FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D20-1117

SHAUN P. MURPHY, Former Husband,

Appellant,

v.

CLAUDIA A. MURPHY, Former Wife,

Appellee.

On appeal from the Circuit Court for Duval County.
Lance M. Day, Judge.

July 6, 2022

TANENBAUM, J.

Before us is an order denying a non-resident former husband's motion to dismiss for lack of personal jurisdiction, which we of course have authority to consider on direct appeal. *See* Fla. R. App. P. 9.130(a)(3)(C)(i). The former wife sued in equity: first, to have an out-of-state divorce decree treated as an in-state judgment, and then to have the decree clarified and enforced against the former husband. Two problems turn up. One relates to the requirements for properly pleading and proving personal jurisdiction; the other relates to the trial court's misunderstanding of how to consider a motion like the former husband's, which contested the former wife's jurisdictional allegations. As to the pleading issue, the

former wife neither specified in her initiating pleading which provision of Florida's long-arm statute she was relying on nor alleged facts that otherwise could support specific jurisdiction over the former husband. In the alternative, the former wife argued there was a basis for *general* personal jurisdiction, but the husband conclusively refuted her ostensibly supporting averments with his own sworn statement. As to the trial court's analysis, even though the former wife failed to put any material jurisdictional facts in dispute, the trial court denied the motion to dismiss based on its view that it had to stay within the "four corners" of the complaint, which is not correct.

As we will explain, the former wife failed to properly plead and prove a basis for personal jurisdiction over the former husband. The trial court could not then just rely on the jurisdictional allegations in the former wife's petition and overlook the former husband's unrefuted denial of his having any current connection with Florida. There was no basis in the record to support jurisdiction over the former husband. Denial of the motion to dismiss was legal error, and we vacate the order and remand for dismissal of the petition.

I

In September 2019, the former wife filed a petition that sought domestication of a 1999 Hawaiian divorce decree, clarification of the former wife's entitlement to the former husband's military pension, and determination of arrears. The former wife alleged that the parties had not resided in Hawaii in approximately twenty years. To support her contention that the former husband was subject to jurisdiction in Florida, she alleged that he "resided in the State of Florida for most of the last ten to eleven years" in "both the Tampa and Jacksonville areas" and had "owned properties in both of the counties." She further alleged "he *may* still own property" in Florida. (emphasis supplied). While acknowledging the former husband "recently left the state," the former wife went on to aver that "his continued, substantial and *recent* residency in the state provide a basis for personal jurisdiction over him." (emphasis supplied).

A summons issued, and the former wife had the former husband personally served in North Carolina. The former husband

then timely filed a sworn motion to dismiss that challenged the trial court's jurisdiction over him. His sworn statements established that he resided in Florida from January 2010 through December 2012, and from July 2017 through February 2019, all incidental to his military service. He claimed residency in North Carolina. If true, this meant the former husband last resided in Florida roughly seven months prior to the former wife's initiation of her suit. He did admit to owning real property in Florida from July to November 2017, but he denied owning any in the state since then.

The trial court held a hearing on the former husband's motion, but the former wife did not offer any evidence to refute the motion's sworn statements. Nevertheless, in the trial court's order denying the motion, it claimed to be "confine[d] to the four corners of the pleading." It accepted all of the former wife's allegations "as true" and "construe[d] the allegations in the light most favorable to the" former wife. The trial court acknowledged the parties' agreement that the former husband had relocated to North Carolina before the filing of the petition. Still, it denied the motion, reasoning that the former wife "identifie[d] the parties, allege[d] personal and subject matter jurisdiction, and state[d] a claim for which relief can be granted." This, though, is not the analysis required by the supreme court for application of Florida's long-arm statute. Indeed, the trial court failed to cite or even reference a provision in the long-arm statute on which it relied to find personal jurisdiction over the former husband. The law required that the motion be granted, and we correct the trial court's error here.

II

The Legislature limns a variety of actions that could cause a person living outside Florida to be subjected to the jurisdiction of this state's courts. *See* § 48.193, Fla. Stat.; *see also Venetian Salami Co. v. Parthenais*, 554 So. 2d 499, 500 (Fla. 1989) ("By enacting section 48.193, the legislature has determined the requisite basis for obtaining jurisdiction over nonresident defendants as far as Florida is concerned."). As a threshold matter, a plaintiff must plead (and if challenged, prove) that a non-resident defendant engaged in one of the statutorily enumerated forms of conduct before service of Florida process *outside* the state could be

treated as if it had been effectuated within the state. *See* § 48.193(3), Fla. Stat.; *cf. Cortez v. Palace Resorts, Inc.*, 123 So. 3d 1085, 1090 (Fla. 2013) (observing that personal jurisdiction is obtained "by effecting service of process, which occurs where the defendant is present in, resides in, or has its principal place of business in Florida, or through application of the state's long-arm statute").

To be sure, a plaintiff does not need to plead much in the way of jurisdictional facts. The former wife, for example, did not have to plead any more than language tracking the long-arm statute to authorize issuance of process for service on the former husband in North Carolina. *See* Fla. R. Civ. P. 1.070(h) (providing that when service of process "is to be made under statutes authorizing service on nonresidents," the basis for service may be pleaded "in the language of the statute without pleading the facts supporting service"). As an alternative, the former wife could have chosen to "alleg[e] specific facts indicating that the defendant's actions fit within one of the sections of Florida's long-arm statute," without citing the applicable long-arm provision (although that would have been helpful). *Dep't of Legal Affairs v. Wyndham Int'l, Inc.*, 869 So. 2d 592, 596 (Fla. 1st DCA 2004). Either way, the onus was on the former wife to allege *some* cognizable basis for the court's exercise of jurisdiction over the former husband outside the state.

The only readily apparent jurisdictional allegations that the former wife made in her petition addressed the length of time the former husband had lived in Florida *before he left*, the properties he *used to own* in Florida, and the *possibility* that he may still own property in Florida. She did not specify a provision in the long-arm statute on which she sought to rely, but she may have had section 48.193(1)(a)5. in mind. It is a "specific jurisdiction" provision,[1] and it authorizes personal jurisdiction over a nonresident if he was still

[1] "'Specific jurisdiction' . . . occurs 'when a State exercises personal jurisdiction over a defendant in a suit arising out of or related to the defendant's contacts with the forum.'" *White v. Pepsico, Inc.*, 568 So. 2d 886, 888 n.3 (Fla. 1990) (quoting *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 n.8 (1984)).

either "maintaining a matrimonial domicile" in Florida or "resided in this state" when the action was commenced. § 48.193(1)(a)5., Fla. Stat. For this provision to work for the former wife, however, her suit had to be "a proceeding for alimony, child support, or division of property in connection with an action to dissolve a marriage," or it had to be "an independent action for support of dependents." *Id.* The former wife's suit was neither of these—it instead sought clarification and enforcement of a divorce decree. *See Yoder v. Yoder*, 363 So. 2d 409, 409–10 (Fla. 1st DCA 1978) (holding that a suit to establish an out-of-state divorce decree as a Florida judgment, adjudicate alimony arrearages due, and enforce the decree was neither category of suit described in the provision that is now subparagraph (5)). This subparagraph could not support personal jurisdiction over the former husband.

That leaves one other section of the long-arm statute that might arguably apply: subsection (2). The former wife in fact relied on this subsection as part of her argument against the former husband's motion. Subsection (2) authorizes the exercise of "general jurisdiction" over a non-resident defendant "who *is* engaged in substantial and not isolated activity within this state." § 48.193(2), Fla. Stat. (emphasis supplied).[2] Unlike with specific jurisdiction, there is no "require[d] connexity between the [non-resident's] activities and the cause of action" asserted in the complaint. *Wendt v. Horowitz*, 822 So. 2d 1252, 1260 n.7 (Fla. 2002); *see also White*, 568 So. 2d at 889 n.4 ("'Connexity' is the term courts have adopted to mean a link between a cause of action and the activities of a defendant in the forum state."); *Am. Overseas Marine Corp. v. Patterson*, 632 So. 2d 1124, 1130 (Fla. 1st DCA 1994) ("A finding of general jurisdiction in this case would subject [a non-resident] to the jurisdiction of the Florida courts for all legal action notwithstanding where the alleged wrongdoing or injury occurred, or whether the injury had any connection with activities undertaken in Florida."). For this reason, the contacts must be

[2] "When a State exercises personal jurisdiction over a defendant in a suit not arising out of or related to the defendant's contacts with the forum, the State has been said to be exercising 'general jurisdiction' over the defendant." *White*, 568 So. 2d at 888 n.3 (quoting *Helicopteros*, 466 U.S. at 414 n.9)).

"extensive and pervasive," which is "a much higher threshold" than for specific jurisdiction. *Am. Overseas Marine Corp.*, 632 So. 2d at 1127–28 (internal quotations and citation omitted).

Demonstrating robust contacts within the state, however, is not enough. Grammar rules tell us that under subsection (2), those contacts also must be in the present, not just in the past. We say this because the linking verb in the statutory provision that we highlighted in the prior paragraph (*viz.*: "*is* engaged") is in the present tense. It is part of an adjective clause that begins with the relative pronoun serving as the subject of the clause—"who." That clause altogether modifies the antecedent of "who," which is "a defendant." This adjective clause, stated in the present tense, thereby describes the type of defendant subject to general jurisdiction in subsection (2). That is to say, because the verb "is" links the past participle "engaged"—operating here as a subject complement—to the relative pronoun it modifies—"who"—the clause effectively links "engaged" (in the present tense) to the defendant being described. This means, in turn, that jurisdiction must be based on *current* (not exclusively past) "substantial and not isolated activity" within Florida. *Cf. Heineken v. Heineken*, 683 So. 2d 194, 196 (Fla. 1st DCA 1996) (concluding that "limited past contacts," like a defendant's possession of a Florida driver's license and a Florida voter registration card, are not "'substantial and not isolated' activities within the state sufficient to" satisfy subsection (2)); *Gibbons v. Brown*, 716 So. 2d 868, 870 (Fla. 1st DCA 1998) (treating the phrase "is engaged" as adding a present-tense component to the consideration of whether a defendant's contacts with the state are "substantial and not isolated activity").

If the Legislature had intended to allow prior conduct (*i.e.*, activity that started and ended in the past) to support jurisdiction over a nonresident, it would have used a past tense of the being verb (*i.e.*, "*was* engaged") or a perfect tense (*i.e.*, "*has* engaged" or "*had* engaged"). It did not. Then again, why would it? General jurisdiction is premised on a non-resident defendant in essence still being "present" in the state *now*. *Cf. Rosenberg Bros. & Co. v. Curtis Brown Co.*, 260 U.S. 516, 517 (1923) ("The sole question for decision is whether, at the time of the service of process, defendant was doing business within the state of New York in such manner and to such extent as to warrant the inference that it was *present*

there." (emphasis supplied)); *see also Int'l Shoe Co. v. Washington*, 326 U.S. 310, 317 (1945) (equating pervasiveness of a foreign corporation's "continuous and systematic" activities in the forum state with its "presence" there). How could a non-resident defendant's prior contact with the state—now discontinued—be used to support such a legal fiction? After all, by any measure, such a defendant *no longer* is present in the state, virtually or otherwise. It simply would not make any logical sense—and worse, it would be wholly inconsistent with the long-arm statute—to suggest the former husband's *previous* connections or activities in the state—no matter how pervasive they once were—are at all relevant to whether the former husband could be subject to general jurisdiction under subsection (2) at the time the former wife filed suit.[3]

Simply put, unlike the type of contact required for specific jurisdiction, the contacts in support of general jurisdiction, by definition, cannot be exclusively in the past. The former wife had to establish not only the former husband's "extensive and pervasive" contacts, but also the fact that he *currently* maintained those contacts with Florida at the time she filed suit. This, she failed to do. As we showed above with the highlighted words in our description of the jurisdictional allegations, the only potentially *present* contact alleged by the former wife was stated in her petition as speculation: that "he *may* still own property" here. We do not need to reach whether this allegation could suffice, though.

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[3] Prior contacts or activity *would* be relevant to the question whether the former husband's being hauled into a Florida court was foreseeable. That, however, is a separate due-process analysis that we do not have to reach here. *Cf. World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980) (addressing "the foreseeability that is critical to due process analysis" by asking whether "the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there"). Unless the former wife sufficiently established the application of the long-arm statute in the first instance (which she did not), whether the former husband had the minimum contacts with Florida to comport with due process is beside the point.

Once the former husband contested the former wife's jurisdictional allegations with his sworn statement denying that he owned property in Florida currently, the burden shifted to the former wife "to prove by affidavit the basis upon which jurisdiction may be obtained." *Venetian Salami*, 554 So. 2d at 502; *see also Jones v. Jack Maxton Chevrolet, Inc.*, 484 So. 2d 43, 45 & n.4 (Fla. 1st DCA 1986) (explaining that regardless of the jurisdictional facts pleaded, if a motion to dismiss is filed that challenges personal jurisdiction, the plaintiff would have to "prove the evidentiary facts to support the statutory requirements" in any event).

The former wife did not submit any affidavits or other sworn statement, so she did not meet her burden of production. The only evidence before the court was the former husband's sworn motion, leaving unrefuted the former husband's statements that he had no present contacts with Florida. The trial court should have disposed of the former husband's motion based on the undisputed fact that he had no presence in the state at the time the former wife filed suit. *Cf. Venetian Salami*, 554 So. 2d at 503 (explaining that the trial court "will be in a position to make a decision [regarding jurisdiction] based upon facts which are essentially undisputed" when the affidavits that are submitted "can be harmonized"); *id.* (explaining, however, that if the affidavits cannot be reconciled, the court must "hold a limited evidentiary hearing in order to determine the jurisdiction issue"). The trial court has no authority to exercise jurisdiction over the former husband, and the motion to dismiss must be granted.

* * *

We vacate the March 5, 2020, order denying the former husband's motion to dismiss, and we remand the matter with an instruction to dismiss the petition for lack of personal jurisdiction.

VACATED and REMANDED with instruction.

B.L. THOMAS, J., concurs; MAKAR, J., dissents with opinion.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

MAKAR, J., dissenting.

This straightforward appeal of an order exercising jurisdiction over a former husband in a dispute over his military pension has been pending in this Court for over two years. I dissent with only a minimalist opinion to bring this case to an end.

In its March 2020 order, the trial judge properly exercised personal jurisdiction because the former husband's contacts with Florida were sufficient under section 48.193(2), Florida Statutes, the general jurisdiction statute, which does not require the former wife's "claim arise from activity or effects within Florida, nor that there be any 'connexity' between the claim and the [former husband's] activities in Florida." *Garris v. Thomasville-Thomas Cnty. Humane Soc'y, Inc.*, 941 So. 2d 540, 544 (Fla. 1st DCA 2006).

At the time the former wife filed her petition in September 2019, the former husband had resided in Florida two separate times, totaling almost five years in the nine years prior to the filing; his most recent residency was from July 2017 until February 2019, which was just months before the filing of the former wife's petition. The former husband had also owned property during one of his residencies in Florida.

The fact that the former husband moved out of Florida in 2019, just before the petition was filed, does not automatically negate jurisdiction; otherwise, defendants would leave the state in an attempt to avoid jurisdiction despite having engaged in substantial ongoing contacts just moments prior to being sued. *See, e.g., Singer v. Unibilt Dev. Co.*, 43 So. 3d 784, 789 (Fla. 5th DCA 2010) ("When the activities of the nonresident are of sufficient quality that it should in fairness expect to defend itself here, it should not make a difference that it happens to cease these activities prior to the filing of the complaint, especially where the

activities occur close in time to the events giving rise to the cause of action."); *cf. Buckingham, Doolittle & Burroughs, LLP v. Kar Kare Auto. Group, Inc.*, 987 So. 2d 818, 822 (Fla. 4th DCA 2008) (noting that no caselaw exists that "addresses *what period of time must pass* before a company which stops doing business in a state is no longer considered to have sufficient contacts to justify general in personam jurisdiction pursuant to the statute" and upholding dismissal where business had terminated its relationship more than eighteen months before suit was filed) (emphasis added). General jurisdiction becomes meaningless if, as is claimed, a defendant's contacts must exist on the exact day and time the lawsuit is filed; Florida courts have not imposed such an unreasonable and linguistically cramped view of the language of the general jurisdiction statute. Plus, if the legislature had intended such a hyper-technical result it could have used limiting language, such as "at the time of filing" or the like, that it has used in dozens of other statutes; it did not—and courts shouldn't on their own initiative judicially interlineate words that defeat a statute's purpose.

Former husband's substantial presence and activities in Florida were neither isolated, haphazard, nor sporadic (such as coming to Florida occasionally to visit family or friends). Instead, he resided in-state for half of the nine years preceding—and up until shortly before—the filing of the former wife's petition. As such, it is neither unforeseeable nor unjust to require the former husband to be haled into a Florida court and allow the former wife's claim to proceed. The trial judge, after reviewing the evidence and holding a hearing, denied the former husband's motion to dismiss on jurisdictional grounds, which was a proper exercise of authority.

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