Filed 4/20/16 Marriage of Korpivaara CA2/8

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re Marriage of HANNU and FATTANEH JAFARZADEH KORPIVAARA.	B260287 (Los Angeles County Super. Ct. No. SD032582)
HANNU KORPIVAARA, Respondent, v. FATTANEH JAFARZADEH KORPIVAARA, Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Thomas T. Lewis, Judge. Affirmed.

Paul Kujawsky for Appellant.

Procopio, Cory, Hargreaves & Savitch, Kendra J. Hall for Respondent.

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Fattaneh Jafarzadeh Korpivaara filed this marital dissolution proceeding against her Finnish husband, Hannu Korpivaara.[1] Hannu moved to dismiss or stay the proceedings for lack of personal jurisdiction and on forum non conveniens grounds. The court granted his motion and stayed the action. We affirm.

FACTS AND PROCEDURE

Fattaneh filed the petition for dissolution in January 2014. Hannu filed his motion to dismiss for lack of personal jurisdiction, or in the alternative, motion to dismiss or stay under forum non conveniens, in March 2014.

1. Hannu's Evidence

Hannu's supporting declaration and other evidence showed as follows. Hannu is a citizen of Finland, where he has resided since birth to the present. He and Fattaneh married in Finland in September 1999. The two entered into a prenuptial agreement. They signed the prenuptial agreement on September 24, 1999, in Helsinki, Finland. Other than identifying the contracting parties and setting forth their signatures and a witness's signature, the English translation of the agreement stated in its entirety: "AGREEMENT [¶] Neither of us shall have marital right to the property owned by either of us at the moment or to the property acquired in the future by either of us or to its interest or to any property acquired instead of said property. [¶] We approve this marriage agreement and we are committed to comply with it. [¶] APPLICABLE LAW [¶] This marriage agreement shall be governed by and construed in accordance with the laws of Finland."

Immediately after they married, Fattaneh went to California and Hannu remained in Finland. The two never established a residence together throughout the marriage. They met during visits. From 1999 to 2008, approximately twice a year, Fattaneh visited Hannu in Finland, and during the same period, Hannu visited her in California. Each of the trips lasted no more than 60 days. Since 2008, most of their visits occurred when they would

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[1] We will refer to the parties by their first names for clarity and ease of reference. (*In re Marriage of Witherspoon* (2007) 155 Cal.App.4th 963, 967, fn. 2.)

meet in Spain. During the marriage, Fattaneh spent a considerable amount of time each year in Spain and had been doing so continuously since December 2012, living in an apartment that Hannu owned in Marbella, Spain. Hannu had not visited California since 2010. This final visit lasted no more than 30 days.

In April 2013, when they were both in Spain, the couple decided to separate permanently. Fattaneh remained in Spain and Hannu returned to Finland after that. In September 2013, Hannu filed a petition for divorce in the Helsinki District Court in Finland.

In late January 2014, Hannu received and signed for a registered letter that appeared to be from Fattaneh's son. Inside the envelope he found Fattaneh's California petition for dissolution. He was not aware of the legal effect of signing the postal receipt, and in signing it, he did not intend to forego his Finnish divorce petition or submit to the authority of the California court.

At the time Hannu filed his petition in Helsinki, Finland and Fattaneh filed her petition, he resided in Finland; he did not own any real property in California; he did not conduct any business in California; he paid taxes only in Finland; he did not file tax returns in California; and he did not have any sources of income in California.

Hannu served a deposition notice on Fattaneh for an examination "directed solely toward issues related to the jurisdiction" of the court over Hannu. The notice included requests for Fattaneh to produce 10 categories of documents, including: credit card statements; banking statements for accounts in Europe; telephone statements reflecting calls made or received while she was in Europe; airline or travel agent documents reflecting travel within, to, or from Europe; passports, visas, or permits reflecting travel to or from Europe; documents relating to her September 2013 application to the "LL.M." program at a Spanish university; and any documents supporting her claim in the dissolution petition that she was a resident of Los Angeles immediately preceding the filing of the petition. Hannu later served additional document requests for similar categories of documents relating to Fattaneh's phone usage, shopping, and travel, her application to the LL.M. program in Spain, and her claimed residence in Los Angeles right before filing her petition. Hannu argued this discovery was relevant to determine whether Fattaneh complied with the

statutory residence requirements for dissolving the marriage in the California courts (Fam. Code, § 2320), and whether the court should afford her choice of forum deference because she was a California resident.

2. Fattaneh's Evidence

Fattaneh's declarations and other evidence disputed much of Hannu's evidence. Her evidence was as follows.

Hannu comes from an affluent Finnish family and was the director of several family businesses. Hannu's Helsinki-based company, Global Connection, Inc. (Global), was a California corporation and had an office in Los Angeles at the time they met in 1997, which office space Hannu leased month-to-month in his own name. Another company of which he was a director, Design Finland, Inc. (Design), also maintained offices in Los Angeles.

Fattaneh has a law degree from a law school in Los Angeles but has never been licensed to practice in the United States (U.S.). She has resided in Los Angeles County since 1978. She had worked for several years at a law firm in Beverly Hills when she and Hannu met. An "international law firm" employed her from 2000 to 2006.

Fattaneh declared that the parties married in August 1999 in Los Angeles, not September in Finland. The ceremony in Finland was a "blessing of [the] marriage." Hannu presented the prenuptial agreement to her on the eve of their ceremony in Finland. She did not have independent counsel, did not speak Finnish, and had no knowledge of Finnish law. She told him she would sign the agreement based on her "understanding of the definition of separate property under California law."

While Los Angeles was "home," Fattaneh traveled to Europe every two to three weeks since the beginning of the marriage. Both she and Hannu traveled extensively between Finland, Spain, and the U.S., but their "marital domicile" was Los Angeles. Because of all the travel, she eventually stopped working altogether in 2006. Contrary to Hannu's assertion that he had not been in California since 2010, Hannu attended the law school graduation ceremony of Fattaneh's son in Los Angeles in June 2011.

The couple had homes in Finland, Los Angeles, and Marbella, Spain. The homes in Finland were owned either by Hannu or by his family. They purchased the Marbella

property during the marriage but Hannu held title in his name alone. They used the Marbella property as a "second home" since 2004. Fattaneh owned the condominium in Los Angeles. Her petition identified the condominium in Los Angeles as her separate property. The petition identified as community or quasi-community property the condominium in Marbella; real properties in Helsinki, Finland, including a ski house and country estate; antiques and art located in Finland; and future accounts receivables from Hannu's family businesses. She was seeking an award of attorney fees and costs so that she could, among other things, engage expert accountants in Europe and travel to Europe to "collect the evidence necessary" to litigate her case. She recognized that the case involved "[i]nternational issues . . . with properties located in different countries, trusts and family businesses." She had mortgaged her condominium and borrowed from relatives to pay her living expenses and retain counsel. She had attorneys in Marbella and Madrid, Spain, another in Los Angeles, and had consulted one in Helsinki, for whom she was seeking fees to retain. Fattaneh had not been served with the Finnish divorce action filed by Hannu.

Fattaneh proffered the declaration of her Finnish attorney opining on her "support and maintenance rights" in Finland. According to the attorney, it was unlikely the Finnish court would order spousal support. While Finnish law gave the courts power to order spousal support, in practice the courts did so "only in usual cases." A spouse was obligated to pay support only when the other spouse's earning capacity had decreased because of the marriage and the spouse was unable to support him- or herself after divorce. Support after the marriage ended was not considered to be the responsibility of the former spouse because Finland's "strong social security system" provided support. The attorney opined that support was "considered in less than one percent of all cases," and even in those unusual cases, support was payable for a limited amount of time. She further opined that this case did not qualify as an unusual case.

Fattaneh, Hannu, and her son lived together in Los Angeles from November 1999. Hannu became a permanent resident of the U.S. in 2003 or 2004. Since the beginning of the marriage, he transferred $10,000 to $15,000 on average per month to a joint bank account at Wells Fargo for the household expenses in Los Angeles. He also paid the credit card bills

every month for an American Express account in the U.S., separate from a similar European account they had. He held a California driver's license and leased a Mercedes-Benz in 2002 in his name from a Beverly Hills dealer. From at least 2010 to 2013, a Mercedes-Benz was registered in his name at the Los Angeles condominium. There was also evidence of automobile insurance policies naming Hannu and Fattaneh as the insureds at the Los Angeles condominium, for the years 2006, 2007, 2010, and 2012. Hannu received account statements at the Los Angeles condominium from BMW Financial Services dated December 2000, January 2001, and September 2002. He received Wells Fargo bank account statements and American Express correspondence at the Los Angeles condominium at various times from 2002 to 2014. Hannu's name appeared on 2013 billing statements from the Los Angeles Department of Water and Power for the Los Angeles condominium. According to Fattaneh, Hannu received medical and dental care in Los Angeles, was a member of the Beverly Hills Sports Club, and belonged to the Finnish American Chamber of Commerce in Los Angeles.

3. Hannu's Rebuttal Evidence

In response to Fattaneh's declarations and documentary evidence, Hannu submitted more evidence as follows.

The parties were not married in Los Angeles. The ceremony to which Fattaneh referred was a celebration of their decision to marry attended by her relatives. But they were formally married in Finland in a civil ceremony, which was what their Finnish marriage certificate showed. They also had another religious ceremony in Finland after the civil one.

Hannu presented the prenuptial agreement to Fattaneh before the eve of their wedding in Finland. At least two weeks prior, a Helsinki law firm prepared a draft of the agreement. He handed Fattaneh an English translation of the draft and a memorandum in English explaining its provisions. After that, Fattaneh insisted on retaining another Helsinki firm to prepare a second draft, a firm that had no prior connection to Hannu or his family. Hannu agreed, and the two met with an attorney from the second firm at least twice. This new attorney prepared the final version that the parties signed.

Throughout the marriage, Hannu resided in Helsinki, Finland. When he and Fattaneh married in 1999, he became a permanent U.S. resident at Fattaneh's suggestion so that he could more easily enter the country for his visits. He became a permanent resident in 2000 or 2001 after Fattaneh sponsored his application, and he also had a social security number and California driver's license. But in 2009 or 2010, he returned his permanent resident card to the U.S. embassy in Helsinki and submitted a form renouncing his permanent resident status. He had inadvertently stated in his first declaration that he was last in the U.S. in 2010. He did attend the law school graduation of Fattaneh's son in 2011, but that was the last time he was in the U.S. He entered the U.S. that time as a visitor using his Finnish passport. He did not intend to return to the U.S. for the foreseeable future and wanted to continue to reside in Finland permanently.

Fattaneh and he agreed after they married that he should develop a credit history in the U.S. in the event that a business opportunity arose. Thus, he opened a joint bank account with her at Wells Fargo bank. She obtained a mortgage loan for the condominium on Century Park, and he contributed $120,000 toward the down payment. In 2003, he leased a Mercedes-Benz in his name. The two agreed that, since he was not residing in California and had no plans to do so, the condominium and the Mercedes would be her property.

Hannu had never authorized the utilities accounts and the other U.S. financial accounts in his name. He learned of these accounts only recently when Fattaneh proffered correspondence regarding these accounts as evidence in this proceeding. Because she had access to his personal information, he assumed she or someone on her behalf had opened those accounts without his consent.

Hannu did not receive regular medical and dental care in California. From 1999 to 2011, he saw a physician or dentist on only three occasions in California.

When Hannu and Fattaneh met, she had a "vibrant" practice as an immigration attorney for a well-known Beverly Hills law firm. After he purchased the Marbella condominium in 2004, she practiced law part time from Marbella. She used the condominium as a business address to send and receive correspondence. She took business

trips throughout Europe to meet clients. Her claims that she had no means to support herself and required total support from him were untrue.

Hannu had his own financial problems. In 1991, he began supervising his family's stock portfolio but was not assigned a salary. He received dividends from shares of publicly traded companies, which his father gifted to him. His family revoked his authority to oversee the family's stock portfolio in 2010 when he disclosed that he was experiencing serious financial problems because of his borrowing and overspending.

Hannu formed Global and another company, HK Copterflight Oy (HK), in 1991 with partners. They incorporated both companies in Finland. He visited the U.S. from 1992 through 1998 on behalf of Global to solicit business—specifically, to find clients for Finnish export companies. He and his business partners formed business entities in California, such as Design, for these purposes. He leased an office space for Global in 1998, but the lease was terminated the same year. Although his businesses were profitable for a few years, they were currently out of business and had considerable debt. He discontinued his efforts to solicit business in the U.S. and dissolved the businesses in 1998.

Hannu was unemployed and had no current sources of income. In October 2013, he spent one month in a substance abuse rehabilitation clinic in Finland, and since being discharged, he was undergoing outpatient therapy for chronic alcohol dependency. He was unable to work for the foreseeable future because of his treatment and depended entirely on loans from his brothers or mother for living expenses and counseling expenses.

He relied on loans from family members, family owned businesses, or sales of personal assets to fund the past lifestyle he and Fattaneh enjoyed. He was now deeply indebted to various family members, family businesses, his own defunct businesses, and the Finnish tax authorities to the tune of millions of euros. He owed 110,000 euros to one brother; 30,000 euros to another brother; 34,000 euros to his mother; 645,000 euros to his father's estate; 75,000 euros to the Finnish tax authorities; 818,318.98 euros to HK; and 490,267.22 euros to a family business.

He commenced the divorce proceedings in Finland in September 2013, four months before Fattaneh filed the instant petition for dissolution. Further, there were proceedings

underway before a tribunal in Marbella, Spain regarding possession of the condominium located there. Fattaneh had engaged counsel there and was arguing that the condominium represented her domicile.

Hannu's Finnish attorney made several attempts to serve Fattaneh with the Finnish action. At Hannu's request, the Finnish court sought the assistance of the Marbella tribunal to attempt service in Marbella because Hannu believed Fattaneh had been living there for an extended period of time. The Marbella tribunal directed two notices to appear to Fattaneh at the Marbella condominium, but she failed to appear. Simultaneously, the Finnish court granted Hannu's request to attempt service on Fattaneh at the Century Park condominium in Los Angeles. Fattaneh's son was at the Century Park condominium and told the process server she had moved to Spain. After the unsuccessful attempts to serve her in Marbella and Los Angeles, the court granted Hannu's request for service by publication. In September 2014, his petition for dissolution was published in Finland's Official Journal, an official newspaper of general circulation in Finland. His attorney also e-mailed copies of the petition and other court documents to Hannu's attorney in Marbella and Fattaneh's attorney in Marbella.

Hannu proffered a declaration from his Finnish attorney regarding spousal support in Finland in response to Fattaneh's attorney declaration. His attorney disagreed with Fattaneh's about the rarity of successful spousal support claims because of the Finnish social security system. Moreover, he opined that to the extent cases of spousal support were unusual, the facts of this case fit it within that class of unusual cases. According to Fattaneh, they spent more than $30,000 monthly during the marriage. But they had both experienced abrupt financial hardship and lived on loans now. Between the two of them, they had real property in Spain, Finland, and the U.S. They were citizens of different countries and were living in different countries.

4. Court's Ruling

The court granted Hannu's motion to stay. First, the court held it lacked personal jurisdiction over Hannu to make the orders Fattaneh was seeking. Fattaneh had established her residency in Los Angeles, California, permitting her to obtain a status only dissolution

of the marriage in the California courts. But she sought relief beyond termination of the marriage—she wanted a determination of property rights and spousal support. California no longer had personal jurisdiction over Hannu for any purpose relating to the dissolution proceeding, except with respect to the status of the marriage. Hannu did not deny that he had some past contacts with California, such as business interests years ago. There were also deposits into an account for Fattaneh's benefit and utilities accounts in his name. His present contacts were for Fattaneh's convenience principally. But his contacts were too remote or tenuous to impose the burden of personal jurisdiction on him. Moreover, Hannu had not consented to jurisdiction through the limited discovery he propounded.

Second, even assuming personal jurisdiction existed, the court held California was not a convenient forum for determining the property rights of the parties or the enforceability of any prenuptial agreement. The parties were jointly attached to Spain, where they both claimed to own the Marbella property, and Finland, where they entered into the prenuptial agreement. The enforceability of the agreement and the rights of the parties under it would be determined pursuant to the laws of Finland, and the Finnish court was the most proper tribunal to do this. There was no evidence Finland would deny Fattaneh the right to end an unhappy marriage, that she could not obtain a fair adjudication of her rights in Finland, or that any California property interests could not be divided in Finland.

Accordingly, the court stayed the action in all respects. Rather than dismiss, the stay was a precautionary measure in the event that Fattaneh was unable to dissolve the marriage in the Finnish court; she could ask the court to lift the stay and seek a status only judgment.

Fattaneh filed a motion for new trial asking the court to vacate its order or, in the alternative, retain jurisdiction over the issue of spousal support. The record does not contain a ruling on the new trial motion. Apparently, the court received the motion late through inadvertence, and the time for ruling on the motion had passed. The only order relating to the motion directed the parties to schedule a hearing on (1) whether the court had lost jurisdiction to rule on the motion and (2) the merits of the motion.

Fattaneh filed a timely notice of appeal from the order granting Hannu's motion to stay.

DISCUSSION

Fattaneh asserts the court erred in two respects: (1) the court had personal jurisdiction over Hannu, either because he consented to jurisdiction by propounding discovery, or because he had sufficient minimum contacts with the state; and (2) California is not an inconvenient forum. The court did not err in either respect.

1. Personal Jurisdiction

Jurisdiction in marital cases involves three areas: (1) subject matter jurisdiction, or authority to adjudicate the precise matters raised by the pleadings; (2) "in rem" jurisdiction over the marital "res," which gives the court authority to adjudicate marital status; and (3) personal jurisdiction over the parties to adjudicate personal rights and obligations. (*In re Marriage of Jensen* (2003) 114 Cal.App.4th 587, 592.) Subject matter jurisdiction is not at issue. The court determined it had in rem jurisdiction to terminate the marriage based on Fattaneh's residency, but not personal jurisdiction over Hannu, and therefore it could not make the property and spousal support orders Fattaneh was seeking.[2]

"A California court may exercise personal jurisdiction over a nonresident defendant to the extent allowed under the state and federal Constitutions." (*HealthMarkets, Inc. v. Superior Court* (2009) 171 Cal.App.4th 1160, 1166 (*HealthMarkets*), citing Code Civ. Proc., § 410.10.) Personal jurisdiction may be established in several ways, including by making a general appearance and therefore consenting to jurisdiction, or by having sufficient minimum contacts with the forum state. (*In re Marriage of Fitzgerald & King* (1995) 39 Cal.App.4th 1419, 1425.) "When there is conflicting evidence, the trial court's factual determinations are not disturbed on appeal if supported by substantial evidence. [Citation.] When no conflict in the evidence exists, however, the question of jurisdiction is

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[2] "A court has in rem jurisdiction to adjudicate marriage dissolution if *either spouse* is domiciled within the state at the time of the proceeding. This is true even if one spouse is a nonresident not subject to the court's 'personal jurisdiction.'" (Hogoboom & King, Cal. Practice Guide: Family Law (The Rutter Group 2015) ¶ 3:66, p. 3-36.) However, "the power to adjudicate marital financial rights and responsibilities requires *personal jurisdiction* over the parties." (*Id.* ¶ 3:74, pp. 3-39 to 3-40.)

purely one of law and the reviewing court engages in an independent review of the record." (*Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 449 (*Vons*).)[3]

a. Hannu's Discovery

"A general appearance is one in which the defendant participates in the action in a manner which recognizes the court's jurisdiction. [Citation.] If the defendant raises an issue for resolution or seeks relief available only if the court has jurisdiction over the defendant, then the appearance is a general one." (*Factor Health Management v. Superior Court* (2005) 132 Cal.App.4th 246, 250 (*Factor*).) Fattaneh contends Hannu made a general appearance by participating in the action—that is, by propounding discovery unrelated to the jurisdictional question. The court correctly held he did not consent to jurisdiction by propounding discovery.

Code of Civil Procedure section 418.10 permits a defendant, within the time he or she has to plead, to file a motion to quash service for lack of jurisdiction or a motion to stay or dismiss based on forum non conveniens. (Code Civ. Proc., § 418.10, subd. (a)(1), (2).) When the defendant makes a motion under section 418.10, "no act" by the defendant "constitutes an appearance, unless the court denies the motion made under this section." (§ 418.10, subd. (e)(1).) If the court denies the motion, the defendant "is not deemed to have generally appeared until entry of the order denying the motion." (*Ibid.*) This means that the defendant may move to quash, stay, or dismiss an action based on lack of jurisdiction or forum non conveniens, and the court will not treat any other subsequent act as a general appearance unless and until it denies the motion. (*Air Machine Com SRL v. Superior Court* (2010) 186 Cal.App.4th 414, 426-427.)

Hannu propounded his discovery after filing the motion to dismiss or stay and before the court ruled on the motion. His conduct did not, therefore, constitute a general

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[3] Fattaneh's briefing often focuses on her evidence while ignoring the conflicting evidence Hannu offered. When the trial court has resolved conflicts in the evidence in favor of one party, we do not reweigh the evidence or reassess the credibility of the parties. (*In re Marriage of Balcof* (2006) 141 Cal.App.4th 1509, 1531.)

appearance under the terms of the statute (Code Civ. Proc., § 418.10, subd. (e)(1)). Even Fattaneh concedes that parties may conduct discovery on personal jurisdiction before the motion hearing without the court deeming the discovery a general appearance. (*Factor, supra*, 132 Cal.App.4th at p. 251.) She asserts Hannu's discovery went beyond personal jurisdiction because he requested information about her residency, which was irrelevant to whether jurisdiction over Hannu existed. But he also based his motion on forum non conveniens. As we discuss in the following part, Fattaneh's residency was a relevant factor in this analysis, and Hannu disputed that she was a resident of California. Hannu narrowly tailored his discovery to address the two bases for his motion. Regardless, Code of Civil Procedure section 418.10 established his discovery was not a general appearance, whether or not he narrowly tailored it.

b. Hannu's Contacts with California

Personal jurisdiction over a nonresident defendant comports with due process "if the defendant has such minimum contacts with the state that the assertion of jurisdiction does not violate '"'traditional notions of fair play and substantial justice.'"'" (*Vons, supra*, 14 Cal.4th at p. 444.) Personal jurisdiction based on contacts may be general or specific. (*Ibid.*) "A defendant that has substantial, continuous, and systematic contacts with the forum state is subject to general jurisdiction in the state, meaning jurisdiction on any cause of action," even those unrelated to the defendant's contacts. (*HealthMarkets, supra*, 171 Cal.App.4th at p. 1167.) This defendant's contacts with the state "are so wide-ranging that they take the place of physical presence in the forum as a basis for jurisdiction" (*Vons, supra*, 14 Cal.4th at p. 446) and render the defendant "'essentially at home in the forum State'" (*Daimler AG v. Bauman* (2014) __ U.S. __ [134 S.Ct. 746, 761]). "For an individual, the paradigm forum for the exercise of general jurisdiction is the individual's domicile." (*Id.* at p. 760.)

Absent the extensive contacts required for general jurisdiction, the defendant may be subject to specific jurisdiction—that is, jurisdiction over causes of action arising out of or related to the defendant's contacts with the state. (*HealthMarkets, supra*, 171 Cal.App.4th

at p. 1167.) Fattaneh contends Hannu's contacts with California sufficed to establish both general and specific jurisdiction. The court did not err in holding otherwise.

Hannu did not have the type of contacts necessary for general jurisdiction—substantial, continuous, *and* systematic. Substantial evidence showed he did not reside in California and was not domiciled here.[4] He lived and was domiciled in Finland. The parties legally married in Finland. He visited California to see Fattaneh for no more than two months at a time, and since 2008, most of their visits had been in Spain. Although he had legal permanent resident status at one point, he demonstrated that he did not actually reside here, and besides, he renounced his permanent U.S. resident status in 2009 or 2010. He was last in California in 2011, years before the dissolution proceeding, for a visit of no more than 30 days. He abandoned his business interests in the U.S. in the late 1990's. He did not own Fattaneh's condominium or any other real property, and while he leased a Mercedes in the early 2000's, the car was for Fattaneh. He does not dispute that he opened a Wells Fargo checking account with her after they married and sent her money for living expenses. But he had not authorized Fattaneh or anyone else to open the other financial accounts or utilities accounts in his name. Far from substantial, continuous, and systematic, his contacts with California were more in the nature of irregular and remote, and not so wide-ranging that they effectively constituted a physical presence in California.

Furthermore, the court rightly determined Hannu lacked sufficient minimum contacts to establish specific jurisdiction. Specific jurisdiction exists when (1) the defendant purposefully availed him- or herself of the benefits of conducting activities in the forum; (2) the action arises out of or is related to the defendant's contacts with the forum; and (3) the exercise of jurisdiction would be fair and reasonable. (*HealthMarkets*, *supra*, 171

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4 Domicile is the place where an individual intends to remain indefinitely and to which the individual intends to return whenever he or she is absent. (*In re Marriage of Amezquita & Archuleta* (2002) 101 Cal.App.4th 1415, 1419.) Residence connotes any place where someone lives with some permanency, regardless of intent to remain indefinitely. (*Ibid.*) One may have several residences but can have only a single domicile at any given time. (*Ibid.*)

Cal.App.4th at p. 1167.) "'These guidelines are not susceptible of mechanical application, and the jurisdictional rules are not clear-cut. Rather, a court must weigh the facts in each case to determine whether the defendant's contacts with the forum state are sufficient.'" (*Ibid.*)

"'The purposeful availment inquiry . . . focuses on the defendant's intentionality. [Citation.] This prong is only satisfied when the defendant purposefully and voluntarily directs his activities toward the forum so that he should expect, by virtue of the benefit he receives, to be subject to the court's jurisdiction based on' his contacts with the forum." (*Pavlovich v. Superior Court* (2002) 29 Cal.4th 262, 269.) This factor thereby ensures the court does not exercise jurisdiction based solely on fortuitous or attenuated contacts, or the unilateral activity of another party. (*Ibid.*) The reasonableness and fairness inquiry looks to the quality and nature of the defendant's contacts and the degree of inconvenience to the defendant if forced to defend in the forum. (*Id.* at p. 268; *HealthMarkets, supra*, 171 Cal.App.4th at p. 1167; *County of Humboldt v. Harris* (1988) 206 Cal.App.3d 857, 860.)

Here, Hannu's contacts were either not voluntary, not related to this dissolution action, or too attenuated in time or nature to establish specific jurisdiction. His long-ago business activities did not give rise or relate to the action for dissolution of marriage. (*Judd v. Superior Court* (1976) 60 Cal.App.3d 38, 44.) It is not as though Fattaneh was a business associate or suing him over a business disagreement. He did not purposefully avail himself of the utilities financial accounts, other than the Wells Fargo account. He initially established the Wells Fargo account to build a credit history for potential business opportunities, but he stopped doing business in the U.S. years ago. Thus, the parties used it mostly for Fattaneh's benefit in that he could transfer money to her for living expenses. The same can be said of the Mercedes-Benz he leased for Fattaneh. Fattaneh contends the intended beneficiary of Hannu's contacts was irrelevant, but we disagree. The purposeful availment factor asks in part whether Hannu should expect to submit to the court's jurisdiction *by virtue of the benefit he receives* from his intentional contacts. If he is not personally benefitting from his contacts, he would not necessarily expect that they would subject him to personal jurisdiction. The reason for the contacts also bears on their quality

and nature. The fact that he remotely sent support to Fattaneh from afar is a thin reed on which to rest personal jurisdiction. We are not convinced this supports the exercise of jurisdiction over a nonresident. (See *id.* at pp. 42, 45 [not fair or reasonable to exercise personal jurisdiction over nonresident husband merely because he sent spousal and child support payments to California for 12 years and visited his children in California three times in 10 years].)

Hannu did purposefully obtain (and subsequently abandon) permanent resident status to ease his entrance into the country, obtain a California driver's license at some point, and visit Fattaneh here. Even assuming this dissolution action can be said to relate to or arise from these contacts, the contacts occurred years before Fattaneh filed the dissolution proceeding. Their remoteness in time also bears on the quality of the contacts and whether it is reasonable and fair to base jurisdiction on them. Thus, in *Muckle v. Superior Court* (2002) 102 Cal.App.4th 218 (*Muckle*), the court held that the husband's past contacts in California did not establish personal jurisdiction over him. The parties married in Georgia in 1989. (*Id.* at p. 222.) The wife served dissolution papers on the husband in 2001. (*Ibid*.) During the 11-year marriage, they lived at various times in Georgia and California and had separated and reconciled repeatedly. (*Ibid.*) The husband resided in California from January 1998 to December 1998, but since that time had lived continuously in Georgia. (*Ibid.*) He bought a trailer for the wife in California in 2000. (*Ibid*.) The court held that the husband's past residency in California and his buying the trailer here did not justify the court's assertion of personal jurisdiction. (*Id.* at pp. 228-229.) Fattaneh criticizes *Muckle*'s focus on the timing of the contacts, specifically *Muckle*'s statement that "the court looks at the contacts at the time of the proceeding and not on whether past minimum contacts might suffice." (*Id.* at p. 227.) She argues that the case *Muckle* cites for this proposition, *Tarvin v. Tarvin* (1986) 187 Cal.App.3d 56 (*Tarvin*), does not lend support, because *Tarvin* involved partition of a husband's military pension, and the federal statute governing military pensions specifically required current residence in the forum for jurisdiction to exist. (*Id.* at pp. 60-61.)

Regardless of the facts of *Tarvin*, we do not think *Muckle* was wrong to consider the timing of the husband's contacts with California for the reason we have already explained—the contacts' remoteness in time relates to their quality and the overall fairness and reasonableness of exercising jurisdiction. Additionally, the cases Fattaneh cites to show that *Muckle* was wrong are distinguishable in significant respects. In *In re Marriage of Lontos* (1979) 89 Cal.App.3d 61, the court held the husband's contacts with California were "continuous and extensive"; he had a "long history of domicile" in the state, he spent 13 of his 17 years of military service in California, one of the couple's children was born here, and he lived in this state until the year before the wife filed for divorce. (*Id.* at pp. 64, 69.) Fattaneh asserts *Lontos* means "[l]ong history of domicile beats current absence from [the] state." We do not necessarily disagree. But Hannu has not had a long history of domicile in California. Similarly, Hannu is unlike the husband in *Khan v. Superior Court* (1988) 204 Cal.App.3d 1168, whose contacts with California the court found extensive, wide-ranging, substantial, continuous, and systematic. (*Id.* at p. 1178.) Among other things, the husband in *Khan* moved to California with his wife, found employment here, became a naturalized citizen, had two children here, purchased real property here that he still owned at the time of the dissolution action, treated the state as his domicile even while living abroad, and spent six uninterrupted years of married life here. (*Id.* at pp. 1172, 1177-1178.) Hannu's contacts with California are nowhere near as extensive.

In short, the court properly determined it lacked personal jurisdiction over Hannu of the general or specific variety. It had jurisdiction over the marital res to adjudicate the parties' marital status, but nothing else. The court did not adjudicate their marital status, choosing instead to stay the action on forum non conveniens grounds. We turn now to that issue.

2. Forum Non Conveniens

Even if the court had personal jurisdiction over Hannu, it had the power to stay or dismiss the action based on forum non conveniens. (Code Civ. Proc., §§ 410.30, subd. (a), 418.10, subd. (a)(2).) "Forum non conveniens is an equitable doctrine invoking the discretionary power of a court to decline to exercise the jurisdiction it has over a transitory

cause of action when it believes that the action may be more appropriately and justly tried elsewhere." (*Stangvik v. Shiley Inc.* (1991) 54 Cal.3d 744, 751 (*Stangvik*).) Code of Civil Procedure section 410.30 codifies the doctrine of forum non conveniens. (*Stangvik, supra*, at pp. 749-750 & fn. 1.) Under this section, when a court "finds that in the interest of substantial justice an action should be heard in a forum outside this state, the court shall stay or dismiss the action in whole or in part on any conditions that may be just." (§ 410.30, subd. (a).)

The defendant bears the burden of proof as the moving party. (*Stangvik, supra*, 54 Cal.3d at p. 751.) The court must first determine whether the alternative forum is "'suitable.'" (*Ibid*.) If it is so, the court then considers the private interests of the litigants and the public interests. (*Ibid.*) The court may stay or dismiss the action if the balance of these factors favors litigating in the alternative forum. (*Id.* at pp. 751-752.)

The court's power to stay an action is broader than its power to dismiss the action, because a stay allows the action to resume in California if, for some reason, the alternative forum denies the plaintiff a prompt trial. (*Archibald v. Cinerama Hotels* (1976) 15 Cal.3d 853, 857.) "It is the trial court's duty to weigh and interpret evidence and draw reasonable inferences therefrom." (*National Football League v. Fireman's Fund Ins. Co.* (2013) 216 Cal.App.4th 902, 918 (*National Football League*).) We accord substantial deference to the court's ruling and review it only for abuse of discretion. (*Stangvik, supra*, 54 Cal.3d at p. 751.) "We 'will only interfere with a trial court's exercise of discretion where [we find] that under all the evidence, viewed most favorably in support of the trial court's action, no judge could have reasonably reached the challenged result.'" (*Guimei v. General Electric Co.* (2009) 172 Cal.App.4th 689, 696 (*Guimei*).)

An alternative forum is suitable if jurisdiction exists there and the statute of limitations will not bar the action. (*Stangvik, supra*, 54 Cal.3d at pp. 752, 754; *Guimei, supra*, 172 Cal.App.4th at p. 696.) Fattaneh concedes the Finnish court has jurisdiction over Hannu and there is no statute of limitations issue there. She suggests that forum is unsuitable, however, because Finland does not grant spousal support as a practical matter. The court did not err in impliedly finding Finland a suitable forum.

When the defendant demonstrates the alternative forum has jurisdiction and the statute of limitations does not bar the action, the burden falls on the plaintiff to show that the alternative forum is nevertheless unsuitable because the forum's law provides no remedy. (*Hahn v. Diaz-Barba* (2011) 194 Cal.App.4th 1177, 1191.) The forum is suitable even if the plaintiff may not necessarily win under the forum's laws. (*Guimei, supra,* 172 Cal.App.4th at p. 696.) "The fact that a plaintiff will be disadvantaged by the law of that jurisdiction, or that the plaintiff will probably or even certainly lose, does not render the forum 'unsuitable' in this analysis." (*Boaz v. Boyle & Co.* (1995) 40 Cal.App.4th 700, 711.) "That the law is less favorable to the plaintiffs in the alternative forum, or that recovery would be more difficult if not impossible, is irrelevant to the determination whether the forum is suitable unless 'the alternative forum provides no remedy at all.'" (*Guimei, supra,* at p. 696.) The "no remedy at all" exception "applies only in 'rare circumstances,' such as where the alternative forum is a foreign country whose courts are ruled by a dictatorship, so that there is no independent judiciary or due process of law." (*Shiley Inc. v. Superior Court* (1992) 4 Cal.App.4th 126, 133-134.) "'For example, in *Rasoulzadeh v. Associated Press* (S.D.N.Y. 1983) 574 F.Supp. 854, 861, the court held that an alternative forum in Iran was not available since the courts there were administered by Iranian mullahs and the plaintiffs were likely to be shot if they returned to Iran.'" (*Guimei, supra,* at p. 697.)

Here, Fattaneh did not show Finland provided her no remedy at all. To begin with, her attorney and Hannu's attorney agreed that Finnish law provided for spousal support. The remedy she seeks exists. They simply disagreed about the rarity of support cases and whether this case would qualify as an unusual case in which the court would order support. Even if we accept as true her attorney's opinion that the court probably would decline to order support, this did not render Finland an unsuitable forum. She must show much more than less favorable law in the alternative forum. She made no showing whatsoever that Finland lacked an independent judiciary or due process of law.

Because the alternative forum was suitable, we next consider whether the balance of the public and private interest factors favored litigating this case in Finland. "The private interest factors are those that make trial and the enforceability of the ensuing judgment

expeditious and relatively inexpensive, such as the ease of access to sources of proof, the cost of obtaining attendance of witnesses, and the availability of compulsory process for attendance of unwilling witnesses. The public interest factors include avoidance of overburdening local courts with congested calendars, protecting the interests of potential jurors so that they are not called upon to decide cases in which the local community has little concern, and weighing the competing interests of California and the alternate jurisdiction in the litigation." (*Stangvik, supra*, 54 Cal.3d at p. 751.) Courts must consider the public and private interests flexibly, "without giving undue emphasis to any one element." (*Id.* at p. 753.) "An undue emphasis on a single factor is especially threatening to a balanced analysis because some of the matters to be weighed will by their nature point to a grant or denial of the motion. For example, the jurisdiction's interest in deterring future wrongful conduct of the defendant will usually favor retention of the action if the defendant is a resident of the forum, whereas the court congestion factor will usually weigh in favor of trial in the alternate jurisdiction." (*Id.* at p. 753, fn. 4.)

A resident plaintiff enjoys a strong presumption in favor of her choice of forum (*National Football League, supra*, 216 Cal.App.4th at p. 926), though the defendant may overcome it with a strong showing that the forum is inconvenient. The court should also consider the defendant's residence in the balance of convenience. (*Stangvik, supra*, 54 Cal.3d at p. 755.)

The court did not abuse its discretion when it held that, on balance, California was an inconvenient forum. The court found Fattaneh established her residency in California. But Hannu made a case to overcome the presumption in favor of her chosen forum. Numerous factors and ample evidence supported its determination. Not only is Hannu a Finnish resident, but key witnesses and sources of proof are located in Finland or nearer to Finland than Los Angeles. The parties do not appear to dispute that the Los Angeles condominium is Fattaneh's separate property. But a dispute definitely exists as to other property Fattaneh identifies as community or quasi-community property—the Marbella condominium, Finnish real properties, personal property located in Finland, and income from Hannu's family's businesses. For instance, Hannu filed a seven-page declaration from his brother, Petri

Korpivaara, whose statements suggested a cottage in Finland and the Marbella condominium constituted Hannu's separate property, and Petri, Hannu's second brother, and his mother all had an ownership interest in the Marbella condominium. Petri also set forth facts suggesting that Hannu had funded his and Fattaneh's lifestyles through unauthorized loans from family businesses or Hannu's own businesses, and now that Hannu's family had uncovered his actions, he was deeply indebted to them, the businesses, and the Finnish tax authorities. In other words, the real and personal property at issue is all located in Finland or Spain, documentary evidence will come from those countries, and the percipient witnesses who will help determine the character of the property and whether spousal support is payable are in Finland or Spain. Fattaneh's statements support this conclusion—she wanted attorney fees and costs to travel to Europe to collect evidence, retain expert accountants there, and continue to pay her Spanish and Finnish attorneys.

Additionally, the existence of the prenuptial agreement means important witnesses and sources of proof are located in Finland. The parties entered into the agreement in Finland. Finnish lawyers drafted the agreement. The parties dispute how long Fattaneh had to consider the agreement, whether she received independent legal advice, and what it actually means. According to Hannu, one firm did the first draft, another firm Fattaneh chose did the second draft, and they met at least twice with the attorney of Fattaneh's choosing. Thus, the pertinent witnesses and documents regarding the agreement are in Finland. And because the agreement is governed by and construed according to the laws of Finland, trial likely will be more expeditious if the Finnish courts are applying Finnish law, rather than the California court applying Finnish law.

In terms of public interest factors, the parties married in Finland. While Fattaneh contends otherwise, she did not produce a marriage license to support her view of the facts. Hannu, by contrast, proffered substantial evidence that the ceremony in Los Angeles was merely a celebration, and the parties married legally in Finland. He produced a Finnish marriage certificate. The Finnish courts and community thus have an interest in overseeing the dissolution of a marriage entered into there.

Fattaneh advances a number of arguments in an attempt to show the court erred in balancing the convenience factors. They all are unavailing. She asserts the "marital domicile" was California because Hannu's permanent legal resident status means that he was a U.S. resident. But Hannu abandoned his permanent resident status by 2010, three years before he filed his dissolution action and four years before Fattaneh filed hers. For purposes of convenience, it is the parties' residence at the time of the action that matters, and the evidence supporting the judgment showed that Hannu was a resident of Finland.

Fattaneh also argues "California has priority between the two divorce cases" because she served her action on Hannu first, even if he filed first. She cites the rule that "pendency of another earlier action growing out of the same transaction and between the same parties is a ground for abatement of the second action." (*Leadford v. Leadford* (1992) 6 Cal.App.4th 571, 574.) But the court is required to stay the second action only when the two actions are pending in the same state. (*Ibid.*) When the actions are pending in different states or countries, the decision whether to stay the second action is discretionary. (*Ibid.*) The court has discretion to deny a stay when judicial economy, the interests of the forum, and the convenience of the parties weigh in favor of denial. (*Id.* at p. 575.) In other words, the court has discretion to conduct a forum non conveniens analysis and do exactly what it did here.

Fattaneh next contends that Hannu is "wealthy" and fluent in English, while she has no income and does not speak or understand Finnish, so it will be easier for him to litigate in California rather than the other way around. Substantial evidence, however, demonstrated that he was borrowing and spending beyond his means during the marriage, he had no current income or job prospects, and he was now entirely dependent on loans from his family for living expenses. Fattaneh contended she was borrowing from relatives to stay afloat. In other words, the parties were in similar circumstances. Even if she cannot understand Finnish, she has already retained Finnish attorneys, and there is no reason to believe she cannot participate intelligently with the aid of her attorneys.

Finally, Fattaneh contends the court relied too heavily on the existence of the prenuptial agreement, which was invalid under California law, specifically Family Code

section 1615. Section 1615 sets forth conditions under which premarital agreements are unenforceable. The party challenging the agreement—here, Fattaneh—carries the burden of proving unenforceability. (§ 1615, subd. (a).) Further, when a party challenges the premarital agreement, the court must make certain findings in writing or on the record relating to the voluntariness of execution, otherwise the agreement will be deemed involuntarily executed. (§ 1615, subds. (a), (c).)

Fattaneh has forfeited this argument by failing to raise it below. (*Dimmick v. Dimmick* (1962) 58 Cal.2d 417, 422 ["It is settled that points not raised in the trial court will not be considered on appeal"].) This issue does not solely involve questions of law such that we may decide it for the first time on appeal. Family Code section 1615 identifies a number of factual issues the trial court should consider in determining enforceability, such as whether the challenging party voluntarily executed the agreement, whether the nonchallenging party provided full disclosure of his or her property and financial obligations, and whether the challenging party had independent legal counsel or waived independent counsel. (§ 1615, subds. (a), (c).) Having failed to challenge enforceability under section 1615, Fattaneh cannot now fault the court for failing to make the express findings the statute requires.

Besides, while Fattaneh relies on the California Family Code to argue the agreement is unenforceable, the agreement specifically provides that it will be governed by and construed according to Finnish law. If the proponent of a choice-of-law clause in a contract demonstrates that the chosen forum "has a substantial relationship to the parties or their transaction, or that a reasonable basis otherwise exists for the choice of law, the parties' choice generally will be enforced unless the other side can establish both [(1)] that the chosen law is contrary to a fundamental policy of California and [(2)] that California has a materially greater interest in the determination of the particular issue." (*Washington Mutual Bank v. Superior Court* (2001) 24 Cal.4th 906, 917.) Finland bears a substantial relationship to the transaction in that the parties married and entered into the prenuptial agreement in Finland, Finnish lawyers drafted the agreement, and as far as alleged community or quasi-community property goes, much of it is in Finland. Fattaneh has not demonstrated that

Finnish law is contrary to a fundamental policy of California, or that California has a materially greater interest in the determination of property and spousal support issues than Finland.

In conclusion, the court did not abuse its discretion in holding California was an inconvenient forum and staying the action, but retaining jurisdiction to adjudicate marital status.

DISPOSITION

The order is affirmed. Hannu shall recover costs on appeal.

FLIER, J.

WE CONCUR:

RUBIN, Acting P. J.

GRIMES, J.