

ILLINOIS TRIAL COURT
DD DIVORCE
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THE GUIDE TO THE DOMESTIC RELATIONS TRIAL COURT

Indiana Visitor Subject to Illinois Jurisdiction

After the wife, represented by Thomas Field of Beermann Swerdlove LLP, filed her Petition for Dissolution of Marriage, the husband, represented by William Wigoda of Jakubs, Kritzmir and Wigoda LLP, objected to the Court's in personam jurisdiction.

The wife, a resident of the state of Illinois sought the dissolution of her marriage to her husband, a resident of the State of Indiana. He was served with process in Chicago, Illinois. Judge Carole Bellows previously denied the husband's Motion to Dismiss pursuant to 735 ILCS 5/2-619, which argued that the court lacked subject matter jurisdiction. The husband then objected to the court's exercise of in personam jurisdiction over him, claiming that neither the Illinois long-arm statute, 735 ILCS 5/5-209, nor the due process requirements of "minimum contacts" as embodied in the *International Shoe* doctrine is satisfied in this case (*International Shoe v. Washington*, 326 U.S. 310, (1945)).

The husband argued that the long-arm statute sets forth a finite list of acts that can be construed as submission to the jurisdiction of Illinois courts and that he had performed none of these acts. He further argued that application of the long-arm provisions are only the first step of a two-step process and that, even if he had performed one of the enumerated acts, the Court must determine whether the husband has had sufficient contacts with the State of Illinois that due process permits the Court to exercise jurisdiction over him.

The husband's legal arguments correctly stated that law that he relied upon. However, Judge Bellows noted that he had apparently overlooked subparagraph (b) of the long-arm statute, which provides:

(b) A court may exercise jurisdiction in any action arising within or without this State against any person who:

- (1) *Is a natural person present within this State when served;*
- (2) Is a natural person domiciled or resident within this State when the cause of action arose, the action was commenced, or process was served;
- (3) Is a corporation organized under the laws of this State; or
- (4) Is a natural person or corporation doing business within this State, (735 ILCS 5/5-209(b) (*emphasis added*)).

She further explained that the United States Supreme Court, in *Burnham*, extensively examined the history and tradition of personal jurisdiction in United States courts (*Burnham v. Superior Court of California*, 495 U.S. 604, (1990)). In that case, a New Jersey resident, while present in the state of California, was personally served with process in a divorce proceeding filed in the California court. The result of that case was that service within the state was sufficient to confer jurisdiction and satisfy due process requirements, without the necessity of a further examination of the "minimum contacts" requirements of *International Shoe*. Justice Scalia, in an opinion joined by Justice Kennedy, Chief Justice Rehnquist, and in part by Justice White, observed:

"Among the most firmly established principles of personal jurisdiction in American tradition is that the courts of a State have jurisdiction over nonresidents who are physically present in the State. The view developed early that each State had the power to hale before its courts any individual who could be found within its borders, and that once having acquired jurisdiction over such a person by properly serving him with process, the State could retain jurisdiction to enter a judgment against him, no matter how fleeting his visit." (*Burnham*, 495 U.S. at 610-611 (Scalia, J.). See also, *C.S.B. Commodities, Inc., v. Kushner*, 626 F. Supp. 2d 837 (N.D. Ill. 2009)).

Pursuant to the foregoing authority, Judge Bellows found that this Court clearly had in personam jurisdiction over the husband.

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