IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In re Marriage of	)	No. 62014-2-I
	)	
AMBER PATRICIA O'DELL,	)	DIVISION ONE
	)	
Respondent,	)	)
	)	
and	)	
	)	
JESS FRANKLIN O'DELL,	)	Unpublished Opinion
	)	
Appellant.	)	FILED: July 27, 2009
	)	

LAU, J. — Due process requires that a parent must have sufficient minimum contacts with the State of Washington before a Washington superior court has the authority to impose a child support obligation upon an out-of-state parent. The 2000 order imposing a child support obligation upon Jess O'Dell expressly recognizes there are no facts establishing personal jurisdiction. The record on appeal does not reflect that Jess[1] had any contacts with Washington before the 2000 default child support

[1] For ease of reference, we use the parties' first names.

order was entered or that he waived the lack of personal jurisdiction. Because the underlying child support order is invalid, the June 20, 2008 superior court judgment for past-due child support must be reversed.

FACTS

In 2000, Amber filed a dissolution action in King County Superior Court. The petition recited that Jess and Amber were married in Alaska on April 9, 1998, and they separated on June 1, 1999. The petition includes a checked box alleging that the court has jurisdiction over respondent because "the respondent is presently residing in Washington," but the proof of service recites that he was served at his at his residence "on Claudia Street in Homer, Alaska." An order of default was entered on April 26, 2000, together with findings of fact and conclusions of law, a parenting plan, an order of child support, and a decree of dissolution. Finding of fact 2.3 has a checked box stating, "There are no facts to establish personal jurisdiction over the respondent." Immediately below that, a box is checked for "Other" with the handwritten notation "Petitioner and children live in Washington State. The respondent lives in Alaska State."

In 2008, Amber filed a motion to hold Jess in contempt for failure to pay child support. Materials submitted by Amber reflect that Jess lived and worked in Lynnwood and Port Townsend after 2006. There are no materials in the record on appeal indicating that Jess lived in Washington state or that he had any contact with the state of Washington before the default child support order was entered in 2000.

In response to the motion for contempt, an attorney was appointed to represent Jess. The attorney filed a notice of appearance expressly reciting that the appearance "does not waive any objection or defense based on lack of service, improper service, lack of jurisdiction or improper venue." The pleadings filed by Jess in response to the motion for contempt challenged the validity of the dissolution and child support order but did not request any affirmative relief.

A superior court commissioner entered an order on June 20, 2008, concluding that Jess had not willfully violated the child support order and that he was not in contempt. The commissioner entered a judgment for back support of $68,670.84 and noted, "The issue of whether the dissolution decree is void ab initio must be decided by another court and has no bearing on the order of the court today."

ANALYSIS

Jess raises several arguments in his challenge to the judgment for back support. Amber has not filed a respondent's brief. The most fundamental question is whether the court lacked personal jurisdiction to impose a child support obligation in 2000, especially in the face of the superior court's determination that "[t]here are no facts to establish personal jurisdiction over" Jess.

The petition recited that Jess resided in Washington, but the trial court did not make any such finding and Jess was served at his residence in Alaska. Due process requires sufficient minimum contacts by a parent before a court may assert personal jurisdiction to impose a child support obligation on an out-of-state parent.[2] There is no

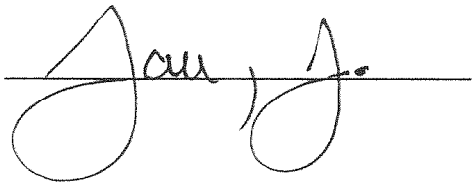
[2] In re Marriage of Tsarbopoulos, 125 Wn. App. 273, 286, 104 P.3d 692 (2004)

indication that Jess had any contacts whatsoever with the state of Washington prior to the entry of the 2000 default child support order.

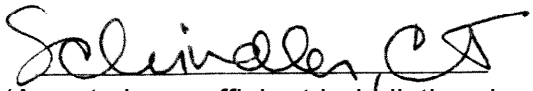
Jess's attorney preserved the issue of lack of personal jurisdiction in the notice of appearance, and there is no indication that Jess waived the lack of jurisdiction by seeking any affirmative relief or otherwise acting inconsistent with an intent to assert the lack of jurisdiction.[3]

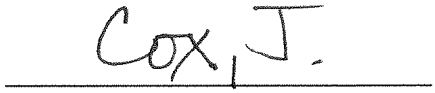
There is no need to address the other arguments advanced by Jess. The record on appeal reveals the 2000 child support order was invalid for lack of personal jurisdiction. Therefore, the June 20, 2008 judgment for back child support must be reversed.[4]

Reversed.



WE CONCUR:





(A party has sufficient jurisdictional minimum contacts with a forum state when that party "purposefully avails himself or herself of the privilege of conducting activities there, and of the benefits and protection of its laws."); In re the Marriage of Peck, 82 Wn. App. 809, 816–17, 920 P.2d 236 (1996) (personal jurisdiction cannot be conferred based upon the father's "'glancing presence'" in the state (quoting Kulko v. Superior Court of Cal., 436 U.S. 84, 92–94, 98 S. Ct. 1690, 56 L. Ed. 2d 132 (1978)); In re Marriage of Yocum, 73 Wn. App. 699, 702, 870 P.2d 1033 (1994) (father's mere failure to pay support after mother unilaterally decided to move with children to Washington was not sufficient basis for Washington court to exercise personal jurisdiction over father).

[3] Tsarbopoulos, 125 Wn. App. at 288.

[4] We express no opinion as to the validity of the decree of dissolution or the parenting plan.