Domestic Violence: more on Mannise and personal jurisdiction

My post last week discussed the decision in *Mannise v. Harrell* that told us a Chapter 50B proceeding is an *in personam* proceeding that requires all three prongs of personal jurisdiction. That case also reminded us that a plaintiff has the burden of producing evidence, "direct or indirect," to establish prima facie that personal jurisdiction exists when a defendant properly objects to personal jurisdiction. As illustrated in *Mannise*, many plaintiffs in 50B proceedings are not prepared to meet this burden.

The Facts 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. She filed *pro se*, using the AOC form Complaint and Motion for Domestic Violence Protective Order. Because she requested temporary custody as part of the DVPO, she attached an Affidavit as to the Status of the Minor Child to the Complaint.

The complaint alleged the date of the threat but did not allege where the threat took place and did not allege mother was a resident of North Carolina when the threat occurred. She did allege she was a resident of North Carolina at the time the complaint for the DVPO was filed and that defendant was a resident of Pennsylvania. The Affidavit as to the Status of the Minor Child alleged the parties had lived in Pennsylvania with the child until the date of the threat. As is normally the case in a Chapter 50B proceeding, the complaint contained no information about defendant's connections to North Carolina.

The trial court granted an *ex parte* DVPO. Father was personally served in Pennsylvania and shortly thereafter, he filed a motion to dismiss the North Carolina action arguing the court had no personal jurisdiction over him. To support his motion, he filed an Affidavit that stated he had lived in North Carolina from 1998 until 2012, at which time he moved to Pennsylvania. He had been away from North Carolina for three years at the time the Chapter 50B proceeding was filed. He admitted he talked with Plaintiff on the telephone on the date of the alleged threat but stated she told him she was in West Virginia when they spoke.

Trial court denial of defendant's motion to dismiss

The trial court denied defendant's his motion to dismiss on two grounds. One was the subject of my post last week about whether personal jurisdiction is required for a DVPO. The second was the trial court's determination that plaintiff had established prima facie that North Carolina had personal jurisdiction over defendant.

The trial court first found that the alleged act of domestic violence had occurred in North Carolina. The court explained that it 'inferred' that the threat occurred in North Carolina based on information contained in the Complaint and in the Affidavit as to the Status of the Minor child indicating plaintiff and the child left Pennsylvania on the date of the threat. In addition, the trial judge relied on mother's attorney's '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.

The trial judge concluded that the fact defendant threatened plaintiff over the telephone while she was present in North Carolina, along with "the parties historical and present connections to this state, the viciousness of the precipitating event, and the nature of the threats to exact revenge," established both long-arm statutory authorization for jurisdiction and minimum contacts.

'Forecast' of evidence by attorney is not evidence of jurisdiction

The court of appeals reversed the decision of the trial court, holding that plaintiff failed to meet her burden of proof required to defeat defendant's motion to dismiss. According to the court of appeals, when a defendant raises the issue of personal jurisdiction, plaintiff is required to produce evidence, "either direct or indirect," of facts to establish the basis for personal jurisdiction.

Without addressing whether the facts found by the trial court would be sufficient to establish minimum contacts, the court of appeals held that the trial court had no actual evidence to support the findings of fact upon which it based its conclusion about jurisdiction. Noting that plaintiff offered no sworn statement, testimony or other evidence as to where the threat took place, the court of appeals held that the trial court erred in relying on argument of counsel and on inferences drawn from the allegations in the complaint and Affidavit as to the Status of the Minor Child.

The court noted that the trial court did not conduct an evidentiary hearing on defendant's motion to dismiss, but it also made it clear an evidentiary hearing is not required before ruling on a defendant's motion to dismiss. The court stated that "a trial court may hold an evidentiary hearing including oral testimony or depositions or may decide the matter based on affidavits." If the court decides to use affidavits, plaintiff's affidavits must establish prima facie that jurisdiction is proper. However, if the court does use affidavits to resolve the motion to dismiss, plaintiff eventually must prove personal jurisdiction by a preponderance of the evidence at an evidentiary hearing or at trial.

Can a telephone call establish personal jurisdiction?

The court of appeals focuses quite a bit of attention in this case on determining whether there was evidence that the alleged threat by defendant occurred in North Carolina and whether plaintiff resided in North Carolina when the alleged act of domestic violence occurred. This is not because either is required to state a claim for a DVPO pursuant to Chapter 50B. Unlike Chapter 50C, Chapter 50B contains no requirement that the act of domestic violence occur in North Carolina.

And, while a plaintiff must be a resident of North Carolina when the complaint is filed, GS 50B-2, there is no requirement that plaintiff be a resident when the act of domestic violence occurs.

Instead, the court is interested in where the act occurred because courts in other states have held that personal jurisdiction may be based on telephone contact with a victim while the victim is physically present in the state in some circumstances, even if a defendant has no other contacts with the state. As stated in *A.R. v. M.R*., 799 A.2d 27 (New Jersey 2002), cited by the trial court in this case, sometimes “telephone calls [are] tantamount to defendant’s physical pursuit of a victim” into the state where she fled to escape further violence. For similar holdings, see *McNair v. McNair,* 151 N.H. 343, 856 A.2d 5 (2004) (exercise of long-arm jurisdiction based on "multiple harassing phone calls" made by the defendant in Texas to the plaintiff in New Hampshire); and *Beckers v. Seck,* 14 S.W.3d 139 (Mo. App. 2000) (nonresident uncle’s harassing calls purposefully directed at his niece in Missouri sufficient minimum contacts for Missouri court to exercise jurisdiction). *But cf. Caplan v. Donovan,* 450 Mass. 463, 879 N.E.2d 117, *cert. denied,* 553 U.S. 1018 (2008) (five or six daily calls by nonresident partner to cell phone of partner who had fled to Mass. did not amount to tortious injury for purposes of personal jurisdiction under Mass. long-arm statute when there was no evidence as to the content of the calls, that resident partner was in fear because of the calls, or that the calls were threatening).