St. John's Law Review

Volume 50, Summer 1976, Number 4 Article 9

CPLR 302(b): Matrimonial Domicile Basis of Jurisdiction Strictly Construed

St. John's Law Review

ported statement that the absence of cross-claims from the language of CPLR 203(c) was a result of "legislative oversight,"[48] is weak support for such a significant modification of the statute. Moreover, rather than avoiding a multiplicity of suits, the extension of CPLR 203(c) actually will increase the burden on the court system by permitting a new class of time-barred claims to be revived in extended trials.

ARTICLE 3 — JURISDICTION AND SERVICE, APPEARANCE AND CHOICE OF COURT

CPLR 302(b): Matrimonial domicile basis of jurisdiction strictly construed.

CPLR 302(b) allows a court, in certain circumstances, to exercise personal jurisdiction over a nonresident or nondomiciliary defendant in an action brought by a New York domiciliary or resident seeking support or alimony.[49] One situation in which the exercise of personal jurisdiction is permitted by the statute is where New York was "the matrimonial domicile of the parties before their

---

asserted? What if the first cross-claim *is* time barred, and yet relates to the events under consideration in the main action? Although *Seligson* involves a major change in New York procedural law, the court apparently gave no consideration to these and similar problems.

[48] 50 App. Div. 2d at 210, 376 N.Y.S.2d at 904.

[49] CPLR 302(b) provides:

> A court in any matrimonial action or family court proceeding involving a demand for support or alimony may exercise personal jurisdiction over the respondent or defendant notwithstanding the fact that he or she is no longer a resident or domiciliary of this state, or over his or her executor or administrator, if the party seeking support is a resident of or domiciled in this state at the time such demand is made, provided that this state was the matrimonial domicile of the parties before their separation, or the defendant abandoned the plaintiff in this state, or the obligation to pay support or alimony or alimony [*sic*] accrued under the laws of this state or under an agreement executed in this state.

The statute was enacted by the legislature in 1974. Ch. 859, § 1, [1974] N.Y. Laws 1339 (McKinney). Such an amendment to New York's long-arm statute became increasingly necessary as a result of the Supreme Court's decision in Williams v. North Carolina, 317 U.S. 287 (1942), wherein the Court held that an ex parte divorce is entitled to full faith and credit if one spouse is domiciled in the divorce forum. *Williams* thus enabled one spouse to abandon the other by moving out of state, establish domicile in a state with liberal divorce laws in order to obtain an ex parte divorce, while at the same time remaining immune from any claim for support, such demand being considered an action in personam requiring personal jurisdiction over the nonresident defendant. *See* Renaudin v. Renaudin, 37 App. Div. 2d 183, 323 N.Y.S.2d 145 (1st Dep't 1971). In most cases, attempts to acquire personal jurisdiction over nonresident defendant-spouses by use of the traditional long-arm statute, CPLR 302(a), have been unsuccessful. *See, e.g.*, Whitaker v. Whitaker, 32 App. Div. 2d 595, 299 N.Y.S.2d 482 (3d Dep't 1969); Kochenthal v. Kochenthal, 28 App. Div. 2d 117, 282 N.Y.S.2d 36 (2d Dep't 1967); Baum v. Baum, 62 Misc. 2d 305, 307 N.Y.S.2d 305 (Sup. Ct. Queens County 1970); Inkelas v. Inkelas, 58 Misc. 2d 340, 295 N.Y.S.2d 350 (Sup. Ct. Bronx County 1968). New York has enacted the Uniform Support of Dependents Law, DRL §§ 30 *et seq.*, under which a New York petitioner may bring a proceeding to compel support from a respondent residing in a state having substantially similar or reciprocal laws. The Uniform Law, however, is inapplicable to ex-spouses.

separation."[50] In *Lieb v. Lieb*,[51] the Appellate Division, Second Department, strictly construed this language, holding that the provision permits personal jurisdiction only where New York was the matrimonial domicile "either *shortly before* or at the moment just *prior* to their separation."[52]

Plaintiff-wife, a New York resident, brought suit against her husband for, among other things, support.[53] Married in New York, the parties resided there for 14 years before moving to Virginia, where they lived for 12 years. In 1969, plaintiff, after being abandoned by the defendant in Virginia, returned to New York and subsequently commenced the instant action for support. Defendant, who was served via registered mail at his current residence in Nice, France, moved for dismissal, alleging that the court lacked in personam jurisdiction. The motion was granted by the Supreme Court, Queens County,[54] and plaintiff-wife appealed.

Plaintiff contended that the jurisdictional requirements of CPLR 302(b) were satisfied, inasmuch as New York had been the matrimonial domicile of the parties at one time during the marriage. The appellate division was thus called upon to determine whether the legislature intended that the parties must live in New York at or shortly before the time of separation, or if maintenance of a New York domicile at any time during the marriage would be sufficient to invoke long-arm jurisdiction.[55] Concluding that CPLR 302(b) requires that New York have been the matrimonial domicile of the parties within the near past, if not immediately prior to the separation, the court affirmed the dismissal for lack of personal jurisdiction.[56] In the opinion of the court, "[i]t would be wholly contrary to the limited nature of the three alternative grounds for personal jurisdiction established under [CPLR 302(b)]"[57] if another result had been reached. The appellate division was convinced that

---

[50] CPLR 302(b).

[51] 53 App. Div. 2d 67, 385 N.Y.S.2d 569 (2d Dep't 1976).

[52] *Id.* at 69, 385 N.Y.S.2d at 571 (emphasis in original).

[53] The plaintiff also sought to attach defendant husband's Civil Service and United States Army pension and annuities, and to recover counsel fees. *Id.* at 68, 385 N.Y.S.2d at 570.

[54] 86 Misc. 2d 75, 381 N.Y.S.2d 757 (Sup. Ct. Queens County 1976).

[55] The ambiguity of the phrase "matrimonial domicile of the parties before their separation" was one of the problems anticipated by Dean McLaughlin in his commentary to the CPLR after enactment of § 302(b). *See* 7B McKINNEY'S CPLR 302, commentary at 17 (Supp. 1975). *See also* 1 WK&M ¶ 302.19, at 3-137.

[56] 53 App. Div. 2d at 75, 385 N.Y.S.2d at 574.

[57] *Id.* at 70, 385 N.Y.S.2d at 571. The three alternative grounds for the exercise of personal jurisdiction under CPLR 302(b) include abandonment within the State; an obligation to pay support or alimony arising under New York law; or, an obligation to support or pay alimony arising under an agreement executed in New York. *See* note 49 *supra*.

the language of CPLR 302(b) indicated no legislative intent to allow in personam jurisdiction over a nonresident defendant-spouse merely because the parties' matrimonial domicile was in New York at some point during the marriage. After examining the long-arm matrimonial action statutes enacted in several other states,[58] the court concluded that although the statutes examined were dissimilar in language to CPLR 302(b),[59] none were broad enough to invoke personal jurisdiction in a case with facts similar to *Lieb*. Based on all these considerations, the court felt obliged to strictly construe the language "before their separation."[60]

In its narrow approach to the phrase in issue, the *Lieb* court seems to have overlooked the intent surrounding the enactment of CPLR 302(b), *i.e.*, to make it more difficult for a spouse to flee from marital responsibilities. The court failed to consider the State's interest in keeping abandoned spouses off the welfare rolls.[61] Moreover, the appellate division's ruling may result in somewhat inconsistent applications of the provisions of CPLR 302(b). It should be noted that mere abandonment within the State constitutes a sufficient fundamental contact upon which to predicate jurisdiction.[62] Thus, a spouse who establishes a New York

---

[58] Interestingly, the court indicated that only five other states have passed statutes exclusively designed to confer long-arm jurisdiction in matrimonial actions. In actuality, some 10 states, aside from New York, have similar provisions. *See* IDAHO CODE § 5-514(e) (Supp. 1975); ILL. ANN. STAT. ch. 110, § 17(1)(e) (Smith-Hurd 1968); KAN. STAT. ANN. § 60-308(b)(8) (1964); NEV. REV. STAT. § 14.065(2)(e) (1973); N.M. STAT. ANN. § 21-3-16(A)(5) (Supp. 1975); OHIO REV. CODE ANN. § 4.3(A)(8) (Baldwin 1971); OKLA. STAT. ANN. tit. 12, § 1701.03(a)(7) (Supp. 1975); UTAH CODE ANN. § 78-27-24(6) (Supp. 1975); WIS. STAT. ANN. § 247.057 (Supp. 1975); IND. TRIAL R. 4.4(A)(7). For a discussion of the trend towards the enactment of legislation of this type, see Note, *Long-Arm Jurisdiction in Alimony and Custody Cases*, 73 COLUM. L. REV. 289 (1973).

[59] 53 App. Div. 2d at 72-75, 385 N.Y.S.2d at 572-74.

[60] *Id.* It would appear that Dean McLaughlin would disagree with the *Lieb* decision. In his commentary to the CPLR, he noted that there might be some problem in interpreting the phrase in issue in *Lieb*. He gave an example to illustrate his point which contained facts somewhat analogous to those in *Lieb*, except that the parties in Dean McLaughlin's fact pattern were not even married in New York. Nonetheless, he felt that "[a] literal reading of the statute would support the conclusion that the wife could obtain alimony in a New York divorce action," and indicated that he would "be comfortable with this result." Dean McLaughlin correctly predicted, however, that the courts would not be likely to agree with him immediately. 7B MCKINNEY'S CPLR 302, commentary at 17 (Supp. 1975).

[61] It has been asserted by Dean McLaughlin that the plaintiff's residence in New York in conjunction with the State's interest in seeing the plaintiff adequately supported should alone be enough to satisfy the minimum contacts test used to determine the constitutionality of a long-arm enactment such as CPLR 302(b). 7B MCKINNEY'S CPLR 302, commentary at 16, 17 (Supp. 1975). *See* 1 WK&M ¶ 302.19, at 3-137.

[62] *See* note 49 *supra*. In *Lieb*, the supreme court felt that abandonment in New York established a "very fundamental contact" with the State. 86 Misc. 2d at 78, 381 N.Y.S.2d at 760. However, it has been questioned whether abandonment actually does afford sufficient minimum contacts with the State to justify the exercise of in personam jurisdiction. *See* 1 WK&M ¶ 302.19, at 3-138.

residence after being abandoned during a temporary sojourn in New York seemingly can successfully sue for support and invoke in personam jurisdiction pursuant to CPLR 302(b). In contrast, a party who was married in New York and resided here for several years before establishing a matrimonial domicile elsewhere cannot, without more, obtain personal jurisdiction in this State under the statute.

A suggested solution to this anomalous situation is judicial or legislative construction of a formula, based on the length of time the parties maintained their matrimonial domicile in New York, to decide whether sufficient fundamental contacts with this State exist to justify the exercise of personal jurisdiction over nonresident defendants. In the absence of such a formula, decisions based on the *Lieb* interpretation may serve to promote injustice rather than prevent it.

ARTICLE 32 — ACCELERATED JUDGMENT

CPLR 3218(d): Execution of confession of judgment by an agent held to be binding against personal assets of indebted partners.

CPLR 3218(d) permits one or more joint debtors to confess judgment on a joint debt.[63] Although such a judgment may be entered and enforced solely against the personal assets of the confessing debtor,[64] execution of a judgment against less than all

---

[63] CPLR 3218(d) provides:

> One or more joint debtors may confess a judgment for a joint debt due or to become due. Where all the joint debtors do not unite in the confession, the judgment shall be entered and enforced against only those who confessed it and it is not a bar to an action against the other joint debtors upon the same demand.

CPLR 3218 permits a debtor to confess judgment for a present or future monetary debt. Such confessions have two primary purposes: First, they act as a "short cut to judgment where the defendant concedes liability," and wishes to avoid the time and expense of a civil action, 7B McKINNEY's CPLR 3218, commentary at 1036 (1970); and, second, they serve as a security device for the protection of creditors' claims, even before a debt is due. *See id.*; 10 CARMODY-WAIT 2d § 68:1, at 214-15 (1966); 4 WK&M ¶ 3218.01. If the entire debt is not due at the time of confession, the judgment is enforceable against only that portion of the obligation which has matured. The judgment, however, remains in effect and acts as security for the monies due subsequent to the initial entry and execution of the judgment. CPLR 3218(c); *see* 7B McKINNEY's CPLR 3218, commentary at 1036 (1970).

Procedurally, to confess judgment, the debtor must execute an affidavit stating the amount due, authorizing the entry of judgment, and describing the factual situation in which the debt arose. CPLR 3218(a)(1)-(2). The affidavit must also state "the county where the [defendant-debtor] resides, or if he is a nonresident, the county in which entry [of judgment] is authorized." CPLR 3218(a)(1). Once the affidavit is executed, the creditor has 3 years to enter judgment. The 3-year period may, however, be shortened by the death of the defendant-debtor. CPLR 3218(b). For a detailed discussion of the confession of judgment procedure, see 7B McKINNEY's CPLR 3218, commentary at 1039-45 (1970).

[64] *See, e.g.*, Schenson v. I. Shainin & Co., 243 App. Div. 638, 276 N.Y.S. 881 (2d Dep't) (per curiam), *aff'd mem.*, 268 N.Y. 567, 198 N.E. 407 (1935) (judgment against nonexecuting