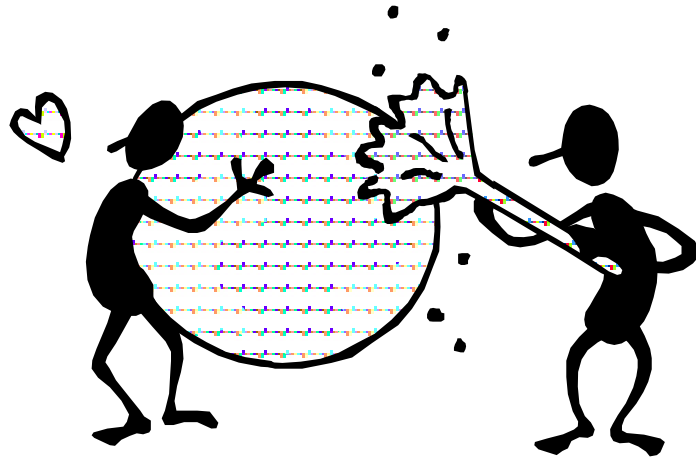


AROUND THE WORLD



JURISDICTION AND SERVICE

Dalma C. Grandjean
Altick & Corwin, L.P.A.
One South Main Street
Suite 1700
Dayton, Ohio 45402
(937) 223-1201
www.altickcorwin.com
grandjed@altickcorwin.com

WHAT'S WRONG WITH THIS PICTURE?

“In her decision of November 15, 2002, the magistrate stated, "Wife was served by certified international mail on September 17, 2002 [in Germany]. The parties have not lived in a marital relationship in the state of Ohio and this court has no personal jurisdiction over wife." The magistrate's decision set forth the duration of the marriage, distributed real and personal property, and addressed the issues of spousal support and Russell Collins's military pension. The trial court adopted the magistrate's decision on January 17, 2003. A decree of divorce was entered February 4, 2003. The decree stated that Russell Collins was an Ohio resident and that "service of process [on Brigitte Collins] was made according to law or waived."



The first step that the Magistrate should have taken is to determine whether there is subject-matter jurisdiction; i.e., was the Plaintiff domiciled in Ohio; or stated otherwise: did the court have jurisdiction over the *res* (the thing), which is the marriage?

R.C. §3105.03 provides that “the plaintiff in actions for divorce and annulment shall have been a resident of the state at least six months immediately before filing the complaint.”

The Second District Court of Appeals did a thoughtful analysis of R.C. §3105.03’s jurisdictional prerequisites in *Hager v. Hager* (1992), 79 Ohio App. 3d 239. In that case, Plaintiff Joseph Hager filed his Complaint for Divorce, and Defendant Marjean Hager moved to dismiss it for lack of jurisdiction. Mrs. Hager alleged that Mr. Hager did not meet the jurisdictional prerequisites set forth in R.C. §3105.03 because, until the month prior to the filing of his divorce action, he (1) maintained Florida as his state of residence for military purposes; (2) maintained a Florida drivers license; and (3) voted in Florida.

The trial court ruled that Mr. Hager met the jurisdictional requirements to convey subject matter jurisdiction to the Court, and the Court of Appeals affirmed that decision. The appellate court explained that the word “residence”, as set forth in R.C. §3105.03, means “domiciliary residence”, which has two components: (1) an actual residence in the jurisdiction, and (2) an intention to make the state of jurisdiction a permanent home. *Citing Coleman v. Coleman* (1972), 32 Ohio St. 2d 155 at 162 and *Spires v Spires* (1966), 7 Ohio Misc. 197. Further, the Plaintiff in an original action has the burden to show he is actually domiciled in this state. *Citing Redrow v. Redrow* (1952), 94 Ohio App. 38.

In support of his assertion that he was domiciled in Ohio, Mr. Hager testified that he had acquired a residence in Beavercreek, Ohio; he was engaged to be married; and he had already explored civilian job opportunities in the area, as he expected to be retiring from the military shortly after his divorce. The trial court concluded, and the appellate court agreed, that Mr. Hager established the two components necessary to show that the Greene County Domestic Relations Court had jurisdiction: he physically resided in Ohio and was domiciled here.

In *Coleman v. Coleman* (1972), 32 Ohio St. 2d 155, the Ohio Supreme Court noted that a person’s intention to make a place his permanent home is largely a subjective determination, because the intention is typically known only by the individual. However, in *Winnard v. Winnard* (1939), 62 Ohio App 351, the Tenth District Court of Appeals explained that “[t]he matter of residence is so essentially one of intent that one is permitted to determine where his residence is and it will be so accepted unless the facts and circumstances are so persuasive as that his avowed purpose cannot be accepted as true.” *Id at 354.*

« EXTERNAL EVIDENCE OF STATE OF MIND NEEDED TO ESTABLISH DOMICILE»

- STATE WHERE DRIVERS LICENSE IS ISSUED
 - STATE WHERE VEHICLE(S) ARE REGISTERED
 - STATE WHERE PARTY IS REGISTERED TO VOTE
 - STATE SHOWN ON ADDRESS LISTED ON IRS FORM 1040
 - STATE WHERE STATE INCOME TAXES ARE FILED
 - STATE WHERE LOCAL INCOME TAXES ARE FILED
 - STATE WHERE OTHER STATE-RELATED TAXES ARE FILED
 - STATE WHERE RESIDENTIAL REAL ESTATE IS OWNED
 - STATE WHERE OTHER REAL ESTATE IS OWNED
 - STATE LISTED ON SERVICE MEMBER'S DD FORM 2048 AS STATE OF LEGAL RESIDENCE (SLR)
 - SERVICE MEMBER'S SUBMISSION OF DD FORM 2058 (CHANGE OF DOMICILE FORM)
 - SERVICE MEMBER'S HOME OF RECORD (HOH)
 - STATE WHERE FINANCIAL ACCOUNTS ARE LOCATED
 - STATE WHERE SAFETY DEPOSIT BOX IS LOCATED
 - STATE WHERE CHILDREN ATTEND SCHOOL
 - STATE IN WHICH CHILDREN ARE ELIGIBLE FOR IN-STATE TUITION RATES
 - STATE DECLARED AS RESIDENCE ON LEGAL DOCUMENTS SUCH AS WILLS, DEEDS, MORTGAGES, LEASES, CONTRACTS, INSURANCE POLICIES, AND HOSPITAL RECORDS
 - STATE DECLARED TO BE DOMICILE IN AFFIDAVITS OR LITIGATION
 - STATE WHERE BURIAL PLOT IS OWNED
 - ANY OTHER FACTOR WHICH TENDS TO SUBSTANTIATE AN INTENTION TO LIVE IN A PARTICULAR STATE AS ONE'S PERMANENT HOME EVEN IF ONE IS TEMPORARILY ABSENT
- ☞ NOTE THAT THE SERVICEMEMBERS CIVIL RELIEF ACT (SCRA) PROTECTS MILITARY PAY FROM BEING TAXED BY ANY STATE OTHER THAN THE MILITARY MEMBER'S STATE OF DOMICILE.
- ☞ NOTE ALSO THAT SCRA PROVIDES THAT A SERVICE MEMBER'S DOMICILE DOES NOT CHANGE MERELY BY VIRTUE OF AN ASSIGNMENT TO A DUTY STATION IN ANOTHER STATE OR COUNTRY
- ☞ A SERVICEMEMBER MAY ENTER THE SERVICE WITH OHIO AS HIS HOME OF RECORD AND MAINTAIN IT AS HIS/HER DOMICILE THROUGHOUT HIS/HER ENTIRE CAREER WITHOUT EVER RETURNING TO IT SO LONG AS S/HE INTEND TO RETAIN IT AS HIS/HER PERMANENT HOME AND IT REMAINS THE PLACE TO WHICH S/HE INTENDS TO RETURN

👍 BASED ON THE ABOVE FACTORS, THE COURT HAS JURISDICTION OVER THE DIVORCE BECAUSE MR. COLLINS HAD BEEN DOMICILED IN OHIO FOR AT LEAST THE REQUISITE SIX MONTHS

2307.382 Personal jurisdiction.

(A) A court may exercise personal jurisdiction over a person who acts directly or by an agent, as to a cause of action arising from the person's:

- (1) Transacting any business in this state;
- (2) Contracting to supply services or goods in this state;
- (3) Causing tortious injury by an act or omission in this state;

(4) Causing tortious injury in this state by an act or omission outside this state if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this state;

(5) Causing injury in this state to any person by breach of warranty expressly or impliedly made in the sale of goods outside this state when he might reasonably have expected such person to use, consume, or be affected by the goods in this state, provided that he also regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this state;

(6) Causing tortious injury in this state to any person by an act outside this state committed with the purpose of injuring persons, when he might reasonably have expected that some person would be injured thereby in this state;

(7) Causing tortious injury to any person by a criminal act, any element of which takes place in this state, which he commits or in the commission of which he is guilty of complicity.

(8) Having an interest in, using, or possessing real property in this state;

(9) Contracting to insure any person, property, or risk located within this state at the time of contracting.

(B) For purposes of this section, a person who enters into an agreement, as a principal, with a sales representative for the solicitation of orders in this state is transacting business in this state. As used in this division, "principal" and "sales representative" have the same meanings as in section 1335.11 of the Revised Code.

(C) When jurisdiction over a person is based solely upon this section, only a cause of action arising from acts enumerated in this section may be asserted against him.



The second step in our analysis is to determine whether there the defendant had “minimum contacts” with the State of Ohio such that the court could exercise in personam jurisdiction over the defendant.

Ohio's long-arm statute, R.C. 2307.382, and the applicable Rule of Civil Procedure, Civ.R. 4.3(A), need to be examined to determine whether they confer personal jurisdiction over the Defendant. and, if so, (2) whether granting jurisdiction under the statute and rule would deprive the nonresident defendant of the right to due process of law under the Fourteenth Amendment to the United States Constitution." *State ex rel. Toma v. Corrigan* (2001), [92 Ohio St.3d 589](#), 592.

As stated by the Tenth District Court of Appeals in *Kvinta v. Kvinta*, 2003 Ohio 2884, 2003 Ohio App. LEXIS 2618:

“Personal jurisdiction over a defendant is premised on that person's minimum contacts with the forum state "such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.' " [International Shoe Co. v. Washington](#) (1945), 326 U.S. 310, 316, 66 S. Ct. 154, 158, 90 L. Ed. 95, quoting [Milliken v. Meyer](#) (1940), 311 U.S. 457, 463, 61 S. Ct. 339, 343, 85 L. Ed. 278. " The unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State.... It is essential in each case that there be some act by which the defendant purposely avails himself of the privilege of conducting activities within the forum State....' " [Kulko v. California Superior Court](#) (1978), 436 U.S. 84, 93-94, 98 S. Ct. 1690, 1698, 56 L. Ed. 2d 132, quoting [Hanson v. Denckla](#) (1958), 357 U.S. 235, 253, 78 S. Ct. 1228, 1240, 2 L. Ed. 2d 1283.

[R.C. 2307.382](#), Ohio's long-arm statute, authorizes the exercise of personal jurisdiction over nonresident defendants. Civ.R. 4.3 provides for service and determines the "minimum contacts" necessary to effectuate that jurisdiction. *Kvinta I*, citing [Kentucky Oaks Mall Co. v. Mitchell's Formal Wear, Inc.](#) (1990), 53 Ohio St.3d 73, 75, 559 N.E.2d 477. Civ.R. 4.3(A)(8) states, in pertinent part:

"Service of process may be made outside of this state... in any action in this

state, upon a person who, at the time of service of process, is a nonresident of this state or is a resident of this state who is absent from this state. 'Person' includes an individual... who... has caused an event to occur out of which the claim that is the subject of the complaint arose, from the person's:

....

"Living in the marital relationship within this state notwithstanding subsequent departure from this state, as to all obligations arising for spousal support, custody, child support, or property settlement, if the other party to the marital relationship continues to reside in this state[.]"

In determining the propriety of personal jurisdiction based on Civ.R. 4.3(A)(8), the dispositive issue is "whether the nonresident defendant lived in a marital relationship within the state to an extent sufficient to satisfy the minimum-contacts requirement of constitutional due process." [Fraiberg at 377-378](#). The trial court's determination whether personal jurisdiction exists over a party is a question of law that we review de novo. [Robinson v. Koch Refining Co. \(June 17, 1999\), Franklin App. No. 98AP-900, 1999 Ohio App. LEXIS 2682](#)...

In 1991 or 1992, plaintiff and the minor children moved to Ohio, where defendant purchased a home in Mansfield for plaintiff and the children to live in and sent them money for living expenses. As they had in other places they lived, plaintiff and defendant joined a parish in Mansfield and attended some dinners, events and services together. Plaintiff testified defendant "visited" plaintiff and the children in Ohio during "vacations," usually twice a year for about a month each time, but he always returned to Kuwait where he worked and maintained a separate residence until plaintiff filed her complaint for legal separation. According to plaintiff, during visits to Ohio, defendant attended his son's baseball games, bought suits in Cincinnati, visited a doctor in Cleveland and a dentist in Columbus, and had intimate relations with plaintiff until she filed for legal separation in 1995. Plaintiff and defendant filed separate tax returns, with plaintiff filing as "single" and defendant filing as "head of household." Defendant received some mail at the Mansfield residence, but it was primarily "junk" mail.

Based upon the evidence, personal jurisdiction of defendant under Civ.R. 4.3(A)(8) has not been established. As the trial court properly concluded, while "defendant has been to Ohio only for visits since plaintiff's move here in 1992, he has not established residence in Ohio nor has he 'lived in the marital relationship' in Ohio sufficient to establish 'minimum contacts' necessary to establish jurisdiction over the person of defendant."

[Kvinta v. Kvinta, 2003 Ohio 2884, P76-P77 \(Ohio Ct. App. 2003\)](#)

👍 The court was correct in finding that there was no jurisdiction over the person of Brigitte Collins because the minimum contacts standard of Ohio Long Arm Statute, R.C. 2307.382 and Civ. R. 4.3(8) were not met.

💣 Proceed with personal jurisdiction on the basis of R.C. 2307.382(8) at your own risk.

According to the Eighth District Court of Appeals in *Prouse, Dash & Crouch, L.L.P. v. Dimarco*, 2006-Ohio-1538; decided on March 30, 2006:

“A review of Ohio law shows that few cases have determined long-arm jurisdiction based solely on ownership of real property in the forum state. One Ohio legal authority states that Civ. R. 4.3(A)(6) "is indefinite in its long-arm reach in light of the fact that there have been very few cases in any state which interpret its meaning. In short, subsection (6) is a `sleeper.'" 4-150 Ohio Civil Practice (2005), Section 150.38.

“The Tenth District Court of Appeals of Ohio held that the trial court did not have personal jurisdiction over a party, despite his owning real estate in Ohio, in an action for legal separation where the spouse sought an equitable division of the couple's assets, including the Ohio property. *Kvinta v. Kvinta* (Feb. 20, 2000), Franklin App. No. 99AP-508. "Although appellee has sought a division of property, the action is not one arising from appellant's interest in, possession, or use of the real property in Mansfield, Ohio." *Id.* See, also, *Leonesio v. Carter* (May 11, 1992), Butler App. No. CA91-08-136 (holding that the "mere presence of property in a state does not establish a sufficient relationship between the owner of the property and the state to support the exercise of jurisdiction over an unrelated cause of action.")”



The third step is to determine how to serve the defendant.

Some divorce practitioners look no further than the Ohio Rules of Civil Procedure, pick the method of service which seems most appropriate to the circumstances and proceed to “serve” the other party. This is not only poor practice; it may be malpractice, because if the method of service does not comport with the target country’s applicable laws, the divorce decree may well be voidable or void *ab initio*.



Here are Ohio Rules for Service:

Civ R 4.1 Process: Methods of Service

All methods of service within this state, except service by publication as provided in Civ. R. 4.4(A), are described in this rule. Methods of out-of-state service and for service in a foreign country are described in Civ. R. 4.3 and 4.5.

(A) Service by certified or express mail.

Evidenced by return receipt signed by any person, service of any process shall be by certified or express mail unless otherwise permitted by these rules. The clerk shall place a copy of the process and complaint or other document to be served in an envelope. The clerk shall address the envelope to the person to be served at the address set forth in the caption or at the address set forth in written instructions furnished to the clerk with instructions to forward. The clerk shall affix adequate postage and place the sealed envelope in the United States mail as certified or express mail return receipt requested with instructions to the delivering postal employee to show to whom delivered, date of delivery, and address where delivered.

The clerk shall forthwith enter the fact of mailing on the appearance docket and make a similar entry when the return receipt is received. If the envelope is returned with an endorsement showing failure of delivery, the clerk shall forthwith notify, by mail, the attorney of record or, if there is no attorney of record, the party at whose instance process was issued and enter the fact of notification on the appearance docket. The clerk shall file the return receipt or returned envelope in the records of the action.

All postage shall be charged to costs. If the parties to be served by certified or express mail are numerous and the clerk determines there is insufficient security for costs, the clerk may require the party requesting service to advance an amount estimated by the clerk to be sufficient to pay the postage.

(B) Personal service.

When the plaintiff files a written request with the clerk for personal service, service of process shall be made by that method.

When process issued from the Supreme Court, a court of appeals, a court of common pleas, or a county court is to be served personally, the clerk of the court shall deliver the process and sufficient copies of the process and complaint, or other document to be served, to the sheriff of the county in which the party to be served resides or may be found. When process issues from the municipal court, delivery shall be to the bailiff of the court for service on all defendants who reside or may be found within the county or counties in which that court has territorial jurisdiction and to the sheriff of any other county in this state for service upon a defendant who resides in or may be found in that other county. In the alternative, process issuing from any of these courts may be delivered by the clerk to any person not less than eighteen years of age, who is not a party and who has been designated by order of the court to make service of process. The

person serving process shall locate the person to be served and shall tender a copy of the process and accompanying documents to the person to be served. When the copy of the process has been served, the person serving process shall endorse that fact on the process and return it to the clerk, who shall make the appropriate entry on the appearance docket.

When the person serving process is unable to serve a copy of the process within twenty-eight days, the person shall endorse that fact and the reasons therefore on the process and return the process and copies to the clerk who shall make the appropriate entry on the appearance docket. In the event of failure of service, the clerk shall follow the notification procedure set forth in division (A) of this rule. Failure to make service within the twenty-eight day period and failure to make proof of service do not affect the validity of the service.

(C) Residence service.

When the plaintiff files a written request with the clerk for residence service, service of process shall be made by that method.

Residence service shall be effected by leaving a copy of the process and the complaint, or other document to be served, at the usual place of residence of the person to be served with some person of suitable age and discretion then residing therein. The clerk of the court shall issue the process, and the process server shall return it, in the same manner as prescribed in division (B) of this rule. When the person serving process is unable to serve a copy of the process within twenty-eight days, the person shall endorse that fact and the reasons therefore on the process, and return the process and copies to the clerk, who shall make the appropriate entry on the appearance docket. In the event of failure of service, the clerk shall follow the notification procedure set forth in division (A) of this rule. Failure to make service within the twenty-eight-day period and failure to make proof of service do not affect the validity of service.

Civ R 4.2 Process: who may who may be served

Service of process, except service by publication as provided in Civ. R. 4.4(A), pursuant to Civ. R. 4 through 4.6 shall be made as follows:

(A) Upon an individual, other than a person under sixteen years of age or an incompetent person, by serving the individual;

(B) Upon a person under sixteen years of age by serving either the person's guardian or any one of the following persons with whom the person to be served lives or resides: father, mother, or the individual having the care of the person; or by serving the person if the person neither has a guardian nor lives or resides with a parent or a person having his or her care;

(C) Upon an incompetent person by serving either the incompetent's guardian or the person designated in division (E) of this rule, but if no guardian has been appointed and the incompetent is not under confinement or commitment, by serving the incompetent;

(D) Upon an individual confined to a penal institution of this state or of a subdivision of this state by serving the individual, except that when the individual to be served is a person under sixteen years of age, the provisions of division (B) of this rule shall be applicable;

(E) Upon an incompetent person who is confined in any institution for the mentally ill or mentally deficient or committed by order of court to the custody of some other institution or person by serving the superintendent or similar official of the institution to which the incompetent is confined or committed or the person to whose custody the incompetent is committed;

(F) Upon a corporation either domestic or foreign: by serving the agent authorized by appointment or by law to receive service of process; or by serving the corporation by certified or express mail at any of its usual places of business; or by serving an officer or a managing or general agent of the corporation;

(G) Upon a partnership, a limited partnership, or a limited partnership association by serving the entity by certified or express mail at any of its usual places of business or by serving a partner, limited partner, manager, or member;

(H) Upon an unincorporated association by serving it in its entity name by certified or express mail at any of its usual places of business or by serving an officer of the unincorporated association;

(I) Upon a professional association by serving the association in its corporate name by certified or express mail at the place where the corporate offices are maintained or by serving a shareholder;

(J) Upon this state or any one of its departments, offices and institutions as defined in division (C) of section 121.01 of the Revised Code, by serving the officer responsible for the administration of the department, office or institution or by serving the attorney general of this state;

(K) Upon a county or upon any of its offices, agencies, districts, departments, institutions or administrative units, by serving the officer responsible for the administration of the office, agency, district, department, institution or unit or by serving the prosecuting attorney of the county;

(L) Upon a township by serving one or more of the township trustees or the township clerk or by serving the prosecuting attorney of the county in which the township is located, unless the township is organized under Chapter 504. of the Revised Code, in which case service may be made upon the township law director;

(M) Upon a municipal corporation or upon any of its offices, departments, agencies, authorities, institutions or administrative units by serving the officer responsible for the administration of the office, department, agency, authority, institution or unit or by serving the city solicitor or comparable legal officer;

(N) Upon any governmental entity not mentioned above by serving the person, officer, group or body responsible for the administration of that entity or by serving the appropriate legal officer, if any, representing the entity. Service upon any person who is a member of the "group" or "body" responsible for the administration of the entity shall be sufficient.

Civ R 4.3 Process: out-of-state service A) When service permitted.

Service of process may be made outside of this state, as provided in this rule, in any action in this state, upon a person who, at the time of service of process, is a nonresident of this state or is a resident of this state who is absent from this state. (emphasis supplied) **"Person" includes an individual**, an individual's executor, administrator, or other personal representative, or a corporation, partnership, association, or any other legal or commercial entity, **who**, acting directly or by an agent, **has caused an event to occur out of which the claim that is the subject of the complaint arose, from the person's** (emphasis supplied):

(1) Transacting any business in this state;

(2) Contracting to supply services or goods in this state;

(3) Causing tortious injury by an act or omission in this state, including, but not limited to, actions arising out of the ownership, operation, or use of a motor vehicle or aircraft in this state;

(4) Causing tortious injury in this state by an act or omission outside this state if the person regularly does or solicits business, engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this state;

(5) Causing injury in this state to any person by breach of warranty expressly or impliedly made in the sale of goods outside this state when the person to be served might reasonably have expected the person who was injured to use, consume, or be affected by the goods in this state, provided that the person to be served also regularly does or solicits business, engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this state;

(6) Having an interest in, using, or possessing real property in this state;

(7) Contracting to insure any person, property, or risk located within this state at the time of contracting;

(8) Living in the marital relationship within this state notwithstanding subsequent departure from this state, as to all obligations arising for spousal support, custody, child support, or property settlement, if the other party to the marital relationship continues to reside in this state;

(9) Causing tortious injury in this state to any person by an act outside this state committed with the purpose of injuring persons, when the person to be served might reasonably have expected that some person would be injured by the act in this state;

(10) Causing tortious injury to any person by a criminal act, any element of which takes place in this state, that the person to be served commits or in the commission of which the person to be served is guilty of complicity.

(B) Methods of service.

(1) Service by certified or express mail.

Evidenced by return receipt signed by any person, service of any process shall be by certified or express mail unless otherwise permitted by these rules. The clerk shall place a copy of the process and complaint or other document to be served in an envelope. The clerk shall address the envelope to the person to be served at the address set forth in the caption or at the address set forth in written instructions furnished to the clerk with instructions to forward. The clerk shall affix adequate postage and place the sealed envelope in the United States mail as certified or express mail return receipt requested with instructions to the delivering postal employee to show to whom delivered, date of delivery, and address where delivered.

The clerk shall forthwith enter the fact of mailing on the appearance docket and make a similar entry when the return receipt is received. If the envelope is returned with an endorsement showing failure of delivery, the clerk shall forthwith notify, by mail, the attorney of record or, if there is no attorney of record, the party at whose instance process was issued and enter the fact of notification on the appearance docket. The clerk shall file the return receipt or returned envelope in the records of the action. If the envelope is returned with an endorsement showing failure of delivery, service is complete when the attorney or serving party, after notification by the clerk, files with the clerk an affidavit setting forth facts indicating the reasonable diligence utilized to ascertain the whereabouts of the party to be served.

All postage shall be charged to costs. If the parties to be served by certified or express mail are numerous and the clerk determines there is insufficient security for costs, the clerk may require the party requesting service to advance an amount estimated by the clerk to be sufficient to pay the postage.

(2) Personal service.

When ordered by the court, a "person" as defined in division (A) of this rule may be personally served with a copy of the process and complaint or other document to be served. Service under this division may be made by any person not less than eighteen years of age who is not a party and who has been designated by order of the court. On request, the clerk shall deliver the summons to the plaintiff for transmission to the person who will make the service.

Proof of service may be made as prescribed by Civ. R. 4.1 (B) or by order of the court.

RULE 4.5 Process: Alternative Provisions for Service in a Foreign Country

(A) Manner.

When Civ. R. 4.3 or Civ. R. 4.4 or both allow service upon a person outside this state and service is to be effected in a foreign country, service of the summons and complaint may also be made:

- (1) In the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction when service is calculated to give actual notice;
- (2) As directed by the foreign authority in response to a letter rogatory when service is calculated to give actual notice;
- (3) Upon an individual by delivery to him personally;
- (4) Upon a corporation or partnership or association by delivery to an officer, a managing or general agent;
- (5) By any form of mail requiring a signed receipt, when the clerk of the court addresses and dispatches this mail to the party to be served;
- (6) As directed by order of the court.


Service under division (A)(3) or (A)(6) of this rule may be made by any person not less than eighteen years of age who is not a party and who has been designated by order of the court, or by the foreign court. On request the clerk shall deliver the summons to the plaintiff for transmission to the person or the foreign court or officer who will make the service.

(B) Return.

Proof of service may be made as prescribed by Civ. R. 4.1(B), or by the law of the foreign country, or by order of the court. When mail service is made pursuant to division (A)(5) of this rule, proof of service shall include a receipt signed by the addressee or other evidence of delivery to the addressee satisfactory to the court.

Some divorce practitioners assume that because the other party is a US citizen abroad or an American service member living on a US military base overseas that the law of the country do not apply. This is wrong as well.

→If one of the prospective parties resides in Ohio and the other is overseas, you must observe the rules for service both of Ohio and of the other country.

 Where should you look to determine another country's law governing service of process?

- First look to see if there is a treaty obligation governing service in the country where service is to be perfected
 - Is the party being served in a country which is a signatory to either the Hague Convention on Service Abroad or the Inter-American Convention?
 - If yes, has the country made any objections or reservations?
 - If no, look to the local law of the land and consult with a local practitioner.
- Second, look to the local laws governing service
 - Does the country specifically allow the kind of service being contemplated, or
 - Does the country merely fail to prohibit the kind of service being contemplated, or
 - Does the country specifically authorize the kind of service being contemplated?
 -
- Third, look to Ohio law and rules of civil procedure
- The US is a party to two multilateral treaties on service of process:
 - 1) The Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters
 - 2) The Inter-American Convention on Letters Rogatory

Service must be in compliance with:

- treaty obligations, reservations, and objections,
 - local law of the country where service is to be made, and
 - the law and civil rules of procedure of the United States and/or of the state in which the action is filed.
- A treaty occupies coequal authority with the United States Constitution, and as such, is entitled to recognition as the "supreme law of the land". See *Missouri v. Holland*, 252 U.S. 416, 433, 40 S.Ct. 382, 383, 64 L.Ed. 641, 647 (1920), and Article VI, Clause 2 of the United States Constitution.

- Consequently, the Hague Convention on Service Abroad and the Inter-American Convention on Letter Rogatory take precedence over any conflicting federal or state laws, including the Ohio Rules of Civil Procedure.

The Hague Convention: is a multilateral treaty which codifies service of process by international registered mail and by agent. The treaty also provides for service of process by a Central Authority (usually the Ministry of Justice) in the Convention countries. The text of the treaty is self-explanatory; however, you must be careful to check the reservations and declarations each country made on accession to the treaty. Some countries have made specific reservations against particular methods of service (for example, service by process server or international registered mail). The Convention method should be employed in all countries party to it. Each signatory designates a Central Authority for receipt of Hague Service Convention requests, however, the Hague Convention specifically allows a signatory nation to consent to methods of service other than through its Central Authority.


Three liberal methods of service are permitted under the Hague Convention. First, service may go through the central authority of the receiving country. (Article 5) Second, service may go through diplomatic or consular agents that the receiving country considers "non-objectionable (Article 8-11); and third, service may be done by any method permitted by the internal law of the receiving country (Article 19).

- Personal delivery is not a means of service explicitly provided for in the Convention, but it is allowed under Fed.R.Civ. P. 4(f)(20 and under the Ohio Civil Rules. This method may be used **if** it is not contrary to the law of the country in which service is made
- Article 19 of the Hague Convention provides: "To the extent that the internal law of a contracting state to the Convention allows methods of transmission, other than those provided for in the Articles, of documents coming from abroad, for service within its territory, the Convention shall not affect such provisions."
- Two views:
 - A method of service may be used so long as it is not expressly prohibited by the Convention, the law of the foreign nation, nor by the terms of its treaty ratification
 - Methods not specifically provided for in the Convention, must be specifically authorized; i.e., specifically enumerated in the country's laws
- Under the terms of the Hague Convention, registered mail service, which may meet the requirements of the Ohio Civil Rules of Procedure, is insufficient service of process on citizens of nations that are signatories. See *id.*; *Lyman Steel Corp. v. Ferrostaal Metals Corp.* (N.D. Ohio 1990), 747 F.Supp. 389; *Okubo v. Shimizu*, 2nd Dist. No. 2001 CA 134, 2002-Ohio-2624. Germany, a signatory to the Hague Convention, has expressed a specific objection to service by international mail and has asserted that the Hague Convention is the exclusive method for international service of process in Germany. See *Lyman Steel Corp. v. Ferrostaal Metals Corp.*, supra.

- The Hague Service Convention provides for service of process from the U.S. by a Central Authority (usually the Ministry of Justice) in the Convention countries pursuant to a request submitted on a form USM-94, available at the office of any United States Marshal
 - The attorney representing the party seeking service should execute the portion of Form USM-94 marked "Identity and Address of the Applicant" and the "Name and Address of the Requesting Authority" portion of the Summary of the Document to be Served.
 - The Central Authority itself serves or arranges to have served "by a method prescribed by its internal law for the service of documents in domestic actions upon persons who are within its territory". Generally, documents to be served in accordance with this method must be translated into the official language of the country

The Inter-American Convention on Letters Rogatory: The United States has a treaty relationship with countries which are a party to the Convention and the Additional Protocol. The treaty provides a mechanism for service of documents by a foreign central authority. Requests are prepared on a Convention form and transmitted via the U.S. Central Authority.

Letters Rogatory: If the destination country is one in which no Consular Convention or specific treaty obligation is in force with the United States, a letter rogatory may be issued. A letter rogatory is a formal request, based on comity, from a court in one country to "the appropriate judicial authorities" in another country requesting service of process, filing of a subpoena, or production of documents or testimony. Only about 20% of nations have service of process treaties. Formalities may include specified format, translations, and diplomatic authentications such as acknowledgments and embassy seals.

 Effective June 1, 2003, Process Forwarding International (PFI) began a 5-year contract to perform the duties as Central Authority for USDOJ. See www.hagueservice.net. PFI now manages all formal service of process for the U.S. on judicial documents under the Hague Service Convention and the Inter-American Convention

☞ It is clear from the record, and undisputed by Russell Collins, that Brigitte Collins was never properly served with the complaint for divorce pursuant to the terms of the Hague Convention. Therefore, the court had no personal jurisdiction over Brigitte Collins.



The fourth step is to consider whether the defendant has entered a voluntary appearance and submitted to the court's jurisdiction either expressly or by waiver. But such appearance and waiver would still need to be in accord with the law of the other country.

☞ It is clear that Brigitte Collins did not enter a voluntary appearance or otherwise submit to the court's jurisdiction.

"A court obtains personal jurisdiction over a defendant by (1) service of process, (2) the voluntary appearance and submission of the defendant to the court's jurisdiction, or (3) other acts the defendant commits which constitute a waiver of a jurisdictional defense. *Maryhew v. Yova* (1984), 11 Ohio St.3d 154, 156, 11 Ohio B. 471, 464 N.E.2d 538. Pursuant to Civ.R. 12(H), a defendant waives the affirmative defenses of lack of jurisdiction over the person or insufficiency of service of process unless the defenses are presented (1) by motion before pleading pursuant to Civ.R. 12(B), (2) affirmatively in a responsive pleading under Civ.R. 8(C), or (3) within an amended pleading under Civ.R. 15. *State ex rel. The Plain Dealer Publishing Co. v. Cleveland* (1996), 75 Ohio St.3d 31, 33, 1996 Ohio 379, 661 N.E.2d 187. The failure to utilize the prescribed methods results in a waiver of the affirmative defenses. *Mills v. Whitehouse Trucking Co.* (1974), 40 Ohio St.2d 55, 60, 320 N.E.2d 668."

[Kvinta v. Kvinta, 2003 Ohio 2884, P57 \(Ohio Ct. App. 2003\)](#)

- ☛ Note that in *Kvinta II*, the filing of a notice of special appearance, coupled with a motion to quash a subpoena and a motion to quash a request for production of documents constituted a waiver of 12(B) jurisdictional defenses of lack of jurisdiction and insufficiency of process and the party was deemed to have submitted to the jurisdiction of the court.
- ☛ Special appearances, where a person would appear in an action without submitting to the court's jurisdiction, were abolished with the adoption of the Rules of Civil Procedure in Ohio. [Maryhew v. Yova \(1984\), 11 Ohio St.3d 154, 156, 11 Ohio B. 471, 464 N.E.2d 538](#)

FLAWS IN THE *COLLINS* CASE:

- ☒ No long-arm jurisdiction over wife because she did not have minimum contacts with Ohio
 - ☞ See the due process clause of the Federal Constitution
 - ☞ See 2703.283
 - ☞ See Civ. R. 4.3
- ☒ No long-arm jurisdiction over wife because she never lived in a marital relationship in Ohio
 - ☞ See Civ. R. 4.3 (8)
- ☒ No proper service of summons on wife because service was not consistent with the Hague Convention on Service
 - ☞ See Civ. R. 4.5
 - ☞ See Hague Convention on Service
 - ☞ See Supremacy Clause of Article VI of the United States Constitution

“For a court to acquire personal jurisdiction, there must be a proper service of summons or an entry of appearance, and a judgment entered without proper service or an entry of appearance is **null and void**. See *State ex rel. Ballard v. O'Donnell* (1990), 50 Ohio St.3d 182, 553 N.E.2d 650. "A trial court is without jurisdiction to render judgment or to make findings against a person who was not served summons, did not appear, and was not a party in the court proceedings. A person against whom such judgment and findings are made is entitled to have the judgment vacated." See *id.* at paragraph one of the syllabus.


The Hague Convention is a multilateral treaty "intended to provide a simpler way to serve process abroad, to assure that defendants sued in foreign jurisdictions will receive actual and timely notice of suit, and to facilitate proof of service abroad." See *Volkswagenwerk Aktiengesellschaft v. Schlunk* (1988), 486 U.S. 694, 108 S.Ct. 2104, 100 L. Ed. 2d 722. "The Hague Convention requires each state to establish a central authority to receive requests for service of documents from other countries." See *id.* The Hague Convention preempts inconsistent methods of service of process prescribed by state law by virtue of the Supremacy Clause of Article VI of the United States Constitution. See *id.* The Hague Convention, a ratified treaty, is "the supreme law of the land." See *Meek v. Nova Steel Processing, Inc.* (1997), 124 Ohio App.3d 367, 706 N.E.2d 374.

Under the terms of the Hague Convention, registered mail service is insufficient service of process on citizens of nations that are signatories. See *id.*; *Lyman Steel Corp. v. Ferrostaal Metals Corp.* (N.D. Ohio 1990), 747 F.Supp. 389; *Okubo v. Shimizu*, 2nd Dist. No. 2002 Ohio 2624. Germany, a signatory to the Hague Convention, has expressed a specific objection to service by international mail and has asserted that the Hague Convention is the exclusive method for international service of process in Germany. See *Lyman Steel Corp. v. Ferrostaal Metals Corp.*, *supra*.

It is clear from the record, and undisputed by Russell Collins, that Brigitte Collins was never properly served with the complaint for divorce pursuant to the terms of the Hague Convention. Therefore, the court had no personal jurisdiction over Brigitte Collins.”

[Collins v. Collins, 165 Ohio App. 3d 71, 75 \(Ohio Ct. App. 2006\)](#)

- No jurisdiction over property not located in Ohio
- No jurisdiction over spousal support
- No jurisdiction over wife's interest in husband's military pension
- The court had *in rem* jurisdiction over the "res" of the marriage and had the power to grant the divorce itself

 If subject-matter and long-arm jurisdiction are established, but personal service is not, one may, after proper service and issuance of notice, seek the appropriate *in rem* orders. These may then be enforced against the other party should he or she be personally served or against any real property or other assets belonging to the other party in Ohio.

A decree of divorce is regarded as a judgment *in rem* because it determines the marital status of the parties. See *Hager v. Hager* (1992), [79 Ohio App.3d 239](#), 607 N.E.2d 63, citing *McGill v. Deming* (1887), [44 Ohio St. 645](#), 11 N.E. 118. The marital status, or *res*, follows the domiciles of the parties to the marriage. See *id.* In order for the court to have jurisdiction over the *res*, or marriage, one of the parties must be domiciled within the state granting the divorce. See *id.*, citing *Williams v. North Carolina* (1942), 317 U.S. 287, 63 S.Ct. 207. Russell Collins was domiciled in Ohio. Therefore, the trial court had the authority to enter a decree terminating the Collinses' marriage.

In order to determine financial issues, the trial court must have personal jurisdiction based upon notice to and proper service on the defendant. See *Kvinta v. Kvinta* (June 5, 2003), 10th Dist. No. 02AP-836, 2003-Ohio-2884; *Depaulitte v. Depaulitte* (2000), [138 Ohio App.3d 780](#), 742 N.E.2d 659; *Stanek v. Stanek* (Sept. 26, 1994), 12th Dist. No. CA94-03-080; *Hager v. Hager*, *supra*. In a divorce proceeding, the trial court must have personal jurisdiction over a nonresident defendant in order to determine issues of spousal support and property division. See *id.* The trial court had no jurisdiction over Brigitte Collins in this case. Therefore, the court had no authority to distribute property to which she arguably had a claim, to issue orders regarding spousal support, or to issue orders regarding the parties' pensions.

The trial court erred in granting Brigitte Collins's Civ.R. 60(B) motion for relief from judgment as to the granting of the divorce. The trial court did not err in granting the Civ.R. 60(B) motion as to support, property division, and all other financial matters. The first and second assignments of error are sustained solely to the extent that they challenge the trial court's granting of the Civ.R. 60(B) motion in regard to the granting of the divorce, and they are overruled in all other respects.

The third assignment of error, alleging that the trial court erred in taking "judicial notice" of the provisions of the Hague Convention, is overruled because the trial court is required to follow the applicable law.

The fourth assignment of error, which alleges that Brigitte Collins did not timely file her Civ.R. 60(B) motion, is overruled because the record shows that the motion was filed six months after the divorce decree was entered." [Collins v. Collins, 165 Ohio App. 3d 71, 75 \(Ohio Ct. App. 2006\)](#)

But see *Ward v Ludwig*, 149 Ohio App.3d 687, 778 N.E.2d 650 (2002) where husband, in Ohio, sued his wife, a German citizen who had returned to Germany, the Fourth District Court of Appeals held that husband's failure to follow Article 5 of the Hague Service Convention **rendered the resultant judgment void**. Germany had chosen to reject Article 10 and follow Article 5 by establishing a central authority to receive service of documents; and requiring the papers served by the central authority to be written in or translated into German. *Service by registered mail in compliance with Civil Rule 4.5 rendered the divorce judgment void*, irrespective of fact that wife received actual notice, understood the English language, and had a German lawyer file an answer.

→ SOME QUIRKS OF COUNTRIES TO KNOW ABOUT:

☉ China does not recognize U.S. judgments and they will not honor requests for discovery assistance. The only purpose in most cases to serve in China via the Hague is because you want to enforce judgment against the other party in the United States or in a county other than China. Service is required to enforce judgment but service does not guarantee enforcement in the foreign country unless there is a reciprocity agreement or a judgment treaty. There is no such treaty with China. Such a treaty is being worked on at the Hague but it is not yet completed nor ratified by any country.

☉ Japan has designated its Minister of Foreign Affairs as its Central Authority and requires that documents submitted for service be written in or translated into Japanese

✖ The Hague Service Convention provision for service by a Central Authority is the **exclusive** method for service of process in the Federal Republic of Germany

- On German citizens
- On American citizens on German soil
- On US Armed Forces members on German soils
- All pleadings and forms submitted must be translated into German even if the individual being served is a US citizen who does not even speak German

✖ Germany, Japan and Switzerland have laws in force which make it a criminal act to issue service in contravention of their civil codes

✖ Switzerland requires translation but there is no Swiss language; depending on the destination region, the requisite language is German, French or Italian

Ġ According to Marion J. Browning-Baker, author of "No Service, No Divorce Case", *Family Advocate*, Fall 2005, "Currently, one may serve anyone in Iraq or Afghanistan via the U.S. Postal Service, the Hague Service Convention does not apply."

SERVICE ON MILITARY PERSONNEL ABROAD

- The general position of the military departments is that the service of civil process on military personnel stationed abroad (or at sea) is not a proper military function. Thus, governing military regulations expressly prohibit commanders from serving civil process upon their personnel unless the individual agrees to accept the process voluntarily. Generally, commanders or other officials in charge when contacted about service of process on an employee will bring the matter to the attention of the individual and will determine whether he or she wishes to accept service voluntarily.
 - If the individual does not desire to accept service, the party requesting such service will be notified and will be advised to follow the procedures prescribed or recognized by the laws of the foreign country. In countries party to the Hague Service Convention or Inter-American Service Convention, the foreign Central Authority may attempt to accomplish service under the applicable Convention if the prevailing Status of Forces (SOFA) agreement permits access to the base
 - Installation commanders may impose reasonable restrictions upon persons who enter their installations to serve process. It may therefore be necessary for the foreign Central Authority to effect service on the individual outside the installation. Some foreign Central Authorities may decline jurisdiction over cases involving U.S. military personnel depending on the SOFA agreement applicable (if any).
 - A request for service on U.S. military personnel pursuant to a letter rogatory may prove difficult as the foreign court may decline jurisdiction. It may be necessary to retain the services of a private attorney or other agent to effect service on the individual outside the U.S. military installation. Service by registered mail is also another option.
 - You may wish to consult the Judge Advocate General's office for the appropriate branch of the U.S. military at the Pentagon for further guidance
- *If you wish to split the military pension, never take a default judgment against the service member. Under the Uniformed Services Former Spouses Protection Act (USFSPA), the court **must** have personal jurisdiction over the service member. Remember the mere fact that Captain Collins is stationed at Wright-Patterson Air Force Base is insufficient to establish Ohio as his or her domicile.