

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

DENYELL WISE,	:	FC-22-20236
Plaintiff	:	
	:	CIVIL ACTION – LAW
vs.	:	
	:	
MATTHEW WISE,	:	
Defendant	:	

OPINION AND ORDER

AND NOW, after argument on Defendant's Preliminary Objections to Plaintiff's Petition for Protection from Abuse, the Court hereby issues the following OPINION and ORDER.

BACKGROUND

On April 6, 2022, Plaintiff filed a Petition for Protection from Abuse ("PFA") against Defendant, her husband.¹ The Petition listed her address, as well as those of her children,² as "Po Box 15, Montgomery, Pennsylvania, 17752," and Defendant's address as "116 Edgewood Ave, Landrum, South Carolina, 29356." In the Petition, Plaintiff alleged that on March 25, 2022 at approximately 2:00 a.m., at the Landrum, SC location listed as Defendant's address, Defendant woke her up, began kissing her, and when she told him to stop grabbed her and took her phone, walking down the hall with it. Plaintiff alleged that while trying to get her phone, she accidentally scratched Defendant's arm with her fingernail, at which time Defendant told her she

¹ Plaintiff and Defendant are in the process of divorcing; the divorce action, filed in Spartanburg County, South Carolina, is discussed *infra*.

² The parties have three children together, daughters aged 8, 6 and 4.

was going to jail for assault and called the police;³ Plaintiff alleges that the parties' 8-year-old daughter observed this, and that Defendant told their daughter "you better say bye to your mom because you are never going to see her again, prompting her to cry." Plaintiff alleges that after the county police department arrived and asked Defendant to spend the night elsewhere, he refused, and that the children remained fearful throughout the night, staying in a room with Plaintiff. Plaintiff further alleged that Defendant "has... been mentally, emotionally, verbally, and physically abusive towards" both her and their children in the past, including threatening to assault her or kill her by various means. Plaintiff alleges Defendant's abusive behavior has traumatized their children and caused her great fear for their safety as well as her own, particularly on one occasion when Defendant "ha[d] gone to get a gun and held it to his side while he was arguing with [her]."

That same day, April 6, 2022, following an *ex parte* hearing pursuant to 23 Pa. C.S. § 6107(b), the Court entered a Temporary PFA and scheduled a final hearing for April 18, 2022. The Temporary PFA and notice of the hearing was served on Defendant the following day in Landrum, South Carolina by Sgt. Bradley of the Spartanburg County, South Carolina Sheriff Office.

On April 13, 2022, Defendant filed counseled Preliminary Objections/Motion to Dismiss, arguing that the Court lacks personal jurisdiction over him under 42 Pa. C.S. § 5322 as incorporated into the PFA Act by 23 Pa. C.S. § 6103(b)(2). On April 18,

³ Defendant is employed as a police officer; Plaintiff alleges that the police force Defendant works for initially responded to his call before the county police department eventually arrived.

2022, at the time initially scheduled for the final PFA hearing, the Court continued the hearing to May 24, 2022 without objection to allow the parties time to appropriately brief and argue Defendant's objection to personal jurisdiction.⁴ By separate Order, the Court scheduled a hearing on Defendant's motion for May 16, 2022 and directed the parties to file briefs.

DEFENDANT'S PRELIMINARY OBJECTIONS AND MOTION TO DISMISS

A. Defendant's Motion and Brief

Defendant argues in his motion that Plaintiff's Petition for PFA "must be dismissed because this Honorable Court lacks personal jurisdiction" over him.

Specifically, Defendant contends that:

- "[T]he alleged abusive incident occurred in South Carolina";
- "The parties lived together in South Carolina until Plaintiff left the marital residence with the children on March 28, 2022";
- "Plaintiff did not allege that any harm or tortious injury occurred in" Pennsylvania;
- "[Defendant] has filed for an order of protection [and] has filed for custody against Respondent in South Carolina"; and
- "[Defendant] has in no way purposefully availed himself to Pennsylvania's jurisdiction...."

⁴ By agreement of the parties, the final hearing was continued a second time to June 24, 2022.

For these reasons, Defendant argues, “it would offend the traditional notions of fair play and substantial justice for Pennsylvania to exercise personal jurisdiction” over him, and thus the matter must be dismissed under 42 Pa. C.S. § 5322.⁵

In his brief, Defendant more explicitly states four grounds for his assertion that Pennsylvania does not possess personal jurisdiction over him. First, he notes that he does not live in Pennsylvania and was not served with process in this matter in Pennsylvania. Second, he highlights that Plaintiff alleges the most recent incident of abuse took place at their marital home in South Carolina, and does not plead that any alleged past incidents of abuse occurred in Pennsylvania.⁶ Third, he states that he has not purposefully established any contacts with Pennsylvania, having lived in South Carolina for the past 10 years save for brief trips to see family; Defendant argues that such brief forays into the Commonwealth are insufficient to establish personal jurisdiction. Finally, he claims that:

“maintaining this petition in Pennsylvania offends traditional notions of fair play and substantial justice because [Plaintiff] absconded [from South Carolina] with the parties’ children and immediately filed a petition for protection from abuse in this Commonwealth in an attempt to forum shop and keep the children from [Defendant]. The parties’ marital residence is in South Carolina. The parties have been involved in family court in South Carolina for over a year. [Plaintiff] is aware that it would be difficult for [Defendant] to respond to a petition in Pennsylvania, which is why she chose to petition for a Protection from Abuse Order in Pennsylvania rather than in their home state. [Plaintiff]

⁵ 42 Pa. C.S. § 5322 is Pennsylvania’s “long-arm” statute, which extends Pennsylvania’s jurisdiction “to the fullest extent allowed under the Constitution of the United States” and provides that such jurisdiction “may be based on the most minimum contact with this Commonwealth allowed under the Constitution of the United States.” Thus, under this section as incorporated by the PFA Act, Pennsylvania will assert personal jurisdiction over Defendant unless doing so would violate the United States Constitution.

⁶ The parties testified regarding this matter at the hearing on Defendant’s motion; this hearing is discussed *infra*.

is attempting to abuse this Commonwealth's laws in an attempt to avoid the legal trouble she has created in South Carolina."

Defendant also filed a Supplemental Brief in Support of his Motion to correct a factual error in his original brief. In his Supplemental Brief, Defendant clarified that he and Plaintiff "moved to South Carolina fifteen years ago, moved back to Pennsylvania for two months in 2015, and then moved back to South Carolina and have lived there since," with Defendant only returning to Pennsylvania twice since 2015 for a total of four days. The Supplemental Brief also claims that Plaintiff "testified in family court in South Carolina on April 15, 2022 that all of the allegations that she made in the Petition for Protection from Abuse occurred in South Carolina."

B. Plaintiff's Brief in Response

In her Brief in Response, Plaintiff alleged a number of new facts and disputed some factual averments made by Defendant. Plaintiff indicated that she and Defendant grew up in Pennsylvania, began dating in Pennsylvania in 2005, and married in Lycoming County, Pennsylvania on April 25, 2009 when both were approximately 20 years old. Plaintiff avers that Defendant "started to become verbally and physically abusive soon after the marriage commenced...." Plaintiff explained that the parties moved to South Carolina in June of 2011, where their daughters were born in 2013, 2016 and 2018. Plaintiff alleges that once in South Carolina "Defendant prohibited [her] from working or attending vocational school," and continued his consistently abusive behavior. Plaintiff agreed that she and

Defendant moved back to Pennsylvania in 2015 so Defendant could find work.⁷ Plaintiff recounted one occasion in 2016 when the parties were “driving to a family reunion held by [Plaintiff’s] family in Pennsylvania,” during which Defendant became enraged and held a gun to his head, threatening to kill himself, which put Plaintiff in fear for herself and her children who were in the back seat. Plaintiff alleges that the parties separated in January of 2021, and that Defendant initially “did not object or protest when [Plaintiff] asked if she could relocate with [their daughters] in July [of 2021].” At that time, Plaintiff and her daughters returned to Pennsylvania, but “[o]n August 11, 2021 Defendant called [Plaintiff] and threatened her if she did not return home with the girls he would have her arrested for kidnapping,” at which time she “returned to the marital home and both the divorce and custody proceedings were withdrawn.”

Plaintiff argues that Pennsylvania has personal jurisdiction over Defendant for essentially four reasons. First, she notes that 23 Pa. C.S. § 6103(b) provides that “[t]he right of the plaintiff to relief under this chapter shall not be affected by either... [t]he plaintiff’s leaving the residence or household to avoid further abuse [or] [t]he defendant’s absence from this Commonwealth or the defendant’s nonresidence in this Commonwealth, provided that the court has personal jurisdiction over the defendant....” Second, Plaintiff asserts that, as she and Defendant are married, Defendant has a marital interest in property she owns in Montgomery, Lycoming

⁷ The specific dates of Plaintiff’s and Defendant’s temporary return to living in Pennsylvania are discussed *infra*.

County, Pennsylvania, and thus under 42 Pa. C.S. § 5322(a)(5) the Court has personal jurisdiction over him by virtue of his “[h]aving an interest in, using, or possessing real property in this Commonwealth.” Third, Plaintiff argues that the “catch-all” provision of 42 Pa. C.S. § 5322(b) applies, and that Defendant has sufficient “minimum contact[s]” with Pennsylvania to constitutionally extend personal jurisdiction over him.⁸ Finally, Plaintiff asserts that although § 5322(a)(5) and (b) provide sufficient bases for personal jurisdiction, in the alternative § 5322(a)(4) also applies, because Defendant “[c]aus[ed] harm or tortious injury in this Commonwealth....”

Plaintiff argues that this case is distinguishable from *JT v. JJS*, a March 5, 2020 Opinion of the Honorable Joy McCoy of the Lycoming County Court of Common Pleas concerning personal jurisdiction in the PFA context.⁹ In *JT*, the plaintiff and the defendant resided together in Colorado from 2007 through September 2018, lived in the Virgin Islands from September 2018 to December 2018, and resided with the plaintiff’s family in Lycoming County from January 2019 to March 2019. From March 2019 to July 2019, they lived in Massachusetts with the defendant’s family, and from July 2019 to February 2020 they lived again in the Virgin Islands. In February 2020 the plaintiff left the Virgin Islands with her and the defendant’s minor child and

⁸ 42 Pa. C.S. § 5322(b) states that “the jurisdiction of the tribunals of this Commonwealth shall extend to all persons who are not within the scope of [42 Pa. C.S. § 5301],” which is not implicated here, “to the fullest extent allowed under the Constitution of the United States and may be based on the most minimum contact with this Commonwealth allowed under the Constitution of the United States.”

⁹ *JT v. JJS*, Lycoming County docket FC-20-20090.

returned to Lycoming County. The plaintiff's petition alleged abuse occurring solely in the Virgin Islands, and did not contain allegations of abuse occurring in Pennsylvania. The defendant testified that during the portions of three months he lived in Lycoming County, he worked and had a local bank account, but did not know if the account was still open; he testified that he had no other ties to Pennsylvania. On these facts, Judge McCoy held that Pennsylvania did not have personal jurisdiction over the defendant, because the plaintiff could not show that the defendant "availed himself [of Pennsylvania's] 'privileges and benefits' such that he should be subjected to its laws and regulations" or that "he could reasonably anticipate being hauled into Pennsylvania in light of the activities at issue."¹⁰

Plaintiff argues that Defendant's contacts with Pennsylvania are far greater than those of the defendant in *JT*, inasmuch as "Defendant lived in Pennsylvania for over 20... of his 33 years, in addition to purposely availing himself to the laws and regulations of Pennsylvania when deciding to marry [Plaintiff] within the Commonwealth." Plaintiff further contends that Pennsylvania "may be the only venue that would allow [Plaintiff]" the right to "substantial justice and fair play," because Defendant's employment as a police officer and relationship with the local government in Spartanburg County, South Carolina would "prevent[]" her from receiving a fair opportunity to present her side of this Petition."¹¹

¹⁰ The Court discusses legal standard for determining whether the constitutional requirements for personal jurisdiction are satisfied *infra*.

¹¹ Plaintiff avers that, prior to fleeing South Carolina for Pennsylvania, she sought help at a local domestic violence shelter but was informed by the shelter that "they could not assist her due to a conflict of interest."

C. Hearing

The Court held an evidentiary hearing limited to the issues raised in Defendant's preliminary objections on May 16, 2022. Plaintiff and counsel for both parties appeared in person, and Defendant appeared telephonically from South Carolina.

Defendant testified first, explaining that he grew up in Pennsylvania and lived there until late 2010 or early 2011 when he and Plaintiff left for South Carolina; since then, he stated, he and Plaintiff only lived in Pennsylvania for two months from November 2015 to January 2016. Defendant testified that other than the two months living in the Commonwealth, he only came to Pennsylvania on two occasions totaling four days from when he left until the commencement of this PFA action, with one of those visits being a two-day trip due to Plaintiff's father's emergency surgery and the other being a two-day trip for his grandfather's funeral. Defendant stated that this action is the only thing presently tying him to Pennsylvania.

Defendant explained that he initiated custody proceedings in South Carolina on or shortly prior to April 5, 2022, and that he obtained a court order from Spartanburg County Judge Moss granting him custody and ordering his and Plaintiff's children to attend school in South Carolina.

Defendant stated that he knew Plaintiff owned land in Pennsylvania, but he does not know exactly where it is and was never involved with the property. He did not know whether it had increased in value or whether he is entitled to any portion of

its value, and disclaimed an interest in the property. Defendant denied the allegations in the Petition and brief.

On cross-examination, Defendant noted that he and Plaintiff married on April 25, 2009 in Montgomery, Pennsylvania, after meeting in 2004 or 2005 as high school students and beginning to date not long after. Defendant clarified that he lived in Pennsylvania from birth until he and Plaintiff moved to South Carolina. Defendant testified that most of his extended family (much of it estranged) lives in Pennsylvania, though his mother and some other family live in South Carolina.

On questioning by the Court, Defendant explained that he and Plaintiff have three children, all born in South Carolina, and that Plaintiff and his children went together to live in Pennsylvania in late 2015 and returned to South Carolina together in early 2016. Defendant reiterated his statement that since then he had only returned to Pennsylvania and Lycoming County twice, with the first trip being for a funeral sometime in 2019 and the second for Plaintiff's father's surgery occurring in early March of 2021. Defendant stated that he has no recollection of driving from South Carolina with Plaintiff and their children to attend Plaintiff's family reunion as Plaintiff claims.

Defendant explained that he and Plaintiff separated in September or October 2021, with the divorce litigation in South Carolina beginning in late December 2021 or early January 2022. Defendant testified that after he and Plaintiff separated, she began making weekend trips with the children to Pennsylvania, but still resided in South Carolina until late March 2022. On limited re-direct, Defendant testified that

Plaintiff's trips to Pennsylvania disrupted the children's school schedule, causing many absences. He explained that after Plaintiff returned to Pennsylvania he asked her to return the children, and affirmed that he "absolutely [did] not" consent to the children residing in Pennsylvania or Plaintiff taking them from South Carolina.

Following Defendant's testimony, the Court took judicial notice of the Protection Order and Custody Order from Spartanburg County, South Carolina. At this time, Defendant rested.

Next, Plaintiff testified. She stated that her relationship with Defendant began on November 26, 2006, when she was 17 years old, and that they married on April 25, 2009. Plaintiff explained that she never lived outside of Pennsylvania until June 17, 2011 when she and Defendant moved to South Carolina. Plaintiff stated that prior to this move, Defendant had physically and emotionally abused her in Pennsylvania. When they moved to South Carolina, Plaintiff and Defendant first lived in Greer with Defendant's mother and father, before moving to Landrum, SC on October 21.

Plaintiff testified that prior to leaving South Carolina in March of 2022, she had left Defendant once before, returning to Pennsylvania on July 7, 2021.¹² Plaintiff testified that she and Defendant lived in Pennsylvania together from November 2016 to April 2017, rather than November 2015 to January 2016 as Defendant claimed,

¹² Plaintiff stated that, although she believed this was the date, it may have actually been July 7, 2020.

and that they moved to Pennsylvania because Defendant got a job at the federal prison in Allenwood, PA.¹³

Plaintiff testified that the family reunion occurred sometime in 2016. During that incident, she and Defendant drove from South Carolina to Pennsylvania with their children in the back seat, but after they entered Pennsylvania and shortly before reaching the location of the reunion they became lost. At this time, Plaintiff testified, Defendant put his service weapon to his head and threatened to kill himself, making Plaintiff very fearful for her own safety and that of her children in the car. Plaintiff testified that they did ultimately arrive at the reunion, stayed for four hours, and then returned to South Carolina. Since returning to living in South Carolina, Plaintiff testified, they returned to Pennsylvania together twice – once for Defendant’s grandfather’s funeral in May of 2019 and once for Plaintiff’s father’s surgery in March of 2021. Plaintiff testified that since first moving to South Carolina in 2011, she and Defendant had returned to Pennsylvania “many times” as a family for different holidays, and explained that Defendant would return occasionally to go bear hunting.

Plaintiff explained that she owns two parcels of land in Montgomery, acquiring them as a minor in 2000. She testified that as her and Defendant’s marriage

¹³ Plaintiff’s testimony regarding these dates was somewhat confused. She initially testified that she and Defendant lived in Pennsylvania from November 2017 to April 2018. She explained that after filing her brief, which agreed that she and Defendant lived in Pennsylvania from 2015 to 2016, she realized that date was incorrect because she became pregnant with her youngest child in May of 2018, and remembered that this pregnancy started very shortly after her and Defendant’s return to living in South Carolina. Ultimately, on re-cross examination, Plaintiff stated that her youngest child’s birthdate was February 12, 2018, which meant that Plaintiff became pregnant in May 2017 and refreshed her memory that she and Defendant lived in Pennsylvania from November 2016 to April 2017.

deteriorated, Defendant “threatened to take half of” the land during the divorce proceedings.

On cross-examination, Plaintiff explained that the property she owns is improved with a residence, and that her father lives at the property and has consistently made improvements to it. She stated that Defendant contributed to the property monetarily.

Plaintiff testified that she was scared of Defendant, and thus did not tell him prior to returning to Pennsylvania without him in July 2021 or March 2022. She explained that prior to her and Defendant moving to Pennsylvania in 2016, she had been attempting to return “for a while,” as she has no family in South Carolina. She stated that she had asked Defendant to return to Pennsylvania essentially since they first moved to South Carolina. Plaintiff testified that after their brief residence in Pennsylvania, they returned to South Carolina because Defendant did not like his prison job, wished to return to South Carolina, and got a job as a deputy in South Carolina.

Plaintiff clarified that the weapon Defendant possessed during the reunion incident was his duty weapon issued by his employer, and that the reunion was for Plaintiff’s side of the family.

In response to Court questioning, Plaintiff clarified that during the reunion incident Defendant pulled the gun in Pennsylvania. She stated that the return trips to Pennsylvania for holidays and hunting she previously described occurred almost

annually, and that she and Defendant hadn't returned only a few different years since they first moved to South Carolina.

Plaintiff explained that the property she owns was purchased with the proceeds of her inheritance she received following the death of her mother and sister when she was twelve years old. She testified that the two parcels comprising the property are adjacent and that her father lives on the only one of them with a house; Plaintiff explained that the other parcel previously had a residence that was demolished. Plaintiff clarified that she and her father lived at the property since Plaintiff obtained it, and that when she left the property she and her father agreed that rather than paying rent he would instead pay the taxes on the house and take care of it with upkeep, maintenance, repair and improvements. Plaintiff testified that Defendant never personally contributed money to the property directly, but that marital funds did take care of the property.

On redirect examination, Plaintiff testified that she enrolled her three children in the Montgomery School District, and that the different schedules of the two schools they attended meant that they had spring break in South Carolina, came to Pennsylvania, and immediately had spring break at Montgomery, which meant they were not in school for multiple weeks but had not missed scheduled days. At this point, Plaintiff rested.

Counsel for Defendant, Allison Grady, Esq., argued that the testimony and evidence presented was not sufficient to establish personal jurisdiction for many of the reasons discussed in Defendant's brief. She suggested that this case is very

similar to *JT v. JJS*, in that Defendant did not avail himself of the benefits of Pennsylvania and could not reasonably anticipate being haled into Court in Pennsylvania. Attorney Grady argued that inasmuch as Plaintiff unilaterally took the parties' children, who were South Carolina residents, to Pennsylvania, requiring Defendant to subject himself to jurisdiction in Pennsylvania to attempt to retrieve them would offend traditional notions of fair play and substantial justice. Finally, Attorney Grady averred that the property in Montgomery is non-marital, because there is no evidence that any equity was added during the marriage and the divorce proceedings are in South Carolina, which does not consider such property a marital asset and would not provide Defendant a claim to any portion of the property.

Counsel for Plaintiff, Stephanie Wolak-Fleming, Esq. argued that § 6103 of the PFA statute contemplates the exact situation present here, and evinces the intent of the PFA Act to not punish victims of abuse who flee their abusers by depriving them of their right to protection for any reason other than unconstitutionality. Attorney Wolak-Fleming noted that personal jurisdiction does not require a finding of substantial – or even any – abuse in Pennsylvania, but merely sufficient contacts of any sort. She argued that Defendant here has far greater contacts than the defendant in *JT*, and that any allegations of forum shopping or impropriety in Plaintiff's decision to return to – and file this action in – Pennsylvania are spurious, as Pennsylvania is the natural place she would return to given the presence of her family and her and Defendant's history of consistently returning to the state.

ANALYSIS

A. Legal Standard

In *Mendel v. Williams*, the Superior Court explained the process a court must apply when analyzing preliminary objections to personal jurisdiction:

“When deciding a motion to dismiss for lack of personal jurisdiction the court must consider the evidence in the light most favorable to the non-moving party.... Once the moving party supports its objections to personal jurisdiction, the burden of proving personal jurisdiction is upon the party asserting it. Courts must resolve the question of personal jurisdiction based on the circumstances of each particular case.

...

The extent to which jurisdiction is proscribed by the Due Process Clause [of the Fourteenth Amendment to the United States Constitution] is dependent upon the nature and quality of the defendant’s contacts with the forum state. Where a defendant has established no meaningful contacts, ties or relations with the forum, the Due Process Clause prohibits the exercise of personal jurisdiction. However, where a defendant has purposefully directed his activities at the residents of the forum, he is presumed to have fair warning that he may be called to suit there.

...

[I]f a defendant’s activities in Pennsylvania only give rise to jurisdiction under [42 Pa. C.S. § 5322], the plaintiff’s cause of action is limited to those activities which formed the basis of jurisdiction.... Whether specific jurisdiction is proper under the Due Process Clause requires a two-part analysis: first, the plaintiff must demonstrate that the defendant purposefully established minimum contacts with the forum state; and second, the maintenance of the suit must not offend traditional notions of fair play and substantial justice.

A defendant purposefully establishes minimum contacts with the forum state when its contacts are... such that the defendant could reasonably anticipate being called to defend itself in the forum.... Random, fortuitous, and attenuated contacts cannot reasonably notify a party that it may be called to defend itself in a foreign forum and, thus, cannot support the exercise of personal jurisdiction. That is, the defendant

must have purposefully directed its activities to the forum and conducted itself in a manner indicating that it has availed itself of the forum's privileges and benefits such that it should be subjected to the forum state's laws and regulations.

If the defendant has purposefully established minimum contacts in the forum State, these contacts must be considered on a case-by-case basis to determine whether they are such as to make it reasonable and fair to require him to conduct his defense in the state. Factors to be considered include (1) the burden on the defendant, (2) the forum state's interest in adjudicating the dispute, (3) the plaintiff's interest in obtaining convenient and effective relief, (4) the interstate judicial system's interest in obtaining the most efficient resolution of controversies and (5) the shared interest of the several states in furthering fundamental substantive social policies."¹⁴

As Judge McCoy noted in *JT*, the Superior Court recently addressed preliminary objections premised on lack of personal jurisdiction in *N.T. ex rel K.R.T. v. F.F.*¹⁵ In *N.T.*, N.T. and F.F. lived together in California with their minor child, but were not married.¹⁶ N.T. removed the three children to Pennsylvania without notice, and F.F. subsequently commenced paternity and custody proceedings in California.¹⁷ Over the next 18 months, N.T. resided in Pennsylvania but occasionally returned to California and encountered F.F. for purposes related to the custody proceedings.¹⁸

A year-and-a-half after moving to Pennsylvania, N.T. filed a PFA there, alleging multiple instances of abuse that took place in California.¹⁹ F.F. asserted a lack of personal jurisdiction, averring that he had never stepped foot in Pennsylvania

¹⁴ *Mendel v. Williams*, 53 A.3d 810, 821 (Pa. Super. 2012) (internal citations and quotes omitted).

¹⁵ *N.T. ex rel. K.R.T. v. F.F.*, 118 A.3d 1130 (Pa. Super. 2015).

¹⁶ *Id.* at 1132.

¹⁷ *Id.*

¹⁸ *Id.* at 1132-33.

¹⁹ *Id.* at 1133.

and that his sole connection to the state was service of papers related to the California custody matter on N.T. there.²⁰ N.T. responded by presenting evidence that F.F. hired a private investigator in Pennsylvania to determine her whereabouts.²¹ The trial court held that these were sufficient connections to establish personal jurisdiction.²²

The Superior Court reversed, holding that “not only is F.F.’s single contact with Pennsylvania tenuous, it also is not clear that it is related to N.T.’s PFA petition filed in Pennsylvania more than eight months after [contact between N.T. and F.F.] ceased.”²³ For that reason, the Court concluded that N.T. had “not met her burden to prove that F.F. has availed himself of Pennsylvania’s privileges and benefits such that he should be subjected to its laws and regulations... [n]or has she shown that he could reasonably anticipate being haled into court in Pennsylvania in light of the activities at issue here.”²⁴

B. Discussion

Here, Defendant has supported his preliminary objection premised on a lack of personal jurisdiction, and thus Plaintiff has the burden of proving that Pennsylvania has personal jurisdiction over Defendant. As the non-moving party, though, the Court will consider the evidence in the light most favorable to her.²⁵ Thus, the Court must

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at 1134.

²³ *Id.* at 1136.

²⁴ *Id.* (internal citations and quotes omitted).

²⁵ In practice, this means that if the question of personal jurisdiction turns in part on a disputed fact, the disagreement will be resolved in favor of Plaintiff. This principle is consistent with the common sense notion that Plaintiff should not be required to prove her

first determine whether Defendant purposefully established minimum contacts with the forum state.

The Court concludes that Defendant has done so in the following ways:

- Marrying Plaintiff in Pennsylvania;
- Returning to Pennsylvania temporarily but regularly for various reasons while a resident of South Carolina;
- Moving with Plaintiff to Pennsylvania and residing in this state for some number of months due to his obtaining employment in Pennsylvania; and
- Allegedly committing abuse in Pennsylvania.

The Court finds that these contacts are more significant than those in *N. T.* and *JT.* Further, unlike in those cases, Defendant's contacts with Pennsylvania are not merely reactions to Plaintiff's decision to come to Pennsylvania; rather, Defendant actively sought out these contacts. Defendant's relationship to Pennsylvania is not "[r]andom, attenuated or fortuitous," but instead reflects that Defendant "purposefully directed [his] activities to" Pennsylvania with some regularity.²⁶

case prior to the resolution of a threshold question such as jurisdiction. Of course, Plaintiff will still bear the burden of proving the disputed fact at the final adjudication of this matter.²⁶ The Court does not consider the fact that Defendant was raised and grew up in Pennsylvania to constitute a particularly relevant connection, especially in light of the fact that Defendant left the state not long after reaching the age of majority. Additionally, the Court does not believe that the testimony concerning Plaintiff's property in Montgomery establishes any property interest in Pennsylvania property. To the extent Defendant does possess a property interest, the Court finds that this interest does not reflect any purposeful effort by Defendant to enjoy the benefits of Pennsylvania, inasmuch as Defendant's interest in the property is entirely secondary to Plaintiff's interest which arose before the parties even met. Even so, the Court finds that Defendant purposefully established minimum contacts with Pennsylvania without considering these two factors.

Next, the Court must determine whether the maintenance of this action in Pennsylvania would offend traditional notions of fair play and substantial justice. The Court concludes that these notions are not offended by the maintenance of this action, and thus it may proceed. Inasmuch as Defendant married Plaintiff in Pennsylvania, moved to Pennsylvania within the last decade to pursue work and resided in Pennsylvania for at least two months, and allegedly committed acts of abuse in Pennsylvania, Defendant could reasonably anticipate being called to defend himself in Pennsylvania.

A review of the factors noted in *Mendel*, although not all supporting Plaintiff's position, confirms the Court's conclusion. As to the burden on Defendant, the Court acknowledges that Defendant has not resided in Pennsylvania for several years, and the physical distance between the states creates a non-trivial burden. Pennsylvania's interest in adjudicating allegations of abuse, however, is substantial, both generally and as specifically reflected in the PFA Act's provision that "[t]he defendant's absence from this Commonwealth or the defendant's nonresidence in this Commonwealth" will not affect the right of a PFA plaintiff to relief. This provision recognizes that the purpose of the PFA Act is not centered on punishing the abuser but on protecting the victim; inasmuch as Plaintiff is located in Pennsylvania and has reestablished residence here, Pennsylvania's interest in protecting her is not altered by Defendant's absence. Similarly, Plaintiff's interest in obtaining convenient and effective relief is well-served by the maintenance of this action in Pennsylvania. Whereas Defendant has family contacts in both South Carolina and Pennsylvania,

Plaintiff has family only in Pennsylvania. Although the Court believes that the South Carolina Court System is certainly capable of ameliorating any potential conflicts arising out of Defendant's employment as a police officer, the fact remains that dismissing these claims in Pennsylvania would require Plaintiff to choose between not seeking protection from her alleged abuser or seeking that protection in a state to which she has no particular connection and in which her alleged abuser resides. The Court recognizes that the maintenance of custody and divorce actions in South Carolina and this action in Pennsylvania will complicate efforts to obtain the "most efficient resolution" of the interstate controversies presented. The several states of the Union, however, share a substantial interest in the protection of the abused, and unwarranted hesitance of the courts to find personal jurisdiction in cases such as this even when a defendant has minimum contacts with a victim's home state could undermine that substantial interest by discouraging abuse victims to physically flee their abusers and return to places where they have a support system and a measure of security.

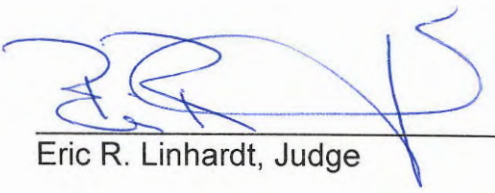
For all of these reasons, the Court has personal jurisdiction over Defendant pursuant to 42 Pa. C.S. § 5322(b), Pennsylvania's long-arm statute, as well as 42 Pa. C.S. § 5322(a)(4), granting jurisdiction over a defendant who causes harm or tortious injury in Pennsylvania.

ORDER

For the foregoing reasons, the Court finds that it has personal jurisdiction over Defendant in this matter. Therefore, Defendant's preliminary objection premised on a lack of personal jurisdiction is OVERRULED and his Motion to Dismiss on the same grounds is DISMISSED.

IT IS SO ORDERED this 23rd day of June 2022.

By the Court,



Eric R. Linhardt, Judge

ERL/jcr

cc: Stephanie Wolak-Fleming, Esq.
Allison Grady, Esq.
Gary Weber, Esq. (Lycoming Reporter)