Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2007-487

AUGUST TERM, 2008

Marianne Lisenko	}	APPEALED FROM:
	}	
v.	}	Chittenden Family Court
	}	
	}	
Boris Osadchuk	}	DOCKET NO. 94-2-07 Cndm
		Trial Judge: Mark J. Keller

In the above-entitled cause, the Clerk will enter:

Wife appeals pro se from the family court's ruling on her motion to reopen the dismissal of her divorce complaint. The court denied wife's request for a distribution of marital property due to lack of personal jurisdiction over husband, a Canadian citizen. She raises numerous arguments, many of which appear irrelevant to the issue presented on appeal. To the extent that wife relies on evidence that was not presented below, we do not consider it. See Hoover v. Hoover, 171 Vt. 256, 258 (2000) (Supreme Court's review on appeal is confined to the record and evidence adduced at trial; Court cannot consider facts not in the record). In a similar vein, we do not address arguments raised for the first time in a reply brief. See Windsor Sch. Dist. v. State, 2008 VT 27, ¶ 31 n.7 (arguments raised for the first time in a reply brief need not be considered). We affirm the family court's order.

The record indicates the following. The parties are Canadian citizens who were married in Canada in 1983. Husband and wife resided in Canada until 2003, when wife moved to Vermont. Husband continues to reside in Canada. In February 2007, wife filed a complaint in Vermont Family Court, asking the court to grant her a legal separation from husband, divide the marital estate, and award her maintenance. The court scheduled a hearing, noting that jurisdiction over all of the marital property appeared to be in Canada. Husband did not attend the hearing, apparently because he did not receive timely notice. In May 2007, the court issued a temporary order, granting the parties a legal separation and ordering husband to pay wife $1833.33 per month based on a January 2000 "temporary separation agreement" produced by wife.

Wife then filed a "jurisdictional statement and motion for default judgment." She asked the court to order husband to pay her $275,000 in cash and $1800 per month in maintenance. The court set the matter for a hearing. Husband obtained counsel and filed a motion to dismiss for lack of jurisdiction, or alternatively, for relief from judgment. Husband argued that he lacked the requisite minimum contacts with Vermont such that the court could exercise personal jurisdiction over him. He explained that he had never lived in Vermont or conducted business in

Vermont, and that his only contact with the state had been many years earlier for a fishing trip. Following a hearing, the court agreed with husband that it lacked personal jurisdiction over him. It thus granted husband's motion to set aside the temporary order, and award of spousal maintenance.

In August 2007, wife asked the court to rule on her "jurisdictional statement and motion for default judgment." A final hearing was held in October 2007, and wife failed to attend. Following the hearing, the court again ruled that it did not have personal jurisdiction over husband, and it would therefore not grant wife's requests for property division and maintenance. The court noted that while it could grant a legal separation to the parties, wife's failure to attend the hearing deprived it of a factual basis for such an order. The court therefore dismissed the case due to wife's failure to appear. Shortly thereafter, wife moved to reopen the court's decision. In a November 2007 order, the court granted her request as to the dissolution of the marriage but not as to the question of property division, reiterating its earlier conclusion that the court lacked personal jurisdiction over husband. Before a hearing could be held on the issue of legal separation, wife filed a notice of appeal from the court's November 2007 order.

Wife raises numerous arguments on appeal. She suggests that the personal jurisdiction requirement is at odds with due process. She also argues that courts are biased against women, and that it was unfair for the court in this case to refuse to divide the marital property. According to wife, the court should have exercised jurisdiction over husband because she was married to husband, she served husband with a copy of the divorce complaint, and husband responded in Vermont court. She also appears to assert that because she can be legally separated from husband, despite the fact that there is no personal jurisdiction over him, then the court must also divide the marital estate.

These claims of error are without merit. The family court properly concluded that it lacked personal jurisdiction over husband. Its conclusion is consistent with due process, not at odds with it. See N. Aircraft, Inc. v. Reed, 154 Vt. 36, 41 (1990) ("The Due Process Clause limits the power of a state court to render judgments against nonresident defendants."). It is well-established that "[b]efore a nonresident defendant can be brought into a Vermont court, the plaintiff must show that the Vermont long arm statute reaches the defendant, and that jurisdiction over him may be maintained without offending the Due Process Clause of the Fourteenth Amendment." Id. at 40; see also 12 V.S.A. § 913(b) (long-arm statute).

The Due Process Clause requires that a defendant "have certain minimum contacts with [the forum state] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." Poston v. Poston, 160 Vt. 1, 5 (1993) (citation and quotation omitted). To determine if sufficient minimum contacts exist, courts look to "the interests of the plaintiff and the forum state in proceeding with the action there; the nature and quality of the defendant's activity within that state, and whether it is fair and reasonable to require the defendant to conduct a defense within the plaintiff's choice of forum." Id. at 6 (citation omitted). We have made clear that the "unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of [minimum] contact with the forum State. Additionally, the foreseeablity of being summoned into a foreign jurisdiction, while not wholly irrelevant, has never been a sufficient benchmark for personal jurisdiction under the Due Process Clause." Reed, 154 Vt. at 41 (citations omitted). Instead, "the critical consideration is whether the defendant's conduct and connection with the forum State are such that he should reasonably

anticipate being haled into court there." Id. To satisfy this requirement, a defendant must purposefully direct his activities towards residents of the forum State and the resulting litigation must arise from those activities; he "cannot be summoned into a jurisdiction merely as a result of fortuitous, attenuated or random contacts." Id. at 41-42 (citations omitted).

In this case, husband clearly lacks the requisite minimum contacts with Vermont that would support an exercise of personal jurisdiction over him. As the family court found, he has never lived nor conducted business in Vermont, and he owns no property or proprietary interest in Vermont. See Poston, 160 Vt. at 6 (finding that wife had insufficient contacts with Texas to support an exercise of personal jurisdiction over her where she had no ties to Texas other than residing there for three years in the early 1970s and giving birth to her first child there). The fact that husband was married to someone who subsequently moved to Vermont does not satisfy the minimum-contacts requirement, nor does the fact that he was served with a Vermont divorce complaint in Canada. We note, moreover, that in responding to wife's Vermont filings, husband did not waive his right to challenge the court's jurisdiction over him; in fact, he expressly challenged the court's jurisdiction. Cf. V.R.C.P. 12(h) (discussing how defense of lack of personal jurisdiction may be waived). Finally, the family court's authority to dissolve the parties' marriage has no bearing on the question of the court's personal jurisdiction over husband. Cf. Poston, 160 Vt. at 5 (recognizing that "each state, by virtue of its command over its domiciliaries and its large interest in the institution of marriage, can alter within its own borders the marriage status of the spouse domiciled there, even though the other spouse is absent." (citation omitted)). We have considered all of wife's arguments and find them all without merit. The family court properly concluded that it lacked personal jurisdiction over husband.

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

_____
John A. Dooley, Associate Justice

_____
Denise R. Johnson, Associate Justice