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IN THE CIRCUIT COURT OF PUTNAM COUNTY, WEST VIRGINIA

SAIRA AHMAD,

v.

SAED AFTAB AHMAD.

CASE NO. 08-D-230  
PHILLIP M. STOWERS, JUDGE

PUTNAM CO. CIRCUIT COURT

2010 APR 16 PM 9:35

**ORDER GRANTING APPEAL, REVERSING THE FAMILY COURT ORDER IN PART, GRANTING LEAVE TO AMEND FOR PROPER SERVICE**

This matter comes before the Court pursuant to a *Petition for Appeal* filed by Dr. Saed Ahmad through counsel Troy Giatras on August 3, 2009. Dr. Ahmad appealed the final decision of the Family Court in its *Order Clarifying October 20, 2008 Temporary Order Granting Judgment, and Revoking License/Board Certification* on June 16, 2009. Ms. Saira Ahmad filed a *Response to Petition for Appeal* through counsel Rosalee Juba-Plumley on August 18, 2009. The Court held a hearing on February 25, 2010, to allow the parties the opportunity to be heard at oral argument. The Court granted time for the parties to provide supplemental briefs on the issue of the applicability of West Virginia Code § 56-3-3. Dr. Ahmad submitted a brief on March 17, 2010. Ms. Ahmad filed a response brief on March 18, 2010.

After reviewing the record, including Petitioner's *Petition for Appeal* and supporting memorandum, Respondent's reply and supporting memorandum, the Family Court's *Order Clarifying October 20, 2008 Temporary Order Granting Judgment, and Revoking License/Board Certification*, the parties' oral arguments, and the parties' supplemental briefs, as well as all relevant legal precedent, this Court grants Dr. Ahmad's appeal, in part, and reverses the Family Court's *Order*, in part, for the reasons set forth below.

## Procedural Background

1. Ms. Ahmad filed a *pro se Petition for Divorce* on May 19, 2008. At that time, Ms. Ahmad filed an *Affidavit of Non-Residency or Unknown Residency* for Dr. Ahmad stating that she used due diligence to determine the address of Dr. Ahmad and was unable to locate him. An *Order of Publication* was entered by the Circuit Clerk of Putnam County on May 19, 2008. A copy of the publication was published on May 23, 2008 and May 30, 2008.
2. Prior to the publication, this Court, presided by Judge Eagloski, held an emergency hearing and entered an *Order* on May 19, 2008, prohibiting Dr. Ahmad from removing the parties' children from their home in Putnam County, West Virginia. The *Order* also awarded temporary child support to Ms. Ahmad from Dr. Ahmad in the amount of \$1,500 per month. A copy of the *Order* was sent to Dr. Ahmad at his marital home in Putnam County, West Virginia.
3. On May 23, 2008, the case file indicates that Ms. Ahmad sent a copy of the Eagloski *Order* and the *Petition for Divorce* to Dr. Ahmad at an address in New Martinsville, West Virginia. The address is handwritten on a piece of paper filed with the clerk's office. A domestic return receipt signed by Richard Wright was filed with the Court on May 27, 2008.
4. On June 11, 2008, a letter from Dr. Ahmad addressed to the Circuit Clerk was filed. The letter requests information regarding the divorce proceedings, mentioning the case number specifically. The address for Dr. Ahmad is Lahore in the country of Pakistan.
5. The Family Court entered a *Temporary Order* on October 21, 2008, granting spousal support in the amount of \$10,000 per month based on the Family Court's finding of Dr. Ahmad's attributable income at \$550,000 per year. The Family Court awarded child support in the amount of \$7,825 per month. This finding was based on Ms. Ahmad's financial statement which indicated that her husband's income amount was "unknown." Records regarding past

employment contracts of Dr. Ahmad with various hospitals were also disclosed by Ms. Ahmad. Dr. Ahmad never filed a financial statement or an answer to the *Petition for Divorce*. The Family Court found that Dr. Ahmad received notice of the hearing by regular mail and email. A receipt of an email was filed by counsel for Ms. Ahmad on September 3, 2008. The receipt is a print-out of a purported email from eleanorlaw@teays.net (Ms. Ahmad's counsel) to saed\_ahmad@yahoo.com. The print-out shows a response from the email account saed\_ahmad@yahoo.com. However, the typical headers associated with email communications are not included on the print-out of the communication allegedly from Dr. Ahmad. The date and time of the communication from saed\_ahmad@yahoo.com to eleanorlaw@teays.net is not available from the documents submitted to the Court from Ms. Ahmad's counsel. It appears from the file that Ms. Ahmad's counsel faxed a copy of the purported email to the clerk's office.

6. On December 17, 2008, Dr. Ahmad sent a letter addressed to Judge William Watkins regarding the *Temporary Order* discussing several issues regarding his marriage with Ms. Ahmad and explaining that he was currently a resident of Pakistan. Dr. Ahmad contested the Family Court's jurisdiction over his marriage, *inter alia*, in his *pro se* letter. Dr. Ahmad listed his address in Lahore, Pakistan.

7. On May 26, 2009, Dr. Ahmad presented documentation to the Family Court regarding an alleged divorce from Ms. Ahmad in Pakistan. In that correspondence, Dr. Ahmad contested the Family Court's jurisdiction over his marriage, *inter alia*.

8. The Family Court held a final hearing on the matter on June 10, 2009. The Family Court entered the *Order Clarifying October 20, 2008 Temporary Order Granting Judgment, and Revoking License/Board Certification* on June 16, 2009. The *Order* upheld its previous award of child support, finding Dr. Ahmad in arrears in the amount of \$128,427.06. The *Order* upheld its

previous award of spousal support, finding Dr. Ahmad in arrears in the amount of \$175,685.49. The *Order* liquidated certain assets and applied the value of the assets to the household expenses of Ms. Ahmad and the children. The *Order* also suspended the medical board licenses of Dr. Ahmad for unpaid child support. Dr. Ahmad appeals this final order of the Family Court.

### **Issues on Appeal**

Dr. Ahmad appeals the final order of the Family Court, alleging that the Family Court lacked personal jurisdiction over Dr. Ahmad through the entirety of the proceedings. Dr. Ahmad argues that notice of the proceedings was effectuated solely through publication and email notice of the proceedings. On appeal, Dr. Ahmad raises issues of his divorce and the award of support and arrearages. Dr. Ahmad also appeals the decision to suspend his medical licenses due to the arrearages under the claim that the court did not have proper jurisdiction to issue an arrearage.

Although many issues have been raised by both parties in this case, the case before this Court concerns *only* whether the Putnam County courts had sufficient personal jurisdiction over Dr. Ahmad to meet the basic constitutional requirements of both the United States and the State of West Virginia in order to affect his personal property rights.

### **Discussion**

This Court finds that the Family Court had subject-matter jurisdiction over the divorce under the “divisible divorce” doctrine recognized by the Supreme Court of Appeals of West Virginia in *Burnett v. Burnett*, 208 W.Va. 748, 542 S.E.2d 911 (W.Va. 2000). This doctrine recognizes that a court must possess both *in personam* jurisdiction and subject-matter jurisdiction in order to exercise authority in a case. 208 W.Va. at 753, 542 S.E.2d at 916. A family court lacking *in personam* jurisdiction over a party may enter an order severing the bonds of marriage but may *not* affect the party’s personal property interests, such as through the award or alteration

of child support or alimony. This Court finds that the Putnam County Family Court possessed subject-matter jurisdiction over the Ahmad marriage which allowed it to grant a divorce and address custody issues under the “divisible divorce” doctrine.

As for personal jurisdiction, this Court finds that Ms. Ahmad never obtained sufficient service over Dr. Ahmad to give personal jurisdiction to the Putnam County Circuit Court, presided by Judge Eagloski, or the Putnam County Family Court. Phone calls, emails, or written letters sent to friends of Dr. Ahmad are not sufficient to meet the requirements of personal jurisdiction. Even allegations of a party’s personal knowledge of the proceedings do not meet the requirements for personal jurisdiction. Jurisdiction over Dr. Ahmad’s property interests arises from West Virginia Code § 56-3-33, also known as the “long-arm statute.” The long-arm statute supplies a list of activities that a non-resident person may engage in to render personal jurisdiction in this State, including “causing tortious injury by an act or omission in this state.” The West Virginia Supreme Court in *Lozinski v. Lozinski*, 185 W.Va. 558, 408 S.E.2d 310 (W.Va. 1991) found that a parent’s act of not supporting his or her children constitutes a tortious act for purposes of the long-arm statute. The allegations in Ms. Ahmad’s *Petition for Divorce* support a finding that Dr. Ahmad failed to support his children, invoking the long-arm statute. Therefore, this Court finds that personal jurisdiction over Dr. Ahmad under the long-arm statute would be appropriate in this matter.

Under the long-arm statute, personal jurisdiction over Dr. Ahmad may be effectuated by service on the Secretary of State. The West Virginia Supreme Court has found that parties must “strictly comply” with the requirements of the long-arm statute. *McClay v. Mid-Atlantic Country Magazine*. 190 W.Va. 42, 435 S.E.2d 180 (W.Va. 1993). *McClay* expressly rejected publication as a substitute for service through the Secretary of State. Ms. Ahmad does not dispute the fact

that she did not serve Dr. Ahmad through the Secretary of State. In light of this case, this Court cannot recognize personal service on the basis of publication, alleged email conversations, phone conversations, informal letters, or on the basis that somehow Dr. Ahmad "knew" of the proceedings against him. Dr. Ahmad's knowledge or depth of understanding of the proceedings is not relevant to the case before this Court. Ms. Ahmad failed to serve notice on the Secretary of State as required. Therefore, the Putnam County court system, beginning with the initial emergency custody hearing presided by Judge Eagloski where the Court granted child support, lacked jurisdiction to affect Dr. Ahmad's personal property interests. Ms. Ahmad *must* serve the Secretary of State in order to achieve personal service over Dr. Ahmad and to invoke the Family Court's personal jurisdiction over Dr. Ahmad.

Under Rule 4(j) of the West Virginia Rules of Civil Procedure, a court may allow "any process, notice, or order, or proof of service or publication" to be amended unless material prejudice would result. The Court finds that Ms. Ahmad shall be granted time to serve the *Petition for Divorce* upon Dr. Ahmad in accordance with the requirements outlined in this *Order*. In order to avoid prejudice, the Court shall also grant Dr. Ahmad a period of time to answer the *Petition* and address the substantive issues regarding the orders of the Family Court to the Family Court regarding those orders affecting Dr. Ahmad's financial obligations.

#### **Order**

Based upon the foregoing, the Court **GRANTS** Dr. Ahmad's *Petition for Appeal*. The Court **GRANTS** Ms. Ahmad a period of thirty days from entry of this *Order* to obtain proper service over Dr. Ahmad. The Family Court's orders remain in effect until modified by the Family Court. The Court **GRANTS** Dr. Ahmad a period of sixty days following service to respond to the Family Court's prior orders to the Family Court. If Ms. Ahmad fails to effectuate

proper service over Dr. Ahmad, the Family Court's orders affecting Dr. Ahmad's financial obligations will become unenforceable for lack of *in personam* jurisdiction. Furthermore, the Court finds that this *Order* is a **FINAL ORDER DISPOSING OF THE APPEAL**.

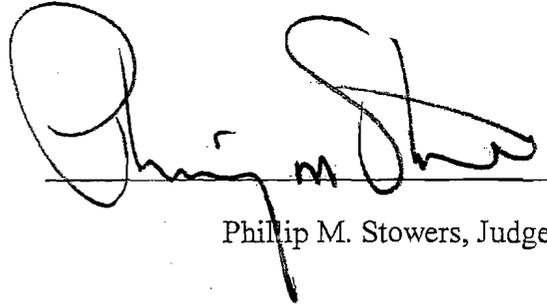
The Circuit Clerk is directed to send certified copies of this *Order* to the parties of record listed below.

Troy Giatras  
118 Capitol Street  
Suite 400  
Charleston, WV 25301

Rosalee Juba-Plumley  
P.O. Box 380  
Eleanor, WV 25070

Entered this 16<sup>th</sup> day of April, 2010.

4/19/10  
CC: Watkins



Phillip M. Stowers, Judge

STATE OF WEST VIRGINIA  
COUNTY OF PUTNAM, SS:

I, Ronnie W. Matthews, Clerk of the Circuit Court of said County and in said State, do hereby certify that the foregoing is a true copy from the records of said Court. Given under my hand and the seal of said Court

this 20 day of April, 2010

Ronnie W. Matthews Clerk  
Circuit Court  
Putnam County, W.Va. W