procedure suggests that even litigation about subject matter jurisdiction should take into account the importance of the principle of the finality of judgments, particularly when the parties have had a full opportunity originally to contest the jurisdiction of the adjudicatory tribunal.”\[33\]

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30. Lacks, 359 N.E.2d at 386-88 (citations omitted).
31. See Minto v. Lambert, 870 P.2d 572, 575-76 (Colo. Ct. App. 1993) (stating a requirement of good faith negotiations before the commencement of condemnation proceedings is not restriction on district court’s subject matter jurisdiction, but merely element of claim for relief); Vogel v. Vogel, 422 A.2d 271, 273 (Conn. 1979) (rejecting attack on twenty-year-old dissolution judgment); People v. Jackson, 198 Cal. Rptr. 135, 139 (Cal. App. Dep’t Super. Ct. 1983) (stating a statutory requirement governing municipal and justice court jurisdiction; that the offense charged must be committed within the county of such court was in the nature of non-fundamental, waivable “territorial jurisdiction”). The court in B.J.P. v. R.W.P. stated:

A consideration of the “environment” in which the jurisdictional issue arises in this case persuades us that the mother’s objections to the trial court’s authority may be (and here have been) waived, and that it would be inequitable to permit her to raise them for the first time on appeal.

The purported lack of subject matter jurisdiction based on territorial considerations—a fair characterization of the asserted defect here—has been held to be analytically similar to improper venue; it does not go to the power of the court to adjudicate the case, and may be waived if not asserted in timely fashion.

33. Id. at 953 (citations omitted) (citing Meinket v. Levinson, 474 A.2d 454, 455-56 (Conn. 1984) (quoting Monroe v. Monroe, 413 A.2d 819 (Conn. 1979); Conn. Pharm. Ass’n v. Milano, 468 A.2d 1230 (Conn. 1983); Vogel v. Vogel, 422 A.2d 271 (Conn. 1979); RESTATEMENT (SECOND) OF JUDGMENTS § 12 (1982); FLEMING JAMES, JR. & GEOFFREY C. HAZARD, JR., CIVIL PROCEDURE § 13.16 (2d ed. 1977)); Morris v. Irwin, 494
In *Will of Brown*, the court briefly discussed the due process implications of the *Lacks* decision. Observed the court:

[A] defendant who had appeared in a New York divorce action could not, after final judgment, collaterally attack the subject matter jurisdiction of the court to make the decree as void in New York or elsewhere on the basis that the plaintiff’s New York residence had subsisted less than the one year or two year period called for by the statute . . . so long as the plaintiff had the minimal contacts with New York said to make the decree enforceable under the full faith and credit clause.

In conclusion, a reasonable argument can be made that the residency requirement contained in Minnesota Statutes section 518.07 is necessary to establish a cause of action for a divorce; however, the failure to make the proof does not strip the court of subject matter jurisdiction given to it by the Minnesota Constitution and Minnesota Statutes chapter 484. It is suggested that the present construction given by Minnesota’s courts should be reexamined. Alternatively, the provision should be rewritten to prevent a dissolution judgment of many years from being reopened solely on a theory that the courts lacked subject matter jurisdiction.

IV. ELEMENTS OF A DISSOLUTION

Minnesota is a “no-fault” jurisdiction. Consequently, a marriage dissolution may be granted without requiring that one party be at fault. To “prove up” a dissolution petition, a party need only show that there “has been an irretrievable breakdown of the marriage relationship.”

While the elements to establish a basis for divorce vary among the states, Minnesota’s legislature allows a dissolution solely on this

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35. *Id*.
36. MINN. STAT. § 518.06, subd. 1 (2002).
37. *See*, e.g., ALA. CODE § 30-2-1(a)(1)-(12) (1993) (including grounds of irretrievable breakdown, abandonment for one year, imprisonment for two years under sentence of seven or more years, habitual drunkenness or drug addiction, insanity, non-support for two years); ALASKA STAT. § 25.24.050(1)-(9) (Michie 1991) (listing, among other grounds, incompatibility of temperament, adultery, and willful desertion for one year); ARK. CODE ANN. § 9-12-301(1)-(8) (Michie 1991) (including no fault, impotence, cruel and barbarous treatment, and willful nonsupport); CAL. FAM. CODE § 2310 (West 1994) (requiring irretrievable breakdown or incurable insanity); CONN. GEN. STAT. ANN. §§ 46b-40, -51 (West 1986) (listing irretrievable breakdown, living apart for eighteen months due to incompatibility); FLA. STAT. ANN. § 61.052 (West 1985 & Supp. 1992)
including irretrievable breakdown and mental incompetence for up to three years); GA. CODE ANN. § 19-5-3(1)-(13) (Harrison 1991) (listing irretrievable breakdown, adultery, desertion for one year, mental incapacity at the time of the marriage, cruel treatment, and incurable mental illness); IDAHO CODE §§ 32-603, -610 (Michie 1983) (including irreconcilable differences and five years of separation); 750 ILL. COMP. STAT. 5/401 (1999) (listing irretrievable breakdown, impotence, and adultery); IND. CODE ANN. § 31-15-1-2 (West 1997) (including irretrievable breakdown, conviction of a felony, incurable insanity lasting for at least two years, impotency existing at the time of the marriage); KAN. STAT. ANN. § 60-1601(a) (1983) (including incompatibility and failure to perform a material duty or obligation); LA. CIV. CODE ANN. art. 103 (West Supp. 1992) (including irretrievable breakdown and adultery); ME. REV. STAT. ANN. tit. 19-A, § 902(1) (West 1997) (requiring irreconcilable differences); MD. CODE ANN., FAM LAW § 7-103 (1991) (listing one-year voluntary separation or two years living separate and apart, insanity, adultery, or abandonment); MASS. GEN. LAWS ANN. ch. 208, §§ 1, 1A (West 1992) (including irretrievable breakdown and adultery, desertion for one year, or cruel and abusive treatment); MISS. CODE ANN. §§ 93-5-1 to -2 (1972 & Supp. 1990) (requiring irreconcilable differences); MO. REV. STAT. § 452.320 (1986) (requiring irretrievable breakdown for uncontested divorces; if contested, petitioner must show either period of separation or fault); NEV. REV. STAT. 125.010 (1991) (including living separately for one year, incompatibility, and insanity for two years); N.H. REV. STAT. ANN. §§ 458:7-.7-a (1992) (listing irreconcilable differences, extreme cruelty, absence for two years, or joining a religious sect or society that believes the relation of husband and wife is unlawful, and refusing to cohabit for six months); N.J. STAT. ANN. § 2A:34-2 (West 1987) (including eighteen months of separation in different habitation and no reasonable prospect of reconciliation, as well as traditional fault such as adultery, willful desertion for twelve or more months, and extreme mental or physical cruelty); N.M. STAT. ANN. § 40-4-1 (Michie 1993) (requiring incompatibility, abandonment, or adultery); N.Y. DOM. REL. LAW § 170 (McKinney 1988) (including living apart for one year pursuant to a separation agreement, cruel and inhuman physical or mental treatment); N.C. GEN. STAT. §§ 50-5.1, -6 (1987) (requiring living separate and apart for one year, or three years’ separation because of incurable insanity); N.D. CENT. CODE §§ 14-05-03, -05.1 (1991) (listing irreconcilable differences, willful neglect, habitual intemperance, and conviction of a felony); OHIO REV. CODE ANN. § 3105.01 (Anderson 1993 & Supp. 1991) (including living separately for one year, bigamy, extreme cruelty, and any gross neglect of duty); OKLA. STAT. ANN. tit. 4, 3 § 101 (West 1990) (listing incompatibility, abandonment for one year, habitual drunkenness, and gross neglect of duty); 23 PA. CONS. STAT. ANN. § 3301 (West 1991) (requiring irretrievable breakdown); R.I. GEN. LAWS §§ 15-5-2, -3 (1988) (listing irreconcilable differences, extreme cruelty, adultery, or any other gross misbehavior and wickedness that is “repugnant to and in violation of the marriage covenant”); S.C. CODE ANN. § 20-3-10 (Law. Co-op. 1993) (including living apart for one year, physical cruelty, and habitual drunkenness); S.D. CODIFIED LAWS §§ 25-4-1 to -18 (Michie 1992) (listing irreconcilable differences, adultery, extreme cruelty); TENN. CODE ANN. §§ 36-4-101, -102 (1991) (including irreconcilable differences, impotence, bigamy, adultery); TEX. FAM. CODE ANN. §§ 6.001-007 (Vernon 1998) (including marriage that is insupportable because of discord or conflict of personalities that destroys legitimate ends of the marriage relationship and prevents any reasonable expectation of reconciliation, living apart for three years, cruelty, and confinement in mental hospital for three years); UTAH CODE ANN. § 30-3-1(3) (1993) (including irreconcilable differences and living apart for three consecutive years under a decree of separate maintenance without cohabitation, physical or mental cruelty); VT. STAT. ANN. tit. 15, § 551 (1993) (requiring resumption of marital relationship is not reasonably probable, willful desertion
An “irretrievable breakdown” has been construed to mean that there is “no reasonable prospect of reconciliation.” This provision appears to accurately reflect current public policy, which is not to return to a fault based system.

38. The language of Minnesota’s dissolution statute reads as follows:

518.06. Dissolution of marriage; legal separation; grounds; uncontested legal separation

Subdivision 1. A dissolution of marriage is the termination of the marital relationship between a husband and wife. A decree of dissolution completely terminates the marital status of both parties. A legal separation is a court determination of the rights and responsibilities of a husband and wife arising out of the marital relationship. A decree of legal separation does not terminate the marital status of the parties. A dissolution of a marriage shall be granted by a county or district court when the court finds that there has been an irretrievable breakdown of the marriage relationship.

A decree of legal separation shall be granted when the court finds that one or both parties need a legal separation. Defenses to divorce, dissolution and legal separation, including but not limited to condonation, connivance, collusion, recrimination, insanity, and lapse of time, are abolished.

Subd. 2. Repealed by Laws 1978, c. 772, § 63.

Subd. 3. If one or both parties petition for a decree of legal separation and neither party contests the granting of the decree nor petitions for a decree of dissolution, the court shall grant a decree of legal separation.

V. LEGAL SEPARATION

A party seeking a legal separation is not bound by the same requirements as one seeking a marriage dissolution. For example, actions for legal separation are exempt from the 180-day residence requirement. Consequently, where a divorce claim cannot be proven because of the 180-day residence barrier, a petition for a legal separation can be filed and heard. In this proceeding a court may award child support, maintenance, custody and attorneys’ fees and the separation may later be converted to a divorce action. A court must, of course, possess personal jurisdiction over both parties during the legal separation proceeding to make an award of support or divide the couple’s personal and real property.

VI. DOMICILE AND RESIDENCE

It was suggested earlier in this article that neither residence nor domicile are jurisdictional prerequisites to Minnesota exercising subject matter jurisdiction in a dissolution matter—they are merely elements of a cause of action. Therefore, if the residency elements are successfully challenged during a divorce proceeding, the action must be dismissed. However, the failure to raise them should not automatically void the judgment. This section of the article contains a brief analysis of the distinction Minnesota’s courts and legislature have made between “residence” and “domicile.”

Minnesota’s courts appear to have consistently applied well-accepted principles of law when considering questions of domicile and residence. For example, they have stated that “[d]omicile is the union of residence and intention . . . .” They have also stated that a legal resident who temporarily lives in another state may still meet the statutory requirements for domicile or residency if the Minnesota place of domicile has not changed; “[i]f the change in physical presence is made without intent to abandon the old home, domicile has not changed.”

40. See Donigan v. Donigan, 236 Minn. 516, 521, 53 N.W.2d 635, 638 (1952).
42. See supra Part II.
44. Bechtel v. Bechtel, 101 Minn. 511, 515, 112 N.W. 883, 884 (1907) (holding that wife, who was forced by husband to leave state, never intended to take up permanent abode in other state and was considered legal resident).
45. Davidner, 304 Minn. at 494, 232 N.W.2d at 7 (holding husband’s move from
The legislature has stated that the term “residence” is susceptible to different interpretations depending upon the “context” in which it is used. Given this definition, residence has sometimes functioned as the equivalent of domicile while at other times it has meant only bodily presence or temporary abode. The primary difference between these terms concerns the intent of the individual. Generally, “residence” has required only bodily presence whereas “domicile” has required presence plus an intention to make a place one’s permanent home.

In Jones v. Jones, the court suggested that the purpose of a residency requirement is to prevent nonresidents from coming into Minnesota with their marital grievances; apparently it acts to prevent the state from becoming a divorce mill.

Although Minnesota’s courts have encountered little difficulty making a distinction between domicile and residence, it may be helpful if the legislature were to incorporate the legal principles into two definitions: one for residence and the other for domicile.

VII. DIVISIBLE DIVORCE

In Pennoyer v. Neff the United States Supreme Court stated that personal jurisdiction over a nonresident spouse is not necessary to dissolve a marriage. This principle rests on the theory that every state possesses jurisdiction to determine the civil status and capacities of all its inhabitants and has the authority to prescribe the conditions on which proceedings affecting them may be commenced and carried on within its boundaries. Consequently, a state is viewed as having an absolute right to prescribe the conditions upon which the marriage relation between its own citizens shall be created, and the causes for which it may be dissolved. When a state possesses in rem jurisdiction over the res or “thing,” which is the marriage itself, and has in personam jurisdiction over the plaintiff or petitioner, a valid ex parte divorce may be granted on whatever basis a state sees fit. The decree is recognized as having absolute and binding finality within the confines of its borders.

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46. Minn. Stat. § 518.003, subd. 1 (1990) (“For the purposes of this chapter, the following terms have the meanings provided in this section unless the context clearly requires otherwise”).
47. 402 N.W.2d 146 (Minn. Ct. App. 1987).
48. Id. at 148.
49. 95 U.S. 714 (1877).
The power to change the status of a state citizen has led to the development of the “divisible divorce” doctrine, which recognizes that issues other than the dissolution of the marriage are severed from the divorce action when the court does not have personal jurisdiction over the other spouse.\(^{50}\) \textit{Estin v. Estin}\(^{51}\) is illustrative of the application of the “divisible divorce” doctrine. The Court held that the Full Faith and Credit Clause did not require New York to enforce a Nevada divorce decree that failed to provide maintenance for a New York wife who had obtained support under a prior New York decree.\(^{52}\) The Court stated that while Nevada law permitted the marriage to be dissolved because of the petitioner’s connection with the forum, property rights and personal obligations could not be adjudicated unless the forum court had personal jurisdiction over the respondent spouse.\(^{53}\)

Under the “divisible divorce doctrine,” issues other than the dissolution of the marriage are severed from the divorce and the judgment does not resolve issues other than the marital status of the parties.\(^{54}\) This doctrine is recognized by the Restatement of Conflict of Laws\(^ {55}\) and has been accepted and applied by Minnesota’s appellate courts.\(^ {56}\)

\(^{50}\) Conlon by Conlon v. Heckler, 719 F.2d 788, 795-96 (5th Cir. 1983).

\(^{51}\) 334 U.S. 541 (1948).

\(^{52}\) Id. at 549.

\(^{53}\) Id.

\(^{54}\) \textit{Conlon}, 719 F.2d at 795-96. \textit{See also} Vanderbilt v. Vanderbilt, 354 U.S. 416, 418-19 (1957) (where wife not subject to Nevada jurisdiction, Nevada court could not extinguish right to support in another state even though not reduced to judgment in the other state); \textit{Estin}, 334 U.S. at 549 (holding that a Nevada court lacking personal jurisdiction over wife could not terminate the husband’s preexisting obligation for support ordered in another state).

\(^{55}\) The Restatement of Conflict of Laws recognizes that an adjudication of status does not require personal jurisdiction. It provides the following illustration: Assume that “A leaves his home in State X and goes to State Y, where he becomes domiciled and there obtains an ex parte divorce from B, his wife. Assuming that the requirements of proper notice and of opportunity to be heard have been met, this divorce is valid and must be recognized in X under full faith and credit even though B was not personally subject to the jurisdiction of the Y court and at all times retained her domicile in X.” \textit{RESTATEMENT (SECOND) OF CONFLICT OF LAWS} § 71 cmt. a, illus. 1 (1971).

\(^{56}\) \textit{See} Larsen v. Erickson, 222 Minn. 363, 368, 24 N.W.2d 711, 714 (1946) (there was a complete severance of the marriage status, but no property rights were there determined, nor was there any provision for alimony); Sheridan v. Sheridan, 213 Minn. 24, 27, 4 N.W.2d 785, 787 (1942) (citing Haddock v. Haddock, 201 U.S. 562, 567 (1906)) (reciting established law that personal judgments rendered against non-residents without acquiring personal jurisdiction may not be enforced in another state by virtue of the full faith and credit clause of the Constitution); Rose v. Rose, 132 Minn. 340, 343, 156 N.W. 664, 666 (1916) (upholding dissolution of the marriage “without regard to the
VIII. CONTINUING SUBJECT MATTER JURISDICTION

Once a court has subject matter and personal jurisdiction over the parties to a divorce, does it ever lose that power? The question usually arises when one of the parties to a divorce moves away and establishes a domicile outside Minnesota.57 A majority of jurisdictions have taken the view that they possess continuing jurisdiction. Consequently, obligors who move from a jurisdiction where a judgment was properly entered, and remain away for several years, are usually unable to block modification or enforcement efforts on the ground that the forum court lost personal jurisdiction once they moved out-of-state. Minnesota follows the majority rule.

For example, in Bjordahl v. Bjordahl,58 the court held that even though the husband had not resided in Minnesota for twenty-two years and the parties’ children had reached majority, the court in which the divorce was granted under a stipulated judgment had continuing jurisdiction to modify or enforce the decree. Observed Justice Simonett:

Respondent argues that enforcement of a divorce judgment is a new and independent action, requiring independent jurisdictional contacts. He cites a North Dakota case for this proposition, Zent v. Zent, 281 N.W.2d 41 (N.D.1979). But we held to the contrary in Atwood v. Atwood, 253 Minn. 185, 91 N.W.2d 728 (1958), and see no reason to overrule that decision now. In Atwood, we said: (A)n application for modification or enforcement of provisions of a divorce decree respecting divorce and custody of minor children is a supplementary proceeding, incidental to the original suit; it is not an independent proceeding or the commencement of a new action. The jurisdiction to order such modifications is a continuing one. 253 Minn. at 193, 91 N.W.2d at 734. Though Atwood and cases following, Cummiskey v. Cummiskey, 259 Minn. 427, 107 N.W.2d 864 (1961), and Zaine v. Zaine, 265 Minn. 105, 120 N.W.2d 324 (1963), dealt with minor-age children, this is not to suggest that continuing jurisdiction is cut off when, as here, the children have reached the age of majority. A place of the marriage, or to that of the commission of the offense for which the divorce is granted”); Thurston v. Thurston, 58 Minn. 279, 285, 59 N.W. 1017, 1018 (1894) (stating that the court changed only the marriage status without affecting any property).

57. The Uniform Child Custody Jurisdiction and Enforcement Act, the Uniform Interstate Family Support Act, and the Parental Kidnapping Prevention Act all, of course, provide specific answers to this question. See supra notes 5-6, 8.

58. 308 N.W.2d 817 (Minn. 1981).
divorce decree, by its nature, sets up continuing obligations; an effort to collect arrearages should not be barred jurisdictionally simply because the children are of age. The fact that future support payments are no longer required by the decree makes the obligation to pay the past-due support no less continuing.59

There are no strong public policy reasons to suggest that Minnesota abandon its present view of continuing jurisdiction. Furthermore, the question of exercising continuing jurisdiction in custody cases is now more fully addressed by the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)60 and the Parental Kidnapping Prevention Act (PKPA).61 Continuing jurisdiction in child support matters is addressed in the Uniform Interstate Family Support Act.62

IX. “STATUS THEORY” AND JURISDICTION

Jurisdictions are increasingly using “status” as a theory upon which to adjudicate family law issues where personal jurisdiction cannot be obtained over an out-of-state defendant. Expansive use of “status” places that theory into an apparent conflict with the Due Process Clause of the United States Constitution.

It is a black letter principle of law that the Constitution “trumps” a state statute, and the legal question is whether application of the “status theory” runs afoul of the Constitution. The Constitutional due process issue arises initially from the Court’s decision in May v. Anderson.63 There the father had obtained an ex parte Wisconsin divorce, which granted custody of the minor children to him. He attempted to enforce the custody decree in Ohio, where the mother was now living, after she refused to return them to Wisconsin while exercising visitation. The Court held that Ohio did not have to recognize the Wisconsin decree because it was entered without personal jurisdiction over the mother. Of possible significance is the fact that the parties had stipulated in the divorce action that the children were domiciled in Wisconsin.

Since the Court’s ruling, it has been subjected to considerable debate and criticism.64 Its critics have lauded Justice Jackson’s

59. Id. at 818.
63. 345 U.S. 528 (1953).
64. See Brigitte M. Bodenheimer & Janet Neeley-Kvarme, Jurisdiction Over Child Custody and Adoption After Shaffer and Kulko, 12 U.C. DAVIS L. REV. 229 (1979); Brigitte M. Bodenheimer, The Uniform Child Custody Jurisdiction Act: A Legislative
dissenting opinion in which he stated in part:

Custody is viewed not with the idea of adjudicating rights in
the children, as if they were chattels, but rather with the idea of
making the best disposition possible for the welfare of the
children. To speak of a court’s “cutting off” a mother’s right
to custody of her children, as if it raised problems similar to
those involved in “cutting off” her rights in a plot of ground, is
to obliterate these obvious distinctions. Personal jurisdiction of
all parties to be affected by a proceeding is highly desirable, to
make certain that they have had valid notice and opportunity to
be heard. But the assumption that it overrides all other
considerations and in its absence a state is constitutionally
impotent to resolve questions of custody flies in the face of our
own cases.\footnote{Remedy for Children Caught in the Conflict of Laws, 22 Vand. L. Rev. 1207, 1232-33 (1969).}

Justice Frankfurter, in a concurring opinion, noted that although
Ohio was not required to give full faith and credit to the Wisconsin order,
the due process clause did not prohibit Ohio from recognizing it “as a
matter of local law” or comity.\footnote{Id. at 535-36 (Frankfurter, J., concurring).}

The Second Restatement of Conflict of

\textit{Laws} accepts the Frankfurter interpretation of \textit{May v. Anderson} as
authoritative.\footnote{See RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 79 cmt. c.}

While there is authority to the contrary, a majority of courts
considering this question appear to have rejected the plurality opinion in
\textit{May v. Anderson} and have accepted the status exception when
considering child custody issues where personal jurisdiction cannot be
obtained over one of the parties. The state courts considering the issue
have held that the state having the most significant connections with the
child and his family will be permitted to make a custody adjudication in
the absence of personal jurisdiction over a parent who does not reside in
the forum state.\footnote{See McArthur v. Superior Court, 1 Cal. Rptr. 2d 296, 298 (Cal. Dist. Ct. App. 1991) (ruling that significant connection jurisdiction continues in the rendering state until the child and all parties have moved away); \textit{In re Marriage of Leonard}, 175 Cal. Rptr. 903, 912 (Cal. Ct. App. 1981) (holding that personal jurisdiction over the out-of-state parent is not required to make a binding custody determination); Burton v. Bishop, 269 S.E.2d 417, 417-18 (Ga. 1980) (holding that under the Uniform Child Custody Jurisdiction Act (UCCJA), Georgia courts must recognize an Ohio custody decree despite the absence of personal jurisdiction over an out-of-state parent); Yearta v. Scroggins, 268 S.E.2d 151, 153 (Ga. 1980) (noting that the public policy of the state is to recognize child


\textit{Id.} at 535-36 (Frankfurter, J., concurring).

\textit{See} RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 79 cmt. c.
Tennessee rejected *May v. Anderson* on the ground that subsequent Supreme Court decisions have “abolished the distinctions between in rem and in personam” jurisdiction, and “recognized that exceptions can be made to the ‘minimum contacts’ standard” in “status” cases, such as child custody decisions.\(^6^9\) The court declared that a state “having the most significant connections with the child and his family will be permitted to make a custody adjudication even in the absence of personal jurisdiction over a parent who does not reside in the forum state.”\(^7^0\)

A Texas court, taking essentially the same view as Tennessee, explained that:

> [U]nlike adjudications of child support and visitation expense, custody determinations are status adjudications not dependent upon personal jurisdiction over the parents. Generally, a family relationship is among those matters in which the forum state has such a strong interest that its courts may reasonably make an adjudication affecting that relationship even though one of the parties to the relationship may have had no personal contacts with the forum state.\(^7^1\)

The status exception has been extended in some jurisdictions to custody decrees where there is no personal jurisdiction under principles of comity: *In re Marriage of Hudson*, 434 N.E.2d 107, 117-18 (Ind. Ct. App. 1982) (recognizing that custody is an adjudication of a child’s status, which means that a court may adjudicate the matter without acquiring personal jurisdiction); *Genoe v. Genoe*, 500 A.2d 3, 8 (N.J. Super. Ct. App. Div. 1985) (noting that the status of a child may be decided quasi in rem pursuant to the UCCJA and, therefore, custody and visitation orders can be made without regard to either parent’s personal jurisdiction); *Hart v. Hart*, 327 S.E.2d 631, 635-37 (N.C. Ct. App. 1985) (finding a legitimate basis for determining custody based on the significant connection between the children and the state and noting that personal jurisdiction over the nonresident parent is not a UCCJA requirement); *In re Matter of O’Connor*, 690 P.2d 1095, 1097 (Or. Ct. App. 1984) (noting that a court may determine a custody dispute against a nonresident spouse over whom it cannot exercise personal jurisdiction); *McAtee v. McAtee*, 323 S.E.2d 611, 616-17 (W. Va. 1984) (noting that the status exception permits the court to adjudicate custody without obtaining personal jurisdiction over both parents).


\(^7^0\) *Fernandez*, 1986 WL 7935, at *2* (citation omitted). *See also* Roderick v. Roderick, 776 S.W.2d 533, 535-36 (Tenn. Ct. App. 1989) (noting that the UCCJA permits the courts of the state with the most significant contacts to make custody determinations even without personal jurisdiction over the nonresident parent).

other family law areas including parental termination proceedings. The Oklahoma Supreme Court applied the status rationale when deciding a nonconsensual stepparent adoption dispute in *In re Adoption of J.L.H.* There, the children’s natural father and stepmother petitioned the court for the nonconsensual adoption of the father’s children by the stepmother on the ground that their mother, a nonresident of Oklahoma, willfully failed to pay child support. Finally, the theory has been applied by a majority of the Iowa Supreme Court to sustain the issuance of a protective order without first obtaining personal jurisdiction over a defendant.

Minnesota has applied the status rationale in interstate custody disputes, which is consistent with a majority of jurisdictions that have recently examined the issue. For example, in *Willmore v. Willmore*, the court held that in the absence of a conflicting court order from another jurisdiction, a wife, who was a Minnesota resident and who established domicile of her two children in Minnesota, could invoke the jurisdiction of Minnesota courts to determine custody of the children who were forcibly removed from the state by her estranged husband. The court said it possessed this power despite the fact that the ex-husband was a nonresident, the wife had been unable to secure personal service upon him, and she did not know the precise address of the husband and children who were not in the jurisdiction.

It is interesting to note that in an older decision, *State ex rel. Larson v. Larson*, the court concluded that proceedings to determine the custody of a minor child are in the nature of an action in rem, with the res being the status of the minor. It stated that only the court of the state

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72. See *In re Appeal in Maricopa County, Juvenile Action No. JS-734*, 543 P.2d 454, 459-60 (Ariz. Ct. App. 1975) (concluding that the state acting in its parens patriae capacity is justified in providing for effective termination proceedings, even in the absence of in personam jurisdiction over a non-consenting parent); *In re Interest of M.L.K.*, 768 P.2d 316, 319-20 (Kan. Ct. App. 1989) (determining that termination of parental rights is analogous to the termination of a marriage relationship and, therefore, is within the “status exception” to the minimum contacts rule); *Wenz v. Schwartz*, 598 P.2d 1086, 1092 (Mont. 1979) (concluding personal jurisdiction over a parent is not necessary in order to terminate parental rights, without specifically discussing status exception); *In re Adoption of Copeland*, 43 S.W.3d 483, 487 (Tenn. Ct. App. 2000) (relying on the status exception in parental rights termination proceeding against a father in prison); *In re Interest of A.E.H.*, 468 N.W.2d 190, 198-200 (Wis. 1991) (focusing on child’s contacts with the state in order to terminate parental rights).

73. 737 P.2d 915 (Okla. 1987).


75. 273 Minn. 537, 143 N.W.2d 630 (1966).

76. 190 Minn. 489, 252 N.W. 329 (1934).
where the minor is domiciled possesses the power to fix or change that status.

In *Johnson v. Murray*, a recent unpublished decision, the Minnesota Court of Appeals, in dictum, discussed the status principle and its application to a custody dispute. It observed:

> Although we hold that the district court has personal jurisdiction over respondent, we note that under the Act, personal jurisdiction over a contestant outside the state may not be required for a court to determine the custody status of a child. See, e.g., In re Marriage of Bueche, 550 N.E.2d 48, 51 (Ill. App. 1990) (stating that personal jurisdiction over either parent is unnecessary for district court to issue custody order under UCCJA as long as jurisdictional requirements of Act are met); In re Marriage of Hudson, 434 N.E.2d 107, 118 (Ind. App. 1982) (stating that “in personam jurisdiction is not required under the Uniform Act”) (citations omitted). Because a custody determination is, in effect, an adjudication of the child’s status, courts have adjudicated custody under the Act without acquiring personal jurisdiction over absent contestants. In re Marriage of Hudson, 434 N.E.2d at 117. The Act requires, however, that contestants outside this state be given reasonable notice and an opportunity to be heard in the custody proceeding. Minn. Stat. § 518A.04 (1998); Minn. Stat. § 518A.05, subd. 1 (1998).

When the Minnesota Supreme Court later reversed *Johnson v. Murray*, it did not consider the question of personal jurisdiction. Rather, it focused exclusively on the Uniform Custody Jurisdiction and Enforcement Act and its application to the facts of the dispute.

In conclusion, it appears that Minnesota has cautiously adopted the status theory in the area of custody disputes and, in doing so, has aligned itself with a majority of the courts in the nation on that issue. It has not, however, squarely discussed the potential implications of *May v. Anderson*—which would be informative and useful.

### X. PERSONAL JURISDICTION—TRADITIONAL VIEW

Unlike subject matter jurisdiction, which can never be waived, personal jurisdiction may be granted by the consent of the parties or

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78. Id. at *3 (footnotes omitted).
79. 648 N.W.2d 664 (Minn. 2002).
waived through inaction. The distinction between subject matter and personal jurisdiction rests on the characterization of personal jurisdiction as a matter of individual liberty rather than as a statutorily defined limitation on a court’s power. The United States Supreme Court has stated that:

The requirement that a court have personal jurisdiction flows not from Art. III, but from the Due Process Clause. The personal jurisdiction requirement recognizes and protects an individual liberty interest. It represents a restriction on judicial power not as a matter of sovereignty, but as a matter of individual liberty . . . . Because the requirement of personal jurisdiction represents first of all an individual right, it can, like other such rights, be waived.

Service within the forum. A long-standing principle is that a person becomes subject to personal jurisdiction when served with legal process while within the forum state. This applies even if the person served is an out-of-state resident who is only briefly within the forum state.

The traditional view of personal jurisdiction and service within the forum was discussed extensively in Burnham v. Superior Court. In that case, the wife brought a divorce action in California and served her husband with divorce papers when he visited their children in that state. The Court ruled that his physical presence within the state conferred personal jurisdiction over him—no additional “minimum contacts” were required.

Justice Scalia, writing for a plurality of four, declared that “jurisdiction based on physical presence alone constitutes due process because it is one of the continuing traditions of our legal system that define the due process standard of ‘traditional notions of fair play and substantial justice.’” Three other justices concurred in an opinion filed by Justice Brennan. In their view, tradition alone was not dispositive; they would judge the constitutionality of in-state service on a nonresident by examining contemporary notions of due process. However, the

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80. See Huhn v. Foley Bros., 221 Minn. 279, 286, 22 N.W.2d 3, 8 (1946).
84. Id.
85. Id.
86. See id. at 628-32 (Brennan, J., concurring).
justices ultimately concluded, “as a rule the exercise of personal jurisdiction over a defendant based on his voluntary presence in the forum will satisfy the requirements of due process.” They reasoned that by visiting the forum state, a defendant avails himself of significant benefits, such as the protection of his health and safety. Justice Stevens joined neither Justice Scalia’s nor Justice Brennan’s opinion, but concurred in the judgment based on considerations of history, fairness and common sense.

Minnesota’s application of personal service within its borders is consistent with the views expressed in Burnham. For example, in In re Marriage of Calhoun v. Rookstool, the ex-husband came to Minnesota to pick up his child for visitation and was personally served with his ex-wife’s motion to modify child support. When challenging the exercise of personal jurisdiction, he attempted to distinguish Burnham on the ground that it applied only to service of a summons and complaint or petition and not to parties served with motion papers. In rejecting his claim, the court viewed Burnham as supporting the establishment of personal jurisdiction over him. There are no apparent strong public policy reasons for changing Minnesota’s view in this area.

XI. WAIVING PERSONAL JURISDICTION

General rule. As a general rule, a Minnesota district court may exercise personal jurisdiction over a nonresident if the individual submits to jurisdiction by consenting; entering a general appearance; or by filing a responsive document, which effectively waives any contest to personal jurisdiction. The defense of personal jurisdiction is also deemed waived if not raised as a defense, made by motion, or included in a responsive pleading. 87

87. Id. at 639.
88. See id. at 640.
90. Id. at *1.
91. Id. at *2.
92. Id.
93. See MINN. R. CIV. P. 12.08(a) (1)-(2). See also Majestic Inc. v. Berry, 593 N.W.2d 251, 258 (Minn. Ct. App. 1999). In addition, Rule 12.08 does not “preclude waiver by implication.” Patterson v. Wu Family Corp., 608 N.W.2d 863, 868 (Minn. 2000) (citation omitted). “[D]efendant waives the defense of insufficient service of process, even though asserted by answer, by affirmatively invoking the jurisdiction of the district court to obtain partial summary judgment without earlier or simultaneously moving to dismiss the complaint for insufficient service of process.” Id. at 864 (footnote omitted). It has long been the rule “that a party may, by consent, give jurisdiction over
Counterclaim. The general rule applied to counterclaims is that when a party asserts a counterclaim, the party making the assertion automatically waives any claim that the court lacks personal jurisdiction. The waiver theory rests on the view that when the counterclaim is asserted, the party voluntarily invokes the power of the court on the party’s own behalf. Therefore, the party’s conduct provides the court with jurisdiction. Courts also reason that it would be unsatisfactory to allow a defendant to challenge personal jurisdiction while seeking recovery on a counterclaim. Moreover, it is thought unfair for a defendant to bind the adverse party to a result without being bound if the result proved unsatisfactory. To a limited extent, this rule of waiver has been modified by Minnesota Rule of Civil Procedure 12.02.

Minnesota Rules of Civil Procedure declare that “[n]o defense . . . is waived by being joined with one or more defenses in a responsive pleading or motion.” The Rules also declare that “[a] party may also state as many separate claims or defenses as the party has regardless of consistency.” Because of this language, the mere assertion of a counterclaim should no longer automatically result in a personal jurisdictional waiver. However, the responding party must act quickly to preserve a personal jurisdiction challenge after asserting a counterclaim.

Failure to promptly challenge personal jurisdiction after asserting a counterclaim may result in a finding that the party has waived the
imperfection. A party who fails to act quickly may be viewed as demonstrating a willingness to “invoke[] the power of the court in his own behalf.”99 As a consequence of the party’s inaction, he or she is viewed as waiving the jurisdictional defense and having forfeited the flexibility of modern pleading recognized by the court.100

Crossclaims. In Johnson Bros. Corp. v. Arrowhead Co.,101 the court applied the above analysis to crossclaims and concluded that the mere assertion of a crossclaim “does not [automatically] waive a properly raised jurisdictional defense.”102

Discovery. A party who properly challenges the court’s jurisdiction does not waive that defense by subsequent participation in the discovery process.103

Custody Modification Actions. Under certain conditions, a nonresident who brings a child custody modification motion in Minnesota is not subject to a court’s power to hear other actions such as child support. For example, in Ferguson v. Ferguson104 the court held that the ex-husband did not consent to Minnesota’s exercise of personal jurisdiction over him despite his efforts to seek assistance from its courts on several separate occasions.105

The dispute involved a court battle between a financially destitute mother, who had custody of the couple’s two children, and her ex-husband, a well-to-do Montana physician. The mother left Montana for Minnesota several years earlier in violation of a Montana court order. After she left Montana, her ex-husband successfully brought two change-of-custody motions and obtained an ex parte motion regarding visitation in Minnesota. He also appeared at a hearing in Minnesota where he successfully defended the ex parte action. Both the trial judge and the Minnesota Court of Appeals rejected the mother’s argument that by his behavior he had consented to Minnesota’s exercise of jurisdiction over him. The court of appeals observed:

Ferguson’s principal contention appears to be that J. Paul Ferguson consented to personal jurisdiction of the Minnesota

99. See Morehart, 149 Minn. at 57, 182 N.W. at 724 (citations omitted).
100. Federal-Hoffman, Inc., 549 N.W.2d at 95-96.
102. Id. at 163.
104. 411 N.W.2d 238 (Minn. Ct. App. 1987).
105. Id. at 239-41.
courts by bringing motions involving custody and visitation matters. We recognize that the requirement of personal jurisdiction is an individual right which can be waived. However, J. Paul Ferguson did not choose to avail himself of the Minnesota courts; he was forced to do so by the fact that Ila Ferguson had moved to Minnesota with the children in violation of a court order, which resulted in Minnesota gaining custody jurisdiction as the “home state” of the children. Accordingly, he had no choice but to appear in the Minnesota courts to enforce his visitation rights. See Minn. Stat. § 518A.02(b) (1986) (custody matters include visitation rights).106

As a practical matter, the issue of modifying custody is now controlled by the UCCJEA and the PKPA. Whether Minnesota will reject finding jurisdiction in future cases because of parental misconduct is problematic.

XII. PERSONAL JURISDICTION: SPOUSE’S RESIDENCE

Minnesota courts have held in several older decisions that a wife’s domicile is that of her husband’s.107 The court viewed a husband “as head of the family, [therefore] it is for the husband to determine and fix the domicile of the family, including that of the wife . . . .”108 A wife could establish a separate domicile only if her husband failed to establish one for her.109 However, this outmoded view is no longer recognized.

For example, in Tureson v. Tureson,110 the court recognized that for the purpose of creating a jurisdictional basis for divorce, a wife may establish and maintain a residence or domicile separate from that of her husband during the marriage.111 Jones v. Jones112 ended any speculation about this point.

XIII. PERSONAL JURISDICTION: CHILD’S DOMICILE

Because children are legally incapable of forming the intent

106. Id. at 240 (citations omitted).
108. Kramer v. Lamb, 84 Minn. 468, 471, 87 N.W. 1024, 1025-26 (1901) (citing Williams v. Moody, 35 Minn. 280, 28 N.W. 510 (1886)).
109. See Gussman v. Rogers, 190 Minn. 153, 157, 251 N.W. 18, 19 (1933).
110. 281 Minn. 107, 160 N.W.2d 552 (1968).
111. See id.
necessary to establish a domicile, they take the same domicile as their parents.\textsuperscript{113} If a child is born out-of-wedlock, the child takes the domicile of his or her mother.\textsuperscript{114}

XIV. PERSONAL JURISDICTION: PRETRIAL BURDEN

When a defendant challenges personal jurisdiction at the pretrial stage, the burden shifts to the plaintiff to make a prima facie showing of minimum contacts through its complaint and supporting evidence, “which will be taken as true.”\textsuperscript{115} In questionable cases, doubt is resolved in favor of retaining jurisdiction.\textsuperscript{116} An order denying a pretrial motion for dismissal based upon a lack of personal jurisdiction is “appealable as a matter of right.”\textsuperscript{117}

XV. CONFLICT OF LAW

When a couple marries in one state, but divorce in Minnesota, Minnesota law normally applies.\textsuperscript{118}

XVI. SPECIAL SERVICE OF PROCESS PROVISIONS

In order to increase the possibility of gaining jurisdiction over a party who is within the state but difficult to serve, the legislature promulgated Minnesota Statutes section 543.20, which states that:

[I]n addition to the methods of service of process provided in the rules of civil procedure, service of a summons, an order to show cause, or an order or judgment within this state may also be made upon an individual by delivering a copy to the individual personally at the individual’s place of employment or at a post-secondary education institution in which the individual is enrolled. The employer shall make the individual available for the purpose of delivering a copy. The post-secondary education institution must make the individual’s class schedule available to the process server or make the

\textsuperscript{113} See In re Pratt, 219 Minn. 414, 421, 18 N.W.2d 147, 151-52 (1945).
\textsuperscript{114} Id.
\textsuperscript{116} Hardrives, 307 Minn. at 296, 240 N.W.2d at 818.
\textsuperscript{118} See, e.g., DeLa Rosa v. DeLa Rosa, 309 N.W.2d 755, 756 n.1 (Minn. 1981).
individual available for the purpose of delivering a copy. No employer or post-secondary education institution shall deny a process server admittance to the employer’s or post-secondary education institution’s premises for the purpose of making service under this section.119

Service of process must be made personally on the individual. The statute applies to an action for dissolution, annulment, legal separation, or a proceeding under the Parentage Act. It can be used in actions under both Minnesota Statutes section 256.87 and the Uniform Interstate Family Support Act (UIFSA)120 and for contempt of court for failure to pay child support. Other uses include service of petitions under the Domestic Abuse Act and motions, orders and judgments for the payment of child support, should a court order personal service of them.121

An employer may not discharge or otherwise discipline an employee, nor shall a post-secondary education institution dismiss or discipline a student as a result of service under this section.122

XVII. LONG-ARM STATUTE—GENERAL

When a court considers exercising jurisdiction over a nonresident, two requirements must be met. First, the language placed by the legislature in a long-arm statute must be satisfied.123 Second, “minimum

119. MINN. STAT. § 543.20, subd. 1 (2002).
120. MINN. STAT. §§ 518C.101-.902 (2002).
121. MINN. STAT. § 543.20, subd. 2 (2002).
122. § 543.20, subd. 1.
123. See generally MINN. STAT. § 543.19 (2002), which reads:

543.19. Personal jurisdiction over nonresidents
Subdivision 1. As to a cause of action arising from any acts enumerated in this subdivision, a court of this state with jurisdiction of the subject matter may exercise personal jurisdiction over any foreign corporation or any nonresident individual, or the individual’s personal representative, in the same manner as if it were a domestic corporation or the individual were a resident of this state. This section applies if, in person or through an agent, the foreign corporation or nonresident individual: (a) Owns, uses, or possesses any real or personal property situated in this state, or (b) Transacts any business within the state, or (c) Commits any act in Minnesota causing injury or property damage, or (d) Commits any act outside Minnesota causing injury or property damage in Minnesota, subject to the following exceptions when no jurisdiction shall be found: (1) Minnesota has no substantial interest in providing a forum; or (2) the burden placed on the defendant by being brought under the state’s jurisdiction would violate fairness and substantial justice; or (3) the cause of action lies in defamation or privacy. Subd. 2. The service of process on any person who is subject to the jurisdiction of the courts of this state, as provided in this section, may be
contacts” must exist between the defendant and Minnesota in order to satisfy due process—\(^{124}\)—that is, there must be sufficient contacts between the defendant and Minnesota to satisfy “traditional notions of fair play and substantial justice.”

The advent and growth of long-arm statutes represents an attempt by Minnesota to provide a litigation forum for the convenience of its own citizens at the expense of citizens of other states. The statutes are an outgrowth of a mobile, industrialized society that has reduced the time and difficulty once associated with travel from Minnesota to other states in the United States.

The language used by legislatures when drafting long-arm statutes varies from state to state, and when initially encountered it may appear that the legislature has ignored domestic matters.\(^{126}\) However, state courts have found creative ways to construe the statutes to encompass domestic disputes. They have seized upon phrases such as “transacting business” or “tortious conduct,” and found them applicable to domestic disputes. For example, in *Prybolsky v. Prybolsky*,\(^ {127}\) a Delaware family court held that it had acquired jurisdiction under that state’s long-arm statute over a nonresident husband involved in a domestic dispute by means of the “doing business” language in its long-arm statute.\(^ {128}\) It reasoned that marriage is a contract and that support and other rights springing from that contract have financial and business implications.\(^ {129}\) Therefore, the phrase “doing business” encompassed a marital


\(^{126}\) See, e.g., supra note 123, which sets out Minnesota’s general long-arm statute.


\(^{128}\) *Id.* at 807.

\(^{129}\) *Id.*
relationship. 130

The phrase “tortious act,” which is common in long-arm statutes, has been applied in several jurisdictions to encompass domestic matters. 131 Minnesota has determined that civil proceedings to establish paternity involve “tortious conduct” within the meaning of the long-arm statute, 132 and has given a broad application to this phrase. For example, in *Hughes ex rel. Praul v. Cole*, 133 the court held that the long-arm statute involved “tortious conduct” and reached a nonresident father because of the effects of physical and emotional abuse occurring in Minnesota despite the fact the alleged abuse occurred in Pennsylvania. 134

There are some indications from opinions involving Minnesota’s long-arm statute that whether a court will consider applying it to a particular situation may depend on the court’s focus; for example, whether it concentrates on the injury to the victim or the conduct of the parents. For example, in *Ferguson v. Ferguson*, 135 discussed earlier in this article, the court was unable to find a tort having been committed within Minnesota where the ex-wife brought a child support modification action in the state. The court rested its decision primarily on the conduct of the custodial mother who had fled Montana in violation of a court order years earlier—it did not focus on the damage suffered to the child as a result of a lack of child support.

In a subsequent decision, *Impola v. Impola*, 136 the court suggested that damages for the purposes of long-arm jurisdiction suffered by a child because of non-support turned on whether the child was born in Minnesota. The court stated:

> Although paternity has been denounced a tort within the

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130. *Id.*


132. Ulmer v. O’Malley, 307 N.W.2d 775, 777 (Minn.1981). *See also* Nelson, 298 Minn. at 442, 216 N.W.2d at 143.

133. 572 N.W.2d 747 (Minn. Ct. App. 1997).

134. *See id.* at 750. *See also* Howells v. McKibben, 281 N.W.2d 154, 156-57 (Minn. 1979) (holding the failure of a father who resides in Wisconsin to pay child support to his child in Minnesota is tortious conduct, subjecting him to personal jurisdiction in Minnesota).

135. 411 N.W.2d 238 (Minn. Ct. App. 1987).

scope of the long-arm statute, we have drawn a distinction between paternity actions and actions for dissolution or for modification of child support which do not involve a complainant’s injury within the State of Minnesota. In *Mahoney*, this court held that statutory authority under the long-arm statute did not extend to reach a nonresident respondent in a dissolution action such that the trial court had jurisdiction to render judgment with respect to spousal maintenance, property settlement or attorney fees. Similarly, in *Ferguson v. Ferguson*, we held the long-arm statute did not provide statutory authority to reach a nonresident parent to modify a child support order.

However, we believe the facts of the instant action compel the trial court to assume jurisdiction. In neither *Mahoney* nor *Ferguson* did the complainant sufficiently establish her injury within the state to support the trial court’s exercise of jurisdiction. In contrast, the conduct giving rise to MI’s birth and appellant’s injury took place while respondent was a resident of Minnesota and occurred at all times within the state. Of critical importance is that the conception took place in Minnesota, that respondent acknowledged paternity within the state, and that respondent was a resident when the child was conceived, during the pregnancy, and at times thereafter.

However, the injury to a child in terms of non-support is the same whether it is born inside or outside of Minnesota—the key issue is whether the child resides in Minnesota. The distinction made by the court appears unwarranted.

In *H.A.W. v. Manuel*, the Minnesota Court of Appeals focused on the injury. There, Minnesota children were allegedly assaulted by a participant in a cultural exchange program outside of the state and the children sought recovery within the state. The court observed that the injury to the Minnesota children and the consent signed by a defendant met the requirements of Minnesota’s long-arm statute, and stated:

Minnesota’s statutes include a “long arm” statute which authorizes jurisdiction over any nonresident who “[c]ommits any act outside of Minnesota causing injury or property damage in Minnesota,” subject to several exceptions. Minn.

137. *Id.* at 298-99 (full citations omitted).
139. *Id.* at 11-12.
140. *See id.* at 12.
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Stat. § 543.19, subd. 1(d) (1992) . . . .

In this instance, if we assume the facts alleged by respondents, the long-arm statute applies. According to these facts, appellant committed an act outside of Minnesota; he signed consent forms which allowed his son to visit here. This fulfills the first half of section 543.19, subd. 1(d). In addition, appellant’s act allegedly caused injuries to respondents’ children in Minnesota; if appellant had not signed the forms, his son could not have abused respondents’ children. This appears to satisfy the second half of section 543.19, subd. 1(d). Thus, based on the given facts, respondents’ claim passes the first test and we apply the constitutional analysis.141

Paternity actions raise troubling issues regarding application of the language in Minnesota’s general long-arm statute. Minnesota has held that failure to provide child support is sufficient to constitute a “tortious act” within the meaning of its long-arm statute.142 It rejected the thesis that jurisdiction in paternity proceedings was not contemplated by the long-arm statute because no such cause of action was recognized as a tort at common law and because no “injury or property damage” is involved.143

Several jurisdictions that have examined this issue disagree with Minnesota.144 They accept the argument that no tortious conduct may occur until the alleged tortfeasor has been established as the child’s father and then assigned a duty of support. They reason that until the duty of support is established, no tort can be committed; therefore, “[t]o saddle a defendant with the burden of child support before paternity has been established would be both illogical and unjust.”145 Furthermore, a

141. Id. at 12.
143. Id. at 440, 216 N.W.2d at 142.
court may not, as an initial matter, assume a defendant is the father of a child so that the matter of nonsupport can be adjudicated, and upon finding nonsupport, convert a failure to pay child support into “tortious conduct which then justifies adjudicating the matter.”

In conclusion, the application of Minnesota’s long-arm statute appears to turn on whether the court focuses squarely on the injury to a child or the conduct of a parent. This distinction should be reexamined in light of a strong public policy to protect children, which would always focus on the damage to the child. Whether the long-arm statute should continue to apply to paternity actions is another intriguing question that remains open for Minnesota courts to revisit.

XVIII. DUE PROCESS BARRIERS TO THE EXERCISE OF PERSONAL JURISDICTION

Although Minnesota’s general long-arm statute has been construed as applicable to domestic disputes, the United States Constitution may nevertheless prevent its application. “The Due Process Clause of the Fourteenth Amendment operates as a limitation on the exercise of jurisdiction of state courts to enter judgments affecting the rights or interests of nonresident defendants.” 147 Although the language in a long-arm statute may give a state court power to bring an out-of-state defendant before it, the question remains whether application of the statute exceeds the constitutional limitations imposed on the state by the Fourteenth Amendment. A court must be satisfied that application of the long-arm statute meets the “minimum contacts” test. In *International Shoe Co. v. Washington*, 148 the following due process test was established:

> 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.” 149

In *Kulko v. California*, the court applied this test to an effort made by an ex-wife located in California to increase a child support award when her ex-husband lived in New York.150 The facts briefly follow.

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146. *Id.*
149. *Id.* at 316 (emphasis added) (citations omitted).
150. 436 U.S. at 92.
After their separation, the ex-husband remained in New York, the state of marital domicile, and the ex-wife moved to California. The couple executed a separation agreement in New York that provided that the parties’ two children were to reside with Mr. Kulko in New York during the school year and with their mother during their Christmas, Easter, and summer vacations. Mr. Kulko also agreed to pay $3000 a year in child support. The terms of this agreement were later incorporated into a Haitian divorce decree obtained by Mrs. Kulko.

Subsequently, the parties’ daughter expressed a desire to live full time with her mother. Mr. Kulko acquiesced and paid the child’s airfare to California. A few years later, the couple’s son expressed to his mother a desire to live with her. Without Mr. Kulko’s knowledge, Mrs. Kulko sent her son a plane ticket, which he used to join his mother and sister in California.

With both children now residing with her in California, Mrs. Kulko filed suit in that state to obtain increased child support. Mr. Kulko resisted on the ground that he had insufficient contacts to warrant the California court’s assertion of personal jurisdiction over him. The California Supreme Court rejected this argument, reasoning that by sending his daughter to reside permanently in California, he had purposely availed himself of the benefits and protections of the laws of that state.

The United States Supreme Court rejected this argument, stating that the mere fact that Mr. Kulko “acquiesced” in the desire of his daughter to live with her mother was not a sufficient contact with California to warrant imposition of the unreasonable burden of litigating a child support action there. The Court observed that there was no other activity that would bring Mr. Kulko in contact with California. It also stated that the former wife was not without remedy, as she could
initiate a proceeding under the Uniform Reciprocal Enforcement of Support Act “and have its merits adjudicated in the State of the alleged obligor’s residence, without either party’s having to leave his or her own State.”

Minnesota follows *Kulko* but applies a five-part test to help determine whether due process bars application of its long-arm statutes. The first three factors of that test are of primary consideration. The factors are:

1. the quantity of the defendant’s contacts with the state;
2. the nature and quality of the contacts;
3. the connection of the cause of action with those contacts;
4. the interest of the state in providing a forum; and
5. convenience to the parties.

When evaluating the nature and quality of the contacts, a court must determine whether the respondent (defendant) “purposefully availed” itself of the benefits and protections of Minnesota law. Requiring purposeful availment ensures that a respondent (defendant) will not have to appear in a jurisdiction solely because of “attenuated contacts” or the “unilateral activity of another party or third person.” Minnesota has said that the reach of Minnesota’s long-arm jurisdiction should not be such that “anyone who deals with a Minnesota resident in any way... can be brought into the Minnesota courts to respond to a suit.”

Purposeful availment may be established through the “stream-of-commerce theory,” whereby a state asserts personal jurisdiction over a business if that business “delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum state.” However, “stream of commerce” is not limited to

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164. *Id.* at 99.
166. *Id.*
167. *Id.* at 907.
169. *Id.*
commercial activity, and includes “any purposeful acts by an individual, whether personal, private, or commercial.”

Minnesota’s personal jurisdiction decisions in the family law arena following *Kulko v. California* appear occasionally inconsistent. For example, in *H.A.W. v. Manuel*, discussed earlier in relation to construction of Minnesota’s long-arm statute, the court found that there were not sufficient minimum contacts to satisfy due process where the defendant’s only contact with Minnesota was when he consented to his son’s participation in a cultural exchange program. Observed the court:

> The facts of the current case indicate a far more attenuated contact than that found in Kulko. Unlike Kulko, appellant has never been in this country, let alone the forum state. In addition, appellant consented only to a short visit by his son, not to permanent residence. Thus, the reasoning of Kulko applies with even greater force here. Appellant’s consent to his son’s desire to participate in a cultural exchange does not amount to purposeful availment of the benefits and protection of Minnesota law and does not constitute a sufficient contact to justify jurisdiction in this state.

In *Ulmer v. O'Malley*, the court refused to extend jurisdiction to an alleged out-of-state father of a child born out of wedlock. It held that due process prevented Minnesota from exercising personal jurisdiction because the putative father’s relationship with the child’s mother had occurred entirely in South Dakota, the child was conceived there, and the mother moved to Minnesota when she was approximately seven months pregnant. The putative father had neither visited nor called the mother in Minnesota and his only contacts with Minnesota consisted of his attorney’s responses to adoption agency’s requests for cooperation.

In another Minnesota decision, *Sherburne County ex rel. Pouliet v.*
Kennedy, the alleged father, a Montana resident, engaged in a single act of consensual intercourse with the mother, a Minnesota citizen, during a visit to Minnesota. Following the birth of a child in Minnesota, an action was begun here against the alleged father to determine responsibility for medical expenses related to the birth and to establish child support. The Minnesota Court of Appeals held that while the long-arm statute applied, neither the nature nor the quality of the contact satisfied due process.

In Brown County Family Service Center v. Miner, the alleged father of a child born to a woman in Minnesota had never physically been within the state. However, he sent letters to a Minnesota address and also made a few telephone calls to Minnesota. The Court of Appeals held that these contacts were not sufficient to give Minnesota personal jurisdiction over him as they failed to satisfy the minimum contacts tests. The court noted that the father could not have anticipated being required to defend a paternity action in Minnesota based on a few phone calls and letters sent to Minnesota addresses. Moreover, the contacts were “not directly connected to the underlying action and did not occur until eight months after the contact,” which led to the paternity action.

In contrast to these decisions is Hughs ex rel. Praul v. Cole, which was discussed earlier in regard to Minnesota’s long-arm statute. In Cole, the mother sought an order of protection on behalf of a child, who was allegedly physically abused by his nonresident father during out-of-state visits. The Minnesota Court of Appeals held that personal jurisdiction could be asserted over a nonresident father consistent with due process based solely on child’s suffering the effects of abuse in Minnesota and minimum contacts associated with father’s relationship with his son.

180. 409 N.W.2d 907 (Minn. Ct. App. 1987), aff’d, 426 N.W.2d 866 (Minn. 1988).
181.  Id. at 908.
182.  Id.
183.  Id. at 909-10.
184. 419 N.W.2d 117 (Minn. Ct. App. 1988).
185.  Id. at 118.
186.  Id.
188.  Id.
189. 572 N.W.2d 747 (Minn. Ct. App. 1997).
190.  See supra note 132 and accompanying text.
Although one understands the concern courts have with situations such as those found in Cole, the reasoning supporting the proposition that personal jurisdiction can be exercised over the nonresident father is not particularly strong. For example, it is doubtful that a court would allow Minnesota to exercise personal jurisdiction over a nonresident where the nonresident and the Minnesota resident were involved in an auto accident in the nonresident’s state and the nonresident had no contact in Minnesota. However, because the action in Cole involved child abuse, the court concluded there was jurisdiction, suggesting that jurisdiction may turn on the nature of the cause of action.

In contrast to Minnesota, California has held that a single sexual encounter between a citizen and an out-of-state citizen that results in a parentage claim provides sufficient minimum contacts to give its courts personal jurisdiction over the out-of-state citizen. For example, in County of Humboldt v. Harris a child was conceived when the plaintiff and father had intercourse in California in 1984. While the father admitted the sexual encounter, he maintained that since 1982 he had been a resident of Nevada and that California could not exercise personal jurisdiction over him. The California Court of Appeals disagreed. It observed that under Section 7007, a part of the Uniform Parentage Act, which is codified in California, that “[a] person who has sexual intercourse in this state thereby submits to the jurisdiction of the courts of this state as to an action brought under this part with respect to a child who may have been conceived by that act of intercourse.” It also observed that the sexual act imposed a substantial burden upon the plaintiff and, where the plaintiff is impecunious, upon the state. Furthermore, the court held that application of the statute was not barred by the due process clause. California’s reasoning appears more persuasive on this point than that of Minnesota—a single sexual encounter in Minnesota should subject the alleged putative father to an action to establish support in this state. This is an area that Minnesota should revisit.

192. Id. at 50.
193. Id. at 51.
194. Id.
195. Id. at 51-52.
196. Id. at 52.
197. Id.
XIX. UNIFORM INTERSTATE FAMILY SUPPORT ACT

Jurisdiction. The Uniform Interstate Family Support Act (UIFSA) generally applies to interstate child and spousal-support orders. Its purpose is to unify state laws relating to the establishment, enforcement, and modification of child support orders. A Minnesota court may exercise jurisdiction over a nonresident in an action to modify a support order if the individual submits to the jurisdiction of this state by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction. When a foreign support order exists, a Minnesota court may modify it only if it finds, among other things, that (1) the child, the obligee, and the obligor do not reside in the issuing state; and (2) the petitioner is a nonresident of Minnesota.

Continuing Jurisdiction. A Minnesota district court has continuing, exclusive jurisdiction over an existing child support order until all of the parties who are individuals have filed written consents with the court for a tribunal of another state to modify the order and assume continuing, exclusive jurisdiction. Minnesota may lose its continuing, exclusive jurisdiction with regard to prospective enforcement of an order issued in this state if the Minnesota child support order is modified by a tribunal of another state with substantially similar laws.

Long-arm Provisions. UIFSA also creates a domestic dispute long-arm statute, which gives state courts personal jurisdiction over a nonresident that is as broad as constitutionally permitted. The long-arm statute applies to both spousal and child support. Proponents of UIFSA contend that use of the long-arm statute would make initiation of a case easier, provide greater access to information about the status of the

198. MINN. STAT. § 518C (2002).
199. MINN. STAT. § 518C.301 (2002).
201. MINN. STAT. § 518C.201(2) (2002).
202. MINN. STAT. § 518C.611(a)(1)(i)-(ii); see Rivera v. Ramsey County, 615 N.W.2d 854, 858 (Minn. Ct. App. 2000) (stating that if neither of the parents nor the child resides in the state that issued an existing child-support order, a court in another state may modify a properly registered order).
203. MINN. STAT. § 518C.220(a) (2002).
204. See MINN. STAT. § 518C.205(c) (2002).
205. MINN. STAT. § 518C.201 (2002).
case, and give continuing, exclusive jurisdiction to only one state at any one time.

Where long-arm jurisdiction cannot be obtained, UIFSA creates a two-state proceeding to obtain support. Where long-arm jurisdiction cannot be obtained, UIFSA creates a two-state proceeding to obtain support.206 UIFSA has created special rules on evidence and provides assistance with discovery procedures where its long-arm provisions are utilized. It also attempts to identify the roles for a forum state tribunal and to set up a one-order system.

Stipulating Jurisdiction. Parties may not confer subject matter jurisdiction under the UIFSA on a Minnesota court by stipulation.207 However, under Minnesota Statutes section 518C.204, Minnesota possesses jurisdiction over a foreign support order if the parties do not reside in the issuing state, the petitioner is a nonresident seeking modification, and the respondent is subject to personal jurisdiction in Minnesota.208 Therefore, to exercise jurisdiction under this statute, one must establish whether section 518C.204(a) or section 518C.204(b) applies, and then apply the appropriate statutory provision to the facts.209

Registering an Order Under UIFSA. Minnesota allows the registration of a support order from another state “for enforcement.”210 Among the procedural prerequisites for registration is the filing of a

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206. MINN. STAT. § 518C.204 (2002).
207. Subject matter jurisdiction is conferred by law, not by stipulation. State ex rel. Farrington v. Rigg, 259 Minn. 483, 485, 107 N.W.2d 841, 842 (1961).
208. Minnesota law provides the following guidance concerning jurisdiction when there are simultaneous proceedings in another state:

(a) A tribunal of this state may exercise jurisdiction to establish a support order if the petition or comparable pleading is filed after a petition or comparable pleading is filed in another state only if:
(1) the petition or comparable pleading in this state is filed before the expiration of the time allowed in the other state for filing a responsive pleading challenging the exercise of jurisdiction by the other state;
(2) the contesting party timely challenges the exercise of jurisdiction in the other state; and
(3) if relevant, this state is the home state of the child.
(b) A tribunal of this state may not exercise jurisdiction to establish a support order if the petition or comparable pleading is filed before a petition or comparable pleading is filed in another state if:
(1) the petition or comparable pleading in the other state is filed before the expiration of the time allowed in this state for filing a responsive pleading challenging the exercise of jurisdiction by this state;
(2) the contesting party timely challenges the exercise of jurisdiction in this state; and
(3) if relevant, the other state is the home state of the child.

MINN. STAT. § 518C.204 (2002).
209. Id.
sworn or certified statement “showing the amount of any arrearage.”

What Constitutes a Petition? A request for registration of a foreign child support order is distinct from, and does not constitute, a “petition” for enforcement or modification, within the meaning of a UIFSA provision establishing when a Minnesota court may exercise jurisdiction to establish a support order after a petition or comparable pleading is filed in another state. If neither of the parents nor the child resides in the state that issued an existing child-support order, a court in another state may modify a properly registered order. UIFSA appears to be functioning quite well in Minnesota with no provisions needing imminent attention.

XX. UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT

Minnesota adopted the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) for all custody issues raised after Jan. 1, 2000. The uniform custody laws were established to resolve jurisdictional issues involving interstate child-custody disputes and must be interpreted accordingly.

Subject Matter Jurisdiction to Modify Custody Decision. A Minnesota court may modify another state’s custody determination if Minnesota is currently the child’s home state and the other state no longer has exclusive, continuing jurisdiction. Minnesota has approached the issue of modifying a foreign court’s custody ruling with caution. For example, in Schroeder v. Schroeder the court held that it lacked subject matter jurisdiction to modify a support order, and that the father did not waive his right to challenge the

213. See Rivera v. Ramsey County, 615 N.W.2d 854, 858 (Minn. Ct. App. 2000) (stating that a Minnesota court could modify a Puerto Rico order because Puerto Rico is no longer the child’s nor the parents’ state of residence, and consequently Puerto Rico no longer has continuing, exclusive jurisdiction); see also 28 U.S.C. § 1738B(i) (providing that a party seeking to modify in one state a child-support order issued in another state may only register the order for modification “[i]f there is no individual contestant or child residing in the issuing State”).
215. See Nazar v. Nazar, 505 N.W.2d 628, 636 (Minn. Ct. App. 1993) (noting purpose of UCCJEA as formerly codified under MINN. STAT. § 518A.01, subd. 1(a) (1992)).
216. MINN. STAT. § 518D.203 (2002).
district court’s decision finding jurisdiction to modify the order.\textsuperscript{218} At
the time of dissolution, the father was living in California and mother
was living in Minnesota.\textsuperscript{219} Pursuant to a stipulated order entered in
California, the “father was granted physical custody of the parties’ minor
child subject to the mother’s reasonable visitation and the mother was
required to pay child support.”\textsuperscript{220} “The child resided in California until
November 1999, when he refused to return to [his] father following a
visit with [his] mother in Minnesota.”\textsuperscript{221}

The mother subsequently filed a motion in Minnesota to modify the
California order.\textsuperscript{222} She asked for physical custody of the child and
termination of her support obligation.\textsuperscript{223} The father argued that
California had continuing exclusive subject matter jurisdiction and the
court of appeals agreed with him.\textsuperscript{224} The court observed that:

The UCCJEA provides that the state issuing a custody decree
will generally retain exclusive, continuing jurisdiction over the
decree as long as that state remains the residence of the
children or a parent. Minn. Stat. § 518D.202, .203(2); Cal.
Fam. Code § 3422. It is undisputed that father is still a resident
of California. The Minnesota court therefore lacks subject
matter jurisdiction to modify the California custody order.\textsuperscript{225}

The court also rejected the mother’s argument that the child’s father
had waived a challenge to Minnesota jurisdiction by failing to object to
the registration order.\textsuperscript{226} It reasoned that the “[f]ather could not confer
subject matter jurisdiction to the district court either by waiver or
consent.”\textsuperscript{227}

\emph{Home State Jurisdiction.} Minnesota has jurisdiction to modify an
out-of-state custody or visitation determination where Minnesota is
currently the home state of the custodial parent and the child or

\begin{itemize}
\item \textsuperscript{218} \textit{Id.} at 912.
\item \textsuperscript{219} \textit{Id.} at 911.
\item \textsuperscript{220} \textit{Id.}
\item \textsuperscript{221} \textit{Id.}
\item \textsuperscript{222} \textit{Id.}
\item \textsuperscript{223} \textit{Id.}
\item \textsuperscript{224} \textit{Id.} (citing MINN. STAT. § 518D (2002); CAL. FAM. CODE §§ 3400-25 (West 2002)).
\item \textsuperscript{225} \textit{Id.}
\item \textsuperscript{226} \textit{Id.} at 912.
\item \textsuperscript{227} \textit{Id.} See MINN. R. CIV. P. 12.08(c) “[w]henever it appears by suggestion of the
parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall
dismiss the action.” See also Cochrane v. Tudor Oaks Condo. Project, 529 N.W.2d 429, 432 (Minn. Ct. App. 1995) (“[L]ack of subject matter jurisdiction may be raised at any
time, including for the first time on appeal”) (citations omitted).
\end{itemize}
children. 228

Emergency Jurisdiction. Minnesota may exercise temporary emergency jurisdiction if a child is present in this state and has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse. 229 An unresolved issue involves whether emergency jurisdiction may be exercised by a Minnesota court upon a finding of abuse or mistreatment where the child is not present in the state. In Beier v. Beier, 230 the court held that a Minnesota court could not exercise emergency jurisdiction where the child was not present in Minnesota. 231 This decision was made under the predecessor to the UCCJEA 232 and some have suggested that the UCCJEA removed the dual requirement of presence in the state together with emergency circumstances. This argument will most likely not prevail, however, because of the language of the Parental Kidnapping Prevention Act (PKPA) directed at temporary emergency jurisdiction. 233 The PKPA states that a custody determination can be made by a state if it has jurisdiction under state law and the child is physically present in such [s]tate and (i) the child has been abandoned, or (ii) it is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse. 234 This language is clear and it preempts Minnesota from exercising emergency jurisdiction.

Exercising Jurisdiction over Visitation Issues. Under the UCCJEA, Minnesota can take jurisdiction over a visitation issue only if the foreign visitation order has been registered in a Minnesota court in accordance with the UCCJEA. 235 Other custody matters involving a foreign order should also not be considered absent proper registration under the

228. Stone v. Stone, 636 N.W.2d 594, 597 (Minn. Ct. App. 2001); see Minn. Stat. §§ 518D.102(h), .201(a)(1), .202 (2002) (providing Minnesota with jurisdiction to make a child-custody determination if Minnesota is the child’s home state, defined as the state where the child has lived for at least six consecutive months before commencement of proceedings).
229. Minn. Stat. § 518D.204(a) (2002); see Schmidt v. Schmidt, 436 N.W.2d 99, 104 (Minn. 1989) (stating “emergency” jurisdiction is available only where the child has been subjected to or threatened by abuse).
231. Id. at 55-56.
234. Id.
Continuing Jurisdiction. The UCCJEA provides that the state issuing a custody decree will generally retain exclusive, continuing jurisdiction over the decree as long as that state remains the residence of the children or a parent. The foreign court does not lose its jurisdiction over the matter merely because a party fails to challenge the registration of the judgment in Minnesota.

Personal Jurisdiction. A majority of jurisdictions that have considered the question have concluded that the UCCJEA’s rational scheme assigning default jurisdiction to a child’s home state does not require that state to have personal jurisdiction over both parents of the child in order to make a parental rights termination decision.

XXI. SUBJECT MATTER JURISDICTION—AMERICANS

The Indian Child Welfare Act of 1978 is an important jurisdictional statute. The ICWA §§ 191 and 195 provide tribal courts with exclusive jurisdiction over proceedings concerning an Indian child who resides or is domiciled on an Indian reservation. In *Mississippi Band of Choctaw Indians v. Holyfield*, the U.S. Supreme Court held that custody and adoption decisions involving Indian children born off an Indian reservation to parents who were domiciled on the reservation at the time of birth gave the tribe to which the parents belonged exclusive jurisdiction to decide those issues. Domicile was defined as physical presence with the intent to remain on the reservation. Minors will take the domicile of their parents because they are legally incapable of forming the requisite state-of-mind (intent) to create a domicile. The Court made it clear that parents could not defeat the intent of the ICWA absent changing their domicile.

Minnesota courts do not have jurisdiction over matters on Indian
reservations unless Congress has specifically granted such jurisdiction to
the state. 244 Public Law 280 eliminated most federal restrictions on state
court jurisdiction in paternity and child support cases involving one or
more Indians where state court jurisdiction does not interfere with Indian
self-governance. 245 The Federal Act authorizes state court assumption of
jurisdiction over civil causes of action where Indians are parties.

When Congress passed Public Law 280, it granted Minnesota
general jurisdiction over criminal and civil actions on Indian
reservations. 246 However, the Red Lake Indian Reservation was
explicitly excluded from this grant of general jurisdiction. 247

Despite the Red Lake Band’s unique status, Minnesota has subject
matter jurisdiction over persons normally under the jurisdiction of the
Band when they are off the reservation but within the state. 248 However,
in the absence of a compelling state interest, the state will not exercise its
jurisdictional authority over members of the Red Lake Band found off-
reservation when such action will undermine the Band’s efforts to
achieve effective self-government. 249

To illustrate this point, consider Desjarlait v. Desjarlait 250 where
Minnesota asserted subject matter jurisdiction over a custody suit
involving Indian parents. 251 The court gave three reasons for its
decision: (1) the tribal court relinquished jurisdiction over custody; (2)
the Indian father, who later claimed lack of state court jurisdiction,
initially commenced the dissolution matter in state court rather than tribal
court; and (3) the Indian mother and children resided off the
reservation. 252

244. In re K.K.S., 508 N.W.2d 813, 815 (Minn. Ct. App. 1993) (citing Red Lake
Band of Chippewa Indians v. State, 311 Minn. 241, 247, 48 N.W.2d 722, 726 (1976);
Sigana v. Bailey, 282 Minn. 367, 369, 164 N.W.2d 886, 888 (1960); see Recent Case,
Red Lake Band of Chippewa Indians v. State, 248 N.W.2d 722 (1976), 4 WM. MITCHELL
L. Rev. 454, 455-56 (1978)).
criminal jurisdiction); 28 U.S.C. § 1360 (1988) (granting civil jurisdiction)).
247. Id. (citing 18 U.S.C. § 1162(a) (1953); 28 U.S.C. § 1360(a) (1953)).
248. Id. (citing Red Lake Band, 311 Minn. at 247, 248 N.W.2d at 726).
249. Id. (citing State v. Red Lake DFL Comm., 303 N.W.2d 54, 55 (Minn. 1981)
(quoting Red Lake Band, 311 Minn. at 248, 248 N.W.2d at 727)).
251. Id. at 142-43.
252. Id.
In contrast, in *In re K.K.S.*, the court ruled it did not have subject matter jurisdiction to decide custody of minor children and supported its decision with three reasons: (1) the Red Lake Nation tribal court has exercised jurisdiction over the custody matter of the child, (2) the Indian mother had never submitted to the authority of a Minnesota court, and (3) the non-Indian father had subjected himself to the authority of the tribal court when he chose to live on the reservation with the child and its mother.

Minnesota’s interest in a custody dispute is not always overshadowed by tribal sovereignty—especially where the dispute occurs off the Indian reservation. Physical presence off the reservation and a compelling state interest in a child’s welfare may justify Minnesota exercising initial jurisdiction in a custody dispute between an Indian and non-Indian. Neither federal law nor public policy preempts state power over interparental child custody disputes where the Indian child and at least one parent reside off the reservation.

Where a tribal court and a state court share authority over a custody dispute such as in *K.K.S.*, the state court’s decision to decline jurisdiction in favor of the tribal court is proper for several reasons. First, doing otherwise may encourage parental kidnapping. Second, dismissing the state court action eliminates the possibility of conflicting decrees that would undermine the authority of both the tribal and state courts and disrupt the lives of the mother, father and child. Third, declining jurisdiction in favor of the tribal court recognizes the cultural identity of a child like *K.K.S.* and promotes tribal integrity by acknowledging that


254. *Id.* at 816.

255. *Id.* (citing *Red Lake Band*, 311 Minn. at 247, 248 N.W.2d at 726).


257. *Id.* (citing Parental Kidnapping Prevention Act of 1980, Pub. L. No. 96-611, § 7(c), 94 stat. 3566, 3569 (1980) (one purpose of the Act is to deter abductions by basing jurisdiction on a child’s connections with a state rather than mere presence in it); MINN. STAT. § 518A.01 (1992) (one purpose of Uniform Child Custody Jurisdiction Act is to deter abductions)).

258. *Id.* (citing Fisher v. District Ct., 424 U.S. 382, 388 (1976) (“[State court jurisdiction] would create a substantial risk of conflicting adjudications affecting the custody of the child and would cause a corresponding decline in the authority of the Tribal Court.”)).
children are vital to the continued existence of a tribe.\textsuperscript{259} Fourth, a decision favoring the tribal court is consistent with the federal policy of encouraging tribal autonomy.\textsuperscript{260} Finally, such a ruling satisfies the \textit{parens patriae} role of both the state and the tribe in protecting the welfare of the child.\textsuperscript{261}

\section*{XXII. PARENTAL KIDNAPPING PREVENTION ACT}

One of the thorniest problems faced by state courts involves interstate custody disputes. Although a majority of states have adopted some form of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), the preemptive nature of federal law should not be ignored. To the extent that a state custody statute conflicts with federal law, the latter will always prevail.

Because the states were unable to agree on a uniform application of principles among them, non-custodial parents sometimes exploited the situation by forcibly taking children from the state issuing the custody decree to another state with less-stringent jurisdictional requirements. To discourage that activity and to allocate powers and duties among courts of different states, in 1980 Congress enacted the Parental Kidnapping Prevention Act (PKPA).\textsuperscript{262} The Act applies to criminal civil proceedings including disputes involving interstate custody.\textsuperscript{263} Essentially, PKPA favors continuing jurisdiction in the original state, provided that such state initially acted in compliance with PKPA. If it did so, a second state may not exercise jurisdiction and must give full faith and credit to the custody order of the first state. The second state must enforce the order

\textsuperscript{259} \textit{Id.} at 816-17 (citing 25 U.S.C. § 1901(3) (1988) (finding “there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children”); 25 U.S.C. § 1901(5) (1988) (finding state exercise of jurisdiction over Indian child custody proceedings often fails “to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families”)).

\textsuperscript{260} \textit{Id.} at 817 (citing 25 U.S.C. § 1902 (1988)).

\textsuperscript{261} \textit{Id.} (citing MINN. STAT § 518A.03, subd. 1 (1992) (repealed Jan. 1, 2000 by 1999 Minn. Laws c. 74, art. 3 § 18) (recognizing Minnesota’s interest in protecting the interests of the child); RED LAKE TRIBAL CODE § 801.13 (date unknown) (recognizing tribe’s interest)).


and may not modify it unless the original state has lost or declines jurisdiction.

The United States Supreme Court has made it clear that under the provisions of the PKPA, once a state properly exercises jurisdiction, other states must give full faith and credit to the determination and no other state may exercise concurrent jurisdiction even if it would be entitled to do so under its own laws. The Court has stated that Congress’ chief aim in enacting the PKPA was to extend the Full Faith and Credit Clause to custody determinations.264 The effect of § 1738A(d) and § 1738A(f) of the PKPA is to limit custody jurisdiction to the first state to properly enter a custody order, as long as certain requirements are met. The Act defines a federal standard for continuing exclusive custody jurisdiction. The first state must have possessed initial custody jurisdiction when it entered its first order (according to criteria in the Act) and it must remain “the residence of the child or any contestant” when it later modifies that order.

PKPA incorporates a state law inquiry. In order to retain exclusive responsibility for modifying a prior custody order, the first state must still have custody jurisdiction as a matter of its own custody law. However, if the federal and state criteria for continuing jurisdiction are met, the first state can, if it decides to do so, relinquish jurisdiction in favor of a court better situated to assess the child’s needs.

To retain jurisdiction under the PKPA, a state must have initially obtained and must continue to exercise jurisdiction in accordance with its own laws. In addition, a state must also meet one of the five enumerated jurisdictional conditions of the PKPA.265 Once the original state has made a custody determination, another state may modify the determination only if it has jurisdiction and “the court of the other State no longer has jurisdiction, or it has declined to exercise such jurisdiction to modify such determination.”266

Persons who “snatch” children may be criminally prosecuted under

265. The first four (home state, if no home state then significant connection and substantial evidence, abandonment or neglect, no other state claims jurisdiction and asserting jurisdiction is in the child’s best interests) are essentially the same as the four jurisdictional provisions of the UCCJEA. The fifth condition is that a court making a determination through exercise of one of the first four conditions retains a legally sufficient tie to the case as long as that court keeps jurisdiction under its own laws and remains the residence of the child or of any contestant.
PKPA.²⁶⁷ A federal warrant for unlawful flight is available to the custodial parent for illegal child snatching and permits the intervention of the Federal Bureau of Investigation in such instances.

XXIII. SOLDIERS' AND SAILORS' RELIEF ACT

The Soldiers’ and Sailors’ Civil Relief Act of 1940 tolls the period in which a party must assert the nonexistence of the parent and child relationship during the time the member of the military was on active duty. The Act provides:

The period of military service shall not be included in computing any period . . . for the bringing of any action or proceeding in any court . . . whether such cause of action or the right or privilege to institute such action or proceeding shall have accrued prior to or during the periods of such service.²⁶⁸

A presumed father who is in the military service is entitled to protection from the Act.²⁶⁹ In Jackson v. Jackson,²⁷⁰ the Minnesota Court of Appeals concluded that the trial court did not abuse its discretion in holding that a military serviceman was not entitled to stay child support proceedings while overseas because his presence was unnecessary and evidence could fairly and more expeditiously be presented by affidavits and documentary evidence.²⁷¹ However, before moving forward at a family law hearing without the presence of a member of the military, the court must make a specific finding that the absence of the service person does not materially affect his or her ability to conduct a defense under the Act.²⁷²

Jackson v. Jackson was decided before Conroy v. Aniskoff,²⁷³ which casts doubt upon it. In Conroy v. Aniskoff, the United States Supreme Court held that a member of the armed services is not required to show that his military service prejudiced his ability to bring an action in order for section 525 of the Act to toll the limitations period.²⁷⁴ The Court construed the provision to protect “all military personnel on active duty.”²⁷⁵ The critical factor in these cases is military service, and once

²⁶⁹ See id.
²⁷⁰ 403 N.W.2d 248 (Minn. Ct. App. 1987).
²⁷¹ Id. at 251.
²⁷² See id at 250-51.
²⁷⁴ Id. at 512-13, 518.
²⁷⁵ Id. at 515.
shown, the period of limitations may be tolled for the duration of the military service.276

XXIV. FAMILY DISPUTES IN FEDERAL COURT——
SUBJECT MATTER LIMITS

It is a well-accepted principle that federal courts are courts of limited subject matter jurisdiction.277 In addition to the general limits applied to federal courts in civil actions, there are additional limitations when domestic matters are concerned. The added limitations arise from the “domestic relations exception” that was birthed in the nineteenth century. It first appeared in an 1858 decision, Barber v. Barber,278 where the United States Supreme Court declared that federal courts are without power to hear disputes based upon diversity jurisdiction involving “the subject of divorce, or for the allowance of alimony.”279 The Court did not clearly explain the basis for the exception, but since its decision in Barber the exception has been refined.

The exception is based on the history underlying the congressional grant of power to the federal courts and on the policy consideration that states have traditionally adjudicated marital and child custody disputes due to competence and expertise in adjudicating such matters.280 It is also thought that state courts are peculiarly suited to enforce state regulations and domestic relations decrees involving alimony and child custody, particularly because such decrees often demand substantial continuing judicial oversight.281 State courts also have close connections to local agencies, which resolve conflicts resulting from domestic decrees. Because the state courts are accustomed to handling these cases, they are probably better handled in that venue.

The domestic relations exception was delineated in Ankenbrandt v. Richards, where the Court stated that federal courts are divested of the power to issue divorce decree awards, alimony, and child custody orders.282 Because the limitation is one of subject matter jurisdiction, it

278. 62 U.S. 582 (1858).
279. Id. at 584.
282. Ankenbrandt, 504 U.S. at 703.
is not waivable.

The Court in Ankenbrandt narrowly limited the exception. Lawsuits affecting domestic relations, however substantial, are not within the exception unless the claim at issue is one to obtain a divorce or establish alimony or child custody. This narrow construction led the Court to hold that the exception did not apply to tort claims despite their intimate connection to family affairs.\(^\text{283}\)

While some lower federal courts had permitted declarative actions involving the Parental Kidnapping Prevention Act\(^\text{284}\) to be heard, especially where there were conflicting decisions by state courts on the custody of a minor child, the United States Supreme Court ended such actions. In an opinion without dissent, it held that federal courts may not play an enforcement role when two states disagree over which parent should have custody of a child.\(^\text{285}\)

The Eighth Circuit Court of Appeals has heard a few domestic disputes. It has stated that, in general, “disputes over the custody of children are not subject to federal jurisdiction.”\(^\text{286}\) It has also rejected civil rights claims brought against lawyers, judges, litigants, and others where the allegation is that they are responsible for the plaintiff’s loss of custody of the minor children involved in a divorce.\(^\text{287}\) In a family decision affecting child support in Minnesota, it rejected a constitutional attack on the Federal Child Support Recovery Act (CSRA), and joined several other circuits that have also rejected such an attack.\(^\text{288}\)

XXV. ABSTENTION DOCTRINE IN FEDERAL COURT

Where timely and adequate state-court review is available in a federal court, and despite the fact it has subject matter jurisdiction, it may abstain from hearing the case. The United States Supreme Court has

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283. See id. at 704.
286. Robinson v. Eng, 989 F.2d 505 (table), 1993 WL 51808 at *1 (8th Cir. (Neb.) Jan. 11, 1993) (citing Ankenbrandt, 504 U.S. 689). “Parents do not have an absolute unabridgeable constitutional right to the custody of their children.” Id. (citing Ruffalo v. Civiletti, 702 F.2d 710 (8th Cir. 1983)).
287. Id.
suggested that abstention “might be relevant in a case involving elements of the domestic relationship even when the parties do not seek divorce, alimony, or child custody.”

This would be so when a case presents “‘difficult questions of state law bearing on policy problems of substantial public import whose importance transcends the result in the case then at bar.’”

In *Younger v. Harris*, the Supreme Court required that a federal court abstain from enjoining a pending state criminal proceeding. In *Middlesex County Ethics Committee v. Garden State Bar Ass’n.*, the Court applied *Younger* to non-criminal judicial proceedings where important state interests are involved. Later, the Court extended the *Younger* principles to state civil proceedings. In *Pennzoil Co. v. Texaco, Inc.*, the Court held that federal courts must abstain from hearing challenges to pending state proceedings where the state’s interest is so important that exercising federal jurisdiction would disrupt the comity between federal and state courts. *Younger* requires federal courts to abstain where: (1) state proceedings are pending, (2) the state proceedings involve an important state interest, and (3) the state proceedings will afford the plaintiff an adequate opportunity to raise his constitutional claims.

XXVI. PARTITION ACTIONS

Occasionally, a Minnesota court is asked to award an interest in land located within its borders but it lacks personal jurisdiction over one party. Typically, this problem triggers a partition action. The Minnesota Supreme Court held in *Searles v. Searles* that Minnesota had jurisdiction to hear an action to partition land located within the state even though the parties to the dispute were married and divorced in Missouri and neither was a resident or domiciled here.

290. *Id.* at 705-06 (quoting Colorado River Water Conservation Dist. v. United States, 424 U.S. 800, 814 (1976)).
294. *Id.* at 10.
296. *See, e.g.*, Larsen v. Erickson, 222 Minn. 363, 363, 24 N.W.2d 711, 712 (1946) (stating “in divorce action, the parties’ marriage status, and not their cohabitation, furnishes the subject matter of the court’s jurisdiction.”).
297. Partition actions are brought pursuant to *Minn. Stat.* § 558.01 (1986).
298. 420 N.W.2d 581 (Minn. 1988), aff’d 412 N.W.2d 11 (Minn. Ct. App. 1987).
299. *Id.* at 584.
The disputed Minnesota property had been acquired during the parties’ marriage, which was dissolved by a Missouri court in 1971. However, their divorce decree failed to deal with distribution of any real estate. Years later the ex-wife discovered the existence of the land in Minnesota and initiated a partition action. While holding that Minnesota had in rem jurisdiction to hear the partition action, the court raised but left unanswered the question of whether Minnesota should dismiss the action on the ground of forum non conveniens. The court observed that dissolution of the marriage under the Missouri decree did not extinguish the ex-wife’s claim to a marital interest in the Minnesota real estate. The court found support for this view in Grodzicki v. Quast, where a Florida divorce decree had failed to dispose of the parties’ property and the court held that Minnesota could dispose of it.

The court underscored the importance of closely examining the legal theory upon which a party seeking a partition based upon a foreign divorce decree is proceeding. For example, if the party asserts that recovery is warranted because certain marital property was omitted from a dissolution decree, it is doubtful that Minnesota has jurisdiction to hear the action because nothing in the marriage relationship involved Minnesota, i.e., the couple were married, resided for their married life, and divorced outside the state. However, if the party seeking a partition pursues the action on the basis that Minnesota has in rem jurisdiction over Minnesota land for partition purposes and sculpts the lawsuit as seeking an interest in land, then courts will probably hear it. The rationale is that in rem jurisdiction includes the right to determine title and ownership to the land as a condition precedent to dividing or ordering its sale.

XXVII. ENFORCING OUT-OF-STATE JUDGMENTS

Minnesota has jurisdiction to handle domestic disputes based on out-of-state judgments if both parties reside in Minnesota. Furthermore, it may, in certain situations, apply its own domestic law to resolve a dispute rather than the law of the state where the judgment was originally entered.

For example, both parties in Hodges v. Hodges had moved to

300. 276 Minn. 34, 149 N.W.2d 8 (1967).
301. The court noted that although the trial court had jurisdiction, it possessed the discretion to refuse to hear the matter on the basis that Minnesota was an inconvenient forum. See id. at 39, 149 N.W.2d at 12.
Minnesota following their 1971 Indiana divorce. The ex-wife brought a
motion asking Minnesota to modify the Indiana maintenance award. 
Minnesota law allowed the motion, while Indiana did not. Therefore, if
Minnesota refused to hear the ex-wife’s motion, she was foreclosed from
obtaining a change in support. The Minnesota Court of Appeals held
that Minnesota had jurisdiction to modify the judgment. It justified its
decision in part on the lengthy period the couple had lived outside
Indiana and in Minnesota.

The standard for giving full faith and credit to a foreign judgment is
found in Roche v. McDonald.

It is settled that the full faith and credit clause of the
Constitution requires that the judgment of a State court, which
had jurisdiction of the parties and the subject matter in suit,
shall be given effect in every other State. Furthermore,
decisions shall be equally conclusive upon the merits. Only
such defenses as would be good to a suit thereon in that State
can be relied on in the courts of any other State. Final
judgments should be accorded full faith and credit by the
various states.

The Full Faith and Credit Clause of the United States Constitution
requires recognition and enforcement of alimony payments accrued
under an inalterable judgment for a specific amount of money rendered
in another jurisdiction. The judgment and decree are final for the
purposes of full faith and credit, subject to the usual grounds for vacation
of a money judgment. Problems occur, however, if the foreign

303. Id. at 66 (citing Rudolf v. Rudolf, 48 N.W.2d 740 (Minn. 1948)). The court
justified its decision in part on the lengthy period the couple had lived outside Indiana
and in Minnesota. Id. at 67.

304. 275 U.S. 449 (1928).

305. Id. at 451-52 (citation omitted).

306. Id. (citation omitted).

234 (1946); Donald P. Barrett, Note, Constitutional Law: Due Process: Requirement of
Notice Before Enforcing Judgment for Arrears of Alimony Payable in Installments, 34
CAL. L. REV. 760, 762-63 (1946); Recent Case, Constitutional Law—Due Process—
Conflict of Laws—Recognition of Foreign Ex Parte Judgment for Arrears of Alimony, 31
MINN. L. REV. 95, 95-96 (1946-47); see also Haas v. Haas, 282 Minn. 420, 422-23, 165
N.W.2d 240, 242-43 (1969) (citing Anderson v. Lyons, 226 Minn. 300, 32 N.W.2d 849
(1948); Holton v. Holton, 153 Minn. 346, 190 N.W. 542 (1922)), overruled on other

308. See Rudolf v. Rudolf, 348 N.W.2d 740, 742 (Minn. 1984); see also Uniform

282 Minn. 420, 165 N.W.2d 240; Holton v. Holton, 153 Minn. 346, 190 N.W. 542
alimony decree is not final or if it may be modified either as to future or past installments. 310

The Uniform Enforcement of Foreign Judgments Act (UEFJA) 311 provides a speedy and economical method of enforcing a foreign judgment. 312 It relieves creditors and debtors alike from the costs and harassment of additional litigation. 313 The procedure is optional and does not impair the existing remedies available to a judgment creditor. 314

Judgments that meet the definition in Minnesota Statutes section 548.26 may be filed under the Uniform Act. 315 A foreign judgment filed under the Uniform Act is essentially converted to a Minnesota judgment when the provisions of the statute are followed. 316

XXVIII. CONCLUSION

This article has surveyed, analyzed, and commented on subject matter and personal jurisdiction issues in the family law area from the perspective of the Minnesota legal system. In general, the Minnesota

(1992)).


314. Minn. Stat. § 548.31 (2002). "'Foreign judgment' means any judgment, decree, or order of a court of the United States or of any other court which is entitled to full faith and credit in this state.” Minn. Stat. § 548.26 (2002).


316. See Minn. Stat. § 548.27 (2002).

A certified copy of any foreign judgment may be filed in the office of the court administrator of any district court of this state. The court administrator shall treat the foreign judgment in the same manner as a judgment of any district court or the supreme court of this state, and upon the filing of a certified copy of a foreign judgment in the office of the court administrator of district court of a county, it may not be filed in another district court in the state. A judgment so filed has the same effect and is subject to the same procedures, defenses and proceedings for reopening, vacating, or staying as a judgment of a district court or the supreme court of this state, and may be enforced or satisfied in like manner. Id.
legal system has done a good job. When jurisdiction is at issue, Minnesota tends to remain within the mainstream of American jurisprudence, although there are areas needing greater focus and possible clarification.

For example, the literal interpretation given to Minnesota Statutes section 518.07 is troubling. Either the language in the statute should be modified to reflect a modern-day understanding of such a provision or the courts should revisit it with an eye toward revaluing their century-old view of the application. There is little sense in allowing a judgment to be reopened years after it was entered, and long after the parties have litigated all of the issues in the dispute, because the court lacked what today is characterized as subject matter jurisdiction. New York’s view of a similar provision should be adopted.

It would also be useful to have two clear definitions in Chapter 518: one for residence and a second for domicile. It would also be useful to replace the existing general long-arm statute with language to the effect that “Minnesota will exercise personal jurisdiction in all cases that do not offend the Constitution of the United States.” There is little need for any additional language in the long-arm statute.

There should also be a reexamination of the emerging role that “status” may play in the personal jurisdiction area. With personal liberty at stake, the examination should be very cautious.

Overall, there should be continued work on obtaining uniform outcomes when faced with due process issues within the family context. It is suggested that consistency in outcomes will be increased by focusing only on the harm to the Minnesota child, and not on the conduct of the parents, or where the child was born, or the nature of the claim being made. A more straightforward rule of law will make it easier for the bench and bar to reach uniform understanding in this area.