1999

Civil Procedure—Orders for Child Protection and Nonresident Defendants: The UCCJA Applies and Minimum Contacts Are Unnecessary

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CIVIL PROCEDURE—ORDERS FOR CHILD PROTECTION AND NONRESIDENT DEFENDANTS: THE UCCJA APPLIES AND MINIMUM CONTACTS ARE UNNECESSARY

Hughes ex rel. Praul v. Cole,
572 N.W.2d 747 (Minn. Ct. App. 1997)

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I. INTRODUCTION

Parental disputes over the custody, visitation, and abuse of children involve complex jurisdictional issues when the contestants live in different states. The Minnesota Court of Appeals recently addressed an interstate parental dispute in *Hughs ex rel. Praul v. Cole.*

In *Hughs,* a mother sought an order for protection on behalf of her son, and the nonresident defendant father brought a motion to dismiss for lack of personal jurisdiction. The father appealed the district court’s dismissal of the motion, and the Minnesota Court of Appeals ruled that the district court had personal jurisdiction over the father by way of Minnesota’s long-arm statute and minimum contacts. The father’s only “contact” with the state of Minnesota was his son’s recent three month

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1. See Restatement (Second) of Conflict of Laws § 79 cmt. a (1971). The complexity is due to the different interests involved and the number of states which may have a concern. See also Rhonda Wasserman, Parents, Partners, and Personal Jurisdiction, 1995 U. Ill. L. Rev. 813, 815 (1995) (“The intersection between family law and jurisdiction is messy.”); Christopher L. Blakesley, Comparativist Ruminations from the Bayou on Child Custody Jurisdiction: the UCCJA, the PKPA, and the Hague Convention on Child Abduction, 58 La. L. Rev. 449, 449 (1998) (“Interstate and international jurisdictional problems are often vexing. They are worse in matters of child custody.”).

2. 572 N.W.2d 747 (Minn. Ct. App. 1997). “Hughs” is misspelled in the case name as it appears in the North Western Reporter, but the mother’s name, Barbara Hughes, is spelled correctly in the body of the opinion. This case note therefore will refer to the case as “Hughs,” but this case note will use the correct spelling when referring to the mother.

3. See id. at 749-50.

4. See id. at 750.

5. See id. Minnesota’s long-arm statute provides for jurisdiction if the defendant commits an act outside of Minnesota causing injury in Minnesota. See Minn. Stat. § 543.19(1)(d) (1998). The Minnesota Supreme Court has held that the legislature designed Minnesota’s long-arm statute to extend personal jurisdiction over non-residents to the limits of the Due Process Clause of the U.S. Constitution’s Fourteenth Amendment. See Valspar v. Lukken Color Corp., 495 N.W.2d 408, 410 (Minn. 1992) (finding the trial court had personal jurisdiction over a foreign corporation for purposes of the plaintiff paint manufacturer’s declaratory judgment on a contract between the foreign corporation and the company’s predecessor); Marquette Nat’l Bank v. Norris, 270 N.W.2d 290, 294 (Minn. 1978) (holding that inducing financial transactions within Minnesota subjected the defendant non-resident creditors to personal jurisdiction); Hardrives, Inc. v. City of LaCrosse, 240 N.W.2d 814, 818 (Minn. 1976) (holding that a foreign corporation meeting three out of five factors of the test is subject to personal jurisdiction). See also U.S. Const. amend. XIV, § 1 (Due Process Clause).

6. See Hughs ex rel. Praul v. Cole, 572 N.W.2d 747, 751-52 (Minn. Ct. App. 1997) (holding that although the father’s only Minnesota contact was with the son, the minimum contacts requirement was met).
residency in the state and the father’s phone calls to his son in Minnesota.

The *Hughs* decision is important for two reasons. First, the court’s conclusion that the minimum contacts requirement was met is incompatible with precedent; the court did not have personal jurisdiction over the father. Second, the court ignored the only valid basis for jurisdiction, the Uniform Child Custody Jurisdiction Act ("UCCJA"). The UCCJA does

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7. See *id.* at 751. The mother and son moved to Minnesota on November 28, 1996, and the petition for child protection was filed on February 18, 1997. See *id.* at 749.

8. See *id.* at 751.

9. See *Kulko* v. Superior Court, 436 U.S. 84, 100-01 (1978) (holding that the court did not have personal jurisdiction over nonresident father who derived no personal or commercial benefit from his child’s presence and who lacked any contact with the state).

not require personal jurisdiction over a nonresident defendant.\textsuperscript{11}

This case note will provide an alternative approach to the court’s “minimum contacts” analysis based on the following theory: an order for child protection falls under the umbrella of the UCCJA,\textsuperscript{12} and the court had a valid jurisdictional basis pursuant to the UCCJA to issue the order for child protection.\textsuperscript{13}

II. BACKGROUND

It has been said that the opinions from the United States Supreme Court on personal jurisdiction and minimum contacts have produced an unsatisfactory body of law that is extremely difficult for scholars to organize, synthesize, and comprehend.\textsuperscript{14} One way to organize this body of law is to categorize personal jurisdiction into three bases: service of process on a defendant while the defendant is physically present in the state, specific jurisdiction, and general jurisdiction.\textsuperscript{15}

\begin{flushleft}
\textsuperscript{11} See infra Part IV.B and accompanying notes.
\textsuperscript{12} See MINN. STAT. § 518.A02(b) (1998) ("'Custody determination' means a court decision, court orders, and instructions providing for the custody of a child, including visitation rights, but does not include a decision relating to child support or any other monetary obligation of any person."). \textit{See also infra} Part IV.B and accompanying notes.
\textsuperscript{13} See MINN. STAT. §§ 518A.01-518A.25 (1998) (outlining the jurisdictional requirements to make a child custody determination). \textit{See also infra} Part IV.D and accompanying notes. The pertinent federal law, the Parental Kidnapping Prevention Act of 1980 ("PKPA"), was also satisfied. \textit{See} 28 U.S.C. § 1738A (1994). The PKPA prohibits a state court from modifying a prior custody determination except as provided in the Act. \textit{See id.}
\textsuperscript{14} See Blakesley, \textit{supra} note 1, at 508.
\textsuperscript{15} See generally David D. Siegel, \textit{Supplementary Practice Commentaries}, Fed. R. Civ. P. 4, at 78 (West Supp. 1998) (stating that service of process while the defendant is present in the state is a form of general jurisdiction). This case note considers service of process a separate basis because the test is not the "continuous and systematic" test of general jurisdiction. \textit{See infra} Part II.C and accompanying notes.
\end{flushleft}
A. Service of Process

In 1877, in Pennoyer v. Neff, the Supreme Court held that the Due Process Clause of the Fourteenth Amendment requires a court to have personal jurisdiction over a non-resident defendant when a judgment imposes a personal obligation or duty in favor of the plaintiff. Personal jurisdiction over a defendant was established by personal service of process. In addition, the Court described two other situations that did not require personal service: personal status adjudications and in rem proceedings.

When Pennoyer was decided, the defendant's presence in the state was necessary for personal service of process. This requirement had its origin in the common law judicial writ of capias ad respondendum.

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16. 95 U.S. 714 (1877).
17. See id. at 733.
18. See id.
19. See id. at 733-34. The Pennoyer Court stated:

Except in cases affecting the personal status of the plaintiff, and cases in which that mode of service may be considered to have been assented to in advance, as hereinafter mentioned, the substituted service of process by publication, allowed by the law of Oregon and by similar laws in other States, where actions are brought against non-residents, is effectual only where, in connection with process against the person for commencing the action, property in the State is brought under the control of the court, and subjected to its disposition by process adapted to that purpose, or where the judgment is sought as a means of reaching such property or affecting some interest therein; in other words, where the action is in the nature of a proceeding in rem. As stated by Cooley in his Treatise on Constitutional Limitations, 405, for any other purpose than to subject the property of a non-resident to valid claims against him in the State, "due process of law would require appearance or personal service before the defendant could be personally bound by any judgment rendered."

Id.

20. See International Shoe v. Washington, 326 U.S. 310, 316 (1945) (citing Pennoyer v. Neff, 95 U.S. 714, 733 (1877), which states in relevant part, "Historically the jurisdiction of courts to render judgment in personam is grounded on their de facto power over the defendant's person. Hence his presence within the territorial jurisdiction of court was prerequisite to its rendition of a judgment personally binding him.")


A judicial writ (usually simply termed a "capias," and commonly abbreviated to ca. resp.) by which actions at law were frequently commenced; and which commands the sheriff to take the defendant, and him safely keep, so that he may have his body before the court on a certain day, to answer the plaintiff in the action. It notifies the defendant to defend suit and procures his arrest until security for plaintiff's claim is furnished.
"whereby a civil action was started through physical seizure of the defendant."^22

The Supreme Court, in the 1990 case of *Burnham v. Superior Court*,^23* addressed the constitutionality of this basis for personal jurisdiction. The Court held that the U.S. Constitution's Due Process Clause did not prohibit a California court from exercising jurisdiction over a nonresident father based on in-state service of process. The plurality opinion explained that in order to determine whether the assertion of personal jurisdiction is consistent with due process, it has "relied on the principles traditionally followed by American courts in marking out the territorial limits of each State's authority."^26 Justice Scalia went on to say that one of the most firmly established principles of personal jurisdiction in the American tradition is the principle that state courts have jurisdiction over nonresidents who are physically present in the state. Justice Scalia stressed that this tradition was not only old, but has been continually practiced by all the states. Justice Scalia concluded that "[t]he short of the matter is 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.'"^29

Although *Burnham* was a plurality opinion, personal service of process on a defendant present in the state was upheld as one method of establishing personal jurisdiction. The *Burnham* decision is also significant because it validated the notion that the due process clause could be satisfied without relying on a "minimum contacts" analysis.\(^{31}\)

\[^{22}\text{Id.}^\]
\[^{23}\text{Id. at 628.}^\]
\[^{24}\text{Id. at 609.}^\]
\[^{25}\text{Id. at 610.}^\]
\[^{26}\text{Id. at 615.}^\]
\[^{27}\text{Id. at 619.}^\]
\[^{28}\text{Id. at 621.}^\]
\[^{29}\text{Id. at 628.}^\]
\[^{30}\text{Id. at 607 ("The question presented is whether the Due Process Clause of the Fourteenth Amendment denies California courts jurisdiction over a nonresident, who was personally served with process while temporarily in that State, in a suit unrelated to his activities in the State.").}^\]
\[^{31}\text{See Burnham v. Superior Court, 495 U.S. 604, 621 (1990). The court noted:}^\]

*Shaffer* was saying, in other words, not that all bases for the assertion of *in personam* jurisdiction (including, presumably, in-state service) must be treated alike and subjected to the "minimum contacts" analysis of *Interna-
B. Specific Jurisdiction and Minimum Contacts

In 1945, the "minimum contacts" basis for establishing personal jurisdiction was introduced in *International Shoe v. Washington.*2 The term "minimum contacts" refers to activities with the state, and the *Burnham* Court reviewed the current rule of law:

Our opinion in *International Shoe* cast those fictions aside and made explicit the underlying basis of these decisions: Due process does not necessarily require the States to adhere to the unbending territorial limits on jurisdiction set forth in *Pennoyer.* The validity of assertion of jurisdiction over a nonconsenting defendant who is not present in the forum depends upon whether "the quality and nature of [his] activity" in relation to the forum renders such jurisdiction consistent with "traditional notions of fair play and substantial justice." Subsequent cases have derived from the *International Shoe* standard the general rule that a State may dispense with in-forum personal service on nonresident defendants in suits arising out of their activities in the State.33

This "minimum contacts" rule—that a state has personal jurisdiction over nonresident defendants in suits arising out of the defendant's activities in the state—is termed "specific jurisdiction."34 Specific jurisdiction requires two elements: the defendant must purposefully direct his activities at the forum state, and the litigation must re-

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2. See *International Shoe Co. v. Washington,* 326 U.S. 310, 316 (1945) (stating that the defendant must have certain minimum contacts with the forum state "such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice'").

32. See *International Shoe Co. v. Washington,* 326 U.S. 310, 316 (1945) (stating that the defendant must have certain minimum contacts with the forum state "such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice'")).

33. *Burnham,* 495 U.S. at 618 (citations omitted). The Court is referring to the fictions of "consent" and "presence." See id. at 617-18.

A nonresident defendant "purposefully directs" his activities at state residents when the "purposeful availment" requirement is met. The "purposeful availment" test was described in Hanson v. Denckla.

The unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State. The application of that rule will vary with the quality and nature of the defendant's activity, but it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.

"This 'purposeful availment' requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of 'random,' 'fortuitous,' or 'attenuated' contacts... or of the 'unilateral activity of another party or a third person.'"

Thus, a state's personal jurisdiction over a defendant is not established every time a plaintiff moves to another state; a nonresident defendant's amenability to suit in a forum state does not travel with a chattel or relation. This rule was applied in Kulko v. California Superior Court.

There, the Supreme Court held that it was arbitrary to subject the nonresident father to suit in any State in which the mother chose to live with their child.

The second requirement of specific jurisdiction, that the litigation must arise out of or relate to the act, has not been addressed by the U.S. Supreme Court. Case law in Minnesota requires that there be some

36. See Asahi Metal Indus. Co. v. Superior Court, 480 U.S. 102, 112 (1987). It is possible that purposeful direction is synonymous with "purposeful availment". Both the majority and the concurring opinion use the phrase "purposeful availment." See id. at 112-22.
38. Id. at 253 (citing International Shoe, 326 U.S. at 319).
40. See World-Wide Volkswagen, 444 U.S. at 296-97.
41. 436 U.S. 84 (1978).
42. See id. at 93.
43. See Helicopteros Nacionales, 466 U.S. at 416 n.10. The Court explained:
connection between the cause of action and the contacts.\(^{44}\)

In summary, specific jurisdiction requires an act of "purposeful availment" within the state and for the litigation to arise out of or be related to that act. Specific jurisdiction is limited to particular claims; however, general jurisdiction allows any claim to be brought.

C. General Jurisdiction

Even when the cause of action does not arise out of or relate to the defendant's activities in the forum state, due process is not offended by a state subjecting the defendant to personal jurisdiction when there are sufficient contacts between the state and the defendant.\(^{45}\) This exercise of personal jurisdiction is called "general jurisdiction."\(^{46}\) Contacts with a forum state will be sufficient for general jurisdiction when they are continuous and systematic.\(^{47}\)

With an understanding of the three bases for personal jurisdiction, the issue in \textit{Hughes}, whether the requirements of specific jurisdiction ("minimum contacts") were met, can be addressed.

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We do not address the validity or consequences of such a distinction because the issue has not been presented in this case. Respondents have made no argument that their cause of action either arose out of or is related to Helicol's contacts with the State of Texas. Absent any briefing on the issue, we decline to reach the questions (1) whether the terms "arising out of" and "related to" describe different connections between a cause of action and a defendant's contacts with a forum, and (2) what sort of tie between a cause of action and a defendant's contacts with a forum is necessary to a determination that either connection exists. Nor do we reach the question whether, if the two types of relationship differ, a forum's exercise of personal jurisdiction in a situation where the cause of action "relates to," but does not "arise out of," the defendant's contacts with the forum should be analyzed as an assertion of specific jurisdiction.

\textit{Id.}

44. \textit{See} Hardrives, Inc. v. City of LaCrosse, 240 N.W.2d 814, 819 (Minn. 1976) ("In short, it cannot be said that the cause of action is completely unrelated to the contacts."). In dictum, the Minnesota Supreme Court also said that the plaintiffs' cause of action arose, in part, out of the defendants' contacts with the state. \textit{See} \textit{id}. As an example, the court cited the defendants' inspections in Minnesota as contacts, and the court cited those same inspections as an element of the plaintiffs' breach of contract claim. \textit{See} \textit{id}.

45. \textit{See} Helicopteros Nacionales, 466 U.S. at 414.

46. \textit{See} \textit{id}. at 415 n.9.

47. \textit{See} \textit{id}. at 415-16.
III. THE HUGHS DECISION

A. The Facts

Gerald Cole and Barb Hughes lived together in New Jersey when Hughes gave birth to a son. The couple separated; the Superior Court of New Jersey declared Cole the legal father of the boy and granted Cole visitation rights for three months each summer. Subsequently, Hughes and the child moved to Ohio, and Cole moved to Pennsylvania. From 1989 to 1996, the child visited Cole in Pennsylvania each summer.

Hughes and the child moved to Minnesota on November 28, 1996, and Hughes filed a petition for an order for protection on behalf of the child on February 18, 1997. Hughes testified that Cole abused the child during the summer visitations on several occasions. The trial court denied Cole's motion to dismiss for lack of personal jurisdiction. The trial court stated that the child's presence in Minnesota provided the basis for jurisdiction.

B. The Court's Analysis

The Minnesota Court of Appeals affirmed the trial court's decision, holding that the trial court had personal jurisdiction over Cole. The court applied a minimum contacts analysis to reach this decision, which emphasized a five factor test found in Minnesota common law prece-

49. See id. at 748.
50. See id.
51. See id. at 748-49.
52. See id. at 749.
53. See Hughes ex rel. Praul v. Cole, 572 N.W.2d 747, 749 (Minn. Ct. App. 1997). Cole allegedly slapped the boy in the face and the back of the head, punched the boy's leg, arm, and back, elbowed the boy, and forced the boy's head into a bed. See id. Cole's mother-in-law allegedly backhanded the boy, causing the boy's nose to bleed. See id.
54. See id. at 749.
55. See id. The trial court ultimately determined that domestic abuse did occur and issued a protective order for one year. See id.
56. See id. at 752. The appellate court also held that the record contained sufficient evidence to support the claim of abuse. See id.
57. See id. at 750-51.
58. See Rostad v. On-Deck, Inc., 372 N.W.2d 717, 719-20 (Minn. 1985), cert. denied, 474 U.S. 1006 (1985). The "minimum contacts" test used in Minnesota looks at: 1) the quantity of contacts with the forum state; 2) the nature and quality of contacts; 3) the source and connection of the cause of action with these contacts; 4) the interest of the state providing a forum; and 5) the convenience of the
In addressing the first factor, the quantity of contacts, the court found that Cole's only contact in Minnesota was his son. In analyzing the second factor, the nature and quality of contacts, the court said that it "must determine whether the nonresident purposely availed himself of the benefits and protections of Minnesota law." When the court made this determination, it said that Cole could have anticipated custody or visitation matters being dealt with in Minnesota because the boy was living in Minnesota. The court also pointed out that Cole had a continuing relationship with his son.

In applying the third factor, the court observed that there was a direct relationship between an order for protection and Cole's contact, his son, in Minnesota. The court also determined that Cole could foresee possible consequences from the abuse arising in Minnesota.

The court reached the fourth factor and asserted that Minnesota has a compelling interest in protecting the welfare of children. Finally, the court decided the fifth factor by concluding that the inconvenience for Cole was minimal because the "issues involve the same facts, witnesses, and documents."

parties. See id. The first three factors are primary, the last two receive secondary consideration. See id. at 720. The fourth factor, Minnesota's interest in providing a forum for its residents, is not itself a "contact" and cannot establish personal jurisdiction. See Sherburne County Soc. Servs. ex rel. Pouliot v. Kennedy, 426 N.W.2d 866, 868 (Minn. 1988) (quoting Dent-Air, Inc. v. Beech Mountain Air Serv., Inc., 332 N.W.2d 904, 908 (Minn. 1983)). The fifth factor is irrelevant unless the defendant has sufficient contacts with the forum state. See Sherburne County, 426 N.W.2d at 868 (quoting West Am. Ins. Co. v. Westin, Inc., 337 N.W.2d 676, 680 (Minn. 1983)).


60. See id. at 751. It should be noted, however, that the court also examined the plurality of contacts and mentioned numerous phone calls. See id.

61. Id. The court does not mention purposeful availing himself again. See id.

62. See id. at 751.

63. See id.

64. See id.

65. See id.

66. See id.

67. See id.
IV. ANALYSIS OF THE HUGHS DECISION

The Hughs case presented a dilemma for the court. On the one hand, the court had an interest in providing a forum to adjudicate the allegation of abuse and protect the child. However, in accomplishing that goal, the court was required to balance the due process interests of the father.

This analysis will show that the court’s solution to this dilemma, a “minimum contacts” analysis, was both illogical and inconsistent with precedent. The court should have relied on the Uniform Child Custody Jurisdiction Act (“UCCJA”) exception to personal jurisdiction. An interstate protective order, like the one issued by the Hughs court, falls under the umbrella of the UCCJA. 68 Had the court applied the UCCJA to the facts of this case, it would have had a solid and legitimate basis for issuing the protective order.

A. The Defendant Father Had No “Minimum Contacts” with Minnesota

Faced with a motion to dismiss for lack of personal jurisdiction, the court applied the “minimum contacts” analysis discussed above. 69 The father did not have “minimum contacts” with Minnesota because the requirements of specific jurisdiction were not met. One’s child is not a “contact”; the father’s telephone calls were not acts of purposeful availment, and the father’s telephone calls were not related to the abuse. Before applying the specific jurisdiction requirements to the Hughs facts, the correlation between specific jurisdiction and Minnesota’s five factor test must be established. 70

68. See infra Part IV.B and accompanying notes.
69. See Hughs, 572 N.W.2d at 750-51. See also supra Part III.B and accompanying notes.
70. As explained in Part II, there are three bases for personal jurisdiction: personal service of process when the defendant is present in the state; general jurisdiction, and specific jurisdiction. See supra Part II.B and accompanying notes. Since the first two bases were inapplicable, the court felt compelled to use a minimum contacts analysis. See Hughs, 572 N.W.2d at 750-51.
1. **Minnesota’s Five Factor Test and Specific Jurisdiction**

The first three Minnesota “factors” are really the elements of specific jurisdiction and are required for there to be “minimum contacts.” This is evident when one compares the “specific jurisdiction” test with those three factors.

Specific jurisdiction requires there to be an act of purposeful availment that is related to the cause of action. This statement can be broken down into three elements: 1) an act or acts by the defendant; 2) the act or acts must be one of purposeful availment; and 3) the act or acts must be related to the plaintiff’s cause of action. It is important to remember that the term “act” is synonymous with “contact” in a personal jurisdiction analysis; perhaps the Supreme Court in *International Shoe* should have said “minimum acts.”

In comparison, the first three factors in the Minnesota five part test are the quantity of contacts, the quality and nature of the contacts, and the connection between the contacts and the cause of action. The first Minnesota factor, quantity of contacts, is solely a question of whether the defendant committed some act with the forum state; this is essentially a predicate for specific jurisdiction. In analyzing the second Minnesota factor, nature and quality of contacts, the court in *Hughes* said “it must determine whether the nonresident purposely availed himself of the benefits and protections of Minnesota law”; this is the same as element one of specific jurisdiction. The third factor of Minnesota’s five factor test is identical to the second element of specific jurisdiction: there must be a

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71. *See generally* Defoe v. Lawson, 389 N.W.2d 757, 758 (Minn. Ct. App. 1986) (stating that the minimum contacts or “fair warning” requirement is satisfied if the out-of-state defendant has “purposefully directed” his activities at forum residents, and the alleged injuries “arise out of or relate to” those activities).

72. *See supra* Part II.B and accompanying notes.

73. The same specific jurisdiction test can be compressed into two elements. *See supra* Part II.B and accompanying notes.


76. *See supra* Part II.B and accompanying notes.


78. *See supra* Part II.B and accompanying notes.
connection between the contacts and the cause of action.79 Finally, the fourth and fifth Minnesota factors do not establish personal jurisdiction and are irrelevant unless the first three elements are met.80

Thus, the first three factors in Minnesota's five part test are the same as the elements of specific jurisdiction. In order for there to be "minimum contacts," all of the elements of specific jurisdiction must be met. This test was not met in the Hughs case. This Note will analyze each possible "contact" of the father and show that the requirements of specific jurisdiction (the first three Minnesota factors) were not met.

2. One's Child is Not a "Contact"

The first requirement of specific jurisdiction is that the defendant have "contacts" or activities with the forum state.81 The court in Hughs says that the defendant's son is his contact with Minnesota.82 This conclusion is in conflict with Kulko v. Superior Court,83 a U. S. Supreme Court case, and Sherburne County Social Services ex rel. Pouliot v. Kennedy,84 decided by the Minnesota Supreme Court.

In Kulko, the Supreme Court applied the minimum contacts test to a dispute about child support.85 First, the Court rejected personal jurisdiction on the basis of the father's agreement at the time of separation to allow his children to live with their mother in California.86 To find jurisdiction in a state merely because the mother was living there, according to the Court, would discourage parents from entering into visitation agreements.87 Additionally, the Court noted that finding jurisdiction on this basis would arbitrarily subject the nonresident parent to suit in any state where the custodial parent chose to live.88

Finally, the Court said that, although California had a substantial interest in protecting resident children, the child's presence in the state by itself was not enough to make California a fair forum.89

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79. See supra Part II.B and accompanying notes.
83. 436 U.S. 84 (1978).
84. 426 N.W.2d 866 (Minn. 1988).
85. See Kulko, 436 U.S. at 97 (applying the minimum contacts test).
86. See id. at 93.
87. See id.
88. See id.
89. See id. at 100-01.
In *Sherburne*, the Minnesota Supreme Court observed that "[t]he critical focus in any jurisdictional analysis is 'the relationship among the defendant, the forum and the litigation.' Importantly, this relationship is defined by the defendant's contacts with the forum *state*, not with its *residents*." Thus, in *Hughes*, the Minnesota Court of Appeals erred in concluding that Cole's son was his Minnesota "contact." It is difficult to understand how the court transformed a relative into an activity fulfilling minimum contacts. A Minnesota resident cannot simply "be" the needed contact or activity; personal jurisdiction jurisprudence is clear that the terminology of a "contact" is meant to refer to "activities," not a relative."91

Consequently, Cole's son was not a contact, and the first Minnesota factor was not met. This would normally defeat an assertion of personal jurisdiction, but the *Hughes* court also recognized an activity that could be construed as a contact—the father's telephone calls to his son in Minnesota. Conceding that the father's telephone calls could be the necessary activity with Minnesota, the second and third elements of specific jurisdiction needed to be met.

3. **The Father's Telephone Calls Were Not Acts of Purposeful Availment**

The second Minnesota factor, the nature and quality of the contact, is dispositive.92 In *Kulko*, the U.S. Supreme Court reasoned that the father's acquiescence in his child's desire to live in California did not mean that he purposefully availed himself of the benefits and protections of California's laws.93 Police and fire protection, hospital services, and recreational facilities were benefits to the child, not the father.94 Minnesota courts, too, have applied the "purposeful availment" test in family disputes a number of times.95

91. See supra Part II.B and accompanying notes.
92. *Sherburne*, 426 N.W.2d at 868 (citing Marquette Nat'l v. Norris, 270 N.W.2d 290, 295 (Minn. 1978)).
94. See id. at 94 n.7.
95. The Minnesota Court of Appeals held that the nonresident father "purposefully availed" himself of the benefits of Minnesota law by marrying within the state and by claiming his child as a state tax deduction. See *In re Impola*, 464 N.W.2d 296, 299 (Minn. Ct. App. 1990). In another case, a husband's summer vacations, periodic stays, and phone calls did not rise to the level of purposefully availing himself of the benefits and protections of Minnesota law. See *Mahoney* v. *Mahoney*, 433 N.W.2d 115, 119 (Minn. Ct. App. 1988) (emphasis supplied).
In *Hughes*, the court correctly states the rule that Cole must purposefully avail himself of the benefits and protections of Minnesota law, but the court never discusses this crucial determination. Instead, the court simply concludes that Cole could have anticipated Minnesota litigation. Under *Burger King* and *Sherburne*, however, a court must find purposeful *availment* before specific jurisdiction attaches.

The *Hughes* court, rather than squarely addressing purposeful availment, instead stressed Cole’s continuing relationship with his son. But the court’s reasoning, in effect, punishes Cole for talking to his son on the telephone. In contrast, the U.S. Supreme Court, in *Kulko*, did not consider a father’s good faith contacts with his child to be acts of purposeful availment.

Thus, the *Hughes* court had no good reason to ignore the purposeful availment requirement of specific jurisdiction. It is difficult to imagine how a father’s good faith telephone calls to his son could be considered purposeful availment of the benefits and protections of Minnesota’s laws.

The court does, however, attempt to apply the reasonably foreseeable...
test of *Howells v. McKibben*. This attempt fails because Cole’s son was not living in Minnesota at the time of the abuse.

In *Howells*, the court said it was “reasonably foreseeable by defendant that a continued sexual relationship with plaintiff, a Minnesota resident, might result in the injuries suffered by plaintiff and that those injuries would be sustained in this state.”

Recently, a federal court explained why injury by itself in the forum state is not enough to establish personal jurisdiction:

> Instead of grounding jurisdiction on a defendant’s decision to “purposely avail itself of the privilege of conducting activities within the forum state,” or on a defendant’s activities “expressly aimed” at the forum state, jurisdiction would depend on a plaintiff’s decision about where to establish residence. Such a theory would always make jurisdiction appropriate in a plaintiff’s home state, for the plaintiff always feels the impact of the harm there.

In the *Hughes* case, at the time of the abuse, Cole could not have possibly foreseen that Hughes and her son would move to Minnesota. Using the language from *Howells*, and, assuming that abuse occurred, it was impossible for Cole to foresee that abusing his son, an Ohio resident, might result in injuries occurring in Minnesota. Using the court’s logic, a parent could move to any state and a defendant’s prior conduct would follow the parent.

Although the son felt the impact of the abuse in Minnesota in the *Hughes* case, the son was an Ohio resident at the time of the abuse and it is plainly impossible that the father could have foreseen injury occurring in Minnesota.

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101. 281 N.W.2d 154, 157 (Minn. 1979).
102. See *Hughes*, 572 N.W.2d at 748-49. The abuse occurred in the summer of 1995 and 1996. See *id*. Hughes and her son moved to Minnesota in November, 1996. See *id*.
103. *Howells*, 281 N.W.2d at 157.
105. If Hughes had relatives in Minnesota or discussed about moving to Minnesota during the summers of 1995 or 1996, the court’s reasoning might be applicable, but there is nothing in the record to indicate that Hughes had any prior connection to Minnesota.
4. The Father's Telephone Calls Were Not Related to the Alleged Abuse

The third element of specific jurisdiction requires a connection between a defendant's activities and the cause of action. The litigation must arise out of or relate to the act.

In Hughs, the litigation originated as a petition for an order for child protection because of the father's alleged abuse of his son in Pennsylvania during the summer of 1996. The father's only arguable contact with Minnesota was his telephone calls to his son in Minnesota in 1997. There is no indication from the court's opinion that the father's telephone calls were abusive, threatening or even remotely related to the abuse that occurred the previous summer. The father's telephone calls to his son were not related to the cause of action.

In sum, the father did not have "minimum contacts" with Minnesota because the requirements of specific jurisdiction were not met: one's child is not a "contact," the father's telephone calls were not acts of purposeful availment, and the telephone calls were not related to the abuse. Instead of a making a futile minimum contacts analysis, the court should have looked to the UCCJA exception to personal jurisdiction.

B. Interstate Child Protective Orders Fall Under the Umbrella of the UCCJA

The UCCJA governs interstate child custody determinations in virtually any form. Determinations under Minnesota's Domestic Abuse Act, 106

106. See supra Part IV.A.1 for a description of the relationship between Minnesota's five factor test and specific jurisdiction.
107. See supra Part II.B and accompanying notes.
108. See supra Part IV.A.3 and accompanying notes.
109. See Hughs, 572 N.W.2d at 747.
110. See Blakesley, supra note 1, at 497. See, e.g., A.E.H. v. C.C., 468 N.W.2d 190, 200 (Wis. 1991) (holding that a termination of parental rights is governed by the UCCJA). But see, State ex rel. R.N.J. v. M.M.J., 908 P.2d 345, 347 (Utah Ct. App. 1995) (holding that the termination of parental rights is not a custody proceeding under the UCCJA). A number of states have concluded that a guardianship proceeding, with respect to a minor, is covered under the term "custody proceeding" and must comply with the UCCJA. See, e.g., A.E.H. v. C.C., 468 N.W.2d 190, 199 (Wis. 1991); Walling v. Walling, 727 P.2d 586, 690 (Okla. 1986); Ray v. Ray, 494 So. 2d 634, 637 (Ala. Civ. App. 1986); Gribkoff v. Bedford, 711 P.2d 176, 178 (Or. App. 1985); In re Wonderly, 423 N.E.2d 420, 423-24 (Ohio 1981). The majority of the courts which have addressed the issue have held that the UCCJA is applicable to abuse and neglect proceedings. See, e.g., In re Pima County Juvenile Action, 712 P.2d 431, 432 (Ariz. 1986); L.G. v. People ex rel. K.G., 890 P.2d 647, 648 (Colo. 1995); In re E.H., 612 N.E.2d 174, 182 (Ind. Ct. App. 1993); State ex rel. Dep't of Human Servs. v. Avinger, 720 P.2d 290, 292 (N.M. 1986) (applying New Mexico's
which authorizes temporary restraining orders, are custody determinations when one parent is excluded from the home and children are involved.\textsuperscript{112} The UCCJA should have been applied to the \textit{Hughes} order for child protection. This conclusion is based on the statutory language of the UCCJA, Minnesota’s Domestic Abuse Act, together with the admission of the \textit{Hughes} court and the guidance of South Dakota’s Supreme Court in \textit{Zappitello v. Moses}.\textsuperscript{113}

The UCCJA limits the situations in which a state court has jurisdiction to make a child custody determination in a custody proceeding.\textsuperscript{114} A “custody determination” is defined as a “court decision and court orders and instructions providing for the custody of a child, including visitation rights, but does not include a decision relating to child support or any other monetary obligation of any person.”\textsuperscript{115}

Furthermore, “custody proceedings” are defined as “proceedings in which a custody determination is one of several issues, such as an action for dissolution, divorce or separation, and includes child neglect and dependency proceedings.”\textsuperscript{116} Minnesota’s Domestic Abuse Act outlines the available relief for plaintiffs and specifically mentions custody and visitation.\textsuperscript{117} Subdivision six provides:

(a) Upon notice and hearing, the court may provide relief as follows: . . .

. . .

(4) award temporary custody or establish temporary visitation with regard to minor children of the parties on a basis which gives primary consideration to the safety of the victim and the children . . . .\textsuperscript{118}

\textsuperscript{111} MINN. STAT. § 518B.01 (1998).

\textsuperscript{112} See \textit{Baker v. Baker}, 494 N.W.2d 282, 289 (Minn. 1992) (“There is an obvious practical need to deal with custody issues when one parent is excluded from the home.”). \textit{See also} Matter of Marriage of Rowland, 884 P.2d 561, 564-65 (Or. Ct. App. 1994) (holding that a mother’s motion for a temporary protective order of restraint was effectively a request to modify a custody determination of another state court and she was required to comply with the UCCJA).

\textsuperscript{113} 458 N.W.2d 784, 785 (S.D. 1990) (holding that the UCCJA must be satisfied when a domestic abuse act is implicated).

\textsuperscript{114} MINN. STAT. § 518A.03, subd. 1 (1998).

\textsuperscript{115} Id. § 518A.02(b).

\textsuperscript{116} Id. § 518A.02(c).

\textsuperscript{117} See \textit{id.} § 518B.01, subd. 6.

\textsuperscript{118} \textit{id.} § 518B.01, subd. 6(a)(4).
In the *Hughes* case, the court modified the New Jersey custody determination that granted the father visitation rights during the months of June, July, and August. The court, in effect, gave the mother custody for those three months so that she did not have to send her son to the father. In granting this relief the court gave primary consideration to the safety of the son; their actions are in accordance with the Domestic Abuse Act. When the *Hughes* court awarded temporary custody to the mother, their decision was a custody determination as defined by the UCCJA because it granted the mother custody rights.

The *Hughes* court essentially acknowledged that it was dealing with a custody or visitation matter when it said, "Furthermore, appellant may have reasonably assumed that, because the boy was living in Minnesota, it might result in custody and visitation matters being dealt with by the Minnesota courts." South Dakota resolved a similar jurisdictional dilemma by employing the UCCJA. The South Dakota Supreme Court, in *Zappitello v. Moses*, held:

The sole issue for consideration is whether civil matters arising out of the South Dakota Domestic Abuse Act, SDCL 25-10 (Domestic Abuse Act), are subject to the jurisdictional requirements set forth in the South Dakota Uniform Child Custody Jurisdiction Act, SDCL 26-5A (UCCJA). We hold that in cases involving allegations of domestic abuse which involve interstate custody disputes the UCCJA's jurisdictional requirements must be satisfied before South Dakota courts may exercise jurisdiction.

The *Zappitello* court explained that the case involved the precise difficulties arising out of child custody disputes which the UCCJA was intended to prevent. The South Dakota Supreme Court concluded that when the facts of a Domestic Abuse Act case contain issues of divergent

120. See *id.* at 749.
121. See MINN. STAT. § 518B.01, subd. 6(a)(4).
122. The UCCJA applies to temporary custody orders. See *In re Marriage of Schmidt*, 436 N.W.2d 99, 107 (Minn. 1989) (concluding that the legislature intended temporary orders to be included in the scope of the UCCJA).
123. See MINN. STAT. § 518A.02(b).
124. *Hughes*, 572 N.W.2d at 751.
125. *Zappitello v. Moses*, 458 N.W.2d 784, 785 (S.D. 1990). The salient difference between the *Hughes* case and *Zappitello* is that in *Zappitello* the father made the allegations of abuse on the last day of his summer visitation rights. See *id.*
126. See *id.* at 786.
citizenship, the UCCJA applies.\textsuperscript{127} The UCCJA should have been applied to the \textit{Hughes} order for child protection; the statutory language of the UCCJA and Domestic Abuse Act, the admission of the \textit{Hughes} court, and the persuasive authority of \textit{Zappitello}\textsuperscript{128} support this conclusion. The applicability of the UCCJA in the \textit{Hughes} case was necessary because the court did not have personal jurisdiction over the father, and the UCCJA does not require personal jurisdiction.

\section*{C. The UCCJA Exception to Personal Jurisdiction}

Simply stated, the UCCJA does not require personal jurisdiction over a non-resident defendant.\textsuperscript{129} First, this section will outline the impetus for the UCCJA. Next, the rationale for the UCCJA exception to personal jurisdiction will be explained. Finally, the constitutionality of this exception is addressed.

\subsection*{I. Impetus for the UCCJA}

The UCCJA was enacted by all fifty states to combat the problems associated with the multiple jurisdictional bases for child custody determinations.\textsuperscript{130} The \textit{Restatement (Second) of Conflict of Laws} states that there were three jurisdictional bases for child custody determinations: the presence of the child; the domicile of the child; or personal jurisdiction over both parents.\textsuperscript{131}

\begin{itemize}
  \item \textsuperscript{127} See \textit{id.} at 787.
  \item \textsuperscript{128} See \textit{id.} at 785.
  \item \textsuperscript{130} See \textit{supra} note 10 and accompanying text.
  \item \textsuperscript{131} \textit{Restatement (Second) of Conflict of Laws} § 79 cmt. b (1971 & Supp. 1988). This provision provides:

These different bases of jurisdiction owed their existence to the conflicting interests involved. The domicile of a child was deemed an adequate basis on the ground that custody is a question of status and hence is subject to the control of the State where the child is domiciled. \ldots The State where a child is physically present could be said to have the most immediate concern with his welfare. Its courts would also have direct ac-
The Minnesota Supreme Court has used multiple jurisdictional bases for child custody cases. Specifically, the Minnesota Supreme Court has held that a child custody determination is a status determination that can be made by the state in which the child is domiciled. The court, however, also said that infants and other persons lacking the physical and mental capacity to protect themselves have been accorded special protection by the state, regardless of the child's domicile, based on the state as parens patriae. In addition, the Minnesota Supreme Court held that the state that can best serve the interests of the child should have jurisdiction, and that parental interests must give way to the welfare of the child.

The multiple jurisdictional bases for child custody cases gave rise to access to the child and might be most qualified to decide what would be in the child's best interest. The third jurisdictional basis, personal jurisdiction over the persons who were competing for the child's custody (normally, the parents), placed emphasis upon the interests of the competing parties.

Id.

132. See State ex rel. Larson v. Larson, 190 Minn. 489, 491, 252 N.W. 329, 330 (1934). The Larson court observed:

The question of jurisdiction as here presented is a new one in this state. An examination of certain fundamental principles of conflict of laws is therefore necessary, bearing in mind always that here we are not dealing with substantive property rights but with the question of the domicile of a child and the jurisdiction of courts to deal with matters of custody, which jurisdiction depends upon a determination of the question of domicile. A proceeding to determine custody of a minor child partakes of the nature of an action in rem, the res being the child's status or his legal relationship to another. Except where necessary as a police measure, it would seem that the only court which has power to fix, to change, or to alter this status is the court of the state in which the minor child is domiciled.

Id. (citations omitted).

133. See Glasier v. Glasier, 137 N.W.2d 549, 553 (Minn. 1965). Parens patriae literally means "parent of the country" and refers to the role of a state as sovereign and guardian of persons under legal disability; parens patriae also refers to the state's role in child custody determinations when acting to protect the child's interest. See BLACK'S LAW DICTIONARY 1114 (6th ed. 1990).

134. See Longseth v. Columbia County, 162 N.W.2d 365, 368 (Minn. 1968) ("Probably the better rule is that it does not involve constitutional issues at all, but is simply a matter of comity and that the courts of the state which has the greatest interest in the child ought to be permitted to determine its custody.").

135. See Baker v. Baker, 494 N.W.2d 282, 287 (Minn. 1992) ("While both parents have strong interests in the custody and enjoyment of their child, a parent's love and affection must yield to considerations of the child's welfare.").
conflicting adjudications of custody among different states.\textsuperscript{136} A parent against whom a custody decree had been rendered in one state could remove the child to another state and seek a new custody decree.\textsuperscript{137} In an atmosphere of virtually no jurisdictional limitations, courts were actively asserting initial and modified child custody decrees.\textsuperscript{138} It is estimated that there were 25,000 to 100,000 incidents of child abductions per year.\textsuperscript{139} The UCCJA was the legislative response to this problem and restricts the circumstances in which a court is competent to grant an interstate custody decree.\textsuperscript{140}

The Minnesota Supreme Court in \textit{In re Giblin} endorsed the UCCJA and urged the legislature to enact it.\textsuperscript{141} Minnesota's version of the UCCJA became effective in 1977.\textsuperscript{142} The court in \textit{Hughs} ought to have used the UCCJA exception to personal jurisdiction instead of making a specious "minimum contacts" analysis.

\textbf{2. Rationale for the UCCJA Exception to Personal Jurisdiction}

The usual rationale for the UCCJA exception to personal jurisdiction is expressed in \textit{Hudson v. Hudson}.\textsuperscript{143}

We find a petitioner need not demonstrate minimum contacts under \textit{International Shoe} between the absent parent and the forum in custody proceedings under the UCCJL. Rather, custody is in effect an adjudication of a child's status, which falls under the status exception of \textit{Shaffer v. Heitner}. A court may therefore adjudicate custody under the UCCJL without acquiring per-
sonal jurisdiction over an absent party given reasonable attempts to furnish notice of the proceedings.”

*Pennoyer* recognized a status exception to personal jurisdiction. Although the Court in *Shaffer* negated the “in rem” exception to personal jurisdiction, the court referred to cases involving the personal status of the plaintiff as necessary litigation that did not violate the standard of fairness.

The Supreme Court has held that personal jurisdiction over a non-resident spouse is not necessary to dissolve a marriage because it is a status determination. Traditionally, child custody determinations have also been exempt from the personal jurisdiction requirement. The original

144. *Id.* at 293 (citation omitted). The UCCJL is Washington’s version of the UCCJA.
145. *See* *Pennoyer v. Neff*, 95 U.S. 714, 734 (1877). The Court stated:

To prevent any misapplication of the views expressed in this opinion, it is proper to observe that we do not mean to assert, by any thing we have said, that a State may not authorize proceedings to determine the status of one of its citizens towards a non-resident, which would be binding within the State, though made without service of process or personal notice to the non-resident. The jurisdiction which every State possesses to determine the civil status and capacities of all its inhabitants involves authority to prescribe the conditions on which proceedings affecting them may be commenced and carried on within its territory.

147. *See id.* at 201. The *Shaffer* Court noted:

*Pennoyer* itself recognized that its rigid categories, even as blurred by the kind of action typified by Harris, could not accommodate some necessary litigation. Accordingly, Mr. Justice Field’s opinion carefully noted that cases involving the personal status of the plaintiff, such as divorce actions, could be adjudicated in the plaintiff’s home State even though the defendant could not be served within that State.

148. *See id.* at 209 n.30 (“We do not suggest that jurisdictional doctrines other than those discussed in text, such as the particularized rules governing adjudications of status, are inconsistent with the standard of fairness.”).
150. *See generally In re Appeal in Maricopa County*, 543 P.2d 454, 459 (Ariz. Ct. App. 1975) (“When the issue is primarily between the state in its *parens patriae* capacity and an absent non-consenting spouse, the state is justified in providing for effective termination proceedings, even in the absence of *in personam* jurisdiction over a non-consenting parent.”); *Wenz v. Schwartz*, 598 P.2d 1086, 1092 (Mont. 1979) (“In light of the weight of authority, we must agree that personal jurisdic-
drafters of the UCCJA stated that custody determinations were status exceptions and exempt from the personal jurisdiction requirement. 151

Instead of requiring a defendant to have "minimum contacts" with the forum state, the UCCJA requires a state to have "maximum contacts" with the child. 152 As a result of this different standard, when the parties in a child support and child custody case reside in different states, 153 a court may be able to grant custody, but not child support. 154

In sum, when a state court makes a child custody determination pursuant to the UCCJA, personal jurisdiction over the nonresident defendant
is not necessary.

3. Constitutionality of the UCCJA Exception

The Supreme Court had an opportunity to address the constitutionality of the UCCJA exception to personal jurisdiction in In re Marriage of Hudson but denied certiorari. This section will introduce some of the arguments concerning the UCCJA exception, and hypothesize on the rationale the Supreme Court would use to uphold the UCCJA exception to personal jurisdiction.

One critique of the UCCJA exception is that “[r]eading Shaffer to except child custody matters from the requirement of some form of in personam jurisdiction or other substantive due process fairness is not within Shaffer’s holding and is inconsistent with constitutional law and policy relating to both child protection and parental authority and interests.”

One response to this argument is that only procedural due process requirements need to be met.

The requirements of due process of law are met in a child custody proceeding when, in a court having subject matter jurisdiction over the dispute, the out-of-state parent is given notice and an opportunity to be heard. Personal jurisdiction over the parents is not required to make a binding custody determination, and a custody decision made in conformity with due process requirements is entitled to recognition by other states under both the UCCJA’s requirement of comity and the standards of the full faith and credit clause of the United States Constitution.

Another view is that May v. Anderson demands personal jurisdiction in child custody cases. The counter argument is that May was a full faith and credit case and not a due process - personal jurisdiction case. May’s

156. Blakesley, supra note 1, at 508.
158. 345 U.S. 528 (1953).
159. See id. at 533-34 (finding that a court may not cut off a mother’s right to the care, custody, management and companionship of her minor children without having jurisdiction over her in personam).

In its plurality opinion, the [Supreme] Court held Ohio was not required to accord full faith and credit to a custody decision rendered in Wisconsin because the latter forum failed to acquire personal jurisdiction over the mother, an Ohio resident. The plurality’s opinion in May has been
susceptibility to these two interpretations has created a situation where there is no clear consensus on the existence or stringency of a due process requirement of personal jurisdiction in custody cases.\(^{161}\)

The main problem in an interstate custody case is how to balance a state’s significant interest in the welfare of the child against the due process concerns of a nonresident parent.\(^{162}\) The child’s interests are paramount\(^{163}\) and the decision to uphold jurisdiction is easy, but trying to provide a rationale based on precedent is difficult.

There are at least three possible ways that the U.S. Supreme Court could uphold the UCCJA exception to personal jurisdiction: the status exception, jurisdiction by necessity, and the \textit{Burnham}\(^{164}\) plurality opinion. A U.S. Supreme Court decision on this issue would probably be analogous to the \textit{Burnham} decision, an easy case with conflicting rationales.

Footnote thirty of \textit{Shaffer v. Heitner} provides justification for the UCCJA exception to personal jurisdiction.\(^{165}\) This justification is based on the premise that custody determinations are “adjudications of status.”\(^{166}\)

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Adjudications of custody necessarily involve the resolution of conflicts between parental rights and the best interests of children. . . . Recent United States Supreme Court cases dealing with the due process rights of nonresident defendants raise anew the question of whether the UCCJA has struck the proper balance between the rights of parents and the welfare of their children.


\(^{166}\) See \textit{id}.
The Court cites a law review article written by Justice Roger J. Traynor.\textsuperscript{167}

Justice Traynor's article discusses the exceptional situation of ex parte divorce cases in which a plaintiff asks for no more than the right to remarry and the defendant has only a purposeless interest in barricading the plaintiff's avenue to freedom.\textsuperscript{168} In this situation, the forum state's decree enabling the plaintiff to marry would be justified even though the defendant had no contacts whatever with the forum state.\textsuperscript{169}

In addition, Justice Traynor discusses the parent-child relationship and resulting state interest:

There is an element of contract and some equality of parties in the marital relationship. These are lacking in the parent-child relationship, and the interest of the state therefore becomes correspondingly larger in any action involving parent and child. Contracts [sic] of both parties with the state also take on larger and perhaps paramount importance, since the consequences of any action either declaring or terminating the relationship are so momentous to the parties. In conjunction with fair play, these considerations would normally preclude jurisdiction over a non-resident defendant having no contact with the forum state. Nevertheless, even here we must recognize that the state where a child is present must be competent to regulate his custody whether his parent is present or not, and if the parent cannot be found or has failed to discharge his parental obligations, that state, given the best notice reasonably possible, should be free to promote the interest of the child by permitting his adoption.\textsuperscript{170}

As Professor Coombs points out, it is unlikely that the Supreme Court meticulously cited pages to create the distinction that divorce decrees do not require minimum contacts while custody and adoption decrees do.\textsuperscript{171} Rather, Coombs argues that the Supreme Court "likely cited Traynor to endorse his argument that minimum contacts are sometimes needed and sometimes not needed for a fair adjudication of status."\textsuperscript{172}

Justice Traynor appears to be stating the rule that a state has the power to regulate a child's custody as long as the child is present and the
father's procedural due process rights are not infringed. This rule would be consistent with the position Justice Traynor and the California Supreme Court took in Sampsell v. Superior Court.\textsuperscript{173}

Footnote thirty of \textit{Shaffer} and the commentary possibly develop a rule that the legal relationships involved in cases of child custody are considered statuses.\textsuperscript{174} Only the Supreme Court will be able to authoritatively decide whether the particularized rules of the UCCJA governing child custody status are consistent with the standard of fairness.\textsuperscript{175} In the meantime, courts facing a nonresident's motion to dismiss for lack of personal jurisdiction in a UCCJA case will probably continue to simply cite \textit{Shaffer} for the proposition that "minimum contacts" and personal jurisdiction are unnecessary due to the status exception.

Another rationale the Supreme Court could use to uphold a court's jurisdiction in an UCCJA case is the "jurisdiction by necessity" argument. This argument appears as dictum in a footnote of \textit{Helicopteros Nacionales de Columbia v. Hall}.\textsuperscript{176}

As an alternative to traditional minimum-contacts analysis, respondents suggest that the Court hold that the State of Texas had personal jurisdiction over Helicol under a doctrine of "jurisdiction by necessity."... We conclude, however, that respondents failed to carry their burden of showing that all three defendants could not be sued together in a single forum. It is not clear from the record, for example, whether suit could have been brought against all three defendants in either Colombia or Peru. We decline to consider adoption of a doctrine of jurisdiction by necessity—a potentially far-reaching modification of existing law—in the absence of a more complete record.\textsuperscript{177}

Footnote thirty-seven of \textit{Shaffer} raised, but did not discuss, the question of whether the presence of a defendant's property in a state might be a sufficient basis for jurisdiction when no other forum is available to the plaintiff.\textsuperscript{178}

\textsuperscript{173.} 197 P.2d 789 (Cal. 1948). The court accepts several alternative bases of initial jurisdiction in child custody proceedings. \textit{See id.} at 749-50. The \textit{Sampsell} court's recognition of the three alternative bases of initial jurisdiction in child custody cases was later endorsed by the \textit{Restatement (Second) of Conflict of Laws} and gained wide acceptance in state courts. \textit{See} Coombs, \textit{supra} note 161, at 719.

\textsuperscript{174.} \textit{See} Coombs, \textit{supra} note 161, at 745.


\textsuperscript{176.} 466 U.S. 408 (1983).

\textsuperscript{177.} \textit{Id.} at 419 n.13 (citations omitted).

\textsuperscript{178.} \textit{See} Shaffer, 433 U.S. at 211 n.37 (1977).
This argument may apply to a child custody case when there is not a single forum that would satisfy both the jurisdictional requirements of the UCCJA and the "minimum contacts" standard.\(^{179}\) If the Supreme Court required personal jurisdiction in this situation, the interests of the child would have to be sacrificed for the convenience of the parents and the UCCJA would be nullified.\(^{180}\)

The Supreme Court could solve this problem by holding that there is "jurisdiction by necessity" where there is no other forum available to the plaintiff. In this situation, the interest of the forum state in providing a means to adjudicate the custody of a child would give the state the power to determine the rights of all the parties involved provided the parties are given a full opportunity to appear and be heard.\(^{181}\)

The final rationale that the Supreme Court might use is Justice Scalia’s argument in *Burnham*.\(^{182}\) Arguably, one of the most firmly established principles of state jurisdiction is the rule that the state where a child is physically present has jurisdiction to decide what is best for the child.\(^{183}\) Furthermore, this tradition is not only old, but every state has recently reconsidered and modified the rule by enacting the UCCJA.\(^{184}\)

Thus, the Court might find that because the UCCJA was adopted by the American people, individual Justices' perceptions of fairness should not override the States' "traditional notions of fairness."\(^{185}\) The Court could consequently hold that jurisdiction based on the UCCJA constitutes due process because it continues and improves a tradition of our legal system; it satisfies the standard of "traditional notions of fair play and substantive justice."\(^{186}\)

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179. See Garfield, *supra* note 162, at 462. Garfield observed:

If personal jurisdiction is required in custody cases, inevitably instances will arise in which the state qualifying for custody jurisdiction under the UCCJA cannot require personal jurisdiction over the nonresident parent. In such cases, the custody action will have to be brought in the state where the parent can be served, but that state may not qualify for custody jurisdiction under the UCCJA standards.

*Id.*

180. See *id.*

181. See generally Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 313 (1950) (holding that a state has an interest in determining the rights to a trust). This case note makes the analogy to child custody proceedings.


183. See *id.* at 610.

184. See *id.* at 615.

185. See *id.* at 627.

186. See *id.* at 619.
In summary, there are three possible rationales for upholding the UCCJA exception to personal jurisdiction. Although there probably would be conflicting rationales, the Supreme Court would likely decide that "minimum contacts" are unnecessary as long as the UCCJA was satisfied. The *Hughes* court should have used the UCCJA exception and proceeded to determine whether the UCCJA jurisdictional requirements were satisfied.

D. The *Hughes* Court Had UCCJA Jurisdiction

The *Hughes* court had UCCJA jurisdiction to make the protective order. The court would have had UCCJA jurisdiction over this custody matter in three ways: it was in the best interest of the child; the child allegedly had been subjected to abuse; and no other court had jurisdiction.

Under Minnesota's version of the Uniform Child Custody Jurisdiction Act, a court has jurisdiction to make a child custody determination by initial or modification decree under a variety of conditions. There is jurisdiction if Minnesota is the home state of the child, if it is in the best interest of the child, if the child is present in the state, or if it appears that no other state would have jurisdiction.

187. Sometimes the terms "personal jurisdiction" and "minimum contacts" are interchanged. See supra Part II.B and accompanying notes. Whether the terms are synonymous is arguable.

188. See *Zappitello v. Moses*, 458 N.W.2d 784, 787 (S.D. 1990) (stating that a trial court must first proceed with an analysis of the jurisdictional requirements set forth in the UCCJA).

189. *Minn. Stat.* § 518A.03, subd. 1 (1998). This subdivision provides:

(a) this state
   (1) is the home state of the child at the time of commencement of the proceeding, or
   (2) had been the child's home state within six months before commencement of the proceeding and the child is absent from this state because of removal or retention by a person claiming custody or for other reasons, and a parent or person acting as parent continues to live in this state; or
(b) it is in the best interest of the child that a court of this state assume jurisdiction because
   (1) the child and the parents, or the child and at least one contestant, have a significant connection with this state, and
   (2) there is available in this state substantial evidence concerning the child's present or future care, protection, training, and personal relationships; or
(c) the child is physically present in this state and
   (1) the child has been abandoned or
   (2) it is necessary in an emergency to protect the child because the child has been subjected to or threatened with mistreatment or abuse or
Even if a Minnesota court has jurisdiction based on the UCCJA, the doctrine of continuing jurisdiction allows a child custody modification only if the original state no longer has jurisdiction or if the original state declines to accept jurisdiction.\textsuperscript{190} The original state no longer has jurisdiction if both parents have moved from the state.\textsuperscript{191}

In addition, before a Minnesota court can assert jurisdiction under the UCCJA, it must first determine the existence of a previous decree.\textsuperscript{192} If it finds an original decree, the court should contact the original state and possibly stay its own proceedings.\textsuperscript{193} A family court's temporary custody order may be reversed and remanded for appropriate jurisdictional fact findings if the order does not comply with the UCCJA.\textsuperscript{194}

The \textit{Hughes} court would have had UCCJA jurisdiction over this custody matter under three separate provisions: it was in the best interest of the child;\textsuperscript{195} the child allegedly had been subjected to abuse;\textsuperscript{196} and no other court had jurisdiction.\textsuperscript{197} If the court had applied the UCCJA, the

\begin{itemize}
  \item is otherwise neglected or dependent; or
  \item (d)(1) it appears that no court in another state would have jurisdiction under prerequisites substantially in accordance with clause (a), (b), or (c), or a court of another state has declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child, and
  \item (2) it is in the best interest of the child that a court of this state assume jurisdiction.
\end{itemize}

\textit{Id.}

\textsuperscript{190} See MINN. STAT. § 518A.14, subd. 1 (1998); see also \textit{In re McLain}, 569 N.W.2d 219, 222 (Minn. Ct. App. 1997) (denying jurisdiction to a Minnesota court where the Texas district court has continuing jurisdiction).

\textsuperscript{191} See Blakesley, \textit{supra} note 1, at 477.

\textsuperscript{192} See \textit{In re Coleman} v. Coleman, 493 N.W.2d 133, 136 (Minn. Ct. App. 1992) (citing \textit{In re Marriage of Schmidt}, 436 N.W.2d 99, 103-04 (Minn. 1989)).

\textsuperscript{193} See id.

\textsuperscript{194} See \textit{Schmidt}, 436 N.W.2d at 103-04.

\textsuperscript{195} See MINN. STAT. § 518A.03 subd. 1 (b) (1998). Both the child and the mother had a significant connection with Minnesota, and there was substantial evidence concerning the child's present care, protection, and personal relationships available in Minnesota. See \textit{Hughes ex rel. Praul} v. Cole, 572 N.W.2d 747, 749 (Minn. Ct. App. 1997). For example, the mother introduced a letter from a psychologist who interviewed the boy, and the boy supposedly threatened to run away if he was sent to visit his father. See id. at 750.

\textsuperscript{196} See MINN. STAT. § 518A.03(1)(c) (1998). The child was physically present in Minnesota and it was necessary in an emergency to protect the child because the child has been subjected to or threatened with mistreatment or abuse. See \textit{Hughes}, 572 N.W.2d at 749. The court in \textit{Hughes} looked at the standard of the Domestic Abuse Act and the facts of the case and concluded that the father presented an intent to harm the child or inflict fear of harm. See id. at 752.

\textsuperscript{197} See MINN. STAT. § 518A.03(1)(d) (1998). In \textit{Hughes}, no other state would have had jurisdiction under subdivisions (a)(b), or (c) of Minnesota Statutes sec-
protective order could still have been upheld, but the court would not have had to make a futile minimum contacts analysis.

V. CONCLUSION

The court's analysis in Hughs is unsound because the father did not have any contacts with Minnesota that would satisfy the specific jurisdiction minimum contacts requirement. One's child is not a contact, good faith telephone calls to one's son are not acts of purposeful availment, and the telephone calls were not related to the cause of action. Because the elements of specific jurisdiction were not met, the court did not have personal jurisdiction.

Instead, the court should have declared that interstate child protective orders fall under the umbrella of the UCCJA. The statutory language of the UCCJA, the court's admission, and the persuasive authority of the South Dakota Supreme Court support this conclusion.

Since the UCCJA does not require personal jurisdiction, the court would not have had to make a futile minimum contacts analysis. Finally, the Hughs court would have had UCCJA jurisdiction to issue the protective order.

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