Domestic Violence: DVPOs Require Personal Jurisdiction

While I always have believed a Chapter 50B proceeding requires all three prongs of personal jurisdiction as do most other civil actions, a few appellate courts in other states have held that some DVPOs can be entered without concern for long-arm statutory authorization or the minimum contacts required by Due Process. The North Carolina Court of Appeals finally had the opportunity to address the issue for the first time this week. The court held that because of the significant impact a DVPO has on a defendant, entry of any final DVPO without all three aspects of personal jurisdiction violates "Due Process and offend[s] traditional notions of fair play and substantial justice."

What are the three prongs of personal jurisdiction?

1. All civil orders/judgments require service of process on a defendant unless a defendant consents to jurisdiction or waives the right to object to the exercise of jurisdiction. Without appropriate service of process, a court has no personal jurisdiction over a defendant. Of course, there are limited extraordinary circumstances where a court is authorized to enter an *ex parte* order before service or notice to a defendant, but service of process always must be accomplished before entry of a final order or judgment.
2. In addition, most civil orders and judgments require a statutory basis for the exercise of personal jurisdiction. Statutes authorizing the exercise of personal jurisdiction in specified circumstances are referred to as long-arm statutes. The grounds for personal jurisdiction for most North Carolina civil actions are provided in GS 1-75.4.
3. Finally, the Due Process clause of the federal constitution generally requires what is commonly referred to as 'minimum contacts' between a defendant and a state before the courts of the state can exercise personal jurisdiction over a nonresident defendant. A defendant's relationship with, involvement in or connection to a state must make it 'fair' to require that defendant appear and defend in the courts of that state.

North Carolina appellate courts have interpreted our long-arm statute broadly and held that the statutory provisions are "coextensive with federal due process." *See e.g. Kaplan School Supply Corp. v. Henry Worst, Inc.*, 56 NC App 567 (1982). This means that if facts establish minimum contacts, we generally can assume the long-arm statute authorizes jurisdiction. *Lang v. Lang*, 157 NC App 703 (2003).

A few courts in other states have held DVPOs don't require all three prongs

There are family law proceedings that do not require long-arm authorization and minimum contacts because they are not *in personam* proceedings. Absolute divorce and child custody, for example, are *'in rem'* proceedings; actions viewed as affecting the 'rem' or the thing at issue rather than the substantive rights of the defendant. A court does not need minimum contacts to exercise jurisdiction over a defendant in an *in rem* proceeding. *International Shoe v. Washington*, 326 US

310 (1945).

A few courts in other jurisdictions have determined a DV petition seeking only an order of protection is a request for an '*in rem*' determination because it is nothing more than an order requiring a defendant not to commit an unlawful act against the plaintiff. It seeks a protected status for the plaintiff rather than a determination of defendant's personal rights. These courts have ruled that a nonresident defendant is not required to have minimum contacts with a state before the court can enter an order protecting the in-state victim, who generally has fled the abuser and recently come to the state, when the DVPO does not require affirmative action from a defendant, such as the surrender of firearms. *See Hemenway v. Hemenway*, 992 A.2d 575 (2010)(New Hampshire); *Caplan v. Donovan,* 879 N.E.2d 117, *cert. denied,* 553 U.S. 1018 (2008) (Mass.); *Bartsch v. Bartsch*, 636 N.W.2d 3 (Iowa 2001); *Spencer v. Spencer,* 191 S.W.3d 14 (Ky. App. 2006).

However, other state appellate courts have disagreed. S*ee Becker v. Johnson,* 937 So.2d 1128 (Fl. App. Dist. Ct. 2006)(protective order entered in Florida shortly after wife fled there vacated when husband did not have minimum contacts with Florida); *T.L. v. W.L.,* 820 A.2d 506 (Del. Fam. Ct. 2003) (affirming dismissal of petition for an order of protection based on nonresident husband's lack of minimum contacts with Delaware).

Mannise v. Harrell

This week the North Carolina Court of Appeals rejected the notion that any type of Chapter 50B action is an *in rem* proceeding.

In Mannise, plaintiff mother filed a complaint for a DVPO, alleging father threatened to kill her when he found out she planned to move with their child from Pennsylvania to North Carolina. While the complaint alleged mother was a resident of North Carolina at the time the action was initiated, it did not allege where the threat took place, that mother was a resident of North Carolina when the threat occurred, or that defendant had any connection to North Carolina at all. She did allege defendant was a resident of Pennsylvania. The trial court granted an *ex parte* DVPO and after father was served in Pennsylvania, he immediately filed a motion to dismiss for lack of personal jurisdiction over him.

The trial court denied his motion to dismiss on two grounds. First, the court determined that North Carolina courts had personal jurisdiction over father because mother's attorney 'forecast' in argument that evidence would show the alleged act of domestic violence had occurred in this state when defendant threatened plaintiff over the telephone while she was in North Carolina. More on that issue in my next blog.

Second, the trial court concluded that personal jurisdiction in the form of long-arm authorization and minimum contacts are not necessary for the entry of a DVPO. Citing appellate opinions from other states, including the *Spencer* case from Kentucky cited above, the trial judge concluded that when

a DVPO is prohibitory only, personal jurisdiction is not required. According to the trial court, when a DVPO only prohibits a defendant from committing acts that are illegal anyway, such as acts which constitute domestic violence, the DVPO is prohibitory only and requires no personal jurisdiction. Minimum contacts and long-arm authorization only are necessary if the order required defendant to "undertake any actions," such as surrendering firearms or other personal or real property.

The court of appeals disagreed with the trial court and the opinions from the other jurisdictions and held that "the entry of a domestic violence protective order must be consistent and compatible with North Carolina's long-arm statute, and also must comport with constitutional due process." The court of appeals explained that all DVPOs, whether they only prohibit acts of domestic violence or whether they also require a defendant to act, have both "legal and non-legal consequences" for a defendant. Citing the collateral consequences of a DVPO, such as the impact in a future custody proceeding of a conclusion that a defendant committed an act of domestic violence and the fact that potential employers frequently ask job applicants about DVPOs, the court held that "the issuance of a domestic violence protective order implicates substantial rights of a defendant." Therefore, the court stated, a "[p]laintiff is required to prove personal jurisdiction over defendant. To hold otherwise would violate Due Process and offend traditional notions of fair play and substantial justice."

The court of appeals then went on to hold that plaintiff failed to establish that North Carolina had long-arm jurisdiction and minimum contacts over defendant. That is the subject of my post for next Friday.