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CONNECTICUT FAMILY LAW JURISDICTION

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One of the most complex areas for the matrimonial law practitioner is jurisdiction. With our mobile society, it is not infrequent that, when a couple separates, one of them becomes a resident of a different state. When a dissolution of marriage action is brought after the separation, numerous jurisdictional issues arise. How does the court get personal jurisdiction over the nonresident spouse? What is required for a court to have subject matter jurisdiction? What if actions are brought in two different states at the same time? Does the court retain jurisdiction of post dissolution matters? Is a Mexican divorce valid? This article will examine and discuss how Connecticut courts have dealt with these issues.[1]

I. SUBJECT MATTER JURISDICTION

A. Dissolution of Marriage

Before a court may hear any case, it must have jurisdiction over the subject matter involved. Subject matter jurisdiction must be considered in every dissolution case because the parties may not waive this type of jurisdiction,[2] A party, or the court on its own motion, may move to dismiss any action for lack of subject matter jurisdiction even after judgment is rendered.[3]

Jurisdiction over dissolution of marriage actions is governed by statute.[4] CONN.GEN.STAT. § 46b-42 gives the Superior Court exclusive jurisdiction of all complaints seeking a decree of dissolution of marriage. CONN.GEN.STAT. § 46b-44 further defines the court's jurisdiction by stating that a complaint may be filed after either party has established residence in the state.[5] Section 46b-44 also outlines the residency requirements that must be met before the court may enter a decree of dissolution:

***456** Decree dissolving a marriage or granting a legal separation may be entered if: (1) one of the parties of the marriage has been a resident of this state for at least the twelve months next preceding the date of the filing of the complaint or next preceding the date of the decree; or (2) one of the parties was domiciled in this state at the time of the marriage and returned to this state with the intention of permanently remaining before the filing of the complaint; or (3) the cause for the dissolution of the marriage arose after either party moved into this state.[6]

Although § 46b-44(c)(1) and (2) explicitly state that residency for twelve months preceding the date of the filing of the complaint or the date of the decree is all that is required before the decree may enter, the Connecticut Supreme Court has interpreted this language to mean that both "substantially continuous residence" and "domicile" are required before the decree may enter.[7]

However, the Court also has found that only residence is required for awards of alimony and support pendente lite.[8] The Court bases the distinction between temporary and permanent orders on the fact that it is impossible to ascertain whether the trial court has jurisdiction to grant the decree based on one year's domicile and residence prior to the date of the decree. According to the Court, the legislature must have included the term, "residence," in § 46b-44 to deal with this problem, thereby allowing the court to grant temporary relief in advance of the final residency and domicile determination.

The Appellate Court interpreting LaBow held that subject matter jurisdiction can only be determined at the time of the final hearing.[9] In Sauter, the parties were married in Vermont and moved to New York where the defendant resided at the time she commenced the dissolution action. The plaintiff resided in Connecticut and commenced a dissolution action there three months later. The trial court in Connecticut dismissed the action ***457** brought by the plaintiff because of the prior pending New York action and because the court lacked subject matter jurisdiction when neither party was domiciled in Connecticut. The Appellate Court reversed and remanded for further proceedings, holding that subject matter jurisdiction must be determined at the final hearing.[10]

The elements of domicile are actual residence coupled with the intention of permanently remaining.[11] The intention must be to make a home at present, not at some time in the future.[12] In Adame, the plaintiff was employed in New York as a nonresident taxpayer, living in hotels and apartments. She returned to her home in Connecticut in between jobs, kept and registered her car in Connecticut and paid taxes from her address in Connecticut, although she voted in New York. She later married in Connecticut, lived in New York with her husband and returned to Connecticut prior to filing the lawsuit. Despite the plaintiff's limited connection with Connecticut, the Court found that the state had been her domicile at the time of the marriage and that she had reacquired her domicile prior to commencement of the lawsuit by returning to Connecticut with the intention of remaining permanently.[13]

Facts suggesting domicile often include such things as the party's maintaining a residence and bank accounts in Connecticut, voting in Connecticut and paying taxes using a Connecticut address.[14] However, the court may find that a party is a Connecticut domiciliary even if many of these indicia are missing. In Cugini v. Cugini,[15] the plaintiff registered her car in Rhode Island, showed a Rhode Island address on that registration, registered her children in school in Massachusetts and had Western Union money orders payable to her in California, all shortly before she came to Connecticut. She testified that she resided in ***458** Connecticut more than a year before filing the complaint. The Court found that one may have more than one residence and the fact that the plaintiff resided in Connecticut with the intent to remain was the foundation of jurisdiction.[16]

If the party resides in Connecticut temporarily, however, such as for vacations, then the court will not find Connecticut to be his domicile. In Craig v. Craig,[17] the plaintiff used his parents' summer home in Connecticut for vacation visits. Upon his discharge from the service, he gave his parents' home in New York as his future mailing address and resided out of Connecticut most of the time. He did not vote in Connecticut, maintain bank accounts in the state or pay taxes from a Connecticut address. The court found he did not have the intention of remaining permanently in Connecticut at the relevant time period and consequently, that the trial court lacked jurisdiction.[18]

B. Continuing Jurisdiction

The court can reserve final judgment on financial matters to a later date if the parties' financial status is in flux.[19] In Walsh the parties agreed to continue living together after the dissolution and to share expenses. The stipulation was approved by the Court "without prejudice to either party['s]," reopening the matter in the future. The Court found that the trial court did not err when two years later it ordered the defendant to pay the plaintiff alimony.

II. PERSONAL JURISDICTION

A. Dissolution of Marriage

In addition to subject matter jurisdiction, the trial court must have jurisdiction over the parties before it may proceed to hear the case or enter binding orders. Unlike subject matter jurisdiction, however, the party (usually the defendant) may waive any defect in personal jurisdiction and voluntarily submit to the court's jurisdiction.[20] ***459** If the defendant is domiciled in Connecticut, then service of process made by manual delivery by a sheriff to the defendant personally or at the defendant's usual place of abode is sufficient to confer personal jurisdiction.[21]

In Smith, service of process was left at the defendant's apartment. The Court held that abode service, even while the defendant was traveling out of state, was sufficient to confer personal jurisdiction to grant a judgment of legal separation and also for alimony and counsel fees.

Connecticut has a long-arm statute which gives the court jurisdiction to grant a dissolution of marriage when the defendant is a nonresident.[22]

The plaintiff may obtain an order of notice from the court.[23] However, under the statute, actual notice is not necessary for the granting of a dissolution of marriage. Furthermore, the court has the power to attach the defendant's property if it is located within the state, and to subject that property to judgment.[24]

The constitutional due process standard for determining whether the court may exercise jurisdiction over a person is the well known "minimum contacts" standard that the U.S. Supreme Court articulated in International Shoe Co. v. Washington.[25] Connecticut courts specifically have adopted this rule, stating that all assertions of state court jurisdiction must be evaluated according to the standards set forth in International Shoe and its progeny, and that those standards require that the defendant have certain minimum contacts with Connecticut such that the maintenance of the suit does not offend "traditional notions of fair ***460** play and substantial

justice."[26]
In Hodge, the defendant husband was a nonresident of Connecticut, but owned real estate in the state. The wife, a Connecticut resident, brought an action to dissolve the marriage and sought a transfer of the husband's interest in the property to her. Defendant claimed that the court had no jurisdiction over him, arguing that the action should be dismissed because the court lacked jurisdiction over him. The court denied the defendant's motion to dismiss and held that he had "minimum contacts" with the state and entered judgment quasi in rem, transferring the property to the wife.[27]
When claims for alimony and/or support are made, personal jurisdiction is required. Connecticut's "long-arm" statute provides a standard for determining whether the court may exercise jurisdiction over a nonresident defendant for the purpose of entering alimony and child support orders.[28]

In evaluating the "minimum contacts" standard set forth in Hodge and the requirements of § 46b-46(b), two questions arise: Does the court always have jurisdiction if the requirements of the statute are met; does the court have jurisdiction if the requirements of the statute are not met but the "minimum contacts test" is otherwise satisfied?
In Cleland v. Cleland[29] the court addressed both of these issues. In Cleland, the defendant argued that the facts as applied to him might meet the requirements of § 46b-46(b), but not the minimum contacts standard of Hodge. The court found that both the requirements of the statute and the minimum contacts standard were satisfied, so that defendant was subject to the court's jurisdiction. Significantly, however, the court agreed with the ***461** defendant that the Hodge ruling superseded § 46b-46(b) by enunciating a new standard, the minimum contacts standard, as the only one to be used to determine if a court may exercise personal jurisdiction.[30] Thus, according to the Cleland court, meeting the minimum contacts test but not the requirements of § 46b-46(b), is sufficient to give the court jurisdiction.[31]
Arguably, a recent decision by the United States Supreme Court makes clear that the "minimum contacts" test alone is sufficient to confer personal jurisdiction.[32] In Burnham, the defendant husband, who lived in New Jersey, was served with a divorce complaint while he was visiting his children and conducting business in California. The Court ruled that the exercise of personal jurisdiction over the defendant, based on service while he was briefly in the state, comports with traditional notions of fairplay and substantial justice.
The court can exercise personal jurisiction over a nonresident defendant if he is served with process after he enters the state voluntarily.[33] However, if the defendant "has been decoyed, enticed or induced to come within the court's jurisdiction by a false representation, deceitful contrivance or wrongful device," the court will not exercise personal jurisdiction over him.[34]

B. Post Judgment Matters

Problems with personal jurisdiction may arise post judgment as well, for example, in the context of a modification or contempt proceeding.

Section 46b-46, the long-arm statute, gives the court the power to modify a dissolution decree of which a nonresident party did not have notice, to order that party to pay child support, if actual notice of the modification proceeding was given to the nonresident.[35] In Jones, the husband was a nonresident and the wife was unable to give him actual notice of the dissolution proceedings. Ten years later, she located him in Oregon, filed a motion to reopen ***462** the judgment, requesting an order of child support, and served him in Oregon through a service processor. The Court rejected the husband's argument that the court's lack of personal jurisdiction over him at the time of the decree forever precluded the court from obtaining personal jurisdiction over him to modify the decree.
Two recent cases indicate that the court does not automatically retain jurisdiction over the parties just because in personam jurisdiction existed at the time of the dissolution.[36]

In Everett, the parties were divorced in Virginia in 1977. In 1983, because the defendant resided in Connecticut, the plaintiff filed the Virginia judgment in Connecticut, making it a Connecticut judgment. She then filed a motion for modification of child support and the court entered an order at that time.

The defendant continued to reside in Connecticut until 1986, when he moved to Maine. In 1987, he filed a motion for modification in Connecticut. The court found it did not have jurisdiction over the plaintiff (who still resided in Virginia) since she did not have contact with the State of Connecticut.[37] The court consequently dismissed the defendant's motion and held

[e]ven though it could be argued that once personal jurisdiction is acquired in a matrimonial matter, it is not lost by subsequent events, this position must be considered against the constitutional requirements of due process.[38]
There is a conflict of authority as to whether or not the court has jurisdiction to hear a motion for contempt of a Connecticut judgment of dissolution, if the party against whom the contempt citation is sought is a nonresident.[39] In O'Riordan, the court found that post divorce proceedings may require a new determination as to whether jurisdiction exists, without regard to jurisdiction which existed at the time of the original decree.[40]
The court ***463** continued its analysis by stating that, in deciding a motion to dismiss for lack of personal jurisdiction, the court first decides whether a statute authorizes assertion of jurisdiction, and if so, whether the minimum contacts standard is met.[41]
The court dismissed the plaintiff's motion for contempt because the plaintiff and defendant were no longer residents of the state and, thereofore, the requirements of § 46b-46(b) had not been satisfied. Further, the court noted that no statute gave the court subject matter jurisdiction under these circumstances. However, the court found that defendant's motion for modification was valid despite the fact that the plaintiff was a nonresident, because a specific statute, CONN.GEN.STAT. § 46b-86, gave the court jurisdiction to hear a modification proceeding.

The conclusions O'Riordan reached concerning the contempt motion on the one hand and the modification motion on the other appear to be in conflict. The ruling stands for the proposition that the court has continuing jurisdiction over the persons and subject matter to modify its decision, but not to enforce its decision. The key difference is the existence of 46b-86 conferring jurisdiction on the court, while there is not a similar statute concerning contempt citations. The court, however, failed to address how it had personal jurisdiction over the nonresident plaintiff to grant a modification.

A contrary result was reached by the courts in Breed and Winston. In Breed, the plaintiff was living in Maine when the defendant had him served there with a contempt citation. The plaintiff filed a motion to dismiss, arguing that the court lacked jurisdiction because he was not personally served in Connecticut. The court denied the motion to dismiss and held that the contempt proceeding was merely a continuation of the original action and that
[t]he court's jurisdiction endures and empowers the court to act until its decrees are obeyed. STEPHENSON CONNECTICUT CIVIL PROCEDURE, 2d Ed. (Supp. to 1981), Vol. II, Sec. 224 at 962.[42]

The court found in Winston that it had personal jurisdiction over a man who had not been a resident of the State of Connecticut since the divorce twenty-two years before for purposes of a motion ***464** for contempt concerning child support arrears. Relying on the Jones decision, the court held "[T]he defendant submitted to the jurisidction of the Connecticut courts at the time of judgment, a fact which alone supplies the requisite minimum contracts."

The area of post judgment jurisdiction is clearly ripe for legislation. Arguably, if the dissolution was granted in Connecticut and the opposing party is given actual notice of a motion for modification or a contempt citation, the court should have jurisdiction.

III. CONCURRENT JURISDICTION

A. Introduction

It is not unusual in the practice of family law, with today's mobile society, for the Wife to bring an action for dissolution of marriage in one state and the Husband to bring an identical action in another.
Conventional wisdom would have it that if a dissolution action is pending in a state that has jurisdiction over the parties and the subject matter, then Connecticut would dismiss the same action between the same parties brought later in Connecticut.[43] Surprisingly, however, this is not routinely done.[44]

B. Motions to Stay Proceedings

In Sauter, as discussed supra, the defendant commenced a dissolution action against the plaintiff in New York and, a few months later, the plaintiff instituted a dissolution action in Connecticut.[45] The Court held that:
The rule that the pendency of a prior action between the same parties and to the same ends is grounds for dismissal has efficacy only where the actions are pending in the same jurisdiction.[46]

The Court recognized that this rule would have the effect of two actions for the same relief being litigated at the same time, with the plaintiff in each racing for a judgment. Consequently, the Court found that, in the interests of judical economy, a court has the discretion to stay the second action during the pendency of ***465** the first action.[47] In determining whether to stay the action, the court will look at whether
the opportunity to obtain satisfaction in the foreign suit is as good as the domestic suit, or [whether] it appears that the foreign suit was instituted merely to forestall the domestic suit. 1 C.J.S. Actions § 133 at 1410.[48]
As the Sauter Court noted, the pendency of a prior action between the same parties, in the same jurisdiction and to the same end, is grounds for dismissal.[49] If the purposes of the two actions and the issues to be determined by them are different, however, then this rule does not apply and the court should consolidate the actions.[50]

In Nielsen, the husband filed a dissolution action in Florida and the Florida court rendered a final judgment. At the same time, the wife began a dissolution action in Connecticut. The husband then sought to enforce the Florida judgment in Connecticut.
The Court found that the prior pending action doctrine did not apply because the purposes of the two Connecticut actions were not the same, even though they involved the same parties and revolved around the dissolution of their marriage. The purpose of the wife's action was to dissolve the marriage and to obtain financial orders, whereas the purpose of the husband's action was to enforce Florida's financial orders. The Court also recognized, however, that it would make little sense to have related cases litigated in parallel. Consequently, instead of dismissing either case, the Court consolidated the two.[51]

C. Injunction

The party who brings the action in Connecticut can seek an order from the Connecticut court enjoining the other from proceeding in the foreign jurisdiction.[52] In Nowell, the parties were domiciled in Connecticut at the time the Wife filed an action for ***466** legal separation. Shortly thereafter, the Husband established his domicile in Texas and brought a divorce action there. The Wife obtained an ex parte injunction in Connecticut restraining the Husband from pursuing the Texas action and the Husband obtained an ex parte injunction in Texas restraining the Wife from pursuing the Connecticut action.

Despite the Connecticut injunction, the Husband obtained a judgment of divorce in Texas. The Wife appealed the decision. He then moved the Connecticut court to dismiss the Connecticut action, citing the Texas judgment as res judicata. The trial court refused to dismiss the Wife's action and proceeded to grant the dissolution and to enter financial orders. The judgment was entered while the appeal was pending in Texas.
The Connecticut Supreme Court found no error in the trial court's entering judgment. However, once the Texas appeal was final and the trial court orders affirmed, the Connecticut judgment should have been vacated under the doctrine of full faith and credit.[53] The Texas judgment had to be recognized "despite the fact that it was obtained in defiance of a Connecticut antisuit injunction."[54]
While the remedy of injunction is available, it applies only to the individual and has no effect on the foreign court in which the action is brought.[55] Civil penalties are available for the violation of such an injunction but must be set at the time of the final hearing.[56]

Connecticut courts are reluctant to grant injunctions when there are two actions pending in different jurisdictions.[57] The trial court noted in Brainard that
[t]he power to issue such relief "is one to be sparingly and reluctantly used in the sound judicial discretion; and then only in cases where the petitioner establishes good reason for the ***467** action."[58]

Accordingly, while the injunction remedy is available, it is rarely granted and when it has been used, it is ineffectual if a judgment can be obtained first in the foreign jurisdiction.

IV. VALIDITY OF FOREIGN DIVORCE JUDGMENTS

A. Sister States

The enforceability of one state's judgment in another state is important where parties change their residence after a divorce.
Article 4 § 1 of the United States Constitution, better known as the "full faith and credit clause," provides that the judicial proceedings of each state must be given full faith and credit in every other state.[59] However, the judgment of one state is entitled to full faith and credit only if it is a final judgment and it is final only if it is not

subject to modification in the state that rendered the judgment. Furthermore, the state that rendered the judgment must have had jurisdiction to do so before another state is compelled to give that judgment full faith and credit.60

Connecticut courts look to the law of the state in which the judgment was rendered to determine if that state had jurisdiction to render the judgment so as to allow Connecticut to enforce it.61 A sister state's determination on the jurisdiction issue will be given full faith and credit by Connecticut courts.62 In Morabito, the plaintiff obtained a divorce in Nevada and later sued for an order of arrearage of child support in Nevada. The defendant appeared at the second hearing only, contesting on the ground that the court did not have jurisdiction over him at the time of the original decree to make support orders. The Nevada court found it had personal jurisdiction at the time of the decree and therefore, entered orders. When the plaintiff sought to enforce the Nevada judgment in Connecticut, the defendant again brought up the jurisdiction issue. The Court deferred to the Nevada court's decision on the jurisdiction issue because it was a final judgment and because the defendant had a full opportunity to be heard on this issue in ***468** Nevada. The Court refused to make its own inquiry as to whether the Nevada court had jurisdiction to enter support orders and later to enforce them, because Nevada law precluded the defendant from relitigating the question in a collateral proceeding.63

The procedural mechanism for enforcing out of state judgments in Connecticut is statutory. CONN.GEN.STAT. § 46b-70 defines a foreign matrimonial judgment. CONN.GEN.STAT. § 46b-71 lays out the steps one must follow to file the judgment.64 and CONN.GEN.STAT. § 46b-72 provides that notice of the filing must be given to the adverse party.

CONN.GEN.STAT. § 46b-70 specifically states that a foreign matrimonial judgment is one in which "both parties have entered an appearance." Be aware that this "appearance" does not necessarily mean "general appearance." Although there are states that still allow a defendant to file a special appearance solely for the purpose of contesting jurisdiction, Connecticut considers such an appearance adequate to allow for the filing of the foreign judgment in Connecticut.65 It is ironic and seemingly unfair that a defendant's special appearance, filed for the specific purpose of contesting jurisdiction in one state would have the effect of subjecting him to another state's jurisdiction.

***469** B. Foreign Nations

The law regarding recognition of divorce judgments made by foreign nations is separate from that involving sister states. First, the full faith and credit clause does not apply to foreign nations. Second, § 46b-70 excludes judgments of foreign nations in its definition of "foreign matrimonial judgment," so that no statutory basis exists for the enforcement of such judgments.

Connecticut courts will recognize judgments for dissolution of marriage rendered by foreign nations under the doctrine of comity.66 In Litvaitis the Court set forth the general rule to determine whether or not Connecticut will recognize such judgments. The Court held that, in general, regardless of its validity in the nation awarding it, Connecticut will not recognize a judgment rendered by the courts of a foreign nation unless, by Connecticut standards, at least one of the spouses was a good faith domiciliary in the foreign nation at the time judgment was rendered.67 Applying this reasoning, the Court declined to recognize a Mexican judgment obtained by the Husband when he clearly was not a domiciliary of that country.

The rule enunciated in Litvaitis makes sense. Domicile is required for Connecticut courts to have subject matter jurisdiction which, in turn, is necessary for a court to dissolve a marriage.68 If Connecticut is going to recognize a foreign divorce, then the prerequisites for a valid Connecticut divorce should be met in other countries as well. Otherwise, people could obtain "quickie" divorces in other nations when the divorces could not be obtained in Connecticut and, by so doing, could circumvent Connecticut law.

The rule for recognition of foreign divorce decrees has been relaxed when equity demands a different result.69 This obviously runs afoul of the cases which hold that subject matter jurisdiction cannot be waived.

***470** In Baker, the court based its decision on the equities involved. In that case, both parties appeared in a Mexican court for the purpose of obtaining a divorce and remarried afterwards. Only when the second marriage proved unsuccessful many years later, did the plaintiff assert the invalidity of the Mexican divorce decree.

The court contrasted this situation with the one in Litvaitis, where the husband obtained a Mexican divorce ex

parte and argued for the validity of the divorce so as to alleviate himself of supporting his wife. The court recognized that the principle of comity provides the basis upon which state courts give validity to divorce judgments of foreign countries and that the facts of this case mandated an exception to the Litvaitis rule and a practical recognition of the validity of the Mexican decree.

In Bruneau, the court relied on Baker to reach a similar conclusion. Both parties appeared in the Mexican proceeding in which the Court granted a divorce and incorporated a separation agreement between the parties in the court's judgment. The defendant remarried in reliance on that decree. Nineteen years after the decree, the plaintiff brought an action and asked the court to invalidate the Mexican divorce because of the defendant's failure to live up to certain financial obligations. The court sympathized with the plaintiff's position, but concluded that her acceptance of benefits under the decree for so many years estopped her from asserting its invalidity.

The Bruneau Court seemed comfortable with its decision because it noted that the plaintiff was not without remedy; she could sue to enforce the separation agreement incorporated in the decree.[70] The Court cited Hayes v. Beresford[71] in support of this conclusion.

The decision in Hayes raises an interesting point regarding the Court's treatment of foreign decrees. In Hayes, the parties obtained a Mexican divorce. The plaintiff sued to modify and enforce separate provisions of a separation agreement incorporated in the Mexican decree. The Court refused to entertain the modification action because it claimed it did not have subject matter jurisdiction to modify a private agreement and the suit was on the agreement, not the decree. The Court further noted that ***471** even if the suit were on the decree that incorporated the agreement, the Court could not modify the decree without the moving party first making the decree a Connecticut judgment.[72] The Court, however, found the agreement enforceable because it did not violate Connecticut public policy.[73] The Mexican court adopted, approved and incorporated the agreement into its decree and the trial court found that the parties had, independently of the agreement, determined to pursue a dissolution of marriage, so that the agreement was made to settle property disputes, not to facilitate divorce.[74]

Hayes stands for the proposition that Connecticut may not modify foreign judgments unless they are first made judgments of this state. The problem that the Court does not address, is that there is no constitutional or statutory authority for filing judgments of foreign nations as Connecticut judgments. The Court cites Krueger v. Krueger[75] and Litvaitis v. Litvaitis[76] in support of this proposition. However, Krueger involved a judgment of a sister state where there was statutory authority to make the judgment that of another state,[77] and Litvaitis dealt solely with the issue of recognition of a foreign decree pursuant to the principle of comity.[78]

The Hayes court could have held that the Mexican decree could have been modified as well as enforced pursuant to the principle of comity,[79] but the court chose not to take that route. Consequently, we are left with law that states, in effect, that a decree of a foreign nation may be recognized and a separation agreement incorporated in the decree may be enforced under appropriate circumstances, but the judgment may not be modified.

*472 CONCLUSION

It is evident from a review of the case law concerning jurisdiction that two areas stand out as demanding clarification through legislation. First, the court's jurisdiction to entertain post judgment motions where one or both parties are nonresidents of the state;[80] second, the court's jurisdiction to modify judgments of foreign nations which Connecticut finds were rendered properly.[81]

Footnotes

a Of the Greenwich and Stamford Bar respectively.

1 This article will deal solely with jurisdictional issues relating to the financial aspects of dissolution of marriage cases and post dissolution matters. For a related article, see, Hennessy, Jurisdiction—Notice in Matrimonial Matters, 58 CONN.B.J. 213 (1984). This article will not deal with the separate issue of jurisdiction in contested custody cases. See Uniform Child Custody Jurisdiction Act CONN.GEN.STAT. § 46b-90-114.

2 CONNECTICUT PRACTICE BOOK § 145; but see Daly v. Daly, 19 Conn.App. 65 (1989) (desirability of the finality of judgments may override claim that court lacked subject matter jurisdiction when attack on judgment

came nineteen years later).

3 CONNECTICUT PRACTICE BOOK § 4056, Laurel Park, Inc. v. Pac, 194 Conn. 677, 679 n. 1, 485 A.2d 1272, 1273 n. 1 (1984).

4 Unless otherwise stated, dissolution of marriage actions will include actions for annulment and legal separation, as well.

5 CONN.GEN.STAT. § 46b-44(a) (1989).

6 CONN.GEN.STAT. § 46b-44(c) (1989).

7 LaBow v. LaBow, 171 Conn. 433, 437, 370 A.2d 990, 993 (1976). In Labow, the Court construed a predecessor statute, CONN.GEN.STAT. § 46-35, that had language nearly identical to § 46b-44; Taylor v. Taylor, 168 Conn. 619, 621, 362 A.2d 795, 797 (1975) (jurisdiction to grant a dissolution is founded on domicile and burden of proof is on party challenging the court's jurisdiction).

8 LaBow, 171 Conn. at 437-38, 370 A.2d at 393-94, Carchrae v. Carchrae, 10 Conn.App. 566, 568-69, 524 A.2d 672, 673-74 (1987); Sauter v. Sauter, 4 Conn.App. 581, 583-85, 495 A.2d 1116, 1117-18 (1985) (Court used the same reasoning to hold that residence without domicile is sufficient to provide jurisdiction for the filing of the complaint). McAnerney & Schoonmaker, Connecticut's New Approach to Marriage Dissolution, 47 CONN.B.J. 375, 379 (1973).

9 Sauter v. Sauter, 4 Conn.App. 581, 495 A.2d 1116 (1985).

10 If the plaintiff satisfies the domicile requirements at the time the action was brought, the court does not lack jurisdiction if he or she moved out of Connecticut prior to the entry of the decree. Baker v. Baker, 166 Conn. 476, 488, 352 A.2d 277, 279 (1974); 24 AM.JUR. 2d, Divorce and Separation, § 106 (1983); Note, 7 A.L.R.2d. 1414-17; cf. Note, 89 A.L.R. Annotation, Effect on Jurisdiction of Court to Grant Divorce, of Plaintiff's Change of Residence Pendente Lite, 7 A.L.R.2d 1414, 1414-17 (1949); cf. Annotation, Nonresidence of Defendant or Cross Complainant in a Suit for Divorce as Affecting Power to Grant Divorce in His or Her Favor, 89 A.L.R. 1203 (1934).

11 Mills v. Mills, 119 Conn. 612, 617, 179 A.5 (1935).

12 Adame v. Adame, 154 Conn. 389, 391, 225 A.2d 188, 189 (1966).

13 Id. at 391-92, 225 A.2d at 189.

14 Baker, 166 Conn. at 482, 352 A.2d at 281; Adame, 154 Conn. at 392, 225 A.2d at 189.

15 13 Conn.App. 632, 635-36, 538 A.2d 1060, 1062 (1988).

16 Id. at 636, 538 a.2d at 1062; see also Taylor v. Taylor, 168 Conn. 619, 621, 362 A.2d 795, 797 (1975) (a party may have one or more resident addresses, but only one domicile).

17 21 Conn.Sup. 359, 154 A.2d 581 (1959).

18 Id. at 361-63, 154 A.2d at 882-83.

19 Walsh v. Walsh, 190 Conn. 126, 459 A.2d 515 (1983).

20 Baker, 166 Conn. 485, 352 A.2d at 282 (defendant clearly waived any defects of jurisdiction by filing a general appearance). Be aware, however, that a defendant still may object to the court's jurisdiction even after filing a general appearance. If he or she files a motion to dismiss for lack of jurisdiction within 30 days after filing the appearance, then the filing alone will not submit the defendant to the court's jurisdiction. CONNECTICUT PRACTICE BOOK § 142.

21 Smith v. Smith, 150 Conn. 15, 20, 183 A.2d 848, 851 (1962).

22 CONN.GEN.STAT. § 46b-46(a) provides:
On a complaint for dissolution, annulment or legal separation, if the defendant resides out of or is absent from the state or the whereabouts of the defendant is unknown to the plaintiff, any judge or clerk of the supreme court or of the superior court may make such order of notice as he deems reasonable. After notice has been given and proved to the court, the court may hear the complaint if it finds that the defendant has actually received notice that the complaint is pending. If it does not appear that the defendant has had such notice, the court may hear the case, or, if it sees cause, order such further notice to be given as it deems reasonable and continue the complaint until the order is complied with.

23 CONNECTICUT PRACTICE BOOK § 461.

24 Gimbel v. Gimbel, 147 Conn. 561, 564-65, 163 A.2d 451, 453 (1960); Samrov v. Samrov, 6 Conn.App. 591, 593-94, 506 A.2d 1077, 1079 (1986). See also Fernandez v. Fernandez, 208 Conn. 329. 342 n. 9, 545 A.2d 1036, 1043 n. 9 (1988), petition for cert. filed, a case that dealt with a claim of diplomatic immunity in the context of a dissolution proceeding, and in which the Court confirmed, in dicta, that its power to distribute property is ancillary to its power to dissolve a marriage.

25 326 U.S. 310 (1945).

26 Hodge v. Hodge, 178 Conn. 308 (1979). The Hodge Court relied heavily on the U.S. Supreme Court's decision in Shaffer v. Heitner, 433 U.S. 186 (1977), in which the Court held that there is a single standard (minimum contacts) for determining whether jurisdiction exists in personam, in rem or quasi in rem. Hodge, 178 Conn. at 320, 422 A.2d at 285 (citation omitted); see also O'Brien v. O'Brien, 26 Conn.Sup. 284, 288-89 (1965), app. dismissed, 153 Conn. 739 (1966).

27 Id. at 318, 422 A.2d at 285.

28 CONN.GEN.STAT. § 46b-46(b) provides:
The court may exercise personal jurisdiction over the nonresident party as matters concerning temporary or permanent alimony or support of children, only if (1) The nonresident party has received actual notice under subsection (a) of this section; and (2) the party requesting alimony or support of children meets the residency requirement of section 46b-44; and (3) this state was the domicile of both parties immediately prior to or at the time of their separation.

29 6 Conn.L.Trib. No. 27 at 11, (Dec. 20, 1979) (Super.Ct.1979).

30 Id. at 11-12.

31 A subsequent case, O'Riordan v. O'Riordan, 3 C.S.C.R. 896 (1988) reaches a contrary result by finding that both a statutory and minimum contacts analysis is required. See discussion infra.

32 Burnham v. Superior Court of California, County of Marin, ---U.S. ----, 110 S.Ct. 2105 (1990).

33 Babouder v. Abdennur, 41 Conn.Sup. 258, 262 (1989).

34 Babouder at 262. See also, Siro v. American Express Co., 99 Conn. 95, 98, 121 A.280 (1923); Hill v. Goodrich, 32 Conn. 588 (1865); Annotation, 98 A.L.R.2d 551.

35 Jones v. Jones, 199 Conn. 287 (1986).

36 Everett v. Slosberg, 2 C.S.C.R. 595 (1987); O'Riordan v. O'Riordan, 3 C.S.C.R. 896 (1988).

37 The court stated that it did not have in personam jurisdiction over the defendant. However, the authors conclude from the context of the case, that the court inadvertently erred by substituting "defendant" for "plaintiff" and that the court clearly meant to state it did not have jurisdiction over the plaintiff.

38 Everett, 2 C.S.C.R. at 596.

39 Winston v. Winston, (Super Ct. No. FA 88-0012129), (J.D. Stamford-Norwalk, 1990); O'Riordan v. O'Riordon, 3 C.S.C.R. 896 (1988); Breed v. Breed, 11 Conn.L.Trib. No. 27 at 8 (July 8, 1985) (Super.Ct.1984).

40 In reaching this determination, the court relied on Jones v. Jones, 199 Conn. 287, 507 A.2d 88 (1986).

41 O'Riordan, 3 C.S.C.R. at 897.

42 Breed, 11 Conn. Law Trib. No. 27 at 8 (July 8, 1985) (Super.Ct.1984).

43 See Brainard v. Brainard, 1 C.S.C.R. 649 (1986) (court dismissed Connecticut action commenced subsequent to action properly brought in Rhode Island).

44 Sauter v. Sauter, 4 Conn.App. 581, 495 A.2d 1114 (1985).

45 Id. at 582, 495 A.2d at 1117.

46 Id. at 584, 495 A.2d at 1118.

47 Id. at 584-85, 495 A.2d at 1118. The doctrine of forum non conveniens also permits a court that has jurisdiction, to dismiss a case, if it appears that it would be more appropriately tried elsewhere, either for the convenience of the parties or to meet the ends of justice. Brown v. Brown, 195 Conn. 98, 108 n. 17, 486 A.2d 1116, 1122 n. 17 (1985) (citations omitted). See also A. RUTKIN, FAMILY LAW AND PRACTICE, § 307 (1987).

48 Sauter, 4 Conn.App. at 585, 495 A.2d at 1118.

49 Southland Corp. v. Vernon, 1 Conn.App. 439, 451, 473 A.2d 318, 325 (1983) (citation omitted).

50 Nielsen v. Nielsen, 3 Conn.App. 679, 491 A.2d 1112 (1985).

51 Id. at 682, 684, 491 A.2d at 1114-1115.

52 Nowell v. Nowell, 157 Conn. 470, 254 A.2d 889 cert. denied, 396 U.S. 844 (1969).

53 Id. at 476, 254 A.2d at 893.

54 Id. at 476, 254 A.2d at 894.

55 Id. See also Cunningham v Cunningham, 25 Conn.Sup. 221, 224, 200 A.2d 734, 735-36 (1964) (Nevada court's order enjoining Wife from proceeding with a Connecticut action was not recognized); 24 AM JUR. 2d, Divorce and Separation, § 1010 (1983); 43 C.J.S. Injunction, § 51 (1967).

56 Nowell, 157 Conn. at 482-83, 254 A.2d at 896.

57 Brainard v. Brainard, 1 C.S.C.R. 649 (1986) (injunction to prevent defendant from litigating Rhode Island action for dissolution of marriage was denied); and Miller v. Miller, 15 Conn.Sup. 20, 21 (1947) (injunction to prevent defendant from litigating New York action for dissolution of marriage was denied).

58 Brainard, 1 C.S.C.R. at 469.

59 The implementing statute for this provision of the Constitution is 28 U.S.C. § 1738.

60 Krueger v. Krueger, 179 Conn. 488, 490-91, 427 A.2d 400, 902 (1980) (citations omitted); Hendrix v. Hendrix, 160 Conn. 98, 104-105, 273 A.2d 890, 893 (1970) (citations omitted).

61 Bagshawe v. Bagshawe, 10 Conn.L.Trib. No. 44, at 15 (June 1, 1984) (Super.Ct.1984).

62 Morabito v. Wachsman, 191 Conn. 92, 463 A.2d 593 (1983).

63 Id. at 94-98, 463 A.2d 596. The party contesting another state's decree has the burden of proving it is invalid. McNeeley v. McNeeley, 10 Conn.L.Trib. No. 38, at 16, 17 (May 7, 1984) (1984).

64 CONN.GEN.STAT. § 46b-71 states:
(a) Any party to an action in which a foreign matrimonial judgment has been rendered, shall file, with a certified copy of the foreign matrimonial judgment, in the court in this state in which enforcement of such judgment is sought, a certification that such judgment is final, has not been modified, altered, amended, set aside or vacated and that the enforcement of such judgment has not been stayed or suspended, and such certificate shall set forth the full name and last-known address of the other party to such judgment.
(b) Such foreign matrimonial judgment shall become a judgment of the court of this state where it is filed and shall be enforced and otherwise treated in the same manner as a judgment of a court in this state; provided such foreign matrimonial judgment does not contravene the public policy of the state of Connecticut. A foreign matrimonial judgment so filed shall have the same effect and may be enforced or satisfied in the same manner as any like judgment of a court of this state and is subject to the same procedures for modifying, altering, amending, vacating, setting aside, staying or suspending said judgment as a judgment of a court of this state; provided, in modifying,

altering, amending, setting aside, vacating, staying or suspending any such foreign matrimonial judgment in this state the substantive law of the foreign jurisdiction shall be controlling.

65 Morabito, 191 Conn. at 101, 463 A.2d 598. See also Rule v. Rule, 6 Conn.App. 541, 545, 506 A.2d 1061, 1062, cert. denied, 201 Conn. 801 513 A.2d 697 (1986) (the withdrawal of an attorney's appearance has no effect on the filing of a foreign judgment in Connecticut if the defendant also has filed an appearance).

66 Litvaitis v. Litvaitis, 162 Conn. 540, 544, 295 A.2d 519, 522 (1972).

67 Id. at 546, 295 A.2d at 522. Connecticut follows the majority rule to determine the validity of foreign divorce decrees. The minority rule, which includes New York, maintains that the judgment is valid if the jurisdictional requirements of the foreign country were met. Baker v. Baker, 39 Conn.Sup. 66, 68 (1983) Rosenteil v. Rosenteil, 16 N.Y.2d 64, 262 N.Y.S.2d 86, 209 N.E.2d 709 (1965), cert. denied, 384 U.S. 971 (1966).

68 Williams v. North Carolina, 325 U.S. 226, 229 (1944).

69 E.g., Bruneau v. Bruneau, 3 Conn.App. 453, 489 A.2d 1049 (1987); Baker v. Baker, 39 Conn.Sup. 66, 468 A.2d 944 (1983).

70 Bruneau, 3 Conn.App. at 459, 489 A.2d at 1052.

71 184 Conn. 558, 440 A.2d 224 (1981).

72 Id. at 560-62, 440 A.2d at 226-27 (citations omitted).

73 But see Baker, 39 Conn.Sup. at 73-74, 468 A.2d at 948-49 (court found it had no jurisdiction to enforce separation agreements incorporated in Mexican decrees).

74 See Yoder v. Yoder, 31 Conn.Sup. 344, 349, 330 A.2d 825, 828 (1974) (court found that it could recognize and enforce Mexican decree as a matter of comity if it was not repugnant to public policy of Connecticut and that the principle does not require Connecticut to adopt an alien decree as its own.).

75 179 Conn. 488, 427 A.2d 400 (1980).

76 162 Conn. 540, 295 A.2d 519 (1972).

77 Krueger, 179 Conn. at 492, 427 A.2d at 403.

78 Litvaitis, 162 Conn. at 544, 295 A.2d at 522.

79 See note 70 supra.

80 The following is suggested legislation to settle the uncertainty of the court's jurisdiction:
0046b-46(c)
(c) The court may exercise personal jurisdiction over a nonresident party over whom the court had personal jurisdiction at the time of the original action for purposes of § 46b-86, only if: the nonresident party has received actual notice of the post judgment motion; and (2) the party bringing the motion is a resident of this state.

81 The following is suggested legislation to settle the uncertainty of the court's jurisdiction to modify judgments of foreign nations:

§ 46b-70 (Revised)

As used in sections 46b-70 to 46b-75, inclusive, "foreign matrimonial judgment" means any judgment, decree or order of a court of any state in the United States or foreign nation in an action for divorce, legal separation, annulment or dissolution of marriage, for the custody, care, education, visitation, maintenance or support of children or for alimony, support or the disposition of property of the parties to an existing or terminated marriage, in which each party has entered an appearance and with respect to judgments of foreign nations, at least one of the spouses was a domiciliary of the foreign nation at the time the judgment was rendered.

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