South Carolina Law Review

Volume 31 | Issue 3 Article 10

1980

Constitutional Law--Personal Jurisdiction--The Due Process Clause vs. Long-Arm Claims for Increased Child Support - Kulko v. Superior Court

Karen J. Williams

COMMENTS

CONSTITUTIONAL LAW—PERSONAL JURISDICTION—THE DUE PROCESS CLAUSE VS. LONG-ARM CLAIMS FOR INCREASED CHILD SUPPORT. *Kulko v. Superior Court,* 436 U.S. 84 (1978).

As a result of the rising divorce rate and increased mobility of the American people, former spouses no longer tend to remain within the marital state. When the custodial parent seeks increased support for her children from a parent living in another state, due process requires that the court acquire personal jurisdiction over the nonresident parent.[1] Until recently the United States Supreme Court has declined to rule on the use of long-arm statutes to obtain personal jurisdiction over nonresident defendants in domestic relations actions.[2] Several state courts have treated this silence as implicit approval of the use of long-arm statutes and have held that marital support cases are peculiarly suited to the concept of "minimum contacts" in personam jurisdiction.[3] In *Kulko v. Superior Court,*[4] however, the Supreme Court addressed the issue and reversed a California Supreme Court decision[5] that had upheld personal jurisdiction acquired pursuant to the broad California long-arm statute.[6] In the majority opinion written by Mr. Justice Marshall, the Court held that a New York father who sent his daughter to live with her mother in California did not have "minimum contacts" sufficient to confer personal jurisdiction over him in the California courts in a suit to obtain additional child support.[7]

---

1. *See* Kulko v. Superior Court, 436 U.S. 84 (1978).

2. Mizner v. Mizner, 84 Nev. 268, 439 P.2d 679, *cert. denied,* 393 U.S. 847 (1968); Van Wagenberg v. Van Wagenberg, 241 Md. 154, 215 A.2d 812, *cert. denied,* 385 U.S. 833 (1966); Soule v. Soule, 193 Cal. App. 2d 443, 14 Cal. Rptr. 417 (1961), *cert. denied,* 368 U.S. 985 (1962).

3. *E.g.,* Pinebrook v. Pinebrook, 329 So. 2d 343 (Fla. Dist. Ct. App. 1976); Whitaker v. Whitaker, 237 Ga. 895, 230 S.E.2d 486 (1976); Mitchim v. Mitchim, 518 S.W.2d 362, 365 (Tex. 1975).

4. 436 U.S. 84 (1978).

5. Kulko v. Superior Court, 19 Cal. 3d 514, 564 P.2d 353, 138 Cal. Rptr. 586 (1977), *aff'g,* 133 Cal. Rptr. 627 (1976). The decision at the trial level appears to be unreported.

6. CAL. CIV. PROC. CODE § 410.10 (West 1973) provides that "[a] court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States."

7. 436 U.S. at 92.

I. The *Kulko* Decision

In 1959 appellant Ezra Kulko and appellee Sharon Kulko Horn, both New York domiciliaries, married while he was on a three-day military stopover in California. During their married life in New York, two children were born: a son Darwin in 1961 and a daughter Ilsa in 1962. When the couple separated in March 1972, the mother moved to San Francisco, California. In September 1972 she flew to New York City to sign a written separation agreement which provided that the children would spend the school year with their father and vacations with their mother. Ezra also agreed to pay $3,000 per year in child support for the periods when the children were with their mother.[8] Payments were to be mailed to California or wherever she might be living.[9] He agreed to pay all of the children's educational, clothing, medical, hospital, and dental expenses.[10] He also agreed to indemnify Sharon for costs, expenses, and attorney's fees that she might incur as a result of his future default in the performance of the terms and conditions of the agreement.[11] Sharon then flew to Haiti with a power of attorney signed by Ezra and was granted a divorce that incorporated the terms of their written agreement. She then returned to California. The agreement was performed until December 1973, when Ilsa told her father that she wished to remain with her mother following the Christmas vacation. Ezra bought Ilsa a one-way plane ticket to California. Ilsa returned only to visit her father for summer vacations during the following two years. In January 1976, following Darwin's request to live with his mother, Sharon sent her son a plane ticket without Ezra's knowledge. Shortly thereafter she brought an action to establish the Haitian divorce decree as a California judgment, to modify the judgment to award her full custody of the children, and to increase appellant's child-support obligations.[12]

Ezra appeared specially and moved to quash service of the summons on the grounds that he was a nonresident and lacked the minimum contacts necessary for personal jurisdiction.[13] His motion was denied by the trial court. He then petitioned for a writ

8. *Id.* at 86-87.
9. *Id.* at 93-94 n.6.
10. Brief of Appellee at app. 8, 10 (Separation Agreement).
11. *Id.* at 11. 436 U.S. at 95 n.8.
12. 436 U.S. at 87-88.
13. *Id.* at 88.

of mandate[14] in the California Court of Appeals, challenging the lower court's jurisdiction only over the claim for increased support.[15] The appellate court affirmed, reasoning that because Ezra had consented to his children's decision to live with their mother in California, he had "caused an effect in the state by an act done elsewhere,"[16] thereby warranting the court's exercise of jurisdiction.[17]

The California Supreme Court affirmed.[18] Noting the broad intent of the California Code of Civil Procedure,[19] the court agreed that the father had caused an effect in the state by an act or omission outside the state and that the exercise of jurisdiction was reasonable. Ezra had "purposely availed himself of the benefits and protections of the laws of California"[20] by sending his daughter to live on a permanent basis with her mother in California. He had also derived the economic benefit of not paying support for the child during the school year although he was obligated to do so under the existing agreement.[21] The complaint sought support for both children and appellant asserted lack of jurisdiction over both children. The court, however, concluded

---

14. A writ of mandate, similar to a writ of mandamus, issues from a court of superior jurisdiction and directs that action be taken or disposition be made of the case by the inferior court. CAL. CIV. PROC. CODE § 1085 (West 1955).

15. 133 Cal. Rptr. at 627. The father did not challenge the court's jurisdiction to determine custody. *Id.* The children's physical presence and domicile within the boundaries of the state at the time the proceedings were instituted, coupled with the mother's residence in the state, gave the California courts jurisdiction to entertain proceedings touching the custody of the children. Sampsell v. Superior Court, 32 Cal. 2d 763, 777-79, 197 P.2d 739, 749-50 (1948); CAL. CIV. CODE § 5152 (West Supp. 1979). *See* Titus v. Superior Court, 23 Cal. App. 3d 792, 797-98, 100 Cal. Rptr. 477, 481-82 (Ct. App. 1972); RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 79 (1971).

16. 133 Cal. Rptr. at 628. The court's decision was based on RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 27 (1971), which was incorporated into California law by Judicial Council Comment (9) to CAL. CIV. PROC. CODE § 410.10 (West 1973). The Comment provides in part:

> A state has power to exercise judicial jurisdiction over an individual who causes effects in the state by an . . . act done elsewhere with respect to causes of action arising from these effects, unless the nature of the effects and of the individual's relationship to the state make the exercise of such jurisdiction unreasonable.

Id.

17. 133 Cal. Rptr. at 628.

18. Kulko v. Superior Court, 19 Cal. 3d 514, 564 P.2d 353, 138 Cal. Rptr. 586 (1977).

19. *See* note 6 *supra*. The United States Supreme Court noted that the California Supreme Court opinion had not distinguished between the state and federal constitutional requirements. 436 U.S. at 89 n.3.

20. 19 Cal. 3d at 522, 564 P.2d at 356, 138 Cal. Rptr. at 589.

21. *Id.* at 521-22, 524, 564 P.2d at 356, 358, 138 Cal. Rptr. at 589-91.

that it was fair and reasonable to subject the appellant to personal jurisdiction with respect to the support of both children, even though he had not participated in his son's move to California, and thus had not "caused an effect" within the state with respect to his son.[22]

The United States Supreme Court, treating Ezra Kulko's appeal as a petition for a writ of certiorari,[23] reversed.[24] The Court ruled that the father's acquiescence in his daughter's desire to live in California with her mother was in the interest of family harmony and could not be equated with "'purposefully avail[ing] himself' of the 'benefits and protections'"[25] of the laws of California sufficiently to lead him reasonably to expect to be subject to suit in California. In the first part of a two-pronged test, the Court questioned whether the father had received any personal benefits from the laws of California. It found that such benefits as police and fire protection, the school system, and hospital services were provided by California to the daughter and not to the father.[26] The Court also ruled that Ezra had not received financial benefit from his daughter's stay in California warranting the exercise of in personam jurisdiction. "Any diminution in . . . household costs resulted, not from the child's presence in California, but rather from her absence from appellant's home."[27] The mother's failure to use the New York courts when the de facto modification of the custody provisions and need for increased support occurred resulted in the father's ultimate financial advantage.[28] The Court reasoned that the lower courts had confused the question of liability with the determination of which forum

22. *Id.* at 525, 564 P.2d at 358-59, 138 Cal. Rptr. at 591-92. The court found that because the father purchased his daughter's plane ticket and sent her to live with her mother in California, he thereby caused an effect within the state. Because the mother had arranged for the son to come to California without the father's knowledge, however, the court reasoned the father had not caused an effect with respect to his son.

23. 436 U.S. at 90 n.4. The Court noted that since the issue was not the constitutionality of the statute itself but its application in this case, jurisdiction by appeal did not lie. *See* 28 U.S.C. § 1257(2) (1976). It also noted that appellant alternatively had requested that the papers be acted upon as a petition for certiorari pursuant to 28 U.S.C. § 2103 (1976). The Court's treatment in disregarding formalities previously had been followed in Hanson v. Denckla, 357 U.S. 235, 244 (1958), and May v. Anderson, 345 U.S. 528, 530 (1953).

24. 436 U.S. at 90.

25. *Id.* at 94.

26. *Id.* at n.7.

27. *Id.* at 95.

28. *Id.*

was proper to decide that liability.[29]

In the second part of its test, the Court found no basis on which Ezra reasonably could have anticipated being " 'haled before a [California] court' "[30] when he accepted his daughter's decision to live with her mother. This conclusion may be questioned. Surely Ezra could not have expected his daughter's needs to have been satisfied for nine months on the amount of money he had agreed to provide for three months of support. The Court's concern with Ezra's "substantial financial burden and personal strain of litigating a child-support suit in a forum 3,000 miles away"[31] seems undercut by the indemnification provision of the separation agreement in which the father promised to pay all costs and fees resulting from a default in his agreement to pay all obligations incurred for his daughter's education, clothing, medical, hospital, and dental services.[32] Furthermore, if Sharon had been forced to go to New York, she and the children would have faced the emotional strain of the suit and a possible separation for that period. Perhaps the Court was giving more attention to the burden that would be placed on family relations if the supporting parent were subject to the jurisdiction of the foreign court in whichever state his child chose to reside.[33]

In addition, the Court found that the California courts' reliance on the assertion of jurisdiction based on the "effects" test of the American Law Institute's *Restatement (Second) of Conflict of Laws* § 37[34] was misplaced in this case. First, there was no physical injury to persons or property within the state. Second, the cause of action arose from personal domestic relations and not from commercial transactions in interstate commerce. Third, no commercial benefit was sought from the solicitation of business from a California resident. Fourth, the controversy arose from an agreement that had no connection with California law.[35]

The Court pointed to New York as the proper forum for the suit. The negotiation and signing of the separation agreement had taken place in New York, the parties' former marital domicile. Ezra had remained in New York while Sharon had moved to

29. *Id.* at 95-96.
30. *Id.* at 97-98 (citing Shaffer v. Heitner, 433 U.S. 186, 216 (1977)).
31. 436 U.S. at 97.
32. See note 10 and accompanying text *supra*.
33. *See* 436 U.S. at 98.
34. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 37 (1971). *See* note 16 *supra*.
35. *See* 436 U.S. at 96-97.

California.[36] Although California might have been the "center of gravity" for choice-of-law purposes because the children and their mother resided there, the choice of California law did "not mean that California [had] personal jurisdiction over Ezra."[37]

The Court noted that California had enacted no special jurisdictional statute signifying its specialized interest in such cases.[38] The Court's interest in such a specialized statute may stem from the general proposition that courts seldom like to intrude into intricate and sensitive family relations, perhaps believing that a consensual change of custody in the best interests of the children should be encouraged and that the possibility of the children's custodial parent shopping for the parent's best interests in a distant state should be avoided. The Court recognized California's substantial and important interests in the welfare of its minor residents, but found that these interests were protected by the mother's alternative of proceeding under the Uniform Reciprocal Enforcement of Support Act of 1968.[39] The Court noted that the

---

36. *Id.* at 97.

37. *Id.* at 98. *Accord,* Shaffer v. Heitner, 433 U.S. 186, 215 (1977); Hanson v. Denckla, 357 U.S. 235, 254 (1958).

38. 436 U.S. at 98. See notes 114-15 & 117-19 *infra* for examples of the domestic relations long-arm statutes that have been adopted in several jurisdictions.

39. 436 U.S. at 98-99. *See* CAL. CIV. PROC. CODE §§ 1650-1656 (West 1972 & West Supp. 1979). The Uniform Reciprocal Enforcement of Support Act (URESA) was drafted and approved by the National Conference of Commissioners on Uniform State Laws in 1950. 9 UNIFORM LAWS ANN. 643 (1973). It was amended in 1952 and 1958 and was revised in 1968. *Id.* URESA is presently in force in one form or another in all fifty states, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands. *Id.* at 644.

The normal procedure in a URESA action involves filing a simplified petition in a court in the state where the family has been deserted (called the initiating state). *Id.* § 13 at 686. If the judge finds that the facts show the existence of a duty of support, he sends the petition and a copy of the Act to a court of the responding state to which the husband has fled or in which he has property. That court will take the necessary steps to obtain jurisdiction of the husband or his property, will hold a hearing, and may order the defendant to furnish support. The responding state then sends a copy of the support order and transfers payments made by the defendant pursuant to the order to the initiating state. *Id.* § 24 at 713. *See also* S.C. CODE ANN. §§ 20-7-110 to -470 (1976).

Although URESA may be the sole alternative to traveling to the defendant's forum available to the plaintiff, the Act provides only a cumbersome procedure. The responding court may not impose conditions in its order, such as visitation rights, that are not a part of the subject matter of a URESA proceeding. Hoover v. Hoover, 271 S.C. 177, 181, 246 S.E.2d 179, 181 (1978). In addition, the plaintiff, who is not present at the responding court hearing and must rely on the petition, may not be able to rebut effectively the defendant's allegations for reducing or denying the support requested. *See generally* Ehrenzweig, *Interstate Recognition of Support Duties,* 42 CAL. L. REV. 382 (1954); Note, *Long-Arm Jurisdiction in Alimony and Custody Cases,* 73 COLUM. L. REV. 289, 306-07 (1973); Note, *The Uniform Reciprocal Enforcement of Support Act,* 13 STAN. L. REV. 901,

denial of personal jurisdiction over Ezra Kulko in California did not leave Sharon at a "severe disadvantage."[40]

In a brief dissent, Mr. Justice Brennan concluded that the father's connection with California was "not too attenuated, under the standards of reasonableness and fairness implicit in the Due Process Clause, to require him to conduct his defense in the California Courts."[41] While he did not find the majority's decision "implausible," he preferred to agree with the California Supreme Court determination.[42]

II. Bases for Long-Arm Jurisdiction

Before a court may exercise jurisdiction over the parties there must be a legislative basis for jurisdiction giving the court power to act, and there must be an effective exercise of that power supported by adequate notice and opportunity to be heard.[43] A determination of the adequacy of the basis upon which state-court jurisdiction rests involves the following two-step inquiry: (1) whether the acquisition of jurisdiction by the court is authorized by a state statute, and (2) whether the exercise of such jurisdiction comports with federal constitutional standards. The broad California authorization statute treats the two questions as one by making no distinction between the state and federal constitutions.[44] When the constitutional exercise of in personam jurisdiction over a nonresident defendant is sought, the test first enunciated in *International Shoe Co. v. Washington*[45] must be met. In that case the Court described the test as follows:

915-19 (1961). Specific jurisdictional statutes adopted in several jurisdictions may be used to replace URESA actions under certain circumstances. See notes 102-03 & 105-07 *infra*.

40. 436 U.S. at 100 n.15 (comparing the conclusion in *McGee* that resident plaintiffs would be severely disadvantaged if in personam jurisdiction over out-of-state insurance companies were unavailable. McGee v. International Life Ins. Co., 355 U.S. 220, 222 (1967)).

41. 436 U.S. at 102. (Brennan, J., joined by White and Powell, JJ., dissenting).

42. *Id.*

43. In *Kulko,* the father did not contest notice since he was given actual notice by service of summons by mail in New York pursuant to Cal. Civ. Code § 5154 (West Supp. 1979) and appeared only to contest jurisdiction. *See* 436 U.S. at 91; 19 Cal. 3d at 520, 564 P.2d at 355, 138 Cal. Rptr. at 588. Service of summons by mail would satisfy the constitutional requirements enunciated in Mullane v. Central Hanover Bank and Trust Co., 339 U.S. 306 (1950) (notice must be by means reasonably calculated to give actual notice), and Fuentes v. Shevin, 407 U.S. 67 (1972) (opportunity to be heard must be given at a meaningful time).

44. *See* notes 6 & 19 *supra*.

45. 326 U.S. 310 (1945).

> [D]ue 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.' . . .
>
> . . . .
>
> Whether due process is satisfied must depend rather upon the quality and nature of the activity in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure. That clause does not contemplate that a state may make binding a judgment *in personam* against an individual or corporate defendant with which the state has no contacts, ties, or relations.[46]

The Court in *International Shoe* noted that although an estimate of the inconveniences of litigating in a distant forum is relevant,[47] "minimum contacts" cannot be measured by mechanical or quantitative standards.[48] The Court found that the exercise of jurisdiction was reasonable when the obligation sued upon arose out of the nonresident corporate defendant's systematic and continuous activities within the state.[49]

After *International Shoe,* the minimum-contacts analysis was used to determine whether a nonresident defendant's activities were pervasive enough to permit the assertion of general jurisdiction over any and all claims against the defendant, or whether a nonresident defendant's activities were such that the assertion of jurisdiction would be permitted only for a specific cause of action that arose out of the defendant's activity within the forum.[50] The Court, in *Perkins v. Benguet Consolidated Mining Co.,*[51] allowed the assertion of general jurisdiction over a foreign

---

46. *Id.* at 316, 319.

47. *Id.* at 317; *see* Taylor v. Portland Paramount Corp., 383 F.2d 634 (9th Cir. 1967) (due process is not satisfied by the mere fact that the forum is not inconvenient to the defendant).

48. 326 U.S. at 319.

49. *Id.* at 320.

50. *See generally* von Mehren and Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis,* 79 HARVARD L. REV. 1121 (1966). The authors suggest general jurisdiction is based upon three types of relationship between the defendant and the forum: domicile or habitual residence; presence; or consent. *Id.* at 1137. With general jurisdiction any kind of controversy may be adjudicated. It may be unlimited, *i.e.,* effective against all of the defendant's property, or it may be limited in effectiveness to the property involved in the suit. *Id.* at 1136, 1139. Under specific jurisdiction, however, only a controversy related to the circumstances upon which jurisdiction is predicated may be adjudicated. *Id.* at 1144-45.

51. 342 U.S. 437 (1952).

corporation based on contacts other than those from which the cause of action arose.[52] Five years later the Court, in *McGee v. International Life Insurance Co.*,[53] upheld the exercise of specific jurisdiction over an insurance company whose only contact with the state of California was the policy upon which suit was brought. The Court held that "it is sufficient for purposes of due process that the suit was based on a contract which had substantial connection with that State."[54] The Court noted the clearly discernible trend "toward expanding the permissible scope of state jurisdiction,"[55] California's strong statutorily delineated regulatory interest, and the insured's severe disadvantage if a forum for redress were not provided.[56]

In *Hanson v. Denckla*[57] the Supreme Court reversed the trend toward expansion of state-court jurisdiction by saying that

> It is a mistake to assume that this trend [of expanding personal jurisdiction over nonresidents] heralds the eventual demise of all restrictions on the personal jurisdiction of state courts . . . . Those restrictions are . . . a consequence of territorial limitations on the power of the respective States. . . .
>
> . . . .
>
> [I]t 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.[58]

The Court held Florida was unable to constitutionally subject a Delaware corporate trustee to the jurisdiction of its courts in a suit to determine the validity of a trust. The connection of the trust with Florida had resulted from the settlor's "unilaterial activity" in moving to Florida.[59] The trustee, however, had not per-

52. Von Mehren and Trautman, *supra* note 50, at 1144, suggest that "the *Perkins* case should be regarded as a decision on its exceptional facts, not as a significant reaffirmation of obsolescing notions of general jurisdiction."

53. 355 U.S. 220 (1957).

54. *Id.* at 223.

55. *Id.* at 222.

56. *Id.* at 223. After *Kulko, McGee* seems limited in its application to cases in which the state has expressed a specific statutory interest in regulating the industry's affairs and in which the resident plaintiff would be at a severe disadvantage if personal jurisdiction were not available. *See, e.g.*, Foster, *Expanding Jurisdiction over Nonresidents*, 32 WIS. BAR BULL. 20 (Supp. Oct. 1959); Hazard, *A General Theory of State Court Jurisdiction*, 1965 SUP. CT. REV. 241.

57. 357 U.S. 235 (1958).

58. *Id.* at 251, 253.

59. *Id.* at 252.

formed any acts in Florida related to the trust agreement; thus, there were no contacts that could be equated with the purposeful and beneficial insurance solicitation in *McGee*.[60] The Court in *Hanson* also held that jurisdiction was not acquired merely as a result of the state's being the " 'center of gravity' of the controversy or the most convenient location for litigation."[61] The issue of personal jurisdiction must be resolved by considering the acts of the defendant.[62]

Until recently state courts were given little additional guidance by the Supreme Court in the exercise of long-arm jurisdiction. Many courts placed increasing emphasis on the concept of "fundamental fairness" reflected in the *International Shoe* phrase "fair play and substantial justice," and on the *McGee* decision, rather than on the *Hanson* limitation of purposeful connections with the state.[63] On a case-by-case basis courts have weighed and balanced such considerations as the quantity, quality, and nature of the defendant's activities within the forum, the extent to which the cause of action arose out of those activities, the state's interest in regulating the business concerned, and the procedural conveniences of the presence of witnesses and the availability of evidence.[64]

III. *Shaffer* AND *Kulko*: RECENT RESTRICTIONS ON THE USE OF LONG-ARM JURISDICTION

In a 1977 plurality decision, *Shaffer v. Heitner*,[65] the Supreme Court reaffirmed its stand against expansion of state courts' personal jurisdiction over nonresident defendants. The Court denied a stockholder's derivative action based on quasi in

60. *Id.*

61. *Id.* at 254.

62. *Id.*

63. Casad, Shaffer v. Heitner*: An End to Ambivalence in Jurisdiction Theory?*, 26 KAN. L. REV. 61, 64 (1977); Casad, *Long Arm and Convenient Forum*, 20 KAN. L. REV. 1, 11-12 (1971).

64. *See, e.g.*, Aftanase v. Economy Baler Co., 343 F.2d 187, 197 (8th Cir. 1965) (Mr. Justice Blackmun, then Circuit Judge, noted three primary factors: the quantity of contacts, the nature and quality of contacts, and the source and connection of the cause of action with those contacts; and two other factors of mention: the interest of the forum state and inconvenience); Buckeye Boiler Co. v. Superior Court, 71 Cal. 2d 893, 458 P.2d 57, 80 Cal. Rptr. 113 (1969); Fisher Governor v. Superior Court, 53 Cal. 2d 222, 347 P.2d 1 (1959); Gray v. American Radiator & Standard Sanitary Corp., 22 Ill. 2d 432, 176 N.E.2d 761 (1961).

65. 433 U.S. 186 (1977).

rem jurisdiction over the nonresident corporate directors' shares in the Delaware corporation involved.[66] Unable to assert in personam jurisdiction over the twenty-eight defendants, the Delaware court, pursuant to Delaware laws,[67] sequestered the stock and options of twenty-one defendants. Therefore, jurisdiction was based on the presence of that property and not on defendants' status as corporate fiduciaries or on their contacts with the state.[68] The United States Supreme Court held that "*all* assertions of state court jurisdiction must be evaluated according to the standards set forth in *International Shoe* and its progeny."[69] When direct assertion of personal jurisdiction would violate the Constitution, any indirect assertion of jurisdiction not based on the existence of ties between the state, the defendant, and the litigation also would be impermissible.[70] The Court, focusing on contacts and foreseeability rather than fairness,[71] found no demonstration that the defendants had "purposefully avail[ed themselves] of the privilege of conducting activities"[72] in Delaware within the *Hanson* limitation. Defendants were not required to acquire stock to hold their corporate positions,[73] the sequestered

66. *Id.* at 216. *Cf.* O'Connor v. Lee-Hy Paving Corp., 579 F.2d 194 (2d Cir.), *cert. denied,* 99 S. Ct. 639 (1978) (affirming the constitutionality of quasi in rem jurisdiction adopted by the New York Court of Appeals in Seider v. Roth, 17 N.Y.2d 111, 216 N.E.2d 312, 269 N.Y.S.2d 99 (1966)). Jurisdiction was based on the attachment of the insurance company's policy protecting Lee-Hy Paving Corporation from tort liability. The court found that the attached obligation of the insurance company to defend the claim against the nonresident named defendants "clearly encompassed" the personal-injury and wrongful-death claims of the New York plaintiff, unlike the sequestered shares in *Shaffer,* which were completely unrelated to the cause of action. 579 F.2d at 199. Despite the fact that there were "admittedly no contacts between the named defendants and New York" and that the accident occurred in Virginia, the court in a "practical appraisal" of the situation found no unfairness in the assertion of jurisdiction over the insurance company doing business in New York. *Id.* at 198, 200. Finding serious questions of due process in the judicially created *Seider* doctrine in light of the standards in *Shaffer,* Justices Powell and Blackmun dissented from the denial of certiorari, 99 S. Ct. at 639.

67. DEL. CODE ANN. tit. 8, § 169 (Michie 1974) makes Delaware the situs of ownership of all stock in Delaware corporations, even though both the owner and custodian of the shares are elsewhere. *Id.* at tit. 10, § 366 renders such assets of nonresidents subject to sequestration. 433 U.S. at 214, 218.

68. 433 U.S. at 196, 214.

69. *Id.* at 212 (emphasis added).

70. *Id.* at 209.

71. *See* Casad, Shaffer v. Heitner*: An End to Ambivalence in Jurisdiction Theory?,* 26 KAN. L. REV. 61, 76 (1977).

72. 433 U.S. at 216 (citing Hansen v. Denckla, 357 U.S. 235, 253 (1958)) (alterations in *Shaffer*).

73. 433 U.S. at 216.

stock was not the subject matter of the litigation, no acts were alleged to have taken place in Delaware,[74] and Delaware had no statute equating the acceptance of a directorship with consent to jurisdiction.[75]

Kulko and *Shaffer* added to the emphasis in *Hanson* on purposive involvement by the defendant. Both *Kulko* and *Shaffer* require that the defendant's act be one that would lead him reasonably to expect to be brought before the court.[76] As Mr. Justice Stevens pointed out in his concurring opinion in *Shaffer,* the due process clause has historically served as protection against judgments entered when the defendant had not received notice.[77] He saw the requirement of fair notice to a defendant as including a warning that a particular activity may subject a participant to the jurisdiction of a foreign sovereign. Although it is unclear how much warning is necessary,[78] the Court has determined that the nonresident individual who merely purchases stock in a domestic company or acquiesces in a child's living preference cannot have reasonably foreseen that his actions would subject him to personal jurisdiction when there is no particularized long-arm statute.[79] Whether a specific statute conferring jurisdiction will automatically provide ties between a defendant and the state consistent with due process standards is not clear. The following crucial question will remain for decisions on a case-by-case basis: has the defendant established with the forum state such contacts, ties, or relations that would justify requiring him to answer in the courts of that state? A specific statute does have the advantage of providing some warning to the defendant and may permit the state's interest in that activity to be given greater weight in evaluating

74. *Id.* at 213.

75. *Id.* at 216. The Court noted that some states do have such statutory provisions and cited S.C. CODE ANN. § 33-5-70 (1976). 433 U.S. at 216 n.47. The Delaware legislature has subsequently enacted such a measure. DEL. CODE ANN. tit. 10, § 3114 (Michie Cum. Supp. 1978). Presumably nonresident corporate directors would be forewarned of their amenability to suit and would be subject to in personam jurisdiction under such statutes for the same misconduct as alleged in *Shaffer.* An interesting question is whether a comprehensive jurisdictional statute, "to the constitutional limits of due process," would support in personam jurisdiction. The *Shaffer* Court's requirement of notice and the foreseeability of personal jurisdiction in a distant forum would not be met.

76. 436 U.S. at 97-98; 433 U.S. at 216.

77. 433 U.S. at 217-18 (Stevens, J., concurring).

78. *E.g.,* nonresident drivers of motor vehicles have long been subject to suit in foreign jurisdictions. *See, e.g.,* Nevada v. Hall, 440 U.S. 410 (1979); Hess v. Pawloski, 274 U.S. 352 (1927).

79. 436 U.S. at 97-98; 433 U.S. at 214-15.

the jurisdictional basis for the suit. In denying the assertion of jurisdiction in *Kulko, Shaffer,* and *Hanson,* the Court noted the absence of statutorily delineated state interests.[80]

There may be several reasons why the Court chose to grant certiorari in *Kulko*. According to the dissent, the decision could have gone either way.[81] California courts had been unanimous in their decision that the father was subject to personal jurisdiction in that state. *Kulko* may indicate the Court's willingness to review other cases with jurisdictional issues.[82] More likely it indicates that the court felt a need to reestablish controls on state-court jurisdiction over nonresident individuals by emphasizing and elaborating on the requirement of purposive activity by the defendant within the state. In interpreting the criteria of *Hanson,* the Court determined that the state's benefits afforded the nonresident father must be ones that he personally sought for himself. The benefits extended by the state to his children were not to be attributed to the father; in addition, the state's care of his children could not lead him to foresee amenability to suit for their support in a manner that would satisfy due process.[83]

An underlying purpose for the decision in *Kulko* may have been the Court's desire to develop a solution to over-expansive state-court jurisdiction under the "minimum contacts" test.[84] The Court could have concluded merely that due process had been denied in subjecting the father to in personam jurisdiction in California. The Court continued, however, and found that "basic considerations of fairness"[85] pointed to New York as the appropriate forum. Not only was it the state of the defendant's residence, but it was also the state of marital domicile and the state in which the mother signed the separation agreement. The

80. 357 U.S. at 252; 436 U.S. at 98; 433 U.S. at 214, 216. The Court in *Kulko* noted that in McGee v. International Life Ins. Co., 355 U.S. 220, 221, 223-24 (1957), jurisdiction was upheld because California's interest in providing residents with a means of redress against foreign insurers was statutorily expressed. 436 U.S. at 98.

81. 436 U.S. at 102 (Brennan, J., joined by White and Powell, JJ., dissenting).

82. *But see* O'Connor v. Lee-Hy Paving Corp., 579 F.2d 194 (2d Cir.) *cert. denied,* 99 S. Ct. 639 (1978). See note 66 *supra.*

83. 436 U.S. at 94, 98. See text accompanying notes 23-29 *supra.*

84. *See* A. EHRENZWEIG & D. LOUISELL, JURISDICTION IN A NUTSHELL, 228-30 (3d ed. 1973). Professor Ehrenzweig suggests the need for a *forum conveniens* doctrine when the "minimum contacts" analysis becomes as rigid and irrational as the systems it was designed to replace. Uniform legislation could provide what might be called an "interstate venue" provision. *Id.* at 32. *See also* Ehrenzweig, *The Transient Rule of Personal Jurisdiction: The "Power" Myth and* Forum Conveniens, 65 YALE L.J. 289, 312-14 (1956).

85. 436 U.S. at 97.

Court noted that while the mother would be indemnified for her expenses in litigating matters arising out of the separation agreement in New York, the father would have to bear the expense and inconvenience of traveling across the continent to litigate in a forum with which he had little contact.[86] By finding a forum in which jurisdiction clearly existed and by finding no significant reason to litigate in the mother's choice of forum, the court seemed, in dicta, to develop what may be the forerunner of a state-court *forum conveniens* doctrine or interstate venue provision.

The *forum conveniens* doctrine is rooted in the *forum non conveniens* doctrine accepted in federal and most state courts.[87] Under the *forum non conveniens* doctrine at least two fori where the defendant is amenable to process are presumed available, and the court may, in its discretion, dismiss the action when there is no substantial or justifiable basis for the plaintiff's choice of forum. For the choice among or between fori the doctrine furnishes criteria such as interests of the plaintiff in proceeding in the chosen forum, ease of access to sources of proof, availability of witnesses, enforceability of a judgment, practical considerations that make trial easier, and public interest factors.[88]

The *forum non conveniens* doctrine has been recognized by commentators as a device to prevent, by avoiding a seriously inconvenient forum to the defendant, abuses of expanding state-court jurisdiction.[89] Because the conceptions of the constitutional exercise of jurisdiction and the discretionary dismissal of jurisdiction contain similar analyses of contacts and fairness, these principles "may yet create a new American law of jurisdiction based on the *forum conveniens*."[90] Thus, a court using the *forum*

86. See text accompanying notes 31 & 36 *supra*. California would accord full faith and credit to any increase in child support determined in a New York court because New York clearly has personal jurisdiction over the father.

87. *See, e.g.*, Gulf Oil Corp. v. Gilbert, 330 U.S. 501 (1947); Goodwine v. Superior Court, 63 Cal. 2d 481, 407 P.2d 1, 47 Cal. Rptr. 201 (1965); New Amsterdam Cas. Co. v. Estes, 353 Mass. 90, 228 N.E.2d 440 (1967).

88. Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 508-09 (1947).

89. Casad, *Long Arm and Convenient Forum*, 20 KAN. L. REV. 1, 13 (1971); Ehrenzweig, *The Transient Rule of Personal Jurisdiction: The "Power" Myth and* Forum Conveniens, 65 YALE L.J. 289, 312 (1956).

90. A. EHRENZWEIG, TREATISE ON CONFLICT OF LAWS 122 (1962). Mr. Justice Powell noted the similarities between factors considered in the minimum-contacts analysis of jurisdiction and the doctrine of *forum non conveniens* in his dissent to the denial of certiorari in O'Connor v. Lee-Hy Paving Corp., 579 F.2d 194 (2d Cir.), *cert. denied*, 99 S. Ct. 639 (1978) (Powell, J., dissenting).

conveniens doctrine would look for the most convenient and fair forum in which to litigate, and would transfer the matter there. In the federal system, the *forum conveniens* concept is accomplished through the liberal transfer power provided in 28 U.S.C. § 1404(a),[91] which allows a district court to transfer an action to another district court in which the action originally might have been brought, when such transfer is in the interests of justice and for the convenience of the parties and witnesses.[92] In contrast, a state court has no authority under the existing federal system to transfer litigation from its own judicial system to that of a sister state. In a practical sense, however, a state court may obtain the same results under the *forum non conveniens* doctrine by conditioning its dismissal on the defendant consenting to suit in the alternative forum and waiving any statute of limitations defense.[93]

IV. The Use of Long-Arm Statutes in Domestic Relations Cases After *Kulko*

State courts have exercised jurisdiction over nonresident defendants in domestic relations matters by using a variety of long-arm statutes. Some states, such as California,[94] have adopted comprehensive or omnibus statutes. Other states have adopted

91. 28 U.S.C. § 1404(a) (1976) provides that: "[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought."

92. *See, e.g.*, Hoffman v. Blaski, 363 U.S. 335 (1960); Norwood v. Kirkpatrick, 349 U.S. 29 (1955).

93. *See, e.g.*, MacLeod v. MacLeod, 383 A.2d 39 (Me. 1978), in which the former wife, a Virginia resident, sued the former husband, a resident of Thailand, for amounts allegedly due for alimony and child support under a French divorce decree. The wife personally served the husband at his parents' residence in Maine. The Supreme Judicial Court of Maine reversed the trial court's dismissal under *forum non conveniens* because Thailand was not an "alternative forum" available to the wife. The court stayed the action on the condition that the husband submit to the jurisdiction of the Virginia courts and waive any statute of limitations defense. *Accord*, Vargas v. A.H. Bull S.S. Co., 44 N.J. Super. 536, 131 A.2d 39 (Super. Ct. Law Div.), *aff'd*, 25 N.J. 293, 135 A.2d 857 (1957), *cert. denied*, 355 U.S. 958 (1958); Aetna Ins. Co. v. Creole Petroleum Corp., 23 N.Y.2d 717, 244 N.E.2d 56 (1968). California has adopted a statute that approaches the concept of the *forum conveniens* doctrine. Cal. Civ. Proc. Code § 410.30(a) (West 1973) states as follows:

> When a court upon motion of a party or its own motion finds that in the interest of substantial justice an action should be heard in a forum outside this state, the court shall stay or dismiss the action in whole or in part on any conditions that may be just.

94. See note 6 *supra*.

more traditional long-arm statutes which utilize "transaction of business, commission of tortious acts within the state," or "resident of the state at the time the cause of action arose" provisions.[95] Statutes specifically designed for domestic relations use recently have been enacted in several states. *Kulko* and its predecessors[96] provide general guidelines for the courts in applying these statutes. A defendant must have conducted some purposive activity, which has benefited him personally, within the forum. His activities must also be of a nature that would lead him to foresee the assertion of jurisdiction by the foreign forum. In the "minimum contacts" analysis, marital domicile and the exercise of a separation agreement in the forum are important considerations. Increased weight may be given to a statutory expression of the state's public policy regarding family relations. In addition, a court may question whether it is the most suitable place to litigate the matter. If the court declines to exercise jurisdiction, the only alternative presently available to a plaintiff who cannot travel to the defendant's forum is the Uniform Reciprocal Enforcement of Support Act.[97]

Kulko has cast a shadow on the use of omnibus statutes that provide for jurisdiction over nonresidents on any basis consistent with due process.[98] When the language is overbroad, judicial construction is necessary to determine the constitutional boundaries of in personam jurisdiction. These comprehensive statutes leave greater room for error and create an opportunity for courts to misuse the applicable standards.[99] An example of this misplaced emphasis is the California court's use of the "effects" test from the *Restatement (Second) of Conflict of Laws*[100] as the rationale for jurisdiction over Ezra Kulko.[101] Continual relitigation, as the boundaries of omnibus statutes are tested, reduces judicial effi-

95. *See generally* Annot., 76 A.L.R. 3d 708 (1977), for a discussion of "tortious conduct" and "transaction of business" long-arm applications.

96. For an excellent treatment of this area prior to *Kulko* see Comment, *State Court Jurisdiction: The Long-Arm Reaches Domestic Relations Cases,* 6 TEX. TECH. L. REV. 1021 (1975).

97. See note 39 *supra.*

98. *See* text accompanying notes 38-40 & 79-80 *supra.*

99. *See generally* Anderson, *Using Long-Arm Jurisdiction to Enforce Marital Obligations,* 11 J. FAM. L. 67 (1971); Anderson, *Using Long-Arm Jurisdiction to Enforce Marital Obligations,* 42 MISS. L.J. 183 (1971). Anderson suggests that a contraction rather than an expansion of jurisdiction may occur under a statute that has no guidelines for its application.

100. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 37 (1971).

101. See notes 34-35 and accompanying text *supra.*

ciency and causes conflicting adjudication within the courts of the state.[102] The guidelines suggested in *Kulko* will be most helpful to courts attempting to redefine the reach of the omnibus statutes.

Jurisdiction based on a traditional long-arm "transaction of business within the state" provision probably would continue to be upheld when the parties executed a separation agreement within the state, the cause of action is based directly on that agreement, and other contacts, such as using the court or financial systems of the state or previously maintaining a domicile within the state, exist between the nonresident and the forum.[103]

---

102. *E.g.*, several conflicting interpretations have been made regarding OKLA. STAT. ANN. tit. 12, § 1701.03 (West Supp. 1979-80), which provides in pertinent part:

> (a) A court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a cause of action or claim for relief arising from the person's:
>
> . . . .
>
> (7) maintaining any other relation to this state or to persons or property including support for minor children who are residents of this state which affords a basis for the exercise of personal jurisdiction by this state consistently with the Constitution of the United States.

In Hines v. Clendenning, 465 P.2d 460, 463 (Okla. 1970), the Oklahoma Supreme Court found the "minimum contacts" test satisfied under the totality of the circumstances approach. The court noted the following contacts: the marriage was contracted in Oklahoma; the parties twice resided there under circumstances indicating domicile; the defendant attended college there; he registered to vote and did vote there; he sent his wife back to Oklahoma and refused to permit her to return to him in California; and the wife, at her husband's direction, was effectively abandoned in Oklahoma. The court also stated that the wife's right, if any, to alimony may be said to have accrued at least in part in Oklahoma, that an estimate of the inconveniences does not preclude jurisdiction, and that Oklahoma has a "manifest interest" in the marital and financial status of its residents. In Dunn v. Dunn, 550 P.2d 1369 (Okla. App. 1976), the Court of Appeals affirmed an order vacating jurisdiction over a nonresident husband who had never lived in Oklahoma, who had not transacted, either personally or by an agent, any business therein, and who was not legally obligated to support his wife's children by a former marriage. In Perdue v. Saied, 566 P.2d 1168 (Okla. 1977), however, the Oklahoma Supreme Court held that a serviceman stationed in Germany who had never been in Oklahoma and never had any previous contacts with the state was subject to a suit that requested an increase in the support provisions of an Arizona divorce decree simply because his former wife and child had moved into the state. Conversely, in Hudson v. Hudson, 569 P.2d 521 (Okla. App. 1977), the Court of Appeals denied jurisdiction over a serviceman stationed in California to modify prospectively a support order entered by a California court where there was no allegation that he had regularly paid child support in Oklahoma. The mother had the alternative of proceeding under URESA.

103. In Van Wagenberg v. Van Wagenberg, 241 Md. 154, 215 A.2d 812, *cert. denied*, 385 U.S. 833 (1966), the Maryland Court of Appeals upheld a New York default judgment for arrears of support payments due under the terms of a New York separation agreement which required the former husband to send support payments and maintain security for his performance with a New York brokerage firm. The court found that "transaction of business" was not limited to commercial transactions and that the cause of action was

The generalization that "[t]he mere exercise of a separation agreement in a state . . . [is] sufficient"[104] to confer personal jurisdiction over a nonresident defendant in a suit to enforce that agreement[105] must be qualified by the *Shaffer* requirement that some meaningful relationship exist between the defendant and the forum or the litigation. The *Kulko* decision, in suggesting the need for some personal or commercial benefit to a defendant, would support a holding that merely sending support payments and communicating with children in the foreign state does not constitute "transaction of business."[106]

Traditional long-arm statutes providing jurisdiction over nonresidents who commit "tortious acts within the state" have met mixed reactions in state courts when they have been applied to the failure of a nonresident to support his child. Those courts broadly construing the term "tortious" to include any act that concerned the breach of duty to another, including the failure to

directly based on the New York contract. *Id.* at 176, 215 A.2d at 824. Jurisdiction was upheld in Kochenthal v. Kochenthal, 28 App. Div. 2d 117, 282 N.Y.S.2d 36 (1967), in which the separation agreement was executed in New York while both parties were residents of that state. In Mroczynski v. McGrath, 34 Ill. 2d 451, 454, 216 N.E.2d 137, 139 (1966), however, the court refused to extend the concept of "transaction of business within the state" to the establishment of a marital domicile and the birth of a child. The Illinois Supreme Court held that the wording commonly meant commercial business; the cause of action was not based on defendant's business within the state but concerned declaring a portion of his deceased father's will null and void. *Id.* at 455, 216 N.E.2d at 140. In Wright v. Wright, 114 N.J. Super. 439, 442, 276 A.2d 878, 880 (Ch. Div. 1971), personal jurisdiction was upheld over a nonresident in a separate maintenance action on the basis of his "doing business in the state" by writing a weekly column for a New Jersey newspaper. It should be noted that New Jersey was the marital domicile for four years and was the place from which the defendant left his family. In Titus v. Superior Court, 23 Cal. App. 3d 792, 100 Cal. Rptr. 477 (1972), the court refused to extend "transaction of any business" to the forwarding of a temporary custody agreement for the mother's signature. In Carmichael v. Carmichael, 40 App. Div. 2d 514, 333 N.Y.S.2d 811 (1972), the court found that the incorporation of provisions of a separation agreement executed in New York into a Mexican divorce decree did not provide a nexus between the business transacted in New York and the enforcement proceeding sufficient to sustain jurisdiction over the nonresident husband. In Ross v. Ross, 358 N.E.2d 437 (Mass. 1976), however, personal jurisdiction over a nonresident former wife was allowed on a "transaction of business" rationale where the separation agreement which she had signed in New Jersey was incorporated into a Massachusetts divorce decree and she had used the courts of that state to modify the decree.

104. Ross v. Ross, 358 N.E.2d 437, 439 (Mass. 1976).

105. *Id.*

106. *See* Judd v. Superior Court, 60 Cal. App. 3d 38, 131 Cal. Rptr. 246 (1976) (personal jurisdiction over nonresident father denied when father never had custody of children, he had not sent them to live in California, and his only contacts with California were sending the children support payments and visiting them).

support children, have upheld jurisdiction.[107] Those courts strictly construing the term "tortious" to encompass both the act itself and the injury, however, have refused to exercise jurisdiction.[108] Future reliance on this form of jurisdiction seems limited by the forum state's construction of the term "tortious" and the existence of other contacts sufficient to make the exercise of jurisdiction reasonable. Also, the requirement of a purposeful activity benefiting the defendant must be satisfied.[109]

If jurisdiction were based on a traditional long-arm statute providing for jurisdiction over a nonresident who was a resident of the state at the time the cause of action arose,[110] jurisdiction probably would be upheld if the parties had maintained a marital domicile within the state and the defendant had left without providing support for the remaining family.[111] It is interesting

---

107. *See, e.g.,* Poindexter v. Willis, 37 Ill. App. 2d 213, 231 N.E.2d 1 (1967); Nelson v. Nelson, 298 Minn. 438, 216 N.W.2d 140 (1974); Gentry v. Davis, 512 S.W.2d 4 (Tenn. 1974). It should be noted, however, that these cases concern nonsupport of *illegitimate* children.

108. *See, e.g.,* Inkelas v. Inkelas, 58 Misc. 2d 340, 295 N.Y.S.2d 350, 352-53 (Sup. Ct. 1968) (holding that failure to carry out marital obligations of support and maintenance is not tortious conduct within the meaning of the New York statute); *In re* Marriage of Bryan, 28 Or. App. 169, 558 P.2d 1288 (1977) (additionally noting that Oregon has a specific domestic relations statute that should have been used).

109. *See* Boyer v. Boyer, 73 Ill. 2d 331, 383 N.E.2d 223 (1978), in which the Illinois Supreme Court, relying on *Kulko,* refused to extend jurisdiction over a nonresident father for his alleged tortious act of failure to make alimony and support payments, as required by a foreign divorce decree, to his ex-wife and children who resided in Illinois. The lower court had upheld the exercise of jurisdiction based on Poindexter v. Willis, 37 Ill. App. 2d 213, 231 N.E.2d 1 (1967). The supreme court determined that the quality and nature of the father's activities in Illinois were not such that it would be reasonable and fair to require him to conduct his defense in Illinois, regardless of whether nonpayment of support is a tortious act. 73 Ill. 2d at 337, 383 N.E.2d at 227.

110. *See, e.g.,* ARIZ. REV. STAT. ANN., Rules of Civ. Proc. 4(e)(2) (West 1973), which provides in relevant part:

> When the defendant is a resident of this state, or is a corporation doing business in this state, or is a person, partnership, corporation or unincorporated association subject to suit in a common name which has caused an event to occur in this state out of which the claim which is the subject of the complaint arose, service may be made as herein provided, and when so made shall be of the same effect as personal service within the state.

111. *Id. See, e.g.,* Nickerson v. Nickerson, 25 Ariz. App. 251, 542 P.2d 1131 (1975) (held that the establishment of a marital domicile caused an event to occur, but required that Arizona be the last state of marital domicile); Bunker v. Bunker, 552 S.W.2d 641 (Ark. 1977) (upheld jurisdiction because Arkansas was the last marital domicile, the nonresident husband's asserted wrongful conduct in the state created the cause of action for divorce and alimony, the husband left voluntarily, creating a hardship on the wife if he were not subject to the court's jurisdiction, and Arkansas was where the wife and children continued to reside, their expenses were to be paid, and any witnesses resided;

that the present California jurisdictional statute[112] replaced an earlier version that granted jurisdiction over defendants who were residents when the cause of action arose, and that the United States Supreme Court twice refused the opportunity to rule unconstitutional exercises of jurisdiction pursuant to the earlier statute.[113]

Several states have enacted specific domestic relations long-arm statutes in an effort to alleviate any judicial construction problems with the more general statutes.[114] The compelling state

---

the court also noted the presence of a specific statute for jurisdiction for child-support actions); Mitchim v. Mitchim, 518 S.W.2d 362 (Tex. 1975) (upheld the exercise of jurisdiction over a Texas resident pursuant to the Arizona long-arm statute on the basis that Arizona was the marital domicile for five years, the defendant made payments on a home there and sent money to his former wife who continued to reside in Arizona, and the wife filed suit there less than six months after he left).

112. CAL. CIV. PROC. CODE § 410.10 (West 1973). See note 6 *supra*.

113. In Mizner v. Mizner, 84 Nev. 268, 439 P.2d 679, *cert. denied*, 393 U.S. 847 (1968), the Nevada Supreme Court upheld a California divorce and alimony decree over a Nevada resident, because the parties had been domiciled in California until their separation and the wife's cause of action for cruelty was presumed to arise out of the husband's conduct while they were living together. Soule v. Soule, 193 Cal. App. 2d 443, 14 Cal. Rptr. 417 (1961), *cert. denied*, 368 U.S. 985 (1962), was the first decision to apply a long-arm statute in the domestic relations area (during their marriage both parties were domiciled in California and "the cause of action" arose during that time but the defendant permanently moved to Montana before suit was commenced).

114. In 1964 Kansas enacted the first specific domestic relations long-arm statute. KAN. CIV. PRO. STAT. ANN. § 60-308 (Vernon 1965 & Vernon Supp. 1978) provides in relevant part as follows:

> (a) Proof and effect.
>
> (1) Personal service of summons may be made upon any party outside the state. If upon a person domiciled in this state or upon a person who has submitted to the jurisdiction of the courts of this state, it shall have the force and effect of personal service of summons within this state; otherwise it shall have the force and effect of service by publication . . . .
>
> (b) Submitting to jurisdiction—process. Any person, whether or not a citizen or resident of this state, who in person or through an agent or instrumentality does any of the acts hereinafter enumerated, thereby submits said person, and, if an individual, his or her personal representative, to the jurisdiction of the courts of this state as to any cause of action arising from the doing of any of said acts:
>
> . . . .
>
> (8) Living in the marital relationship within the state notwithstanding subsequent departure from the state, as to all obligations arising for alimony, child support, or property settlement under article 16, if the other party to the marital relationship continues to reside in the state . . . .

Domestic long-arm statutes of other states include: ARK. STAT. ANN. § 34-2446 (Bobbs-Merrill Supp. 1979); FLA. STAT. ANN. § 48-193(1)(e) (Harrison 1976); IDAHO CODE ANN. § 5-514(e) (Bobbs-Merrill 1979); ILL. ANN. STAT. ch. 110, § 17(1)(e) (Smith-Hurd Supp. 1979); IND. CODE ANN., Trial R. 4.4(A)(7) (Burns 1973); NEV. REV. STAT. § 14.065.2(e) (1973); N.M. STAT. ANN. § 38-1-16.A.(5) (Michie 1978); N.Y. CIV. PRAC. LAW § 302(b)

interest in providing a forum for domestic matters, indicated by these specific statutes, may expressly limit their applicability to domestic matters arising when the parties maintained a marital domicile within the state.[115] The requirement of a marital domicile assures the court that the defendant personally had been

---

(McKinney Supp. 1979-80); OKLA. STAT. ANN. tit. 12, § 1701.03 (West Supp. 1979-80); TEX. FAM. CODE ANN. tit. 1, § 3.26(a)(1) (Vernon Supp. 1978-79); UTAH CODE ANN. § 78-27-24(6) (1977); WIS. STAT. ANN. § 801.05(11) (West Supp. 1979-80).

S.C. CODE ANN. § 14-21-830 (1976) may be interpreted as an attempt at a specific domestic relations long-arm provision. The statute provides the following:

> (a) The court shall have jurisdiction, and a husband may be required to furnish support or may be liable for nonsupport, as provided above, if, at the time of the filing of the petition for support:
>
> (1) He is residing or domiciled in the county or when such area is the matrimonial domicile of the parties; or
>
> (2) He is not residing or domiciled in the area referred to in subsection (1), but is found therein at such time, provided the petitioner is so residing or domiciled at such time; or
>
> (3) He is neither residing or domiciled nor found in such area but, prior to such time and while so residing or domiciled, he shall have failed to furnish such support or shall have abandoned his wife or child and thereafter shall have failed to furnish such support, provided that the petitioner is so residing or domiciled at that time.
>
> (b) The petitioner need not continue to reside or be domiciled in such area where the cause of action arose, as provided in subsections (2) and (3) of this section, if the conduct of the respondent has been such as to make it unsafe or improper for her to so reside or be domiciled, and the petitioner may bring action in the court of the jurisdiction wherein she is thusly residing or has become domiciled.

Id. The statute was introduced in the state legislature in 1968, at about the same time other states were passing specific domestic relations long-arm provisions. The statute's legislative history, however, provides no insight into its scope and purpose. The South Carolina courts also have not ruled on its application as a domestic relations long-arm provision. Although section 14-21-830(a)(3) would seem to provide a basis for personal jurisdiction when the party requesting support has remained within the state and the defendant has abandoned or failed to furnish support while he was a resident of the state, the other provisions of the statute may lead the court to construe it merely as a venue statute.

115. *See, e.g.*, ILL. ANN. STAT. ch. 110, § 17 (Smith-Hurd Supp. 1979), which provides in relevant part:

> (1) Any person, whether or not a citizen or resident of this State, who in person or through an agent does any of the acts hereinafter enumerated, thereby submits such person, and, if an individual, his personal representative, to the jurisdiction of the courts of this State as to any cause of action arising from the doing of any such acts:
>
> . . . .
>
> (e) With respect to actions of divorce and separate maintenance, the maintenance in this State of a matrimonial domicile.

The exercise of jurisdiction pursuant to this statute over a nondomiciliary who had married in Illinois and lived there with his wife for three weeks was upheld by the New Hampshire Supreme Court in Nickas v. Nickas, 113 N.H. 261, 306 A.2d 51 (1973).

afforded the benefits and protections of the state, thus satisfying the *Hanson* limitation as interpreted by *Kulko*.[116] The possibility of forum shopping by the plaintiff is avoided because jurisdiction is limited to that state in which the parties had maintained a marital domicile and in which their domestic problems had arisen.

Some states have further restricted their domestic relations long-arm statutory requirements to plaintiffs who have continued to reside in the marital domicile.[117] One state requires a minimum marital relationship period of six months within the forum as well as continuous domicile of the plaintiff within the state.[118] In some states, the statute applies only to child-support actions rather than all incidences arising from the marital relationship.[119] Re-

---

116. See text accompanying notes 25-29, 76 & 83 *supra*.

117. *E.g.*, KAN. CIV. PRO. STAT. ANN. § 60-308 (Vernon 1965 & Vernon Supp. 1978) (set out in relevant part at note 114 *supra*). In Scott v. Hall, 203 Kan. 331, 454 P.2d 449 (1969), the Kansas Supreme Court upheld jurisdiction based on this statute in an action by the former wife's legal counsel for fees awarded in a divorce action. *See also* N.Y. CIV. PRAC. LAW § 302(b) (McKinney Supp. 1979-80), which authorizes long-arm jurisdiction in support or alimony proceedings when New York residency of the petitioner is coupled with one of four facts. The statute provides in relevant part:

> Personal jurisdiction over non-resident defendant in matrimonial actions or family court proceedings. A court in any matrimonial action or family court proceeding involving a demand for support or alimony may exercise personal jurisdiction over the respondent or defendant notwithstanding the fact that he or she no longer is a resident or domiciliary of this state, or over his or her executor or administrator, if the party seeking support is a resident of or domiciled in this state at the time such demand is made, provided that this state was the matrimonial domicile of the parties before their separation, or the defendant abandoned the plaintiff in this state, or the obligation to pay support or alimony accrued under the laws of this state or under an agreement executed in this state.

Id.

118. WIS. STAT. ANN. § 801.05 (West Supp. 1979-80) provides in relevant part:

> A court of this state having jurisdiction of the subject matter has jurisdiction over a person . . . under any of the following circumstances:
>
> . . . .
>
> (11) Certain marital actions. In . . . any action affecting marriage in which a personal claim is asserted . . . when the respondent resided in this state in marital relationship with the petitioner for not less than 6 consecutive months within the 6 years next preceding the commencement of the action, and after the respondent left the state the petitioner continued to reside in this state
>
> . . . .

In Dillon v. Dillon, 46 Wis. 2d 659, 176 N.W.2d 362 (1970), the Wisconsin Supreme Court upheld the constitutionality of a similar predecessor statute, but the case was remanded for a determination of whether the plaintiff-wife had maintained a continuous domicile within the state.

119. ARK. STAT. ANN. § 34-2446 (Bobbs-Merrill Supp. 1979) provides as follows:

> Any person who establishes or acquires a marital domicile in this state or who

cent opinions show that the specific statutes are being strictly construed by the lower courts.[120]

V. CONCLUSION

The Supreme Court used *Kulko* to restrict expanding state-court jurisdiction over nonresident individuals. *Kulko* reaffirmed the *Hanson* requirement that a state's benefits be purposefully sought, and added a further requirement that those benefits be directed toward the defendant personally. It reaffirmed the holding of *Hanson* that the fact that the state is the center of gravity for choice-of-law purposes does not mean that the state has personal jurisdiction over the defendant. The Court also reiterated the *Shaffer* limitations that the defendant's activities be ones that would lead him reasonably to expect to be brought before a foreign court, and that a substantial state interest is insufficient if such interest has not been expressed in a particular statute. The Court additionally limited the use of the *Restatement (Second) Conflict of Laws* § 37 "effects" test to situations in which commercial transactions have caused physical injury in the state or commerical benefits have arisen from connections with the state. The Court stressed that marital domicile and execution of a separation agreement within the forum are important contacts

---

contracts marriage in this state or becomes a resident of this state while legally married, and subsequently absents himself or herself from the State leaving a dependent natural or adopted child or children in this State and fails to support such child or children as required by the laws of this State, is hereby deemed to have consented and submitted to the jurisdiction of the courts of this State as to any cause of action brought against such person for the support and maintenance of such child or children.

120. *See, e.g.*, Corcoran v. Corcoran, 353 So. 2d 805 (Ala. Civ. App. 1978) (denied jurisdiction based on the statutory language "marital relationship within the state if one party continues to reside therein," ALA. CODE, Rules of Civ. Proc. 4.2(a)(2)(H) (1975), because the parties had married in the state and lived there about four months but for over four years thereafter had maintained their marital domicile in North Carolina and the alleged wrongs were committed in North Carolina); *In re* Marriage of Rinderknecht, 367 N.E.2d 1128 (Ind. Ct. App. 1977) (denied jurisdiction over the Nebraska wife because the parties had never lived in a marital relationship in Indiana even though the husband had maintained his Indiana residency while he was in military service); Varney v. Varney, 222 Kan. 700, 567 P.2d 876 (1977) (upheld jurisdiction because the parties maintained a marital domicile within the state for three years and the husband continued to reside there after the wife and children left for Tennessee); Scott v. Scott, 554 S.W.2d 274 (Tex. Ct. App. 1977) (upheld jurisdiction over a nonresident wife because the requirements of the long-arm statute had been met—Texas was the last state of marital cohabitation, the parties lived there together two and one-half months, and the suit was commenced within the required two-year period).

in the application of long-arm statutes to the domestic relations area. Finally, the Court used *Kulko* to suggest that a *forum conveniens* doctrine may be a possible solution to the problem of jurisdiction based on "minimum contacts."

Karen J. Williams