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A Novel and Important Question – Personal Jurisdiction in Colorado: Nonresident Corporations Versus Individuals

In a unanimous decision on May 6, 2024, a case that the Colorado Supreme Court described as "providing guidance" and presenting an important and novel question concerning how the concept of general personal jurisdiction applies to individuals in Colorado, the court drew a bright line between "general jurisdiction over nonresident corporations and individuals" in *In re the Marriage of Green*.

Background Facts

In 1982, Barbara and Jeffry Howard Green were married in Connecticut. In 2018, Mrs. Green moved to Colorado to assist their youngest daughter during her pregnancy. Mr. Green continued to reside in Nebraska.

The Greens purchased two houses in Denver – one for themselves (House A), and one for their daughter and her husband (House B). Mr. Green continued to list House B as an asset on his personal financial statements.

The Greens also own a third house in the Denver area (House C), purchased in 2015, which has served as an investment property and an occasional home for their children.

In 2021, Mr. Green took out a loan that was secured by a mortgage on House A. On the loan application, Mr. Green stated that his home in Nebraska was his former residence, and that House A was his primary residence. Mr. Green also indicated on the loan application that he was self-employed and listed House A as his address of employment.

Critically, though, in spite of these representations, Mr. Green continued to reside in Nebraska and never moved to Colorado.

Original Jurisdiction in the Colorado Supreme Court

The trial court found that Mr. Green "engages in the requisite minimum contacts" to be subject to general personal jurisdiction here. The trial court's decision relied heavily on Mr. Green's assertion that House A was his primary residence when he applied for a loan to acquire property in the state, a representation he made to secure more favorable terms.

The trial court concluded that Mr. Green's continuing financial obligations in Colorado meant that he could reasonably anticipate being "hauled into court" in Colorado, and thus it denied his motion to dismiss.

The Supreme Court accepted Mr. Green's petition for the court to exercise original jurisdiction under C.A.R. 21, thus bypassing the Court of Appeals. The Supreme Court issued a rule to show cause why the trial court had not erred in denying Mr. Green's motion to dismiss.

Recognizing it is an extraordinary remedy resting in its sole discretion, and relying on its decision in *Keefe v. Kirschenbaum & Kirschenbaum, P.C.*[1], the Supreme Court elected to hear the challenge by Mr. Green to personal jurisdiction. The court's concern was focused on out-of-state parties (individuals not entities) because the challenge here raises the question of whether it is unfair to force such a party to defend here at all.

Colorado's Long-Arm Statute (§ 13-1-124, C.R.S. (2023))

Citing *Shaffer v. Heitner*[2], the Supreme Court began by outlining the breadth (and as importantly, the limits) of the long-arm statute stating that "to ensure consistency with due process, the court applies the 'minimum contacts' test set forth in *International Shoe Co. v. Washington*[3]."

On that issue, the state Supreme Court whole-heartedly agreed with the trial court that Colorado may exercise personal jurisdiction if nonresident defendants have

"certain minimum contacts . . . such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'"[4]

Noting that the instant case solely addresses the exercise of general personal jurisdiction over an individual, the court stated that general personal jurisdiction (often called all-purpose jurisdiction) allows a court to exercise jurisdiction over a defendant for any claim or cause of action arising from any of a defendant's activities, even if they didn't occur in the forum state. Nevertheless, only a limited set of affiliations with a forum will render a defendant amenable to all-purpose jurisdiction in a particular forum.

Non-resident Corporations Versus Individuals: A Unique Question – Domicile Controls

Citing *Goodyear Dunlop Tires Operations, S.A. v. Brown*[5], holding that the paradigmatic forum for corporate defendants is where the corporation is "fairly regarded as at home," the Supreme Court began by noting that a Colorado court may exercise general personal jurisdiction over a nonresident corporate defendant where the corporation is at home. The purpose of that interpretation effectively guarantees that there is at least one forum to file any suit against a corporation. Moreover, states may exercise general personal jurisdiction over nonresident corporations which have contacts that are so continuous and systematic as to render them essentially at home in the forum state.[6]

And further, this standard is applied strictly. The court acknowledged that a nonresident corporate defendant's contacts rarely justify the exercise of general jurisdiction.

Stating that it had never directly addressed the question and citing *Daimler*[7] and *Magill v. Ford Motor Co.*[8], the court referred to the facts in Green as unique. The case addressed the exercise of general personal jurisdiction over an individual.

Again citing U.S. Supreme Court precedent, the Colorado court recognizes that the inquiry for general personal jurisdiction over an individual begins and ends with domicile.[9]

Rejecting Mrs. Greens arguments, the court embraces the *Goodyear* analysis stating:

> for a court to exercise general personal jurisdiction over an individual, the individual must be domiciled within the state. We decline to apply the *Magill* framework for corporations to individuals, preferring to keep them on separate jurisdictional playing fields.

Chief Justice Boatright continues:

> [B]ecause domicile is both direct and easily ascertainable, using it as a jurisdictional touchstone provides clarity for litigants, empowers courts to compel appearances and enforce judgments, and strengthens the reciprocal relationship between citizens and states. … Consequently, for a Colorado court to exert general personal jurisdiction over an individual, the individual must be domiciled here, full stop.

Applying the Law to the Facts

The court held that the trial court lacks general personal jurisdiction over Mr. Green because he is not domiciled in the state. It stated, "In Colorado, domicile is the place one actually resides and intends to remain permanently or for an indefinite amount of time."

> In this case, both parties agree that Mr. Green has remained a Nebraska resident and has never resided in Colorado. Even though Mr. Green owns several houses in the state, real estate ownership doesn't automatically equate to domicile, so financial obligations related to Houses A, B, and C do not mean that Mr. Green is domiciled here. And while we certainly do not condone Mr. Green's misrepresentation of his domicile to secure a favorable loan, this act alone does not make him a resident of the state of Colorado. Accordingly, Mr. Green is not domiciled here, and thus is not subject to general personal jurisdiction in Colorado.

Four Avenues to Jurisdiction – The Court's Guidance

Not wanting to leave the parties (or Colorado lawyers) in a lurch, and again citing *Mallory v. Norfolk S. Ry. Co.*[10], (discussing the various personal jurisdiction avenues available to courts), the court emphasized that there are four ways for a court to exercise personal jurisdiction over parties:

(1) General jurisdiction;

(2) Specific jurisdiction;

(3) When service of process occurs within the boundaries of the forum state (often called "tag" jurisdiction); and

(4) When a party consents to the jurisdiction of the court.

The court concluded: "If general jurisdiction is not available, courts may still be able to hear a dissolution of marriage proceeding through other jurisdictional tools."

This post was drafted by John L. Watson, an attorney in the Denver, Colorado office of Spencer Fane LLP. For more information, visit www.spencerfane.com

1 40 P.3d 1267, 1270 (Colo. 2002)

2 433 U.S. 186, 207 (1977)

3 326 U.S. 310, 316 (1945)

4 Int'l Shoe, 326 U.S. at 316 (quoting Milliken v. Meyer, 311 U.S. 457, 463 (1940))

5 564 U.S. 915, 924 (2011)

6 Goodyear, 564 U.S. at 919

7 571 U.S. at 132–33

8 2016 CO 57, 379 P.3d 1033 at 1037

9 Goodyear, 564 U.S. at 924 ("[f]or an individual, the paradigm forum for the exercise of general jurisdiction is the individual's domicile")

10 600 U.S. 122, 128–40 (2023)

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