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Personal Jurisdiction in Divorce Proceedings: *Stucky v. Stucky*, 186 Neb. 636 (1971)

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PERSONAL JURISDICTION IN DIVORCE PROCEEDINGS:

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I. INTRODUCTION

Mr. Justice Field observed in 1877, "The authority [to render in personam judgments] of every tribunal is necessarily restricted by the territorial limits of the State in which it is established."[1] A steady erosion of state lines as the demarcation for state court in personam jurisdiction began thereafter (especially following the *International Shoe Co. v. Washington*[2] decision). Today the extent of this erosion in the various states is considerable. *Stucky v. Stucky*[3] is one example of the extent to which state boundaries have yielded to the pressure to expand the state courts' personal jurisdiction. In that case the Nebraska Supreme Court held *inter alia* that, under the given fact situation, a nonresident defendant in a divorce action can be made amenable to a personal judgment for alimony, child support, and attorney's cost.[4] This holding is unique in that Nebraska has no specific statute providing for this result, and few other states have arrived at this judicial conclusion without a specific statute allowing such a procedure.

This article will analyze the Nebraska decision by discussing three relevant areas: (1) the facts leading to the result in the instant case, (2) the bases for divorce jurisdiction (both in rem and in personam) that have been accepted in Nebraska and elsewhere, and (3) the court's opinion on the *Stucky* fact pattern relating to the facts and the traditional bases for divorce jurisdiction. Then the article will in conclusion: evince a method of reaching the same result for the case with a more restricted holding; predict some possible ramifications of *Stucky;* and finally, suggest some legislation that would crystallize the new law in this area.

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[1] Pennoyer v. Neff, 95 U.S. 714, 720 (1877).

[2] "[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.' " 326 U.S. 310, 316 (1945).

[3] 186 Neb. 636, 185 N.W.2d 656 (1971).

[4] *Id.* at 642, 185 N.W.2d at 660.

II. THE *STUCKY* FACTS

The facts in *Stucky* are extremely important. In 1961 Glen Stucky moved his wife, Dorothy, and their three children to Lincoln, Nebraska. Prior to that time they had lived in several different states since their 1942 marriage in South Dakota. In 1962 Mr. and Mrs. Stucky purchased a house in Lincoln, taking title as joint tenants subject to a mortgage requiring monthly payments.

Later Mr. Stucky voluntarily separated from his wife and left Nebraska in February 1965 to return only twice for extremely brief visits between 1965 and December 1969. Beginning with his departure in 1965 and running through the calendar year 1968, Mr. Stucky mailed bi-weekly deposits to the Stucky joint checking account in a Lincoln bank and sent monthly Series E United States Treasury Bonds to his wife. The yearly amount of these deposits was approximately 8,000 dollars until 1969. Mr. Stucky then decided to make continued family support payments only on a temporary and reduced basis. Thereafter he deposited 250 dollars per month in the joint bank account.

After Mr. Stucky's departure from the state, numerous other factors evidenced his continued ties to Nebraska. Utility services, various charge accounts in local stores and the mortgage on the Lincoln home were never changed from the Stuckys' joint names; payments made on all of these were always in both names. Mr. and Mrs. Stucky filed a joint income tax return for each year from 1965 through 1968, and Mr. Stucky's W-2 Statement attached to each of the returns showed his address to be the Lincoln home. Furthermore, some of Mr. Stucky's personal items were never removed from the Lincoln home.

In November 1968, Mr. Stucky instituted a divorce suit in Montana (later dismissed) in which he stated that he had been a Montana resident for more than a year. Thereafter he filed another divorce action in Pennsylvania in the spring of 1969.[5] Mrs. Stucky then filed her divorce petition in May 1969 in the District Court of Lancaster County, Nebraska. Pursuant to Nebraska divorce procedure statutes,[6] Mr. Stucky was personally served with process

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[5] The status of this Pennsylvania action is unknown. The record makes no reference to its resolution and presumably it was dismissed.

[6] "A petition for divorce, alimony, and maintenance may be exhibited by a wife in her own name, as well as by a husband, and in all cases the defendant may answer such petition without oath. No person shall be entitled to a divorce unless the defendant shall either (1) been served with process in person if within this state, (2) been served with personal notice duly proved and appearing of record if out of

in Pennsylvania on June 3, 1969.[7] At no time after that date did he enter Nebraska. Mr. Stucky entered a special appearance through a Nebraska attorney to contest the jurisdiction over his person by the Nebraska court. The jurisdiction issue was resolved against him, and an absolute decree of divorce was entered in the district court on January 21, 1970 which granted Mrs. Stucky the Lincoln home, alimony, child support, and attorney's costs.[8]

From that decree Mr. Stucky appealed to the Nebraska Supreme Court contending "[t]hat the district court for Lancaster County, Nebraska, did not have personal jurisdiction over the defendant and that a personal judgment for support, alimony and costs based on constructive[9] service outside the territorial limits of Nebraska was wholly ineffectual to sustain a judgment in personam."[10]

In a four to three decision the Nebraska Supreme Court held, in part, that Nebraska did have personal jurisdiction over the de-

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this state, (3) been served by publication under section 42-305.01, or (4) entered an appearance in the case." NEB. REV. STAT. § 42-305 (Reissue 1968).

"Personal notice as provided in subsection (2) of section 42-305 shall not be had without the plaintiff or his attorney filing an affidavit showing that the defendant is a nonresident of this state, or if a resident of this state that the defendant is absent therefrom, and that personal service cannot be had on the defendant in this state. Such notice shall be served upon the defendant in person by issuance and delivery of summons in the manner provided in section 25-521." NEB. REV. STAT. § 42-305.03 (Reissue 1968).

7 The fact that he received actual notice is extremely important in that the trend in the long-arm statute cases providing for in personam jurisdiction has been that the defendant must have actual notice when an action against him is pending and that he have an adequate chance to defend the charges against him. *See generally* National Equipment Rental, Ltd. v. Szukhent, 375 U.S. 311 (1964); Walker v. City of Hutchinson, 352 U.S. 112 (1956); Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950). In Nebraska, actual notice may be sufficient notice of a pending divorce action even though official notice is not received. *See generally* Michaelis v. Michaelis, 187 Neb. 350, 352-53, 190 N.W.2d 783 (1971).

8 As a part of this decree Mr. Stucky received his hunting and fishing equipment then stored in the Lincoln home. 186 Neb. at 638, 185 N.W.2d at 658.

9 Use of the word "constructive" by the court in this quotation comes from the appellant's brief. Relying on Anheuser-Busch Brewing Ass'n. v. Peterson, 41 Neb. 897, 60 N.W. 373 (1894), appellant contended perconal notice under NEB. REV. STAT. § 25-521 (Reissue 1964), was merely a substitution for service by publication, and thus constructive service. The court evidently disregarded this proposition of law in that they found the defendant received actual personal notice.

10 186 Neb. at 638-39, 185 N.W.2d at 658.

fendant as a domiciliary of Nebraska,[11] that the minimum contacts standard under the Nebraska long-arm statutes[12] had been met,[13] and that the district court decree should be affirmed.

III. HISTORICAL BACKGROUND

In order to discuss why *Stucky* represents a departure from previously accepted divorce jurisdictional principles, it is essential to examine what those principles were. There were two basic theories, one that affected only the marital status and another that delineated the personal rights and obligations of the parties to a divorce action.

A. In Rem Jurisdiction

In the majority of the states, courts have assumed the power to dissolve a marriage in which the two parties resided in different states. The theory was that the marriage itself was the *res* in which the state had an interest, and thus the action to sever the marriage bonds was an action in rem.[14] The Nebraska jurisdictional requirement for granting a divorce has long been that at least one party to the action must be a *bona fide* resident of the state where the action is brought.[15] In addition, either personal service, whether within or without the state, must be had on the defendant, or if the whereabouts of the defendant are unknown and unascertainable,

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[11] 186 Neb. at 642, 185 N.W.2d at 660.

[12] "(1) A court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a cause of action arising from the person's: (a) Transacting any business in this state; (b) Contracting to supply services or things in this state; (c) Causing tortious injury by an act or omission in this state; (d) Causing tortious injury in this state by an act or omission outside of this state if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in this state; (e) Having an interest in, using, or possessing real property in this state; or (f) Contracting to insure any person, property, or risk located within this state at the time of contracting." Neb. Rev. Stat. § 25-536 (Supp. 1969).
"A court of this state may exercise jurisdiction on any other basis authorized by law." Neb. Rev. Stat. § 25-539 (Supp. 1969).

[13] 186 Neb. at 642, 185 N.W.2d at 660.

[14] An action in rem is one to effect the interest of persons in the "thing," and, in theory, affects no personal rights or interests as such. For a discussion of the shortcomings of this theory see H. Clark, Jr., Law of Domestic Relations 316 (1968). *Cf.* Restatement of Conflict of Laws § 71 (1971).

[15] *See* Williams v. Williams, 101 Neb. 369, 163 N.W. 147 (1917); Wray v. Wray, 149 Neb. 376, 31 N.W.2d 228 (1948).

service by publication must be made,[16] or the defendant must have entered a voluntary appearance.[17]

The jurisdictional requirement of *bona fide* residency of only one of the parties to the divorce action did lead to some difficulty. The problem arose when an *ex parte* divorce in one state was not granted full faith and credit for jurisdictional reasons in a sister state. Now the requirement is that *ex parte* divorces must be accorded full faith and credit if one of the parties to the action was a *bona fide* domiciliary[18] of the state granting the divorce.[19] This was, however, not an issue in *Stucky*—the validity of the divorce was uncontested.

B. IN PERSONAM JURISDICTION

The in rem action of separating the marriage partners is distinguished from the in personam aspect of a divorce action. Traditionally, money decrees for alimony, child support and costs have been considered personal judgments against the defendant.[20] Thus a state court might have jurisdiction, under the in rem theory, to grant the divorce, but not necessarily the authority to allow alimony and child support. In order to grant such relief, the court must first obtain jurisdiction over the defendant's person.[21] "The state courts have long recognized the rule that a court lacking personal jurisdiction over a husband cannot render a valid alimony judgment against him."[22] Thus unless personal jurisdiction can be obtained, alimony, child support and costs are beyond the state court's power to grant relief.

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[16] *See* Ivaldy v. Ivaldy, 157 Neb. 204, 59 N.W.2d 373 (1953). However the United States Supreme Court has never ruled on the validity of a divorce granted on process by publication. In the light of Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950), there may be some doubt as to the validity of such a decree.

[17] NEB. REV. STAT. § 42-305 (Reissue 1968).

[18] For a discussion of what constitutes domicile for purposes of divorce jurisdiction see Annot., 106 A.L.R. 6 (1937).

[19] *See* Williams v. North Carolina, 317 U.S. 287 (1942); Williams v. North Carolina, 325 U.S. 226 (1945).

[20] "[A]n action for alimony, in the strict sense of the term, is a proceeding *in personam.*" Rhoades v. Rhoades, 78 Neb. 495, 499, 111 N.W. 122, 124 (1907). *Cf.* Dillon v. Starin, 44 Neb. 881, 63 N.W. 12 (1895).

[21] *See* H. CLARK, JR., LAW OF DOMESTIC RELATIONS 314 (1968), and cases cited therein.

[22] Armstrong v. Armstrong, 350 U.S. 568, 579 (1955).

C. Nebraska Jurisdictional Bases Relating to Divorce

The Nebraska decisions are generally in line with these bases for jurisdiction in divorce actions. To sever the marriage bond, only one of the parties to the divorce need be a Nebraska resident.[23] Jurisdiction over the defendant for the in rem divorce action can be had by personal service of process on the defendant within or without the state, by the defendant's voluntary appearance,[24] or by service of process by publication.[25] And where the plaintiff resides in Nebraska and the defendant has voluntarily appeared, the court may decide all issues presented—even to the extent of granting a divorce to a nonresident on a cross-petition.[26] But "[a] court cannot acquire jurisdiction to render a personal judgment upon a money demand against a nonresident of the state without personal service within the state, or an appearance in the action."[27]

The law in Nebraska on this point was aptly stated in *Dillon v. Starin*:[28]

> It has been many times decided in this state and elsewhere that a judgment for alimony is a judgment *in personam*. It is perfectly clear upon principle, and thoroughly settled by the authorities, that while a state may provide for constructive service in a divorce case, so that the decree rendered will be valid as affecting the status of the parties, it is beyond the power of the legislature to confer jurisdiction to render a personal judgment against a non-resident in this manner, and that a judgment for alimony based on such service is void.[29]

If a court must have personal jurisdiction over the defendant husband to grant monetary relief to the wife, then what is necessary to give a state court personal jurisdiction over nonresidents? This was the contested issue in the *Stucky* case.

IV. THE *STUCKY* DECISION

> We hold that in personam jurisdiction may be acquired over a nonresident defendant in a divorce action by extraterritorial personal service of process made in accordance with a statute of this state if there exist sufficient contacts between the defendant and this

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[23] *Supra* note 15 and accompanying text.

[24] Foster v. Foster, 111 Neb. 414, 196 N.W. 702 (1923); Williams v. Williams, 101 Neb. 369, 163 N.W. 147 (1917).

[25] Neb. Rev. Stat. § 42-305.01 (Reissue 1968).

[26] Pine v. Pine, 72 Neb. 463, 100 N.W. 938 (1904).

[27] Carpenter v. Carpenter, 104 Neb. 635, 636-37, 178 N.W. 217, 218 (1920).

[28] 44 Neb. 881, 63 N.W. 12 (1895).

[29] *Id.* at 883, 63 N.W. at 13.

> state relevant to the cause of action to satisfy traditional notions of fair play and substantial justice.[30]

This holding is truly unique. So far, four states have specifically adopted this jurisdictional policy via statutory law,[31] and California, through its very unique omnibus long-arm statute,[32] has encompassed this holding. But to date Nebraska is one of only two states to arrive at this result by judicial decree without a specific statute, relying instead on a combination of completely separate statutes.[33] The court in *Stucky* combined Nebraska's divorce jurisdiction statutes,[34] the service process statute,[35] and the long-arm statute[36] to arrive at its conclusion.

An affidavit filed with the original petition in *Stucky* stated that the defendant was a nonresident of Nebraska. The Nebraska divorce process statutes provide jurisdiction for this situation in a divorce action,[37] and a method of service of summons on the defendant is provided by the out-of-state service statute.[38] The Nebraska Supreme Court has held that domicile under these statutes is sufficient

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[30] 186 Neb. at 642, 185 N.W.2d at 660.

[31] "Any person whether or not a citizen or resident of this state, who . . . does any of the acts hereinafter enumerated, thereby submits said 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 of said acts: . . . (6) 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 . . . if the other party to the marital relationship continues to reside in the state." KAN. CIV. PRO. STAT. ANN. § 60-308(b) (Vernon 1965).

For similar statutes see: ILL. ANN. STAT. ch. 110, § 17 (1) (Smith-Hurd 1968); N.J. SESS. LAWS ch. 212, § 6 (1971); and WIS. STAT. ANN. § 247.06 (1957).

[32] "A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States." CAL. CIV. PRO. CODE § 410.10 (West 1954). Judicial Council Comment (3) recognizes the *ex parte* divorce situation as one of those bases for allowing in personam jurisdiction.

Presumably Rhode Island too could arrive at this result via its all inclusive long-arm statute. R.I. GEN. LAWS ANN. § 9-5-33 (1969).

[33] Oklahoma reached a similar conclusion relying exclusively on the long-arm statute, disregarding the domicile issue. Hines v. Clendenning, 465 P.2d 460 (Okla. 1970).

[34] NEB. REV. STAT. §§ 42-305 and 42-305.03 (Reissue 1968).

[35] NEB. REV. STAT. § 25-521 (Reissue 1964).

[36] NEB. REV. STAT. § 25-536 (Supp. 1969).

[37] NEB. REV. STAT. §§ 42-305 and 42-305.03 (Reissue 1968).

[38] NEB. REV. STAT. § 25-521 (Reissue 1964).

to sustain in rem divorce jurisdiction,[39] and the United States Supreme Court has held that domicile alone is sufficient to bring a defendant within a state court's personal jurisdiction provided a proper substituted service is used.[40] Furthermore, in general, civil law domicile does not necessarily change with residence, and a domicile once established does not change until it is subsequently superseded by a new domicile.[41] The burden of proof that a new domicile has been established is with the party asserting the change.[42] The defendant in *Stucky* failed to meet that burden of proof.[43]

In the *Stucky* case the defendant was personally served with process conforming to the statutory provisions established for nonresident service.[44] He failed to prove his domicile was other than Lincoln, Nebraska,[45] and as stated above, domicile alone is sufficient to sustain jurisdiction in personam.[46] It would seem, therefore, that these facts alone would be sufficient basis for the holding (as Judge Spencer seems to intimate in his separate concurring opinion).[47] The court could conceivably have stopped here, resting the holding on a domicile theory alone without going on to the long-arm statute[48] and a broader holding. Mr. Stucky had an uncontested Nebraska domicile, actual notice of the pending action and sufficient chance to come forth and be heard; in short, the requirements of due process were met.

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[39] *See* Mounts v. Mounts, 181 Neb. 542, 149 N.W.2d 435 (1967).

[40] Milliken v. Meyer, 311 U.S. 457 (1940); RESTATEMENT OF CONFLICT OF LAWS § 29 (1971).

[41] RESTATEMENT OF CONELICT OF LAWS § 19 (1971). *Cf.* Mounts v. Mounts, 181 Neb. 542, 149 N.W.2d 435 (1967).

[42] "The location of domicile in a particular case is largely a question of fact, the presumption being that an existing domicile continues, or in other words the person asserting the change in domicile has the burden of proof." H. CLARK, JR., LAW OF DOMESTIC RELATIONS 148 (1968). *See* RESTATEMENT OF CONFLICT OF LAWS, Explanatory Notes § 19, comment c at 78 (1971).

[43] 186 Neb. at 640, 185 N.W.2d at 659.

[44] *Id.* at 639, 185 N.W.2d at 658.

[45] *Id.* at 640, 185 N.W.2d at 659.

[46] NEB. REV. STAT. §§ 42-305, 42-305.03 (Reissue 1968), and § 25-521 (Reissue 1964).

[47] Judge Spencer concurred only to the extent that actual notice was had by the defendant, that he consistently maintained his permanent home in Nebraska, and that he failed to prove establishment of another domicile. 186 Neb. at 647, 185 N.W.2d at 662-63.

[48] NEB. REV. STAT. § 25-536 (Supp. 1969).

However, in the light of the case law discussed above[49] which provided for the in rem aspect of a divorce, but not for alimony, child support and costs, the court found it necessary to go further. For that reason the holding is partially based on the long-arm statute.[50]

The use of the long-arm statute to gain personal jurisdiction in divorce actions has been previously proposed,[51] but this is one of a very few times that any court has actually done so,[52] and one of only two instances where a court has done so by judicial decree.[53] For some time the trend has been to allow personal jurisdiction under long-arm statutes over nonresident defendants if certain "minimum contacts" with the forum state are met, and if such holding does not offend "traditional notions of fair play and substantial justice."[54] The court in the *Stucky* case decided that allowing personal jurisdiction did not offend those notions, and concluded, "[T]he minimum contacts concept as a basis for in personam jurisdiction is peculiarly suited to marital support cases."[55]

The Nebraska Supreme Court had restrictively interpreted the long-arm statute in a previous case.[56] However, in the *Stucky* case, the court used extremely broad language in its interpretation stating that: "While that language [of the long-arm statute] does not cover divorce in specific words, it indicates clearly the legislative intention

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[49] *Supra*, notes 9 through 22, and accompanying text.

[50] NEB. REV. STAT. § 25-536 (Supp. 1969).

[51] 20 HASTINGS L.J. 361 (1968).

[52] Mizner v. Mizner, 84 Nev. 268, 439 P.2d 679 (1968), involves a similar situation wherein the Nevada Supreme Court gave full faith and credit to a California decree for alimony against a nonresident defendant. *Cf.* Soule v. Soule, 193 Cal. App.2d 443, 14 Cal. Rptr. 417 (1961).

[53] *See* Hines v. Clendenning, 465 P.2d 460 (Okla. 1970).

[54] The "minimum contacts" and "traditional notions of fair play and substantial justice" tests were first expressed in International Shoe Co. v. Washington, 326 U.S. 310 (1945). Since that case these tests (especially the "minimum contacts" test) have undergone numerous refinements and modifications in an attempt to ascertain what "contacts" with a forum state are sufficient to support an action in personam against a defendant not present within the forum state. One of the most recent is a "quantum of contacts" theory, i.e., the quantum of contacts necessary between the defendant and the forum state will vary, dependent upon the strength of the policies that would be advanced and the strength of the policies that would be impaired by the attempted exercise of power. *See* Carrington & Martin, *Substantive Interests and the Jurisdiction of State Courts*, 66 MICH. L. REV. 227 (1967).

[55] 186 Neb. at 642, 185 N.W.2d at 660.

[56] Conner v. Southern, 186 Neb. 164, 181 N.W.2d 446 (1970).

to apply the minimum contacts rule where it does not offend traditional concepts of fair play and substantial justice."[57] Seemingly this language is broad enough to cover a myriad of situations, and exactly where the court will next apply this language remains to be seen.[58]

In any event, it is this step, applying minimum contacts to divorce actions, that dissenting Judge Newton feels is merely "to bulwark the result."[59] Certainly Judge Spencer's concurrence with that much of the dissent can be inferred from his separate concurring opinion.[60] He did not think it necessary to reach the minimum contacts principle in as much as the defendant was domiciled in Nebraska, a ground sufficient in itself to support an in personam judgment.

Thus, the court had three ways this case could have been resolved. First, it could have denied jurisdiction (as would the three dissenting judges). Second, it could have found that the defendant was properly served and that in personam jurisdiction could be supported by the defendant's Nebraska domicile alone (as Judge Spencer's concurring opinion points out). Or the court could rely on a proper service of process, a Nebraska domicile and the long-arm statute. This final alternative was the avenue chosen by the three judges in the "majority" opinion.[61] Perhaps the fact that the court was, in this respect, so badly divided will lead *Stucky* to be easily distinguished and ignored in later cases; that, however, remains to be seen.

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[57] 186 Neb. at 641, 185 N.W.2d at 659.

[58] In the only long-arm statute case decided by the Nebraska Supreme Court before *Stucky*, the court held that the Pennsylvania defendant in a garnishment proceeding upon a contract was not transacting any business in Nebraska when he contracted with the Nebraska plaintiff in Nebraska to construct a building in Pennsylvania. Conner v. Southern, 186 Neb. 164, 181 N.W.2d 446 (1970).

In Von Seggern v. Saikin, 187 Neb. 315, 189 N.W.2d—(1971), the court limited the application of minimum contacts in another fact setting. It held that where the defendant induced a woman to leave Nebraska for illegal purposes and subsequently killed her in Illinois, the contacts with Nebraska were not sufficient to support a wrongful death action in Nebraska.

[59] 186 Neb. at 644, 185 N.W.2d at 661.

[60] *Id.* at 647, 185 N.W.2d at 662-3.

[61] Presumably yet a fourth alternative was available. The result could probably have been reached via the long-arm statute alone, as did the Oklahoma court in Hines v. Clendenning, 465 P.2d 460 (Okla. 1970).

In any event, due to the Nebraska case law pointed out by the dissent,[62] and the doctrine of *staré decisis,* reliance on the minimum contacts principle was essential to the result. The very existence of the long-arm statute is a change in the basic tenor of the law regarding personal jurisdiction since the cases cited in the dissent were decided. All of the Nebraska cases[63] cited by the dissenting judges were decisions made prior to 1967. In 1967 the Nebraska Legislature evidenced its intention to expand Nebraska's jurisdictional powers over nonresidents by adopting the long-arm statute.[64] The prevailing opinion is, therefore, consistent with legislative intent by using the minimum contacts principle, a principle unavailable to the courts that decided the cases cited in the dissenting opinion.

The *forum non conveniens* doctrine, though not mentioned by the court, must have been considered in the instant case, and it should be considered in any other case involving non-resident parties. Even though personal jurisdiction would be constitutionally authorized, a court may use the *forum non conveniens* doctrine to reject the case. Such considerations as who most needs the court's protection, what is the situs of the relevant acts and location of possible witnesses, which state law will apply, and other questions must be answered before any decision regarding the convenient forum can be made.[65] Under the *Stucky* facts the unwritten answers to these policy considerations seem to indicate that Nebraska was the convenient forum for the action.

Since domicile alone is sufficient to sustain personal jurisdiction,[66] *Stucky* was relatively easy. The court has not yet had to face the tougher question of whether a divorce defendant, once a partner to a marriage domiciled in Nebraska but subsequently establishing a new domicile in another state, has, by the former Nebraska marriage domicile, met the required minimum contacts for in personam jurisdiction. In view of the California, Kansas, Illinois, New Jersey, and Wisconsin statutes[67] specifically providing for personal jurisdiction

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62 Rhoades v. Rhoades, 78 Neb. 495, 111 N.W. 122 (1970); Gates v. Tebbetts, 83 Neb. 573, 119 N.W. 1120 (1909); and Carpenter v. Carpenter, 105 Neb. 635, 178 N.W. 217 (1920), provide for no personal jurisdiction against nonresidents in this situation.

63 *Supra* note 62.

64 NEB. REV. STAT. § 25-536 (Supp. 1969).

65 *See generally* Gulf Oil Corp. v. Gilbert, 330 U.S. 501 (1947).

66 *Supra* notes 33 and 34, and accompanying text.

67 CAL. CIV. PRO. CODE § 410.10 (West 1954); KAN. CIV. PRO. STAT. ANN. 60-308(b) (Vernon 1965); ILL. ANN. STAT. ch. 110, § 17(1) (Smith-Hurd 1968); N.J. SESS. LAWS ch. 212, § 6 (1971); WIS. STAT. ANN. § 247.06 (1957).

over nonresident defendants in divorce actions and the general trend to expand state jurisdictional boundaries by long-arm statute interpretation in other areas of the law, it would be entirely reasonable for the court to find personal jurisdiction based on minimum contacts in such a case.

V. CONCLUSION

The state definitely has a vital interest in the control of marriage and divorce, so vital in fact that the state is actually considered a party to the action.[68] It seems, therefore, that the state's vital interest would best be served by enacting some legislation to eliminate the confusion in this area. Far from offending "fair play and substantial justice," it seems eminently "fair" to prevent a defendant who lived as a party to a Nebraska-domiciled marriage from deserting his family and establishing a new domicile in another state in order to avoid the personal responsibility incurred by his marriage. To allow a vagabond defendant to thus escape his personal responsibilities may ultimately shift those responsibilities to the community. In many instances the divorced spouse and children become wards of the state, thus creating unnecessary tax burdens. This migratory divorce situation could be avoided quite easily by an amendment to the long-arm statute providing in personam divorce jurisdiction if two requirements are met: first, the parties must be Nebraska-domiciled while living as husband and wife, and second, the plaintiff must remain a domiciliary of Nebraska.[69]

Without any new legislation, the *Stucky* decision certainly has expanded the in personam divorce jurisdiction heretofore accepted in Nebraska. It is even quite possible that *Stucky* will be used as a springboard to achieve the result of the legislation proposed

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[68] *Cf.* Winder v. Winder, 86 Neb. 495, 125 N.W. 1095 (1910); McNamee v. McNamee, 154 Neb. 212, 47 N.W. 2d 383 (1951).

[69] The following hypothetical situations illustrate how the proposed legislation would work.

(1) *H* and *W* live in a Nebraska marriage domicile, *H* subsequently establishes a domicile elsewhere, but *W* remains a Nebraska domiciliary: *H* is amenable to a personal service.

(2) However, *H* and *W* live in an Iowa marriage domicile, and subsequently separate, *W* cannot come to Nebraska, establish a domicile, and maintain a personal action against *H*, even though *W* meets all the other requirements: *H* has no minimum contacts with Nebraska.

(3) Also, *H* and *W* live in a Nebraska marriage domicile, then both depart, establishing domicile elsewhere, *W* cannot return to Nebraska, establish a domicile and maintain a personal action against *H*: *W* has not met the second requirement of continuous domicile in Nebraska.

above. Given the proposed legislative changes, or the possible extension of *Stucky* to cover defendants domiciled outside of Nebraska, a plaintiff still cannot leave a marriage domicile in another state to institute a divorce in Nebraska,[70] and the plaintiff must be a *bona fide* resident of Nebraska for at least one year next prior to institution of a divorce action.[71] So Nebraska's divorce laws would remain sufficiently prohibitive to maintain the state's declared desire to discourage divorces.[72] If *Stucky* is not expanded by future decisions, the defendant must be a Nebraska domiciliary to sustain in personam jurisdiction. Therefore, the only real impact *Stucky* has currently is that if a defendant leaves the Nebraska marriage domicile and fails to establish a subsequent domicile elsewhere, he is amendable to a personal judgment in Nebraska. This case might, however, be considered as a portent of possible changes yet to come in cases concerning nonresident defendants.

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[70] *See* Dillon v. Starin, 44 Neb. 881, 63 N.W. 12 (1895).

[71] NEB. REV. STAT. § 42-303 (Reissue 1968).

[72] Shin v. Shin, 148 Neb. 832, 29 N.W.2d 629 (1947); Dudgeon v. Dudgeon, 142 Neb. 82, 5 N.W.2d 133 (1942); Hunter v. Crocker, 132 Neb. 214, 271 N.W. 444 (1937).