

No. 67254-1-1

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

In re the Marriage of:

MARGARET MARY DAVID
(f/k/a MARGARET MARY DAVID-OYTAN),

Respondent,

v.

KUDRET DAVID OYTAN,

Appellant.

APPEAL FROM THE SUPERIOR COURT
FOR KING COUNTY
THE HONORABLE JEAN RIETSCHER

BRIEF OF APPELLANT

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I. INTRODUCTION

Before a court may impose personal obligations on a party, it must first have personal jurisdiction over the affected party. Personal jurisdiction cannot be exercised over a non-resident party who is not served within this state unless both the long-arm statute, RCW 4.28.185, and due process are satisfied. Washington State did not have personal jurisdiction over the appellant, who was a resident of Montreal, Quebec, Canada, when the petition for dissolution was served on him in Virginia. The wife failed to meet her burden to prove a basis under the long-arm statute for the trial court to exercise jurisdiction over the husband, who has never been a resident of Washington, and whose presence in Washington has been brief and temporary visits solely for the purpose of visiting the wife and daughter, who relocated to Washington State while the husband resided abroad.

The trial court did not have personal jurisdiction over the husband to divide the marital estate and enter a judgment of nearly \$850,000 against the husband or to impose a child support obligation. The trial court's judgment, which included orders requiring him to undergo treatment before he could have any

meaningful access with his daughter, was particularly egregious because it was made after a trial in which the husband could not participate lest he waive his challenge to Washington's jurisdiction. Because the trial court did not have personal jurisdiction over the husband, its orders imposing personal obligations on the husband must be vacated.

II. ASSIGNMENT OF ERRORS

1. In entering its order denying husband's motion to dismiss, the trial court erred in finding that "the Respondent ('father') lived in a marital relationship with the petitioner ('mother') within the State of Washington. They together established a family home in the State of Washington. They have lived in the State of Washington as husband and wife. The father agreed to their move to the State of Washington as a family. He was personally involved in the decision that the wife pursue and accept employment in the State of Washington, that the family home be moved to Washington so that the wife could work and contribute to the support of the family. [] This is sufficient to exercise personal jurisdiction pursuant to RCW 4.28.185(1)(f)." (Finding of Fact (FF) 1, 4, CP 448)

2. In entering its order denying husband's motion to dismiss, the trial court erred in finding that the "father owns personal property in the State of Washington, including a vehicle. He also has community property in Washington State including financial benefits accrued by the community through the mother's employment in Washington State during the marriage. He has enforceable rights to all community property in the State of Washington and has not in any way renounced or waived such rights. This is sufficient to satisfy both RCW 4.28.185(c) and due process considerations. He may not now defeat the jurisdiction of the Court by renouncing or waiving such rights." (FF 2, CP 448)

3. In entering its order denying husband's motion to dismiss, the trial court erred in finding that "the father engaged in sexual relations with the mother within the State of Washington, secured automobile insurance within the State of Washington and life insurance securing his life within the State of Washington. These factors are sufficient to exercise jurisdiction pursuant to RCW 4.28.185(d) and (e)." (FF 3, CP 448)

4. In entering its order denying husband's motion to dismiss, the trial court erred in finding that "equity requires that all

issues be resolved within the State of Washington. [] There is property located within Washington State. The only property outside of Washington State is a rental home in Virginia and financial accounts of uncertain origin and amount maintained in the father's name in other jurisdictions, and possibly outside the United States. It has been alleged by the mother that these funds are being held in Turkey, but no verification of this fact has been provided, and the current location of the funds is unknown. Both parties have substantial connections with Washington State and it would not prejudice either party to litigate in Washington State, in light of the substantial connections. The petitioner would be prejudiced if she were forced to litigate in any other jurisdiction, as she presently provides all of the care for the parties' daughter and has a full-time job in Washington State. She has no family or friends in Turkey, which is where the Respondent proposes to have property matters decided." (FF 5, CP 448-49)

5. In entering its order denying husband's motion to dismiss, the trial court erred in finding that "[a]ll factors considered, neither party will be prejudiced if this matter is resolved in Washington State." (FF 6, CP 449)

6. In entering its order denying husband's motion to vacate the temporary order of child support, the trial court erred in finding that "the requirements of RCW 4.28.185 are satisfied. The parties submitted declarations for the hearing. The evidence before the court demonstrated that service in State was not possible. The Court also finds that there was an existent circumstance involving the need for a protection order." (CP 462)

7. In entering its order denying husband's motion to vacate the temporary order of child support, the trial court erred in finding that "[t]he record does not reflect any objection to the Temporary Order of Child Support prior to its entry. The Respondent has not sustained his burden to demonstrate that his attorney [] did not have authority to enter the Temporary Order of Child Support or fraud existed. Furthermore, the Court does not find that entry of a temporary order rises to the level of a "substantial right," such that explicit authority would be necessary. The Court finds that even if a "substantial right" were involved, the Respondent's declaration stipulating to the child support calculation constitutes sufficient authorization for Respondent's attorney to enter the Temporary Order of Child Support." (CP 461)

8. In entering its Findings of Fact and Conclusions of Law in Support of the Decree of Dissolution, the trial court erred in finding that “the parties lived in Washington during their marriage and the petitioner continues to reside, or be a member of the armed forces stationed, in this state. The issue of whether this Court has personal jurisdiction over the Respondent has already been litigated thoroughly. Judge Michael Fox found that this Court has personal jurisdiction over the Respondent for the reasons outlined in his Order Denying Motion to Dismiss entered on October 14, 2010. The Court of Appeals denied discretionary review and also entered a detailed order denying discretionary review. This Court affirms the findings previously made by Judge Fox and the Court of Appeals regarding the issue of jurisdiction over the Respondent.” (FF 2.3, CP 492)

9. The trial court erred in entering its Order Denying Motion to Dismiss. (CP 447-49)

10. The trial court erred in entering its Order Denying Motion to Vacate and Granting Attorney Fees. (CP 460-62)

11. The trial court erred in entering its Findings of Fact and Conclusions of Law. (CP 491-503)

12. The trial court erred in entering its Decree of Dissolution. (CP 479-90)

13. The trial court erred in entering its Order of Child Support. (CP 513-29)

14. The trial court erred in entering its Parenting Plan. (CP 504-12)

III. STATEMENT OF ISSUES

1. Did the trial court err in exercising personal jurisdiction over the husband, who is not and never was a resident of Washington State, under the long-arm statute provision allowing the exercise of personal jurisdiction when a party was "living in a marital relationship within this state notwithstanding subsequent departure from the state?"

2. Did the trial court err in exercising personal jurisdiction over the husband based on his interest in community property that the wife brought into or purchased in this state, under the long-arm statute provision allowing the exercise of personal jurisdiction when a party owns, uses, or possesses property within the state, when the dissolution action does not "arise from" the husband's ownership interest in the property?

3. Did the trial court err in exercising personal jurisdiction over the husband under the long-arm statute provision allowing the exercise of personal jurisdiction when a party engages in the “act of sexual intercourse within this state” when no child was conceived from that act?

4. Did the trial court err in exercising personal jurisdiction over the husband based on the fact that his wife’s Washington employer provided health insurance, and because the wife obtained life insurance for the husband and auto insurance within the state, when the dissolution action does not “arise from” these facts?

5. Did the court’s exercise of personal jurisdiction over the husband, who had been a Canadian resident when the dissolution action was filed and a Turkish resident at the time of trial, to impose substantial personal obligations on him and to eliminate any meaningful contact with his daughter, work a substantial injustice when the husband was unable to participate in the trial lest he waive his challenge to the court’s personal jurisdiction?

6. Are the final orders void because the wife failed to file the affidavit of service required by the long-arm statute before the court can exercise personal jurisdiction?

7. Did the trial court err in refusing to vacate a temporary order of child support signed by the husband's former counsel without the husband's authorization?

8. Should this court award attorney fees to the husband for having to defend an action within this state when the trial court did not have personal jurisdiction?

IV. STATEMENT OF FACTS

The following facts are largely based on the declarations filed in connection with the husband's motion to dismiss the wife's petition for dissolution based on his assertion that the court lacked personal jurisdiction over him:

A. The Parties Met And Lived Together Abroad. They Eventually Relocated To California, Where The Wife And Daughter Remained When The Husband Returned Abroad.

Appellant Kudret Oytan is a dual citizen of the United States and Turkey; he is a diplomatic officer with the Turkish Foreign Service. (CP 167) Respondent Margaret David is also a dual citizen. (CP 167) The parties married on November 29, 1997. (CP

2) Their daughter was born March 26, 1999. (CP 59) On June 7, 2010, Margaret filed a petition for dissolution in King County, Washington. (CP 2) When the petition for dissolution was filed, Kudret was residing in Montreal, Quebec, Canada; Margaret was residing in Bellevue, Washington with the parties' daughter. (CP 60, 62)

For the last several decades, Kudret's residence has been dictated by his employment. (CP 59) The parties met in 1993 in Ankara, Turkey, where Kudret was working as a diplomatic officer with the Turkish Foreign Services and Margaret was an intern at the Ankara United Nations Office. (CP 59) The parties then moved to New Dehli, India, where Kudret was stationed at the Turkish Embassy as a diplomatic officer. (CP 59; RP 10-11) The parties eventually relocated to Los Angeles, California in 1997, when Kudret was stationed at the Turkish Consulate as a diplomatic officer. (CP 59)

The parties lived together in California until 2003, when Kudret was offered a position with the Turkish Ministry of Foreign Affairs and he moved back to Ankara, Turkey. (CP 59-60)

Margaret and their daughter remained in California and did not accompany Kudret to Turkey. (CP 60, 167)

B. While The Husband Lived Abroad In Various Locations For His Employment, The Wife And Daughter Relocated To Washington State, Where The Husband Occasionally Visited Them.

While Kudret was in Turkey and Margaret was in California, the parties discussed moving to Virginia so that the parties could work in nearby Washington, D.C., where Margaret had family. (CP 60) In 2004, they purchased a home in Virginia for the family to eventually occupy, which they rented out for income while Margaret and their daughter remained in California and Kudret remained in Turkey. (CP 60, 167)

In Fall 2006, Margaret interviewed for a job as an immigration attorney with Microsoft in Redmond, Washington. (CP 167) According to Margaret, Kudret encouraged her to pursue the position with Microsoft, and the decision for Margaret and the daughter to relocate to Washington State (and not Virginia as originally planned) was a "joint" decision. (CP 167-68) According to Kudret, Margaret's decision to accept the position at Microsoft and relocate to Washington was entirely her own. (CP 60, 309)

In January 2007, Margaret and the parties' daughter relocated to Washington. (CP 60) Kudret returned to the United States for approximately ten days when Margaret moved from California to Washington, but then returned to Turkey. (CP 60, 309)

In August 2007, Kudret was transferred to the Turkish Embassy in Minsk, Belarus. (CP 60) In August 2009, Kudret was transferred to Montreal, Canada, where he worked for the Turkish Delegation at the International Civil Aviation Organization. (CP 60) While Kudret changed residences from Turkey to Belarus, and then to Montreal, Margaret and their daughter continued to live in the United States. (See CP 60, 167)

Kudret visited his family in Washington while living abroad. (CP 60) Kudret's visits to Washington were "very short and temporary," and he never viewed Washington as his residence. (CP 58, 59) The longest period that Margaret alleged Kudret was in Washington was for three months in 2008. (CP 169) But by producing several itineraries, Kudret proved that during that three month period he also traveled to Los Angeles (CP 326, 329), Turkey (CP 326), and Washington, D.C. (CP 310, 329, 331, 332)

Kudret asserted that the longest consecutive period of time that he spent in Washington State was 15 days. (See CP 60)

Kudret also did not view Washington State as a permanent residence for the family. (CP 61) Margaret did not enjoy working at Microsoft, and the parties resumed discussions of moving to Virginia when Kudret eventually returned to the United States. (CP 61) The parties discussed living other places, including Nebraska, Maryland, and Hawaii, but constantly returned to the idea of reuniting the family in Virginia and the Washington, D.C. area. (CP 61, 311)

C. While The Husband Was Residing In Montreal, Canada, The Wife Filed A Petition For Dissolution In Washington State.

In May 2010, Margaret and the parties' daughter visited Kudret in Montreal. During this visit Kudret thought the parties agreed that they would relocate to Virginia. (CP 61) The parties discussed Margaret opening an immigration law firm in Washington, D.C., and Kudret acquiring a business in the area. (CP 61) Consistent with this understanding, Kudret traveled to Virginia in June to meet with business brokers and visit businesses in the area. (CP 61)

On June 7, 2010, while Kudret was in Virginia making arrangements for the family to relocate there, Margaret had him served with a petition for dissolution that she had filed in King County Superior Court. (CP 1, 61) In her petition, Margaret alleged that Kudret's "last known residence" was King County, Washington. (CP 1) Margaret also claimed that Washington had jurisdiction over Kudret "because the petitioner and respondent lived in Washington during their marriage and the petitioner continues to reside [] in this state." (CP 2) In her petition, Margaret sought a temporary parenting plan, temporary order of child support, financial restraints, and a domestic violence protection order. (CP 61-62) While Margaret filed an affidavit of service that Kudret was served in Virginia, the affidavit provided no explanation why Kudret could not be served in Washington. (See CP 530-32)

D. The Husband Asserted That Washington State Had No Personal Jurisdiction Over Him As A Non-Resident And Had No Authority To Divide The Parties' Property Or Obligate Him To Pay Child Support.

After being served with the petition for dissolution in Virginia, Kudret returned to his home in Montreal. (See CP 62) From there, he retained counsel in Washington based on an online search. (CP

62) Counsel for Kudret filed a motion to dismiss the petition for lack of jurisdiction, asserting that Kudret was not a resident of Washington State and that the court did not have personal jurisdiction over him. (See CP 62)

Kudret's request for a continuance of the hearing on Margaret's motion on temporary orders pending a ruling on his motion to dismiss was denied. (CP 62) By declaration, Kudret vigorously denied Margaret's allegations of domestic violence. (See Ex. 10) Kudret stated that Margaret was the aggressor for the most part. Kudret described Margaret as being unable to express her feelings "except by exploding with anger and tears, and at times throwing household items." (CP 428) In response to her allegations of one particular incident, Kudret explained that during a "serious argument," Margaret charged at Kudret, biting him and scratching his face. (Ex. 10 at 12) In response to this attack, and to defend himself, Kudret pushed Margaret numerous times until she finally fell to the ground and hurt herself. (Ex. 10 at 12) Kudret described his use of force to defend himself as an "isolated incident." (Ex. 10 at 12)

Kudret also denied Margaret's allegations that he was an alcoholic. (Ex. 10 at 15) Kudret admitted that when he was living in Belarus – a country he described as inhospitable, with a “low life standard” – he was under significant stress and may have drank more than usual, but denied that he was an alcoholic. (Ex. 10 at 13, 15-16) Kudret asserted that once he moved to Montreal in 2007, he stopped drinking entirely for a period of time, and currently only drinks socially. (Ex. 10 at 16) Kudret later submitted to ten random urinalysis tests in Canada, all of which were negative. (Ex. 46 at 2)

On July 15, 2010, a court commissioner entered a domestic violence protection order, finding that “by a preponderance of the evidence, [Kudret] has subjected [Margaret] to several incidents of domestic violence over the course of the marriage.” (CP 90) The commissioner entered mutual financial restraints on the parties. (CP 92-94) The commissioner also ordered Kudret to provide an accounting of certain funds that were purportedly in his possession. (CP 95)

The commissioner ordered that any residential time between Kudret and the parties' daughter, then age 11, be supervised, and

limited Kudret to one email per day to the daughter. (CP 94) The commissioner ordered Kudret to enroll in a domestic violence assessment and alcohol/substance abuse assessment. (CP 94) Finally, the commissioner ordered that in the event that the trial court dismissed the petition for lack of personal jurisdiction over Kudret, “the property provisions herein shall be void after the date of [the trial court]’s decision.” (CP 96)

Kudret’s counsel signed the temporary order with the notation, “respondent objects to order w[ith] respect to property division and fed[eral] tax return on jurisdictional grounds.” (CP 97) However, without Kudret’s authorization, counsel signed a temporary Order of Child Support that purported to be “agreed.” (CP 63, 103, 134, 141) The order obligated Kudret to pay monthly child support of \$615. (CP 136)

Kudret obtained new counsel and filed an Amended Motion to Dismiss for Lack of Jurisdiction. (CP 58) Kudret also filed a Motion to Vacate the temporary Child Support Order based on his jurisdictional challenge and his prior counsel’s lack of authority to sign an order obligating him to pay child support. (CP 7)

On October 14, 2010, King County Superior Court Judge Michael Fox denied Kudret's motion to dismiss. (CP 447) The trial court did not find that Washington had personal jurisdiction over Kudret because he was a resident of Washington – nor did Margaret actively persist in that claim, despite asserting under oath in her petition that Kudret was a resident of King County. (See CP 448-49; see *also* CP 149-50) Instead, the trial court based its determination that Washington had personal jurisdiction over Kudret under RCW 4.28.185, the long-arm statute. (CP 448-49)

The trial court found that Kudret had “lived in a marital relationship with [Margaret] within the State of Washington” and “this is sufficient to exercise personal jurisdiction pursuant to RCW 4.28.185(1)(f).” (Finding of Fact (FF) 1, 4, CP 448) The trial court also found that Kudret “owns personal property in the State of Washington, including a vehicle. He also has community property in Washington State” and “this is sufficient to satisfy both RCW 4.28.185(c) and due process considerations.” (FF 2, CP 448) The trial court found that Kudret “engaged in sexual relations with [Margaret] within the State of Washington, secured automobile insurance within the State of Washington and life insurance

securing his life within the State of Washington. These factors are sufficient to exercise jurisdiction pursuant to RCW 4.28.185(d) and (e).” (FF 3, CP 448) Finally, the trial court found that “equity requires that all issues be resolved within the State of Washington.” (FF 5, CP 448)

On October 18, 2010, a superior court commissioner denied Kudret’s motion to vacate the temporary child support order. (CP 454-56) The commissioner concluded that the “requirements of RCW 4.28.185 are satisfied.” (CP 456) Further, the commissioner found that Kudret “has not sustained his burden to demonstrate that his attorney [] did not have authority to enter the Temporary Order of Child Support or fraud existed.” (CP 455) The commissioner rejected Kudret’s assertion that agreeing to entry of a child support order, thus waiving his jurisdictional challenge, is a “substantial right, such that explicit authority would be necessary.” (CP 455) The commissioner found that even if it were a substantial right, “the Respondent’s declaration stipulating to the child support calculations constitutes sufficient authorization for Respondent’s attorney to enter the Temporary Order of Child Support.” (CP 455)

Kudret filed a Motion for Discretionary Review of the order denying his motion to dismiss and the order denying his motion to vacate. (See CP 444, 457) The motion was denied by Commissioner James Verellen of this court. Commissioner Verellen stated, “[t]here is room to debate whether the ‘living in a marital relationship within the state’ provision for long-arm jurisdiction applies here, but it was not an obvious or probable error to conclude that Kudret Oytan was living in such a relationship within the state, even though he was never a resident of this state.” (December 27, 2010 Ruling, 9)

E. The Dissolution Was Tried Without The Husband’s Participation. The Trial Court Entered An \$808,000 Judgment Against The Husband, Ordered Him To Pay A Portion Of The Wife’s Attorney Fees, Ordered Him To Pay Child Support, And Entered Restrictions On His Residential Time With The Parties’ Daughter.

Trial in this matter was on May 9, 2011, before King County Superior Court Judge Jean Rietschel. (CP 472) Margaret was represented by her counsel, Jennifer Payseno. (CP 472) Kudret, whose counsel withdrew shortly after his Motion for Discretionary Review was denied, did not appear at trial. (CP 472) Margaret testified that she believed that Kudret was still working with the Turkish Ministry of Foreign Affairs, and that he had returned to

Turkey. (RP 16) The only evidence presented was testimony from Margaret, which Kudret was unable to rebut. Had he appeared for trial his presence might undermine his challenge to Washington's personal jurisdiction over him.

Despite no testimony being presented on the issue of personal jurisdiction over the husband, the trial court found "the parties lived in Washington during their marriage and the petitioner continues to reside [] in this state." (FF 2.3, CP 492) The trial court "affirm[ed] the findings previously made by Judge Fox and the Court of Appeals regarding the issue of jurisdiction over the Respondent." (FF 2.3, CP 492)

Based on evidence presented solely by the wife at trial, the trial court found the community had over \$2 million in two bank accounts in Turkey. (FF 2.8(1), (2), CP 493-94) The trial court found that the husband withdrew \$1.556 million from one account on or about May 31, 2010. (FF 2.8(1)(E), CP 494) The trial court found that the husband's father withdrew \$468,000 from the second account on or about June 4, 2010. (FF 2.8(2)(E), CP 495) Under the court's July 15, 2010 temporary order, the husband had been ordered to provide an accounting of these funds (CP 95), and the

trial court found that he had failed to do so. (FF 2.8(1)(E), FF 2.8(2)(E), CP 494, 495)

The trial court awarded all of the community assets located within the United States to the wife, including the home in Virginia, accounts worth over \$320,000, the wife's retirement with Microsoft valued at approximately \$115,000, Microsoft stock, her car, and one-half of the community interest in certain businesses. (CP 482-84) The wife was also awarded an \$808,000 "equalizing" judgment against the husband, which was to be paid from the funds purportedly held by the husband in Turkey. (CP 480, 483; see CP 467)

The husband was awarded his unvalued pension with the Turkish government, accounts valued at over \$1,330,000 (including the funds that the husband purportedly held in Turkey), and one-half of the community interest in certain businesses. (CP 481-82)

The trial court ordered the husband to pay the wife \$30,000 for her attorney fees, based on the husband's intransigence. (FF 2.15, CP 500) The trial court found the wife had incurred \$109,499 in attorney fees related to the divorce in the trial court, \$7,500 in the appellate court to answer the husband's motion for discretionary

review, and \$19,321 in attorney fees to answer a divorce action that the husband commenced in Turkey. (FF 2.15, CP 500) The trial court expressly declined to find that the husband's motion for discretionary review was intransigent, but did find that "the only purpose in pursuing the Turkish divorce, to dismiss the Washington divorce, [was] to require the wife to unnecessarily incur substantial fees and costs engaging in 3 simultaneous legal proceedings." (FF 2.15, CP 500)

For purposes of child support, the trial court imputed income of \$100,000 to the husband based on the parties' 2009 joint income tax return. (CP 515) The trial court ordered the husband to pay monthly child support of \$877.60. (CP 516) Because the husband had not paid child support under the temporary order, the trial court entered a judgment of \$2,835.04 against the husband for back support. (CP 513)

The trial court imposed RCW 26.09.191 restrictions on the father's residential time with the parties' daughter based on findings of "a history of acts of domestic violence," "neglect or substantial nonperformance of parenting functions," and "a long-term impairment resulting from drug, alcohol, or other substance abuse

that interferes with the performance of parenting functions.” (CP 505) The father was ordered to complete domestic violence treatment and alcohol/substance abuse treatment. (CP 508)

Even though the daughter had told the parenting evaluator that she would like to visit the father in Turkey for “short periods, such as two weeks,” and the evaluator described the daughter as “attached to her father,” (Ex. 46 at 14, 24), the father was provided with only 10 hours of supervised visitation per week with the daughter, to occur in Washington. (CP 505) The parenting plan provided that the residential time may be reviewed only upon the father’s completion of domestic violence treatment, alcohol/substance abuse treatment, and the completion of the Turkey divorce that he had commenced while the Washington action was pending. (CP 506) The father was allowed 20 minutes of phone/webcam contact per week and one daily email with the daughter. (CP 509) Finally, the trial court granted the mother sole decision-making for all major decisions for the child. (CP 511)

The father appeals. (CP 474)

V. ARGUMENT

A. Washington Could Not Exercise Personal Jurisdiction Over the Husband Because There Was No Basis Under The Long-arm Statute To Do So.

The wife, the petitioner in the superior court, is a resident of Washington. (CP 1) As a consequence, the court has *in rem* jurisdiction to dissolve the parties' marriage and to enter a parenting plan for the parties' daughter, who also resides in Washington State. ***Ghebremichale v. Dep't of Labor & Industries***, 92 Wn. App. 567, 573, 962 P.2d 829 (1998) (As long as "the petitioner resides in the state and the judgment dissolves only the legal status of the marriage, the superior court has *in rem* jurisdiction to enter a dissolution decree."); RCW 26.27.201(1)(a) (court has jurisdiction to make an initial custody determination if "this state is the home state of the child on the date of the commencement of the proceeding").

However, without personal jurisdiction over the husband, the trial court had no authority to enter an order obligating the husband to pay child support, dividing the marital property, or requiring him to pay attorney fees. ***Marriage of Tsarbopoulos***, 125 Wn. App. 273, 284, ¶ 23, 104 P.3d 692 (2004). "A court cannot adjudicate a personal claim or obligation without personal jurisdiction over that

party. Personal obligations flowing from and incidental to the marital relationship requires personal jurisdiction. Maintenance and monetary awards are examples of personal obligations.” **Marriage of Powell**, 84 Wn. App. 432, 437, 927 P.2d 1154 (1996) (citations omitted).

Personal jurisdiction cannot properly be exercised over a non-resident party who is not served within this state, unless both the long-arm statute, RCW 4.28.185, and due process is satisfied. **Marriage of Yocum**, 73 Wn. App. 699, 702, 870 P.2d 1033 (1994). In addressing long-arm jurisdiction, “[c]ourts should address the statutory issue before reaching the constitutional issue.” **Grange Ins. Ass’n v. State**, 110 Wn.2d 752, 756, 757 P.2d 933 (1988), *cert. denied*, 490 U.S. 1004 (1989). If there is no statutory basis for the exercise of long-arm jurisdiction, it is not necessary for the due process question to even be reached. **Carrigan v. California Horse Racing Bd.**, 60 Wn. App. 79, 82, 802 P.2d 813 (1990), *rev. denied*, 117 Wn.2d 1002 (1991).

Here, the trial court erred in holding that this state’s courts have personal jurisdiction over the husband because he is not a resident of Washington, and none of the bases under the long-arm

statute, RCW 4.28.185, can apply under the facts of this case. Accordingly, to the extent the superior court's orders obligate the father to pay child support, divides the parties' property, and require the husband to pay attorney fees to the wife, those orders are void and must be vacated. *Ghebremichale*, 92 Wn. App. at 573 (“When a trial court lacks in personam jurisdiction over a party, any judgment entered by the court against that party is void.”).

1. **The Husband, Who Has Never Resided In Washington, Did Not “Live In A Marital Relationship Within The State.”**
 - a. **Because The Husband Has Never Been A Resident Of Washington, He Could Not Have “Lived In Marital Relationship Within The State.”**

The trial court erred in holding that Washington could exercise personal jurisdiction over the husband under RCW 4.28.185(1)(f), which provides that personal jurisdiction over a non-resident respondent may be established if he was “[l]iving in a marital relationship within this state notwithstanding subsequent departure from this state, as to all proceedings authorized by chapter 26.09 RCW, so long as the petitioning party has continued to reside in this state.” (CP 448) The court could not exercise

personal jurisdiction under RCW 4.28.185(1)(f) because the husband never “lived in” Washington.

This court previously interpreted the phrase “lived in” for the residency requirement of an elected official as meaning the same as “residence, domicile, and place of abode.” ***Freund v. Hastie***, 13 Wn. App. 731, 734, 537 P.2d 804, *rev. denied*, 86 Wn.2d 1001 (1975) (“‘Lived in,’ as used in the constitution, is the same as residence, domicile and place of abode.”) Although no court in Washington has defined the meaning of “living in” for purposes of the long-arm statute, Kansas courts have interpreted the term “lived in the marital relationship” in its own long-arm statute as meaning the same as “established a marital domicile.” ***Perry v. Perry***, 5 Kan. App.2d 636, 623 P.2d 513 (1981). This is consistent with Washington cases that find personal jurisdiction over a spouse who previously resided in Washington before subsequently departing the state while the other spouse remained in Washington. See ***Marriage of Corrie***, 32 Wn. App. 592, 597, 648 P.2d 501 (1982) (Washington had personal jurisdiction over father, who had resided in Washington but later relocated to Virginia, when the wife and children continued to reside in Washington); ***Marriage of Myers***, 92

Wn.2d 113, 116-17, 594 P.2d 902 (1979) (Washington had personal jurisdiction over husband, who lived in Kentucky, when the parties had resided in Washington and the wife still resided there).

Further, the plain language of the statute referring to the party's "subsequent departure" from the state shows that the Legislature intended that the non-resident party over whom the court exercises personal jurisdiction once have resided here. "[W]e interpret a statute to give effect to all language, so as to render no portion meaningless or superfluous." **State v. Ervin**, 169 Wn. 2d 815, 823, ¶ 13, 239 P.3d 354 (2010) (quoting **Rivard v. State**, 168 Wn.2d 775, 783, 231 P.3d 186 (2010)). If it was intended that personal jurisdiction could be exercised over a party who has never lived in Washington, but who happened to be married to a Washington resident, the "subsequent departure" language in the statute would be superfluous.

Instead, this provision of the statute was intended to give the courts long-arm jurisdiction in those circumstances where a party resided in Washington with a spouse, derived the benefits of Washington during residency here, but "subsequently departed"

from the state. In this case, to the contrary, the husband was not, and never was, a resident of Washington.

“Residence” for purposes of establishing a court’s jurisdiction means “domicile.” **Marriage of Strohmaier**, 34 Wn. App. 14, 16, 659 P.2d 534 (1983). The indispensable domicile elements are residence in fact coupled with intent to make the residence home. **Strohmaier**, 34 Wn. App. at 17; *see also Sasse v. Sasse*, 41 Wn.2d 363, 366, 249 P.2d 380 (1952). Domicile has also been described as, “in a strict and legal sense, that is properly the domicile of a person where he has his true, fixed, permanent home and principal establishment, and to which, whenever he is absent, he has the intention of returning.” **Mapes v. Mapes**, 24 Wn.2d 743, 754, 167 P.2d 405 (1946) (*citations omitted*). “The place where a man carries on his established business or professional occupation, and has a home and permanent residence, is his domicile.” **Mapes**, 24 Wn.2d at 754 (*citations omitted*).

Here, Washington was never the husband’s domicile. Washington was not a “permanent residence” for the husband, whose trips to Washington were intermittent, and solely for the purposes of visiting his wife and daughter. *See Marriage of Hall*,

25 Wn. App. 530, 539, 607 P.2d 898 (1980) (“mere presence in this state” is not sufficient to confer personal jurisdiction under the long-arm statute). The husband was not “principal[ly] establish[ed]” in Washington. **Mapes**, 24 Wn.2d at 754. The husband had no intent to make Washington his home. (CP 314) Even if the parties had discussed the husband eventually residing in Washington with the family, this does not show the husband’s “immediate intent” to make Washington his residence. **Marriage of Robinson**, 159 Wn. App. 162, 172, ¶¶ 28, 29, 248 P.3d 532 (2010), *as amended on reconsideration* (2011) (the wife’s statement that she planned to return to Washington in the future does not evidence an “immediate intent to make Washington her domicile” sufficient to confer jurisdiction).

b. The Wife’s Unilateral Relocation To Washington Cannot Satisfy The Requirement That The Husband “Live In A Marital Relationship Within The State.”

That the wife and daughter resided in Washington while the parties were married does not equate to the husband “living in a marital relationship within this state” for purposes of exercising personal jurisdiction under RCW 4.28.185(1)(f). “The unilateral activity of those who claim some relationship with a nonresident

defendant cannot satisfy the requirement of contact with the forum State. . . . It is essential in each case that there be some act by which the defendant purposefully avails [him]self of the privilege of conducting activities within the forum State.” ***Kulko v. Superior Court of California In and For City and County of San Francisco***, 436 U.S. 84, 93-94, 98 S.Ct. 1690, 56 L.Ed.2d 132, *reh’g denied*, 438 U.S. 908 (1978) (*citations omitted*); *see also* ***Marriage of Yocum***, 73 Wn. App. 699, 702-05, 870 P.2d 1033 (1994) (mother’s unilateral decision to move children to Washington was not adequate basis for Washington to exercise personal jurisdiction over father).

In ***Marriage of Tsarbopoulos***, the family lived in Greece during most of the marriage. The wife and children moved to Washington, leaving the husband behind in Greece. The wife filed for dissolution in Washington and had the husband served in Greece. The husband did not appear and the wife had a parenting plan, a child support order, and a decree of dissolution distributing the parties’ property entered by default. The husband appeared thereafter to vacate the orders due to lack of jurisdiction. The trial court vacated the orders. 125 Wn. App. at 280 ¶12.

Division Three held that the trial court could, without having personal jurisdiction over the husband, act on issues related to the custody of the children and the status of the marriage so long as he was given notice and the opportunity to be heard. ***Tsarbopoulos***, 125 Wn. App. at 281 ¶16. But the court could not obligate the husband to pay child support or divide the parties' property. ***Tsarbopoulos***, 125 Wn. App. at 281, 285-86 ¶28. Because the husband did not have sufficient "minimum contacts" in Washington for personal jurisdiction, Division Three affirmed the trial court's decision vacating the order requiring the husband to pay child support and purporting to divide assets. ***Tsarbopolous***, 125 Wn.2d at 286-87 ¶34.

Similarly, in ***Marriage of Markowski***, 50 Wn. App. 633, 749 P.2d 754 (1988), the husband and wife had lived in Oregon during their marriage. The wife and children moved to Yakima, leaving the husband in Oregon. Division Three vacated a default decree of dissolution that ordered the husband to pay child support, spousal maintenance, and divided property because the husband was not properly served with the petition for dissolution and Washington did not have personal jurisdiction over the husband, an Oregon

resident, as he did not have the requisite “minimum contacts” with this state. **Markowski**, 50 Wn. App. at 635-36, fn. 2; see also **Ghebremichale v. Dep’t of Labor & Industries**, 92 Wn. App. at 572 (Washington did not have personal jurisdiction over the husband when only the wife and child moved to Washington from Texas where the family had previously resided together).

While the husband may have acquiesced in the wife and daughter’s relocation to Washington State, this does not warrant the exercise of personal jurisdiction over the husband, who himself did not relocate to Washington. In **Kulko**, for instance, the United States Supreme Court held that California could not exercise personal jurisdiction over the father for purposes of ordering child support solely because the father “actively and fully consent[ed] to [the daughter] living in California for the school year . . . and . . . sen[ding] her to California for that purpose.” **Kulko**, 436 U.S. at 94. The Court rejected “the proposition that appellant’s acquiescence in Ilsa’s desire to live with her mother conferred jurisdiction over appellant in the California courts in this action. A father who agrees, in the interests of family harmony and his children’s preferences, to allow them to spend more time in California than

was required under a separation agreement can hardly be said to have 'purposefully availed himself' of the 'benefits and protections' of California's laws." *Kulko*, 436 U.S. at 94.

Because the husband has never been a resident of Washington, he could not have "liv[ed] in a marital relationship within this state" for purposes of finding long-arm jurisdiction under RCW 4.28.185(1)(f). The trial court erred in relying on RCW 4.28.185(1)(f) to find personal jurisdiction over the husband.

2. The Dissolution Action Did Not "Arise" From The Husband's Interest In Community Property Unilaterally Acquired By The Wife In This State.

The trial court also erred in holding that Washington could exercise personal jurisdiction over the husband under RCW 4.28.185(1)(c) on the grounds that the husband allegedly owned, used, or possessed "property whether real or personal situated in this state." (CP 448) First, that the wife unilaterally accumulated community property in Washington is not a sufficient basis to exercise personal jurisdiction over the husband under RCW 4.28.185(1)(c). See e.g. *Marriage of Yocum*, 73 Wn. App. at 702-05 (mother's unilateral decision to move children to Washington was not adequate basis for Washington to exercise personal

jurisdiction over father); see also *Mason v. Mason*, 321 S.W.3d 178, 183 (Tex. App. 2010) (Texas did not have personal jurisdiction over the wife to divide the marital estate because “[a]ny property in Texas that is part of the marital estate in this case cannot, by itself, supply the requisite minimum contacts for the trial court to exercise personal jurisdiction over [the wife] or quasi in rem jurisdiction to adjudicate the parties’ property interests”).

Second, that the husband owns an interest in such items, including a vehicle that the wife registered in his name, is not a basis to exercise long-arm jurisdiction, because the “cause of action” – the marital dissolution – does not arise from the ownership, use, or possession of property in Washington. See 14 Karl B. Tegland, *Washington Practice: Civil Procedure* § 4:17 at 100 (2d Ed. 2009) (“If a nonresident defendant happens to own property in Washington, but the plaintiff’s cause of action has nothing whatsoever to do with the property, and if the defendant has no other contacts with Washington, no jurisdiction will be found.”)

The trial court erred in relying on the community property located in Washington to find personal jurisdiction over the husband.

3. That The Parties Had Sexual Relations And The Husband Was The Beneficiary Of Insurance In Washington Was Not A Sufficient Basis To Exercise Personal Jurisdiction Over The Husband For An Action Unrelated To Those Acts.

The trial court also erred in holding that Washington could exercise personal jurisdiction over the husband under the long-arm statute, RCW 4.28.185(1)(d), (e), based on its finding that the husband “engaged in sexual relations with the mother within the State of Washington, secured automobile insurance within the State of Washington and life insurance securing his life within the State of Washington.” (CP 448)

RCW 4.28.185(1)(e) provides that Washington may obtain personal jurisdiction over a non-resident who engaged in “the act of sexual intercourse within this state *with respect to which a child may have been conceived.*” (emphasis added) There is no allegation that the parties conceived a child in Washington. Thus, whether the parties had sexual relations in Washington is not a basis for the court to exercise personal jurisdiction under RCW 4.28.185(1)(e) for purposes of establishing a child support obligation for their daughter, who was born in California before the

wife relocated to Washington, or for purposes of dividing the parties' marital property.

RCW 4.28.185(1)(d) also provides that Washington may obtain personal jurisdiction over a non-resident who "contract[s] to insure any person, property or risk located within this state at the time of contracting." But in order to obtain personal jurisdiction over the non-resident, the acquisition of insurance must be the "cause" of the action filed in Washington. RCW 4.28.185(1). First, there was no evidence that the husband obtained health insurance in Washington. (CP 311) It was the wife who obtained health insurance, through her Washington employer. (CP 311) Second, even if it were true that the husband acquired insurance within Washington, this act is unrelated to the dissolution of the parties' marriage and any subsequent order of child support or division of property. Thus, regardless whether the husband "contract[ed]" for insurance within Washington, this is not a basis for the court to exercise personal jurisdiction over the husband.

Because there was no statutory basis under the long-arm statute for the trial court to exercise personal jurisdiction, the orders entered purporting to obligate the father to pay child support and

dividing the marital estate, including in imposing money judgments against the husband, are void and must be vacated. **Marriage of Powell**, 84 Wn. App. 432, 438, 927 P.2d 1154 (1996). “When a court lacks jurisdiction over a party, any orders beyond those changing the legal marital status are not binding.” **Powell**, 84 Wn. App. at 438.

B. The Wife’s Failure To File An Affidavit Of Service As Required By The Long-arm Statute Also Renders The Final Orders Void.

The husband was served in Virginia. (CP 530) Under the long-arm statute, personal service outside the state is only valid “when an affidavit is made and filed to the effect that service cannot be made within this state.” RCW 4.28.185(4). “The statute authorizing such service is to be strictly pursued.” **Morris v. Palouse River & Coulee City R.R., Inc.**, 149 Wn. App. 366, 372, ¶ 11, 203 P.3d 1069, *rev. denied*, 166 Wn.2d 1033 (2009). “If a plaintiff has not complied with RCW 4.28.185(4), then there is no personal jurisdiction and the judgment is void.” **Morris**, 149 Wn. App. at 372, ¶ 11. Here, the wife’s failure to file an affidavit of service as required under RCW 4.28.185(4) also renders any orders entered against the husband void.

C. It Would Work A Substantial Injustice To Require The Husband, Who Was Not A Resident Of The United States, To Litigate The Dissolution Action In Washington State.

1. As A Matter Of Equity, The Trial Court Erred In Forcing The Husband To Litigate In A State Where He Has Never Been A Resident.

Even if there was a basis under the long-arm statute for the court to conclude that Washington has personal jurisdiction over the husband, and even as to custody issues over which the court may have had jurisdiction, the trial court should have declined to exercise personal jurisdiction because it would work a substantial injustice. "Assumption of jurisdiction by the forum state must not offend traditional notions of fair play and substantial justice, consideration being given to the quality, nature, and extent of the activity in the forum state, the relative convenience of the parties, the benefits and protection of the laws of the forum state afforded the respective parties, and the basic equities of the situation." ***Marriage of Yocum***, 73 Wn. App. at 703 (quoting ***Tyee Constr. Co. v. Dullen Steel Prods., Inc. of Wash.***, 62 Wn.2d 106, 115-16, 381 P.2d 245 (1963)).

The trial court erred in finding that “equity requires that all issues be resolved within the State of Washington.” (CP 448) The husband’s only contacts with Washington were to visit his wife and daughter when the wife decided to relocate from California to Washington while the husband was abroad. The husband could not have believed that he could be subjected to litigation in Washington simply because he wanted to maintain relations with his family by visiting them here. The same reasons that the trial court found the wife would be prejudiced if required to litigate elsewhere, also apply to the husband in having to litigate in Washington. (See CP 449) Other than the wife and daughter, the husband has “no family or friends” in Washington, and has a full-time job half a world away that would make litigating in this state difficult. (See CP 449)

2. The Husband Could Not Defend Against The Wife’s Allegations, Resulting In The Loss Of Meaningful Access With The Parties’ Daughter, Without Waiving His Challenge To Personal Jurisdiction.

As a matter of policy, the trial court erred in concluding that it had personal jurisdiction over the husband based on his limited contacts with this state because the “nature” of those contacts was

solely for the purpose of maintaining his relationship with the family. Ruling otherwise creates a chilling effect on out-of-state parents who wish to visit their child but do not do so for fear of being hauled into court and forced to litigate all issues in a state where they do not live. In fact, because the trial court concluded that the husband's limited presence in Washington was enough for it to exercise personal jurisdiction, the husband was unable to attend trial in this matter or risk waiving his jurisdictional challenge.

This was particularly egregious in this case because the husband was unable to defend against the wife's allegations related to parenting – over which the court arguably had jurisdiction – lest his appearance be viewed as a waiver to his personal jurisdiction challenge. See *In re Support of Livingston*, 43 Wn. App. 669, 672, 719 P.2d 166, rev. denied, 107 Wn.2d 1005 (1986) (“By requesting the Washington court to enforce visitation and failing to object to these proceedings, Chae sought affirmative relief from the Washington court and waived her objection to jurisdiction on the support issue.”). As a result, the husband was unable to refute the wife's allegations regarding domestic violence and

alcohol/substance abuse, and now the husband's residential time and contact with the daughter is significantly limited.

“In matters involving the welfare of children, courts need to be able to reach the merits whenever possible.” ***Marriage of Pennamen***, 135 Wn. App. 790, 801, 146 P.3d 466 (2006). Here, the trial court imposed restrictions on the husband’s residential time leaving him with no meaningful contact with the parties’ daughter, without any input from the father. It is the policy of this state that “the best interest of the child is ordinarily served when the existing pattern of interaction between a parent and child is altered only to the extent necessitated by the changed relationship of the parents or as required to protect the child from physical, mental, or emotional harm.” RCW 26.09.002. In this case, the father and daughter’s “pattern of interaction” has been significantly altered as a result of the trial court’s orders.

In her interview with the parenting evaluator, the daughter did not disclose any reason why such severe restrictions were necessary. The daughter admitted that when the parents fought, it was “scary,” but she did not claim that any alleged domestic violence or substance abuse by the father affected their

relationship. (Ex. 46 at 13) Instead, the daughter described that she and the father “got on fine most of the time. Most of the time he was really friendly with me and happy.” (Ex. 46 at 13)

The trial court’s exercise of personal jurisdiction over the father based on his limited contact with this State, which was solely for the purposes of maintaining his relationship with his family, has in effect destroyed the relationship between the father and daughter. The father has not had any personal contact with the daughter since just before the mother filed her petition for dissolution. If the father came to Washington to have supervised visitation with the daughter, the wife (and courts) could argue that his presence in Washington waived his challenge to personal jurisdiction. And even though the daughter has expressed a desire to visit her father and his family in Turkey (Ex. 46 at 14), the court’s order prevents such contact.

Further, the restrictions on the father’s time with the daughter can only be lifted if the father obtains treatment for his alleged domestic violence and alcohol abuse, which must “meet all requirements for state-certified [] treatment in Washington State.” (CP 508) But there was no evidence that the father would be able

to locate a treatment program in Turkey, where the mother asserted the husband lived, that would meet these requirements. In fact, the father had attempted to comply with the temporary order by meeting with a domestic violence evaluator in Canada, but the parenting evaluator claimed that this “did not meet the court’s requirement of treatment.” (Ex. 46 at 22) The parenting plan effectively eliminated the father’s ability to have a meaningful relationship with his daughter. Even the father’s contacts with the daughter on the telephone or webcam require the presence of the daughter’s therapist until the therapist deems it unnecessary (CP 509), and puts the case manager in charge of changes in the restrictions on his time, contrary to *Parentage of Schroeder*, 106 Wn. App. 343, 352-53, 22 P.3d 1280 (2001).

Without any input from the father, it is not clear whether the trial court could determine that these restrictions are in fact in the daughter’s best interests. Because it works a substantial injustice to require the husband to litigate in Washington State, the trial court erred in exercising personal jurisdiction over him. Even if it were not error, this court should remand to give the husband an opportunity to defend against the wife’s allegations regarding

parenting, and allow the trial court to enter a parenting plan in the daughter's best interests, taking into consideration all of the evidence and not just the wife's one-sided claims.

D. The Trial Court Erred In Refusing To Vacate The Temporary Order Of Support Because The Husband Did Not Authorize His Counsel To Enter An "Agreed" Order Of Child Support Or To Waive His Challenge To Personal Jurisdiction.

The trial court erred in refusing to vacate the temporary order of child support because it did not have personal jurisdiction over the husband, and any order obligating him to pay child support is void. *Marriage of Powell*, 84 Wn. App. 432, 438, 927 P.2d 1154 (1996). His former counsel was not authorized to enter an "agreed" child support order and could not waive the husband's objection to the court's exercise of personal jurisdiction over him.

In denying his motion to vacate, the trial court apparently relied on the fact that in one of the husband's declarations, he stated, "for the purpose of establishing temporary child support, I will stipulate to Meg's support calculation." (CP 430, 461) But by agreeing that the wife's math was correct, the husband did not seek "affirmative relief" and consent to personal jurisdiction. *Marriage of Peck*, 82 Wn. App. 809, 815, 920 P.2d 236 (1996). Furthermore,

the husband stated in the same declaration that financial issues were “reserved” pending a ruling on his motion to dismiss for lack of personal jurisdiction, and “the court should view nothing in this pleading to serve as a waiver.” (CP 430)

In *Peck*, the wife argued that the husband consented to personal jurisdiction even though he had never been a resident of Washington by “admitting” in his answer to her petition that “support for the dependent children should be set pursuant to the Washington State Child Support Schedule.” Division Two disagreed, holding that the husband did not consent to jurisdiction, because “[b]y agreeing with Cathy's assertion that the parties have children for whom support should be set according to the standard schedule, he did not seek affirmative relief.” *Peck*, 82 Wn. App. at 815.

In any event, the husband’s former counsel could not without the husband’s authorization waive his challenge to personal jurisdiction and obligate him to pay child support. An attorney cannot surrender a substantial right of a client until the client grants specific authority to do so. *Graves v. P.J. Taggares Co.*, 94 Wn.2d 298, 303-04, 616 P.2d 1223 (1980) (counsel could not

stipulate to liability, extent of plaintiff's injuries, or waive right to jury); **Marriage of Maxfield**, 47 Wn. App. 699, 707, 737 P.2d 671 (1987) (counsel had no authority to bind client to an order of contempt that imposed a \$100 per day fine for each day client was in contempt); **Marriage of Ebbighausen**, 42 Wn. App. 99, 103-04, 708 P.2d 1220 (1985) (counsel had no authority to waive client's right to a trial on the merits of joint custody).

Because the trial court did not have personal jurisdiction over the husband, and his former counsel did not have authority to bind the husband to a temporary order of child support order, the trial court erred in refusing to vacate the order.

E. This Court Should Award Attorney Fees To The Husband.

This court should award attorney fees under RAP 18.1 and RCW 4.28.185(5). This court may award reasonable attorney fees to a foreign defendant who prevails in an action on the basis that the court lacked personal jurisdiction under the long-arm statute. RCW 4.28.185(5); **CTVC of Hawaii, Co., Ltd. v. Shinawatra**, 82 Wn. App. 699, 722, 919 P.2d 1243 (1996) *modified*, 932 P.2d 664, *rev. denied*, 131 Wn.2d 1020 (1997); **Walker v. Bonney-Watson Co.**, 64 Wn. App. 27, 36, 823 P.2d 518 (1992); **Marriage of**

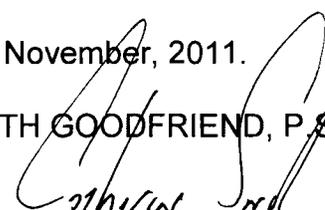
Yocum, 73 Wn. App. 699, 707, 870 P.2d 1033 (1994). Because Washington does not have personal jurisdiction over the husband, this court should award attorney fees to the husband for having to defend against the action commenced by the wife.

VI. CONCLUSION

Washington could not exercise long-arm jurisdiction over the husband, who was never a resident here. Because there was no personal jurisdiction over the husband, the trial court could not order him to pay child support, pay attorney fees, or divide property. To the extent the challenged orders purport to do so, they are void and must be vacated by this court. Even if this court concludes that the trial court had personal jurisdiction, this court should remand for a redetermination of parenting issues in the child's best interests, based on evidence from both parents. To do otherwise has needlessly destroyed the relationship of a loving father with his daughter.

Dated this 21st day of November, 2011.

SMITH GOODFRIEND, P.S.

By: 

Catherine W. Smith, WSBA No. 9542
Valerie Villacin, WSBA No. 34515

Attorneys for Appellant

DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on November 21st, 2011, I arranged for service of the foregoing Brief of Appellant, to the court and to the parties to this action as follows:

Office of Clerk Court of Appeals - Division I One Union Square 600 University Street Seattle, WA 98101	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> E-Mail
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DATED at Seattle, Washington this 21st day of November, 2011.



 Victoria K. Isaksen

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