

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 3, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

No. 99-2170

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

JOHN HEINEKE,

PLAINTIFF-APPELLANT,

V.

CHARLENE LUNSMANN,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Rock County:
EDWIN C. DAHLBERG, Judge. *Reversed and cause remanded.*

Before Dykman, P.J., Vergeront and Roggensack, JJ.

¶1 PER CURIAM. John Heineke appeals from an order dismissing his lawsuit against Charlene Lunsman for lack of personal jurisdiction. He claims the trial court erred in concluding that Lunsman's lengthy absence from the state established a lack of minimum contacts, despite the fact that her alleged tortious

conduct occurred here. We agree and reverse the trial court's order dismissing the case.

BACKGROUND

¶2 Heineke and Lunsmann resided in Wisconsin during their marriage. When they were divorced in 1972, Lunsmann obtained child support for a son, who she claimed was a child of the marriage. Lunsmann moved to Texas in 1981, where she now resides. At some point during the 1980's, Lunsmann returned to the Wisconsin courts to obtain a modification of the child support award. All of the support checks were processed through the Clerk of Courts in Rock County until the support obligation ended in 1988. Lunsmann had no further contacts with this state.

¶3 In 1998, Heineke filed suit against Lunsmann, claiming that she had perpetrated a fraud upon him by asserting that her son, Christian, was a child of the marriage when she knew all along that he was not. Heineke sought damages for the child support payments he had made and for the emotional harm he suffered from being misled about his biological relationship with Christian. He served Lunsmann in Texas. Lunsmann appeared specially and moved to dismiss the action for lack of personal jurisdiction. The trial court granted the motion, and Heineke appeals.

STANDARD OF REVIEW

¶4 We will independently determine whether the facts of record establish personal jurisdiction. See *Brown v. LaChance*, 165 Wis. 2d 52, 65, 477 N.W.2d 296 (Ct. App. 1991).

ANALYSIS

¶5 The Wisconsin Statutes allow courts in this state to assume personal jurisdiction over a properly served defendant “[i]n any action claiming injury to person or property within or without this state arising out of an act or omission within this state by the defendant.” WIS. STAT. § 801.05(3) (1997-98).¹ The provisions of this long-arm statute, as it is called, are to be “liberally construed in favor of exercising jurisdiction.” See *Dietrich v. Wisconsin Patients Comp. Fund*, 169 Wis. 2d 471, 478, 485 N.W.2d 614 (Ct. App. 1992).

¶6 Once it has been established that the long-arm statute applies, an additional determination must be made as to “whether the exercise of jurisdiction under the statute comports with due process requirements.” See *id.* (quoting *All-Star Ins. v. APS Ins. Agency, Inc.*, 110 Wis. 2d 72, 76, 327 N.W.2d 648, 650 (1983)). There is a presumption of constitutionality which may be rebutted, taking into consideration: (1) the quantity of the contacts between the defendant and Wisconsin; (2) the nature and quality of the contacts; (3) the source of the cause of action; (4) the interest of Wisconsin in the action; and (5) the convenience of having the action tried in Wisconsin. See *Brown*, 165 Wis. 2d at 68. Due process requires that the defendant’s conduct and connection with the state be sufficient to reasonably anticipate being called into court here.

¶7 We are satisfied both that the fraud that Heineke alleges Lunsman committed was a local act within the meaning of WIS. STAT. § 801.05(3), and that the application of the long-arm statute in these circumstances would not violate

¹ All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

due process. Lunsmann made representations that Christian was a marital child in the courts of this state on more than one occasion over a period of several years. She relied upon local government agencies to oversee the child support payments, which were obtained as a result of actions which she herself had initiated in this state. The fact that a considerable amount of time has passed since the alleged fraud was committed might raise a statute of limitations question, but it does not negate either the substantial nature or number of contacts that Lunsmann had in this state. Wisconsin has an interest in seeing that its governmental resources are not used in furtherance of fraud. It would be at least as convenient to try the action here as in Texas, given that the court files and some of the proposed witnesses are here. It may reasonably be anticipated that a person who makes misrepresentations in the courts of this state may be called to answer for them here. In sum, we conclude the trial court erred in refusing to exercise personal jurisdiction over Lunsmann, and we reverse the order of dismissal and remand for further proceedings.

By the Court.—Order reversed and cause remanded.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

