

'Til Death Do Us Part: Why Personal Jurisdiction Is Required to Issue Victim Protection Orders Against Nonresident Abusers

I. Introduction

Sarah, a young bride, believes her groom, John, is perfect. Soon after they take their vows, John's criticism of Sarah transforms into verbal abuse. His command keeps her trapped in their home. His temper places her in fear. And eventually, his fist leaves a mark on her face. John apologizes and reminds Sarah how much he loves her. For better, for worse, Sarah forgives her husband. This happens again — and again. Sarah has thought about leaving, but now she is pregnant. After the baby arrives, the stress at home increases. The blood and bruises are nothing new, but the words out of John's mouth are new: "You better believe me when I say that I will kill you." But, the baby crying causes him to relax the hands that were tightening around Sarah's neck.

The next day, before John gets home from work, Sarah packs a suitcase with her clothes and things for the baby. With the little one in the car seat, she heads south on Interstate 35. The drive from Kansas City to Oklahoma City is five hours. Three years prior to the drive, Sarah left her parents' house in Oklahoma City; she has only talked to them a few times since the day she said goodbye. But now there is nowhere else for her to go. Sarah calls them for help, and her mom promises she will have dinner and a warm bed waiting for her.

Back in Kansas City, John gets home from work, and the house is empty. *Where is Sarah?* She has very few friends because he rarely allows her to leave the house. It is too late for the baby to have a doctor's appointment. John thinks, *she will be back*. She has threatened to leave several times, but she always comes back. He calls Sarah's cell phone repeatedly, but she does not answer. It gets later, and he realizes she is gone. He suspects she is with her family in Oklahoma City.

Sarah knows it will not take long for John to figure out where she is. She is fearful that if John finds her, the abuse will be worse than ever before. Upon Sarah's arrival, she and her mother go to the Oklahoma County courthouse and file a petition for an ex parte emergency victim protection order. Within hours of the order being issued, and unbeknownst to Sarah, John is driving through the Kansas prairie, on his way to Oklahoma . . .

* * *

Hopefully, the above hypothetical is as difficult for the reader as it was for the author to imagine. Unfortunately, reality closely mirrors this situation all too often. Domestic violence plagues the entire nation.¹ During 2008, more than 500,000 acts of abuse were committed in the United States against women by their intimate partners,² “[a]nd more than 2,000 [people] were killed by [their] intimate partners.”³ Oklahoma is certainly not immune to domestic violence — 25,189 incidents of domestic abuse were reported to law enforcement during 2009.⁴ Furthermore, more than 100 people in Oklahoma are killed each year as a result of domestic violence. Forty-three percent of intimate partner homicide victims were in the process of leaving their perpetrators.⁵ Like Sarah, many other Oklahomans seek protection from abuse by filing for victim protection orders.⁶ During the first eight months of 2008, 2,400 victims of domestic abuse petitioned for victim protection orders in Oklahoma County District Court.⁷

During the mid-1970s, states began recognizing the lethal nature of domestic violence and passed legislation that enabled judges to grant victim protection orders in civil court.⁸ Currently, all fifty states and the District of Columbia have domestic violence statutes providing for victim protection orders.⁹ In 1982, the Oklahoma legislature joined this reform

1. See Eric Holder, U.S. Att’y Gen., Speech at Domestic Violence Awareness Month Event (Oct. 19, 2009).

2. *Id.*

3. *Id.*

4. INFO. SERVS. DIV. & INFO. TECH. SERVS. DIV., OKLA. STATE BUREAU OF INVESTIGATION, STATE OF OKLAHOMA UNIFORM CRIME REPORT ANNUAL REPORT 8-2 (2009), available at <http://www.ok.gov/osbi/documents/2009%20UCR%20Annual%20Report.pdf>. Domestic Abuse includes such offenses as murder, sex crimes, assault, and assault and battery. *Id.* Domestic abuse reports have increased by 14.2% between 2000 and 2009. *Id.*

5. OKLA. DOMESTIC VIOLENCE FATALITY REVIEW BD., OKLA. STATE BUREAU OF INVESTIGATION, DOMESTIC VIOLENCE HOMICIDE IN OKLAHOMA ANNUAL REPORT 1 (2009) [hereinafter FATALITY REVIEW BOARD], available at [http://www.oag.ok.gov/oagweb.nsf/0/53d98acaf26a9585862577b5004ed38b/\\$FILE/2009%20Annual%20Report.pdf](http://www.oag.ok.gov/oagweb.nsf/0/53d98acaf26a9585862577b5004ed38b/$FILE/2009%20Annual%20Report.pdf).

6. See Bryan Painter, *Oklahoma County Filings Show Increase for Protective Orders*, THE OKLAHOMAN, Sept. 28, 2008, <http://newsok.com/oklahoma-county-filings-show-increase-for-protective-orders/article/3303774>.

7. *Id.* This was the largest number of victim protection orders applied for in Oklahoma County since 2003. *Id.* Two-thousand four hundred filings for victim protection orders “is 123 more than in the same time period [in 2007] and 173 more than [in 2006].” *Id.*

8. Michelle R. Waul, *Civil Protection Orders: An Opportunity for Intervention with Domestic Violence Victims*, 6 GEO. PUB. POL’Y REV. 51, 53 (2000).

9. See, e.g., DEL. CODE ANN. tit. 10, § 1045 (1999); IOWA CODE ANN. § 236.2 (West 2008); KY. REV. STAT. ANN. § 403.725 (West 2006); MASS. GEN. LAWS ANN. ch. 209A, § 1 (West 2003); N.J. STAT. ANN. § 2C:25-18 (West 2005).

and passed the Protection from Domestic Abuse Act.¹⁰ Sections 60-60.18 of Title 22 of the Oklahoma Statutes provide protection for victims of domestic abuse in Oklahoma.¹¹ Despite both proactive and remedial efforts to curb domestic violence, Oklahoma is still ranked fifteenth nationally for having the highest number of women murdered by men each year.¹²

These high numbers are not mitigated by vagaries in the existing laws. The question remains unanswered whether the protection granted by a victim protection order extends to women, like Sarah, who come to Oklahoma seeking shelter from domestic abuse. When victims of domestic violence flee the homes they share with their abusers, they often seek refuge with friends, family, or in shelters, and many move to another city or state to hide from their abusers.¹³ This can raise a number of difficult questions for the courts. What if none of the acts of violence occurred in Oklahoma? What if her abuser has not yet set foot on Oklahoma soil? Must Oklahoma have personal jurisdiction over the abuser to issue a victim protection order against him? Or, is a victim protection order instead a declaration of the victim's protected status, which does not demand personal jurisdiction over the defendant? The state's interest in protecting victims located within its borders should not jeopardize the abusers' Fourteenth Amendment due process rights, but the mere possibility that those rights are conceivably in play should not leave victims of abuse completely unprotected. A major hurdle stands between victims that come to Oklahoma seeking shelter and the protection from abuse afforded by the state of Oklahoma under Title 22, Sections 60-60.18 of the Oklahoma Statutes. The Protection from Domestic Abuse Act does not specify whether the state must have personal jurisdiction over the defendant-abuser to issue a victim protection order against him.¹⁴ Furthermore, if personal

10. See 22 OKLA. STAT. §§ 60-60.6 (Supp. 1982) (current version at 22 OKLA. STAT. §§ 60-60.18 (2001 & Supp. 2007)).

11. 22 OKLA. STAT. §§ 60-60.18.

12. VIOLENCE POLICY CENTER, WHEN MEN MURDER WOMEN: AN ANALYSIS OF THE 2008 HOMICIDE DATA 15 (2010), available at <http://www.vpc.org/studies/wmmw2010.pdf>. Other reports claim Oklahoma ranks ninth. Editorial, *Deadly Results: Domestic Violence Death Rates Too High*, THE OKLAHOMAN, Oct. 4, 2009, at 16A. Oklahoma was ranked fourth for number of women killed by men in 2008. Amy Lester, *Oklahoma Ranks Fourth in Domestic Violence*, (KWTN News 9, Oklahoma City television broadcast Oct. 2, 2008) available at <http://www.newson6.com/Global/category.asp?C=121535&clipId=2974674&autostart=true>.

13. Lee Ann Jones, Note, *Domestic Relations: Oklahoma's Protection from Domestic Abuse Act*, 36 OKLA. L. REV. 349, 359 (1983).

14. 22 OKLA. STAT. §§ 60-60.18.

jurisdiction is required, the Act does not indicate how the state might achieve personal jurisdiction over a nonresident abuser.¹⁵

Part II of this comment describes Oklahoma's response to the prevalence of domestic violence in the state, and the process for obtaining a victim protection order under the Protection from Domestic Abuse Act, as well as the federal government's response to this danger. Part II will also describe the traditional requirements for satisfying procedural due process and briefly discuss the constitutionality of ex parte emergency protective orders. Part III will examine the three rationales embodied in cases where other states have answered the jurisdictional question presented in the scenario above. Part IV will evaluate these three rationales under the microscope of Oklahoma law and suggest how Oklahoma ought to balance the state's interests in both protecting victims of domestic abuse and ensuring a nonresident defendant's right to due process is upheld. This comment concludes in Part V.

II. Victim Protection Orders and Due Process Requirements

A. The Protection from Domestic Abuse Act

Before the Protection from Domestic Abuse Act was passed in 1982, a victim of domestic abuse could only get a court order to stop abuse if the victim was married to her abuser and had filed for divorce or separate maintenance.¹⁶ As a result, prior to the passage of the Protection from Domestic Abuse Act, many victims of domestic abuse were precluded from civil protective relief.¹⁷ The Protection from Domestic Abuse Act expanded the class of victims that could petition for protective relief by defining "domestic abuse" as "any act of physical harm, or the threat of imminent physical harm" when the abuser and the victim "*are family or household members or who are or were in a dating relationship.*"¹⁸ The Protection from Domestic Abuse Act defines "family or household members" as:

[S]pouses, ex-spouses, present spouses of ex-spouses, parents, including grandparents, stepparents, adoptive parents, and foster

15. *See id.*

16. Jones, *supra* note 13, at 350; *see* 12 OKLA. STAT. § 1276 (1981) (allowing for obtaining protective orders during dissolution proceedings) (current version at 43 OKLA. STAT. § 110.B.2 (2001 & Supp. 2007) (providing for ex parte temporary restraining order after filing petition for dissolution of marriage)).

17. *See* Jones, *supra* note 13, at 350.

18. 22 OKLA. STAT. § 60.1.1 (2001 & Supp. 2007) (emphasis added).

parents, children, including grandchildren, stepchildren, adopted children, and foster children, persons otherwise related by blood or marriage, persons living in the same household or who formerly lived in the same household, and persons who are the biological parents of the same child, regardless of their marital status, or whether they have lived together at any time.¹⁹

Under the statute, a “[d]ating relationship,” means a courtship or engagement relationship.”²⁰

A basic understanding of how a victim protection order is obtained, its effect, and how it is enforced, is necessary to understand the due process implications of this court order. A victim of domestic abuse may seek relief under the Protection from Domestic Abuse Act by filing a petition for an ex parte emergency protective order in Oklahoma district court.²¹ Victims of domestic violence often file their petitions for protective orders pro se.²² The Oklahoma legislature requires that the Administrative Office of the Courts develop a standard form for the petition and for both ex parte and final protective orders.²³ The court clerk provides the form petition to the victim-plaintiff at the courthouse.²⁴ Furthermore, the Oklahoma State Courts Network provides downloadable and printable versions of these forms on its website.²⁵ The statute specifically provides that upon the plaintiff’s request, “the court clerk or the victim-witness coordinator, victim support person, and court case manager shall prepare or assist the plaintiff in preparing the petition.”²⁶

19. *Id.* § 60.1.4.

20. *Id.* § 60.1.5 (specifying that a dating relationship does not include “a casual acquaintance or ordinary fraternization between persons in a business or social context”). Domestic violence reaches far beyond the confines of marriage; the Oklahoma Domestic Violence Fatality Review Board reported that fifty-two percent of domestic partner violence homicides were current or former “intimate partner” homicides. FATALITY REVIEW BOARD, *supra* note 5, at 1.

21. 22 OKLA. STAT. §§ 60.2-60.3.

22. See LISAE JORDAN & BETTE GARLOW, THE DOMESTIC VIOLENCE CIVIL LAW MANUAL: PROTECTION ORDERS AND FAMILY LAW CASES ch. 3, at 3 (Rebecca Henry ed., 3d ed. 2007).

23. 22 OKLA. STAT. §§ 60.2.B, 60.3.A, 60.4.D. These forms are available online at http://www.oscn.net/static/forms/aoc_forms/protectiveorders.asp. The two most relevant to this article are the Petition for Protective Order and the Petition for Emergency Temporary Protective Order, cited *infra*, which are linked on this site.

24. 22 OKLA. STAT. § 60.2.B.

25. THE OKLAHOMA STATE COURTS NETWORK, http://www.oscn.net/static/forms/district_forms.asp (last visited Feb. 9, 2010).

26. 22 OKLA. STAT. § 60.2.D.

The district court judge reviews the plaintiff's petition, and "if the court finds sufficient grounds within the scope of the Protection from Domestic Abuse Act" it holds "an ex parte hearing on the same day the petition is filed[.]" before the defendant-abuser receives notice or has an opportunity to be heard.²⁷ Generally, district court judges grant hearings on the victim's petition for a protective order.²⁸ If, at the hearing, the victim shows good cause for the protection order, and the court finds an emergency protection order is "necessary to protect the victim from immediate and present danger of domestic abuse," the emergency ex parte protection order is granted and remains in effect until there is a full hearing with the defendant present.²⁹ A copy of the victim's petition, "notice of hearing, and a copy of [the] emergency ex parte order issued by the court [are then] served upon the defendant;" the victim protection order is effective as soon as the defendant is served.³⁰ Regardless of whether the court grants or denies the emergency ex parte order, a full hearing will be held within twenty days of filing for the protection order.³¹ If, by the date of the full hearing the defendant has not yet been served, the plaintiff-victim can then request to renew the petition or the emergency protective order with a new hearing date.³²

After either the emergency ex parte hearing or the full hearing, "the court may impose any terms and conditions in the protective order that the court reasonably believes are necessary to bring about the cessation of domestic abuse against the victim."³³ Commonly, the court order will prohibit the defendant from contacting, abusing, injuring, threatening, harassing, and/or stalking the petitioner.³⁴ A protection order may also require the defendant-abuser to vacate the home he shares with the victim or order the defendant-abuser to stay a certain distance away from the victim's residence.³⁵ Most noteworthy is the court's wide discretion for ordering relief beyond what is

27. *Id.* § 60.3.A.

28. *See* Painter, *supra* note 6. Oklahoma County Special Judge Barry Hafar said, "When there's domestic violence and you see that in the application, there's a no tolerance policy." *Id.* Judge Hafar has granted a hearing to nearly ninety percent of victims that have filed a petition for protection. *Id.*

29. 22 OKLA. STAT. § 60.3.A; *see* JORDAN & GARLOW, *supra* note 22, ch. 3, at 3 ("Ex parte orders are not enforceable until served on the respondent.").

30. 22 OKLA. STAT. § 60.4.A.

31. *Id.* § 60.4.B.1.

32. *Id.* §§ 60.4.B.3.-60.4.B.4.

33. *Id.* § 60.4.C.1.

34. *See* Petition for Protective Order at 4-6 and Petition for Emergency Temporary Protective Order at 4-6, *supra* note 23.

35. *Id.*

indicated on the pre-printed form.³⁶ The final protective order typically stays in effect for three years.³⁷

The Protection from Domestic Abuse Act is found in Title 22 of the Oklahoma Statutes, which pertains to criminal procedure.³⁸ On its face, this can cause some confusion. Protection orders issued under the Protection from Domestic Abuse Act are civil protection orders.³⁹ The Oklahoma Court of Civil Appeals found victim protection orders were “civil, not criminal, in nature” because, in criminal actions, the state prosecutes “a person charged with a public offense.”⁴⁰ Clearly, a petition for a victim protection order is filed by the victim, not the state; therefore, it is a civil action. The Protection from Domestic Abuse Act creates a private cause of action resting with the victim.⁴¹ Because an action for a victim protection order is not criminal, the rules of civil procedure apply, and the victim protection order is a legally binding court order.⁴² Unlike the penal role of criminal courts, a victim protection order issued by a civil court “is meant to prevent future abusive behavior rather than punish past behavior.”⁴³

There are, however, criminal penalties for violating an ex parte or final protection order.⁴⁴ The Protection from Domestic Abuse Act is most likely included in the state’s criminal procedure title because of the criminal sanctions imposed for violations of victim protection orders.⁴⁵ A first conviction for violating a victim protection order is a misdemeanor and is punishable by a fine and/or up to one year imprisonment.⁴⁶ A second violation of a victim protection order is a felony offense and is punishable by a higher fine and/or one to three years imprisonment.⁴⁷ For both the first

36. See Petition for Protective Order at 6, *supra* note 23, and Petition for Emergency Temporary Protective Order at 5, *supra* note 23.

37. See 22 OKLA. STAT. § 60.4.G (stating this to be the case unless extended, modified, vacated, or rescinded). Often final protective orders are referred to as “permanent” protective orders. This term is misleading, because protective orders are rarely permanent. See JORDAN & GARLOW, *supra* note 22, ch. 3, at 5.

38. See 22 OKLA. STAT. §§ 60-60.18.

39. Marquette v. Marquette, 1984 OK CIV APP 25, ¶ 10, 686 P.2d 990, 993.

40. *Id.* (quoting 12 OKLA. STAT. § 7 (Supp. 1983)).

41. See Tobkin v. State, 777 So. 2d 1160, 1164 (Fl. Dist. Ct. App. 2001).

42. See Waul, *supra* note 8, at 54.

43. *Id.*

44. 22 OKLA. STAT. § 60.6 (2001 & Supp. 2007).

45. See *id.*

46. *Id.* § 60.6.A.1.

47. *Id.* § 60.6.A.2.

and second violation, if the violation actually injures the plaintiff, the sanctions are more severe.⁴⁸

It is also important to recognize that protective orders issued under the Protection from Domestic Abuse Act listed above are distinct from an ex parte temporary restraining order issued under Title 43, Section 110 of the Oklahoma Statutes.⁴⁹ Under Title 43, the petition for a restraining order must accompany a petition for the dissolution of marriage; therefore, it is limited to a spousal relationship.⁵⁰

The state of Oklahoma recognizes the statewide and national validity of protection orders issued in accordance with the Protection From Domestic Abuse Act in Oklahoma.⁵¹ Furthermore, Oklahoma presumes the validity of protection orders issued by other state's courts "even if the foreign protection order contains provisions which could not be contained in a protective order issued by an Oklahoma court."⁵² In accordance with the Violence Against Women Act (VAWA) enacted by the United States Congress in 1994,⁵³ Oklahoma gives full faith and credit to all valid victim protection orders issued by other jurisdictions.⁵⁴ Not only does the VAWA promote full faith and credit among the states, the VAWA also makes it a federal crime to cross state lines to violate a victim protection order.⁵⁵ Furthermore, federal law prohibits an individual from possessing a firearm or ammunition if he is subject to a victim protection order that prohibits him from harassing, stalking, threatening, or using force reasonably

48. Compare *id.* § 60.6.A.1 (penalty for first violation of victim protection order that does not result in injury to plaintiff), and *id.* § 60.6.A.2 (penalty for second violation of victim protection order that does not result in injury to the plaintiff), with *id.* § 60.6.B.1 (penalty for first violation of victim protection order that results in injury to the plaintiff), and *id.* § 60.6.B.2 (penalty for second violation of victim protection order that results in injury to plaintiff).

49. 43 OKLA. STAT. § 110.B.2 (2001 & Supp. 2006).

50. *Id.*; but see 22 OKLA. STAT. § 60.2.A.1-60.2.B.1 (2001 & Supp. 2007) ("If the dissolution of marriage action and the petition for a protection order are filed separately, the two actions may be consolidated.").

51. 22 OKLA. STAT. § 60.7 (2001).

52. *Id.* § 60.12.A (2001).

53. Pub. L. No. 103-322, 108 Stat. 1902 (1994) (codified as amended in scattered sections of 16, 18, and 42 U.S.C.).

54. *Id.*; "[f]oreign protective order means any valid order of protection issued by a court of another state or a tribal court." *Id.* § 60.1.6 (internal quotations omitted); see also 18 U.S.C. § 2265(a) (2006) (not self-executing).

55. See *id.* § 2262. It is also a federal crime to travel across state lines for the purpose of committing domestic violence, see *id.* § 2261(a)(1), or to cause an intimate or dating partner to cross state lines for the purpose of committing domestic violence, see *id.* § 2261(a)(2).

expected to cause injury to another.⁵⁶ In Oklahoma, fifty-seven percent of domestic homicide victims are killed with a firearm.⁵⁷

B. Fourteenth Amendment Procedural Due Process

In *Kulko v. Superior Court of California*,⁵⁸ the United States Supreme Court declared that “[t]he Due Process Clause of the Fourteenth Amendment operates as a limitation on the jurisdiction of the state courts to enter judgments affecting rights or interests of nonresident defendants.”⁵⁹ Generally, to satisfy procedural due process, the defendant must be given notice and an opportunity to be heard.⁶⁰ Furthermore, the court must have jurisdiction over the subject-matter,⁶¹ as well as personal jurisdiction over the defendant.⁶² Personal jurisdiction gives the court the power to render a “binding judgment against the defendant.”⁶³

The purpose of Oklahoma’s “long-arm statute is to extend the jurisdiction of the Oklahoma courts to the outer limits permitted by the Oklahoma Constitution and the Due Process Clause of the Fourteenth Amendment of the United States Constitution.”⁶⁴ The Oklahoma Supreme Court held that personal jurisdiction is not avoided merely because a nonresident defendant did not physically enter the state.⁶⁵ Jurisdiction under the long-arm statute may be predicated on activities in another state that result as harm in the forum state.⁶⁶ The outer limits of due process require that in order to subject a nonresident defendant to a court’s judgment against him, the nonresident defendant must have certain “minimum contacts with [the state] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.”⁶⁷

56. *See id.* § 922(g)(8).

57. *See* FATALITY REVIEW BOARD, *supra* note 5, at 4.

58. 436 U.S. 84 (1978).

59. *Id.* at 91.

60. *See* *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950); *see also* *Harry R. Carlile Trust v. Cotton Petrol. Corp.*, 1986 OK 16, ¶ 12, 732 P.2d 438, 443, n. 25.

61. *See* 27A AM. JUR. 2D. *Equity* § 62 (2008).

62. *See Kulko*, 436 U.S. at 91 (citing *Pennoyer v. Neff*, 95 U.S. 714, 732-33 (1878)); *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)); *see also* 27A AM. JUR. 2D *Equity* § 62 (2008).

63. *Conoco Inc. v. Agrico Chem. Co.*, 2004 OK 83, ¶ 16, 115 P.3d 829, 834.

64. *Id.* ¶ 17, 115 P.3d at 834; *see also* 12 OKLA. STAT. § 2004.F (2001 & Supp. 2007) (allowing Oklahoma court to “exercise jurisdiction on any basis consistent with the Constitution of the state and the Constitution of the United States.”).

65. *Hough v. Leonard*, 1993 OK 112, ¶ 7, 867 P.2d 438, 442.

66. *See id.* (citing *Fields v. Volkswagen of Am. Inc.*, 1976 OK 106, ¶ 6, 555 P.2d 48, 52).

67. *Gilbert v. Sec. Fin. Corp. of Okla.*, 2006 OK 58, ¶ 16, 152 P.3d 165, 173 (internal

The nonresident defendant's "conduct and connection with the forum State [must be] such that he should reasonably anticipate being haled into court there."⁶⁸ The nonresident defendant "must have meaningful 'contacts, ties or relations' to the forum state."⁶⁹

The Oklahoma judiciary follows a two-step process for ascertaining whether the court has personal jurisdiction over a nonresident defendant.⁷⁰ First, the court asks if the defendant has the requisite minimum contacts with Oklahoma such "that he should have reasonably anticipated being haled into court there."⁷¹ Second, if minimum contacts are established, the court examines whether the assertion of personal jurisdiction comports with "fair play and substantial justice."⁷² When determining the reasonableness of a nonresident defending his suit in the forum, Oklahoma courts consider the following factors: "the burden on the defendant," "the [state's] interest in adjudicating the dispute, the plaintiff's interest in obtaining convenient and effective relief," the interest of the interstate judicial system in obtaining an efficient resolution, and the shared interest of the states in "furthering fundamental substantive social policies."⁷³ However, a nonresident defendant may waive his objection to the court's improper exercise of personal jurisdiction.⁷⁴ If the nonresident defendant makes a general appearance without specifically objecting to the court's assertion of personal jurisdiction, he consents to the court's jurisdiction by waiver.⁷⁵

Personal jurisdiction over a nonresident defendant is not required when the court is adjudicating the status of one of its domiciliaries.⁷⁶ Every state has the power to determine or alter the status relationship between those

quotation marks omitted); see *Marathon Battery Co. v. Kilpatrick*, 1965 OK 212, ¶¶ 25-33, 418 P.2d 900, 907-909 (providing an analysis of the rationale of long-arm jurisdiction as expressed in *Int'l Shoe Co. v. Washington*, 326 U.S. 310 (1945)).

68. *Gilbert*, ¶ 16, 152 P.3d at 173 (citing *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980)).

69. *Klassen v. Lazik*, 2004 OK CIV APP 46, ¶ 8, 91 P.3d 90, 92 (citing *Int'l Shoe*, 326 U.S. at 319).

70. See *id.* ¶¶ 10-11, 91 P.3d at 92-93.

71. See *id.* ¶ 10, 91 P.3d at 92-93 (citing *World-Wide Volkswagen*, 444 U.S. at 297).

72. *Id.* ¶ 11, 91 P.3d at 93 (citing *Int'l Shoe*, 326 U.S. at 320)(internal citations omitted).

73. *Lively v. IJAM, Inc.*, 2005 OK CIV APP 29, ¶ 27, 114 P.3d 487, 494-95 (citing *World-Wide Volkswagen*, 444 U.S. at 292).

74. See 12 OKLA. STAT. § 2012.A (2001 & Supp. 2007) (making general appearance waives lack of personal jurisdiction defense); *Russell v. McGinn*, 1973 OK 43, ¶ 14, 514 P.2d 658, 660 (citing *Turner v. Big Four Petrol. Co.*, 1954 OK 244, ¶ 13, 274 P.2d 524, 526-27).

75. See *Russell v. McGinn*, 1973 OK 43, ¶ 14, 514 P.2d 658, 660.

76. See *Williams v. North Carolina*, 317 U.S. 287, 298-99 (1942).

found within its borders and nonresidents when the state has a strong interest in the status relationship, like marriage, at issue.⁷⁷

While an emergency ex parte protective order is issued before the defendant has notice or the opportunity to be heard, ex parte victim protection orders have consistently survived constitutional challenges.⁷⁸ In *Marquette v. Marquette*,⁷⁹ the Oklahoma Court of Civil Appeals held that protection orders issued ex parte do not violate the defendant's right to due process.⁸⁰ The court noted that domestic violence had become "a problem of considerable magnitude."⁸¹ In *Marquette*, the defendant argued that an ex parte order for protection, entered under the Protection from Domestic Abuse Act, was a violation of procedural due process.⁸² The defendant alleged that the state interfered with his liberty by prohibiting him from communicating with his wife, the custodial parent, thus denying him the right to visit his child.⁸³ Under the Protection from Domestic Abuse Act, the defendant is not afforded an opportunity to appear until after the emergency protective order is issued.⁸⁴ The court weighed the defendant's right to due process with the state's interest in protecting victims of domestic abuse and the risk of erroneous deprivation.⁸⁵ The court held that the "State's interest in securing immediate protection for abused victims"⁸⁶ and the procedural safeguards contained in the Protection from Domestic Abuse Act survived the demands of due process.⁸⁷ The court applied the *Mathews v. Eldridge*⁸⁸ test in balancing the infringement on the defendant's rights before notice and opportunity to be heard against the government's interest in issuing the protective order and the risk of erroneous deprivation under existing procedures.⁸⁹ The court determined the state had an interest

77. *See id.*

78. *See e.g.*, David H. Taylor et al., *Ex Parte Domestic Violence Orders of Protection: How Easing Access to Judicial Process has Eased the Possibility for Abuse of the Process*, 18 KAN. J.L. & PUB. POL'Y 83, 93-100.

79. 1984 OK CIV APP 25, 686 P.2d 990.

80. *Id.* ¶ 20, 686 P.2d at 996.

81. *Id.* ¶ 18, 686 P.2d at 996.

82. *Id.* ¶ 16, 686 P.2d at 995.

83. *Id.*

84. 22 OKLA. STAT. § 60.3.A (2001 & Supp. 2007)

85. *See id.* ¶ 18, 686 P.2d at 995-96.

86. *Id.* ¶ 19, 686 P.2d at 996.

87. *Id.*

88. 424 U.S. 319 (1976).

89. *Marquette* ¶¶ 17-20, 686 P.2d at 995-96 (footnotes omitted). An ex parte order is only issued after the plaintiff shows good cause at the hearing and the court finds the order "is necessary to protect the victim from immediate and present danger of domestic abuse" and a hearing is held 10 days after the ex parte order is issued. *See id.* While there is some

in “securing immediate protection for abused victims”⁹⁰ because of the magnitude of the problem and the serious risk of death if abuse continued.⁹¹ The court held that, when balanced against the state’s interest in protecting victims of domestic abuse, the procedural safeguards embedded in the Protection from Domestic Abuse Act prior to the issuance of an ex parte order sufficiently protected the defendant’s due process rights.⁹²

Like notice and opportunity to be heard, personal jurisdiction is a due process issue. However, the question of what constitutional guarantees can be sacrificed with respect to personal jurisdiction cannot be answered by the inquiry made in *Marquette*. While the Oklahoma Supreme Court agreed that the state’s interest in protecting victims of domestic violence is lofty,⁹³ the court has not ruled on the due process issue pertaining to personal jurisdiction. Oklahoma has yet to examine whether a nonresident’s due process rights remain secure when personal jurisdiction is not required before issuing a victim protection order against him.

III. The Jurisdictional Requirements of Other Courts

A. Status Jurisdiction

Nathan and Tara Bartsch were in a situation much like John and Sarah in the opening hypothetical.⁹⁴ While Nathan and Tara were together, they lived in Utah.⁹⁵ Tara and their infant daughter left Utah and went to Iowa to live with Tara’s parents.⁹⁶ Nathan lived in Utah and Colorado and was not a resident of Iowa when Tara filed an application for a temporary protective order in Iowa district court under Iowa’s Domestic Abuse Act.⁹⁷

Nathan moved to dismiss the order granted by the district court for want of personal jurisdiction.⁹⁸ The Supreme Court of Iowa affirmed the district court’s legal conclusion that “personal jurisdiction over a nonresident defendant is not required for a court to enter an order preserving the protected status afforded Iowa residents under [the Domestic Abuse

risk of erroneous deprivation, the judge has the opportunity to examine the credibility of the plaintiff before granting the order. *Id.*

90. *Id.* ¶ 20, 686 P.2d at 996.

91. *See id.* ¶¶ 18-19, 686 P.2d at 996.

92. *See id.* ¶¶ 19-20, 686 P.2d at 996.

93. *See Curry v. Streater*, 2009 OK 5, ¶ 10, 213 P.3d 550, 555.

94. *See Bartsch v. Bartsch*, 636 N.W.2d 3, 5 (Iowa 2001).

95. *Id.*

96. *Id.*

97. *Id.*; *see also* IOWA CODE ANN. § 236.1 (West 2008).

98. *See Bartsch*, 636 N.W.2d at 5.

Act].”⁹⁹ The court analogized victim protection orders with divorce decrees, child custody determinations, and actions to terminate parental rights, all of which do not require personal jurisdiction over the defendant, but rather allow jurisdiction because the state has the authority “to determine the civil *status* and capacities of all its inhabitants.”¹⁰⁰ Just as the state can determine the status of someone within its borders as being either married or single,¹⁰¹ the court held that the Domestic Abuse Act “clearly creates a status of ‘protection;’” therefore, the state can determine the status of the plaintiff, even though the defendant-abuser is not personally subject to the state’s jurisdiction.¹⁰²

The Supreme Court of Iowa believed that if status jurisdiction applied to divorce actions, then it certainly applied to victim protection orders, finding that “[t]he greater and more immediate risk of harm from domestic violence” made “application of the status exception to protective orders even more compelling than in [divorce] actions.”¹⁰³ The court went on to declare:

[T]he State’s interest in protecting victims of domestic abuse is equal to, if not greater than, its interest in actions determining child custody or terminating parental rights because it involves the safety of the protected parties. If the State can make adjudications without personal jurisdiction over a nonresident parent in custody determinations in which it has a strong state interest, it also has that right in domestic-abuse protection actions in which it has an even stronger interest.¹⁰⁴

To determine if the state has proper jurisdiction for a child custody proceeding, Iowa follows the Uniform Child Custody Jurisdiction and Enforcement Act,¹⁰⁵ which does not require personal jurisdiction over the defendant-parent.¹⁰⁶ Child custody proceedings include legal custody, the termination of parental rights, and, specifically, orders protecting a child from domestic violence.¹⁰⁷ The court further stated that the state’s “domestic-abuse statute evidences a special solicitude for potential abuse

99. *Id.* at 6.

100. *Id.* at 6, 9 (quoting *Pennoyer v. Neff*, 95 U.S. 714, 734 (1877)).

101. *See Williams v. North Carolina*, 317 U.S. 287, 298-99 (1942).

102. *Id.* at 7; *see also Williams*, 317 U.S. at 298-299 (1942).

103. *Bartsch*, 636 N.W.2d at 9.

104. *Id.*

105. UNIF. CHILD CUSTODY & ENFORCEMENT ACT § 201, 9 U.L.A. 672 (1997).

106. *See IOWA CODE ANN.* § 598B.201 (West 2008).

107. *Id.* § 598B.102(4).

victims.”¹⁰⁸ To support this claim, the court cited the provisions of the Domestic Abuse Act that allow the petition to be filed without cost to the plaintiff-victim, that make forms available to pro se plaintiffs, and that allow the county attorney to assist the plaintiff.¹⁰⁹

The court in *Bartsch* relied on an opinion of the Oklahoma Supreme Court to support its holding.¹¹⁰ In *In re Adoption of J.L.H.*,¹¹¹ the Oklahoma Supreme Court used the status jurisdiction rationale to decide the issue of proper jurisdiction for nonconsensual stepparent adoption.¹¹² Where the biological mother was a resident of Kansas, the Oklahoma Supreme Court determined personal jurisdiction was not needed because,

[t]he so-called minimum contacts doctrine . . . was fashioned to gauge the standards of due process for the exercise of jurisdiction to render an in personam judgment against one not served within the state — a form of forensic cognizance that is not implicated in this case because here *no* personal judgment is sought against the Kansas mother.¹¹³

Applying the Oklahoma Supreme Court’s rationale, the Supreme Court of Iowa found the protective order “does not purport to grant affirmative relief against the defendant; it merely preserves the protected status accorded to the plaintiff by [the Domestic Abuse Act].”¹¹⁴ A protective order “does not attempt to impose a personal judgment against the defendant.”¹¹⁵ Under analogous facts, *Bartsch* was controlling in *Doe v. Iowa District Court for Scott County* in 2007.¹¹⁶

The dissent in *Bartsch* maintained that a protective order under Iowa’s Domestic Abuse Act was not a status determination.¹¹⁷ Justice Carter vehemently emphasized that Tara Bartsch sought injunctive relief against her husband, not a declaration of her status.¹¹⁸ Furthermore, the dissent stated that an injunction was affirmative relief.¹¹⁹ In his dissent, Justice

108. *Bartsch*, 636 N.W.2d at 9.

109. *Id.* (citing IOWA CODE § 236.3(7), .3A(2), .3(B)(1999)).

110. *See id.* at 8.

111. 1987 OK 25, 737 P.2d 915.

112. *Id.* ¶ 9, 737 P.2d at 918-19.

113. *Bartsch*, 636 N.W.2d at 8 (quoting *J.L.H.*, ¶ 9, 737 P.2d at 919).

114. *Id.* at 6.

115. *Id.* at 10.

116. *Doe v. Iowa Dist. Ct. for Scott Cnty.*, No. 06-0696, 2007 WL 913851 (Iowa Ct. App. Mar. 28, 2007).

117. *See Bartsch*, 636 N.W.2d at 11 (Carter, J., dissenting).

118. *See id.*

119. *See id.*

Carter noted that the United States Supreme Court's broad interpretation of due process "operates as a limitation on the jurisdiction of state courts to enter judgments affecting *rights or interests* of nonresident defendants" and a nonresident defendant's *rights and interests* go beyond money judgments against him.¹²⁰ The dissent asserted that Nathan Bartsch's liberty interests were substantially affected as a result of the victim protection order being issued against him, which included restricting his right to possess a firearm, and "there [were] collateral consequences of a lasting nature."¹²¹

B. Personal Jurisdiction

The facts leading up to the Family Court of Delaware's decision in *T.L. v. W.L.*¹²² also resemble those in both the opening hypothetical and the *Bartsch* case. In *T.L.*, the husband, wife, and two children lived in Ohio.¹²³ After allegedly suffering abuse from her husband, the wife and two children left Ohio and moved in with the wife's mother in Delaware.¹²⁴ Two days after arriving in Delaware, the wife filed for a victim protection order.¹²⁵

Following the precedent that the "[c]ourt must weigh an individual's rights of due process against Delaware's strong interest in preventing abuse, and the necessity for taking prompt action," the court determined that the "husband's rights of due process vastly outweigh[ed] the state's legitimate concerns to protect its resident . . . from domestic violence."¹²⁶ The court held that under Delaware law, victim protection orders could not be issued against nonresident defendants without the state first having personal jurisdiction over them.¹²⁷ The court based its decision on a reading of the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act,¹²⁸ which required participating states to enforce victim protection orders issued by other states *so long as the issuing court had personal jurisdiction over the defendant-abuser.*¹²⁹ The court also looked to principles of federal constitutional law which provided that a judgment issued by a court in one state must be given full faith and credit by all other

120. *Id.* (quoting *Kulko v. Super. Ct. of Cal.*, 436 U.S. 84, 91 (1978)).

121. *Id.* at 11-12 (citing 18 U.S.C. § 922(g)(8) (2006) (prohibiting a person subject to a victim protection order from possessing a firearm)).

122. 820 A.2d 506 (Del. Fam. Ct. 2003).

123. *Id.* at 507.

124. *Id.*

125. *Id.*

126. *Id.* at 513-14.

127. *See id.* at 516.

128. *See* DEL. CODE. ANN. tit. 10, § 1049 (West 2009)(adopting the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act into Delaware statutory law).

129. *See id.* at 513.

states, so long as due process was not violated when the order was issued.¹³⁰

The Family Court of Delaware began waffling in its decision to require personal jurisdiction, however, when it suggested that if the plaintiff-victim had been a “bona fide resident” of the state, the traditional personal jurisdiction requirements might be relaxed, so as not to “hinder the state in determining the status of [its bona fide resident].”¹³¹ The *T.L.* court did not reject *Bartsch* on the basis that issuances of protection orders are not status adjudications. Rather, the Delaware court gave two reasons for requiring personal jurisdiction over the nonresident defendant-abuser: (1) while Delaware had lowered minimum contact requirements in status determinations, the wife had only been in Delaware for two days, so she was not a bona fide resident of Delaware and the due process requirements should not be relaxed; and (2) the wife’s application for a protective order did not suggest the husband had minimum contacts with Delaware because all acts of abuse occurred in Ohio.¹³² The court recommended that the wife seek protective relief in Ohio.¹³³ In dicta, the court suggested that had the wife’s application for a victim protection order “alleged that husband had pursued the family into Delaware while making additional threats and placing wife and children in fear of harm” the court’s decision may have been different, because the nonresident defendant would have established minimum contacts with the state.¹³⁴

The court distinguishes *T.L.* from *Bartsch* by suggesting that in *Bartsch*, because neither party resided in the state where the acts of abuse allegedly occurred, “the Iowa court found it reasonable for Iowa to proceed with the case.”¹³⁵ Furthermore, Tara Bartsch filed her application for the victim protection order one month after arriving in Iowa.¹³⁶ While the Delaware court may be suggesting that the *Bartsch* court decided a victim protection order is a status determination because the victim was a bona fide resident

130. *See id.* at 514.

131. *Id.* at 512-13 (quoting *Cohen v. Cohen*, 84 A. 122, 124 (Del. Super. Ct. 1912) (pertaining to the dissolution of marriage)).

132. *Id.* at 514.

133. *See id.*

134. *Id.*

135. *See id.* at 514-515. Most of the facts contained in the allegations occurred in Utah. *Bartsch v. Bartsch*, 636 N.W.2d 3, 10 (Iowa 2001). The wife lived in Iowa at the time she applied for the victim protection order, and the husband was living in either Utah or Colorado. *Id.* at 5. The Supreme Court of Iowa stated, “[w]ith respect to residence, Nathan’s status is unclear.” *Id.* at 10.

136. *See T.L.*, 820 A.2d at 514.

of Iowa, the Supreme Court of Iowa never addressed residency requirements for making determinations regarding the status of the state's residents. The Family Court of Delaware clearly acknowledged that while the state has "an important interest in fostering the protection against domestic abuse, its power to do so should be tempered to be sure that it is serving *bona fide* residents and not extending protective [o]rders against persons lacking requisite minimum contacts with the state."¹³⁷

C. Different Jurisdictional Requirements Apply Based on Whether Prohibitive or Affirmative Relief is Ordered

Similar facts arise again in *Shah v. Shah*:¹³⁸ a husband and wife lived in Illinois, where she was allegedly abused.¹³⁹ She fled to New Jersey to stay with family friends.¹⁴⁰ Once in New Jersey, the wife applied for a temporary restraining order under the state's Prevention of Domestic Violence Act.¹⁴¹ The New Jersey Supreme Court held that "if personal jurisdiction cannot be exercised over a [nonresident] defendant within constitutional due process limits, the temporary restraining order may only provide for prohibitory relief."¹⁴² The court further held that the issuance of a final restraining order required minimum contacts, because, by statutory definition, a final order includes an order of affirmative relief, e.g. the surrender of firearms.¹⁴³

In determining whether personal jurisdiction was required before the court could issue a victim protection order, the New Jersey Supreme Court agreed with the lower court's distinction between prohibitive and affirmative relief and reasoned:

[A prohibitory order] allows the entry of an order prohibiting acts of domestic violence against a defendant over whom no personal jurisdiction exists, [and] is addressed not to the defendant but to the victim: it provides the victim the very protection the law specifically allows, and it prohibits the defendant from engaging in behavior already specifically

137. *Id.* at 516.

138. 875 A.2d 931 (N.J. 2005).

139. *Id.* at 933.

140. *Id.*

141. *Id.*

142. *See id.* at 942.

143. *Id.* at 940. One against whom a victim protection order has been issued is required to surrender firearms and pay a civil penalty and a surcharge. *See* N.J. STAT. ANN. § 2C:25-29b (West 1991).

outlawed. Because the issuance of a prohibitory order does not implicate any of [the] defendant's substantive rights, the trial court [has] jurisdiction to enter a temporary restraining order . . .

¹⁴⁴

While the *Shah* court was “unpersuaded by the ‘status exception’”¹⁴⁵ in *Bartsch*, it still upheld the issuance of a victim protection order despite the defendant not having the requisite minimum contacts with the state.¹⁴⁶ The court maintained the propriety of personal jurisdiction “when a court attempts to exercise its coercive power to compel action by a defendant.”¹⁴⁷

Presented with analogous facts, the Kentucky Court of Appeals followed the *Shah* court, holding that prohibitory orders do not require personal jurisdiction to satisfy due process.¹⁴⁸ In *Spencer v. Spencer*, the Kentucky court found that the distinction between prohibitory and affirmative relief was “the fairest balance between protecting the due process rights of the nonresident defendant and the state’s clearly-articulated interest in protecting the plaintiff and her child against domestic violence.”¹⁴⁹ In *Spencer*, the order was vacated and remanded back to the county circuit courts with instructions to limit the protective order to prohibit the nonresident abuser “from breaking the law in Kentucky by approaching [his wife and daughter].”¹⁵⁰ Specifically, aspects of the victim protection order issued by the county circuit court that were to be excluded were those forbidding the possession of a firearm and requiring attendance of domestic violence counseling, because these were said to be affirmative obligations placed on the defendant, over whom the court did not have personal jurisdiction.¹⁵¹

The Supreme Judicial Court of Massachusetts, in *Caplan v. Donovan*,¹⁵² was also presented with a situation involving a nonresident defendant-abuser and the plaintiff-victim seeking shelter in the state.¹⁵³ The *Caplan* Court agreed with the Iowa Supreme Court that a victim protection order

144. *Shah*, 875 A.2d at 939.

145. *Id.* at 940 n.5.

146. *See id.* at 939-940.

147. *Id.* at 939.

148. *Spencer v. Spencer*, 191 S.W.3d 14, 19 (Ky. Ct. App. 2006).

149. *Id.* *See id.*, n.8 (citing *Barnett v. Wiley*, 103 S.W.3d 17, 19 (Ky. 2003) (“[T]he domestic violence statute should be construed liberally in favor of protecting victims from domestic violence and preventing future acts of violence.”)).

150. *Id.* at 19.

151. *See id.*

152. 879 N.E.2d 117 (Mass. 2008).

153. *See id.* at 119-20.

required status jurisdiction generally, and personal jurisdiction over the nonresident defendant was not required.¹⁵⁴ The Massachusetts court explained that its holding “furthers the Commonwealth’s important public policy goal of securing ‘the fundamental human right to be protected from the devastating impact of family violence’ . . . by declaring the protected status of a person who is currently domiciled in this Commonwealth after coming here to escape from abuse.”¹⁵⁵ By requiring personal jurisdiction over a nonresident defendant, the Commonwealth would leave the victim with two unpalatable alternatives for getting protection: the victim could “return to the State in which the abuse occurred,” or “wait for the abuser to follow the victim to the Commonwealth and, in the event of a new incident of abuse, seek an order from a Massachusetts court.”¹⁵⁶

While the Iowa Supreme Court alluded to the due process limitations applied to status determinations, the court in *Caplan* specifically set out that status determinations must be “limited to prohibitions that relate to the protected status of a person within the Commonwealth.”¹⁵⁷ The court stated that due process limitations to status determinations included: (1) that the victim protection order “must provide the defendant with reasonable notice and an opportunity to be heard”;¹⁵⁸ and (2) that “a valid judgment imposing a personal obligation or duty in favor of the plaintiff may be entered only by a court having jurisdiction over the person of the defendant.”¹⁵⁹ Therefore, the Massachusetts court held that “a court may issue . . . an order of prevention and protection even without personal jurisdiction over the defendant, but may not impose affirmative obligations on the defendant if there is no personal jurisdiction.”¹⁶⁰

Most recently, the Supreme Court of New Hampshire followed the Massachusetts Supreme Court’s reasoning in *Caplan*.¹⁶¹ In *Hemenway v. Hemenway*, the Supreme Court of New Hampshire found that the wife failed to “demonstrate facts sufficient to establish personal jurisdiction over the defendant.”¹⁶² Because the New Hampshire court did not have personal jurisdiction over the nonresident defendant, the court limited the victim

154. *Id.* at 123.

155. *Id.* at 123 (quoting *Champagne v. Champagne*, 708 N.E.2d 100 (Mass. 1999); *Mitchell v. Mitchell*, 821 N.E.2d 79 (Mass. App. Ct. 2005)).

156. *Id.* at 123.

157. *Id.* at 124.

158. *Id.* at 123.

159. *Id.* at 123 (citing *Kulko v. Super. Ct. of Cal.*, 436 U.S. 84, 91 (1978)).

160. *Id.* at 119.

161. *See Hemenway v. Hemenway*, 992 A.2d 575 (N.H. 2010).

162. *Id.* at 580 (quoting *Chick v. C & F Enter.*, 938 A.2d 112 (N.H. 2007)).

protection order “to the extent that it protects the wife from abuse,” and “reverse[d] to the extent that the order require[d] affirmative action from the defendant.”¹⁶³ The court specifically pointed to the conflict that arose between the state’s “strong interest in providing protection to victims of domestic violence within [the] State” and requiring personal jurisdiction over the defendant.¹⁶⁴ Like the courts in *Shah*, *Spencer*, and *Caplan*, the *Hemenway* court found the state’s policy interest in the victim’s protected status outweighed the need for personal jurisdiction if the victim protection order contained merely prohibitory relief.¹⁶⁵

IV. Analysis

Unlike high courts in Iowa, Delaware, New Jersey, Kentucky, Massachusetts, and New Hampshire, the Oklahoma Supreme Court has not yet decided whether a petition for a victim protection order is a status determination, a civil injunction that requires personal jurisdiction over the nonresident defendant, or if the jurisdictional requisites vary depending on whether prohibitive or affirmative relief is ordered.

It is unquestionable that the state of Oklahoma has a strong interest in protecting people residing within its borders. Specifically, there is a strong state interest in protecting people within the state from acts of domestic violence.¹⁶⁶ Just two years after the passage of the Protection from Domestic Abuse Act, the Oklahoma Court of Civil Appeals commented:

In the absence of any legislative history, it is reasonable to assume the passage of the Act is a result of increased public awareness regarding the serious nature of domestic violence. The Legislature has attempted to remedy this problem by providing immediate, as well as long-range, protection for the victims of domestic abuse.¹⁶⁷

The court went on to state that “[t]he State’s interest in providing this protection to the victims of domestic abuse is apparent. The [Protection from Domestic Abuse Act] promotes the health, safety and general welfare of its citizens.”¹⁶⁸ The Oklahoma legislature equipped the people with a tool to combat domestic violence — access to victim protection orders. At

163. *Id.* at 582.

164. *Id.* (quoting *McNair v. McNair*, 856 A.2d 5, 14 (N.H. 2004)).

165. *See id.*

166. *See* 22 OKLA. STAT. §§ 60-60.18 (2001 & Supp. 2007).

167. *Marquette v. Marquette*, 1984 OK CIV APP 25, ¶ 9, 686 P.2d 990, 993.

168. *Id.* ¶¶ 6, 18, 686 P.2d at 993, 996.

the same time, this public policy and safety concern may threaten nonresident defendants' due process rights as guaranteed by the Fourteenth Amendment of the United States Constitution.¹⁶⁹ An analysis of the three approaches taken by other courts and described in Part III of this article leads to the conclusion that Oklahoma courts cannot deny nonresident defendants due process by pretending victim protection orders are status determinations, and that statutory amendments would be the best method to assert personal jurisdiction over those nonresident defendants

A. Because a Victim Protection Order Is a Civil Injunction, Oklahoma Must Have Personal Jurisdiction over a Nonresident Defendant in Order to Safeguard Due Process

With any court order entered against an individual, the requirement of personal jurisdiction is the standard rule.¹⁷⁰ Victim protection orders are no exception. The National Council of Juvenile and Family Court Judges warned attorneys representing victims that they should “[b]e prepared to counter respondents’ arguments based upon alleged due process violations and lack of personal jurisdiction, especially in inter-jurisdictional cases.”¹⁷¹ The Oklahoma Court of Civil Appeals, without making a specific determination as to whether personal jurisdiction is the requisite standard for issuing a victim protection order against a nonresident defendant, defaulted to personal jurisdiction when it was faced with a similar situation.¹⁷² In *Stacy v. Ferrel*, Carolyn Stacy and her ex-boyfriend, Paul Ferrel, both lived in Texas.¹⁷³ Ferrel harassed and stalked Stacy in Texas, and as a result she eventually moved to Ada, Oklahoma.¹⁷⁴ Within a month

169. See U.S. CONST. amend. XIV, § 1.

170. See *Kulko v. Super. Ct. of Cal.*, 436 U.S. 84, 91 (1978) (citing *Pennoyer v. Neff*, 95 U.S. 714, 732-3 (1878); *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)) (“It has long been the rule that a valid judgment imposing a personal obligation or duty in favor of the plaintiff may be entered only by a court having jurisdiction over the person of the defendant.”).

171. FAMILY VIOLENCE DEP’T., NAT’L COUNCIL OF JUVENILE & FAM. CT. JUDGES, A GUIDE FOR EFFECTIVE ISSUANCE & ENFORCEMENT OF PROTECTION ORDERS 40 (2005) [hereinafter GUIDE].

172. *Stacy v. Ferrel*, No. 101,253, ¶ 11 (Okla. Civ. App. Jan. 6, 2006), <http://oklegal.onenet.net/sample.basic.html> (In the Database Menu select “OK Court of Appeals Opinions (1968-Current)”); search for “Stacy” in Field “Appellant”; search for “Ferrel” in Field “Appellee”; then Submit Query). As of the publication date of this Comment, *Stacy* has not yet been released for publication in the permanent law reports, nor has *Stacy* been made available on a widely used electronic database. The publication status of the case is publicly accessible through the Oklahoma Public Legal Research System. See *id.*

173. *Id.* ¶ 1.

174. *Id.* ¶¶ 1-2.

after moving to Oklahoma, Stacy filed a petition for a victim protection order against Ferrel.¹⁷⁵ In her petition she alleged that Ferrel attempted to follow her in Oklahoma.¹⁷⁶ Ferrel made a special appearance challenging the state's exercise of personal jurisdiction and offered evidence that he was not in the state of Oklahoma on the date Stacy claimed.¹⁷⁷ The district court found that the state did have personal jurisdiction over Ferrel, presumably because the act that was the basis of Stacy's cause of action allegedly occurred in the state.¹⁷⁸ The Court of Civil Appeals reversed the district court's decision.¹⁷⁹ It found that Stacy did not meet her burden of establishing Ferrel's minimum contacts with Oklahoma which would subject him to the jurisdiction of the Oklahoma court.¹⁸⁰

1. Victim Protection Orders are Civil Injunctions

Amidst the confusion among the courts as to what jurisdictional requisites are required before issuing a victim protection order against a nonresident defendant, a simple question needs to be answered. What is a victim protection order? A victim protection order is a civil injunction.¹⁸¹

In *Curry v. Streater*, the Oklahoma Supreme Court very clearly asserted that a victim protection order "is analogous to an injunction."¹⁸² Three defining characteristics of injunctions are readily identifiable in victim protection orders. First, an "[i]njunction is an equitable remedy."¹⁸³ Likewise, a victim protection order is an equitable remedy; it does not provide a legal remedy for liability, such as money damages for the battery committed. Second, an injunction is designed to protect one party's rights "by prohibiting or commanding certain acts" of another party.¹⁸⁴ An injunction demands that the defendant refrain from "a wrongful act or the causing of some threatened or anticipated injury."¹⁸⁵ That is precisely what a victim protection order does, but the wrongful act the defendant is prohibited from doing is commonly assaulting, threatening, contacting, or

175. *Id.* ¶ 1.

176. *Id.*

177. *Id.* ¶ 2.

178. *See id.* ¶¶ 4, 10.

179. *Id.* ¶ 12.

180. *Id.* ¶ 12.

181. *See Curry v. Streater*, 2009 OK 5, ¶ 8, 213 P.3d 550, 554.

182. *Id.*

183. 42 AM. JUR. 2d *Injunctions* § 1 (2000); *see also Barnes v. State*, 1963 OK 152, ¶ 18, 383 P.2d 635, 639 (citing *Fahr v. State*, 1951 OK 286, ¶ 7, 237 P.2d 128, 130) ("[A]n action for a permanent injunction . . . is an action of equitable cognizance.").

184. 42 AM. JUR. 2d *Injunctions* § 1 (2000).

185. *Id.* § 4.

harassing the plaintiff-victim. These specific acts pose a very serious, imminent risk to the plaintiff's safety and would likely result in injury. Third, injunctive relief is "preventative or protective in character and operates upon unperformed acts rather than upon those that have already occurred."¹⁸⁶

Oklahoma courts have long held that an injunction "is to afford only preventative relief; it is powerless to correct wrongs or injuries already committed."¹⁸⁷ This is also true of the relief afforded through a victim protection order. The Oklahoma Supreme Court, in 2009, asserted "[t]he [Protection from Domestic Abuse] Act's clear purpose is preventative, and the Act provides immediate, civil, nonmonetary relief for victims of domestic abuse . . . [t]o effectuate its purpose, the Act provides for courts to issue civil protection orders to prevent violence before it happens."¹⁸⁸

A victim protection order is a type of injunction because it is intended to protect the plaintiff from the recurrence of abuse or the materialization of threats into future violence.¹⁸⁹ Furthermore, a victim protection order in itself is not a criminal judgment against the defendant, nor is it a civil, legal remedy intended to redress the wrongs committed by the defendant.¹⁹⁰ Often the terms *victim protection order* and *injunction* are used synonymously.¹⁹¹ For example, in the Violence Against Women Act, the United States Congress' definition of protection order included:

[A]ny injunction, restraining order, or any other order issued by a civil . . . court for the purpose of preventing violent or threatening acts or harassment against, sexual violence, or contact or communication with or physical proximity to, another

186. *Id.* § 1.

187. *Walcott v. Dennes*, 1911 OK 285, ¶ 3, 116 P. 784, 786 (quoting *City of Alma v. Loehr*, 22 P. 616 (Kan. 1889)).

188. *Curry v. Streater*, 2009 OK 5, ¶ 10, 213 P.3d 550, 555.

189. *See e.g.*, *Waul*, *supra* note 8, at 53 ("[S]tates began passing legislation allowing judges to grant *injunctive orders* to immediately stop abusive behavior between two parties.") (emphasis added).

190. *See Marquette v. Marquette*, 1984 OK CIV APP 25, ¶ 10, 686 P.2d 990, 993; *see also Walcott*, ¶ 3, 116 P. at 786 ("[T]he exclusive function of a writ of injunction is to afford only preventative relief; it is powerless to correct wrongs or injuries already committed.").

191. *See, e.g.*, *Jones*, *supra* note 13, at 353 (footnotes omitted) ("The [Protection from Domestic Abuse] Act provides that a protective order may be enforced by the civil court that issued the injunction or by the criminal courts."); *GUIDE*, *supra* note 171, at 51 ("Attorneys should work with other community members to make injunctive relief effective for clients."); *Tobkin v. State*, 777 So. 2d 1160, 1164 (Fla. Dist. Ct. App. 2001) ("[T]he legislature has made a petition for injunction against domestic violence a private [cause of] action. . . .").

person, including any temporary or final order issued by a civil or criminal court . . . obtained by filing an independent action . . .

¹⁹²

Whether deemed analogous or synonymous, victim protection orders serve the purpose of civil injunctions — they order the defendant to refrain from a specific act or acts that would likely result in injury to the plaintiff. In *Marquette*, the Oklahoma Court of Civil Appeals found, “[the Protection from Domestic Abuse] Act . . . creates an additional framework through which the court may exercise its long recognized *equitable power* to grant restraining and *injunctive orders* in extraordinary circumstances.”¹⁹³

2. Because Victim Protection Orders Are Civil Injunctions, Personal Jurisdiction Is Required to Satisfy Due Process

The next foundational question that must be answered is whether courts are required to have personal jurisdiction over a defendant before granting a civil injunction. The settled rule is that an injunction operates in personam.¹⁹⁴ If a victim protection order is actually a relatively recent, statutorily-guided civil injunction, then victim protection orders ought to be treated like injunctions. Where Oklahoma’s Protection from Domestic Abuse Act is silent, the law governing traditional civil injunctions ought to govern victim protection orders.

Thus far, the Oklahoma Supreme Court has fallen in line with this proposition. When faced with the decision of how the court should evaluate the issuance of victim protection orders on appeal, the Oklahoma Supreme Court has relied on the law of civil injunctions.¹⁹⁵ In *Curry*, the Oklahoma Supreme Court was presented with an issue of first impression and it addressed the standard of review for victim protection orders issued under the Protection from Domestic Abuse Act.¹⁹⁶ The court held that “proceedings under the Act . . . should be reviewed for an abuse of discretion” because “[a] protection order under the Protection from Domestic Abuse Act . . . is analogous to an injunction.”¹⁹⁷ The court relied on the abuse of discretion standard of review for granting or denying an

192. 18 U.S.C. § 2266(5)(A) (2006).

193. *Marquette*, ¶ 11, 686 P.2d at 994 (emphasis added)(citations omitted).

194. *Barnes v. State*, 1963 OK 152, ¶ 19, 383 P.2d 635, 639 (citing *Howard v. Berryman*, 1930 OK 267, ¶ 10, 288 P. 605, 607 (“The remedy of injunction is strictly in personam. The decree operates and is enforceable against the individual . . .”).

195. *See Curry v. Streater*, 2009 OK 5, ¶ 8, 213 P.3d 550, 554.

196. *Id.*

197. *Id.*

injunction, and held that the proper standard of review for issuing a victim protection order is, likewise, abuse of discretion.¹⁹⁸

If a victim protection order is an injunction, and appellate courts apply the same standard of review for both injunctions and victim protection orders because they are essentially the same legal tool, then it follows that the same jurisdictional limitations that apply when Oklahoma courts enjoin the acts of a nonresident defendant ought to apply when issuing victim protection orders against a nonresident defendant. An injunction issued by an Oklahoma district court must comport with due process, and is valid only if the issuing court has personal jurisdiction over the parties.¹⁹⁹ Therefore, if a victim protection order issued by an Oklahoma district court is an injunction, it is only valid if the court has personal jurisdiction over a nonresident defendant-abuser. Without personal jurisdiction over the defendant, a victim protection order issued by the state of Oklahoma violates the defendant's right to procedural due process guaranteed by the Fourteenth Amendment.²⁰⁰

Arguments that victim protection orders should not be governed by the law of injunctions culminate around the unique characteristics and provisions that distinguish the Protection from Domestic Violence Act from the civil injunction statutes. First, the Oklahoma legislature designated a specific section of the Oklahoma Statutes to provide for victim protection orders.²⁰¹ Victim protection orders do not come under the general civil injunction statute.²⁰² Instead, the Oklahoma legislature elected to create a "special statute[] that provide[s] alternate procedures for the obtaining of temporary restraining orders or temporary injunctions."²⁰³ Additionally, the Protection from Domestic Abuse Act was not incorporated into the state's criminal code; the criminal prosecution of the defendant-abuser is not a

198. *Id.* (citing *Johnson v. Ward*, 1975 OK 129, ¶ 42, 541 P.2d 182, 188).

199. *Howard*, ¶ 10, 288 P. at 607 ("An injunction operates in personam and it will not issue against one not within the jurisdiction of the Court.") (internal citations and quotations omitted); 42 AM. JUR. 2D *Injunctions* § 1 (2000) ("An injunction will not issue against one who is not subject to the jurisdiction of the court."). An injunction provides equitable relief and a court must have both subject-matter jurisdiction and jurisdiction over the parties to exercise its power. *See* 27A AM. JUR. 2D *Equity* § 62 (2008).

200. *See Kulko v. Super. Ct. of Cal.*, 436 U.S. 84, 91 (1978).

201. *Compare* 22 OKLA. STAT. §§ 60-60.18 (2001 & Supp. 2007), *with* 12 OKLA. STAT. §§ 1381-1397 (2001). "This section shall not apply . . . to proceedings brought pursuant to special statutes that provide alternate procedures for the obtaining of temporary restraining orders or temporary injunctions." 12 OKLA. STAT. § 1384.1.E (2001).

202. *See* 12 OKLA. STAT. § 1384.1 (2001).

203. *Id.* § 1384.1.E.

prerequisite for obtaining a victim protection order under the Act.²⁰⁴ The Oklahoma Supreme Court held that

an injunction will not issue to restrain commission of a threatened act merely to prevent the violation of a penal statute . . . unless a statute provides a remedy by injunction to restrain violations . . . [W]here an injunction is otherwise warranted, the court may enjoin certain acts affecting rights, property and general welfare of people even though such acts are also criminal offenses.²⁰⁵

Second, unlike most civil actions, the plaintiff-victim does not have to pay court fees and costs, including “the filing fee, service of process fee, [or] attorneys fees.”²⁰⁶ This is indicative of the legislature’s objective of providing victims greater access to victim protection orders. As a matter of fact, the only time the plaintiff filing for a victim protection order would have to pay attorneys fees and courts costs is if the court makes a special finding that the petition for a protection order was filed frivolously.²⁰⁷

Third, when a civil injunction is violated, the courts may hold the defendant in civil contempt.²⁰⁸ When found in contempt, the violator may be kept in custody until he complies with the injunction, or be fined up to two-hundred dollars per day of noncompliance and serve up to six months in jail.²⁰⁹ When a victim protection order is violated, the defendant faces criminal sanctions which may result in a five-thousand dollar fine and up to one year in the county jail.²¹⁰ The criminal sanctions imposed for violating a victim protection order demonstrate the serious nature of domestic abuse and the state’s interest in preventing abuse. However poignant these arguments may be, they do not justify classifying victim protection orders as something other than civil injunctions with specific statutorily-defined characteristics and the legislatively-sanctioned possibility of criminal contempt for violation.

Requiring personal jurisdiction over the nonresident defendant before the court issues a victim protection order not only safeguards the defendant’s right to due process, but it also ensures maximum protection for the victim.

204. See 22 OKLA. STAT. §§ 60-60.18 (2001 & Supp. 2007).

205. *Anderson v. Trimble*, 1974 OK 2, ¶ 23, 519 P.2d 1352, 1356.

206. 22 OKLA. STAT. § 60.2.C.1 (2001 & Supp. 2007).

207. *Id.* § 60.2.C.2.

208. 12 OKLA. STAT. § 1390 (2001).

209. *Id.*

210. 22 OKLA. STAT. § 60.6.B.1 (2001 & Supp. 2007).

The federal government acknowledged the interstate nature of domestic violence and provided additional protection for victims in the Violence Against Women Act (VAWA).²¹¹ The VAWA sets out that: “Any protection order issued . . . by the court of one State . . . shall be accorded full faith and credit by the court of another State . . . and enforced by the court and law enforcement personnel of the other State” so long as the issuing “court has *jurisdiction over the parties* and matter under the law of such State.”²¹² The VAWA requires that a victim protection order be given full faith and credit if the order is valid.²¹³ An order is only valid if the court issuing the order has personal jurisdiction over the defendant.²¹⁴ If the issuing court does not have personal jurisdiction over the defendant, constitutional due process requirements have not been met.²¹⁵ Oklahoma adopted the VAWA’s position in the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act.²¹⁶ The VAWA also makes it a crime for an abuser to travel across state lines for the purpose of violating a victim protection order.²¹⁷ This provision of VAWA is particularly important to self-enforcement of a victim protection order. In the scenarios examined in this comment the abuser and victim live in different states.

As a result, if an Oklahoma court has personal jurisdiction over the out-of-state defendant and issues a valid victim protection order against him, and the abuser wishes to violate the order and pursue his victim in Oklahoma, he is not only subject to the criminal sanctions imposed by the Protection from Domestic Abuse Act, but also a federal, criminal penalty.²¹⁸ Again, to gain the protections of the VAWA, the court must issue a *valid* order that complies with due process. Without personal jurisdiction over the defendant, the order does not have to be given full faith and credit by other states, nor is the defendant subject to federal criminal law for violating the order.

211. 18 U.S.C. §§ 2261-2266 (2006).

212. *Id.* § 2265(a)-(b)(1) (emphasis added).

213. *See id.*

214. Susan B. Carbon et al., *Enforcing Domestic Violence Protection Orders Throughout the Country: New Frontiers of Protection for Victims of Domestic Violence*, 50 JUV. & FAM. CT. J. 39, 40 (1999); JANET R. FINK, *Full Faith and Credit Mandate*, in THE IMPACT OF DOMESTIC VIOLENCE ON YOUR LEGAL PRACTICE 9-7, 9-11 (Deborah M. Goelman et al. eds., 1996).

215. Catherine F. Klein, *Full Faith and Credit: Interstate Enforcement of Protection Orders Under the Violence Against Women Act of 1994*, 29 FAM. L.Q. 253, 256 (1995).

216. 22 OKLA. STAT. § 60.21-60.29 (2008).

217. 18 U.S.C. § 2262 (2006).

218. *See id.*; 22 OKLA. STAT. §§60-60.18 (2001 & Supp. 2007).

3. *Oklahoma May Have Personal Jurisdiction over Some Nonresident Defendants That Commit Acts of Domestic Abuse Outside the State*

The final question one must ask is whether nonresident defendants, such as John in the opening hypothetical, come within Oklahoma's jurisdiction. A nonresident defendant is not subject to adjudication in Oklahoma courts unless Oklahoma has personal jurisdiction over him.²¹⁹ Oklahoma has personal jurisdiction over a nonresident defendant if: (1) the defendant consents to the jurisdiction of the courts by making a general appearance and failing to raise the defense of lack of jurisdiction;²²⁰ (2) the defendant is served with process in the state of Oklahoma;²²¹ or (3) the defendant has certain "minimum contacts with [the state of Oklahoma] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice."²²² Without personal jurisdiction over a nonresident defendant, due process is violated.²²³

In *Kulko*, the United States Supreme Court applied the minimum contacts principle set forth in *International Shoe v. Washington* to domestic relations.²²⁴ The Court ruled that mere acquiescence of a divorced father, who was a resident of New York, to his daughter's desire to live with her mother in California did not confer jurisdiction to the California court in a custody dispute.²²⁵ The Court explained that "[t]he unilateral activity of those who claim some relationship with a nonresident defendant" does not by itself satisfy the minimum contacts requirement.²²⁶ Instead, the court held that there must be some purposeful act by the nonresident such that the nonresident makes use "of the privilege of conducting activities within the forum State."²²⁷ Thus, the quality and nature of the nonresident defendant's activities must be such that it is reasonable and fair to require him to defend the lawsuit in Oklahoma "notwithstanding that the forum state and the plaintiff have an interest in proceeding in the forum state."²²⁸

219. See *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

220. See 12 OKLA. STAT. § 2012.F.1 (2001 & Supp. 2007); *First Tex. Sav. Ass'n v. Bernsen*, 1996 OK CIV APP 24, ¶ 6, 921 P.2d 1293, 1296.

221. See *Burnham v. Super. Ct. of Cal.*, 495 U.S. 604, 619 (1990).

222. *Gilbert v. Sec. Fin. Corp. of Okla.*, 2006 OK 58, ¶ 16, 152 P.3d 165, 173 (internal quotation marks omitted).

223. See *Kulko v. Super. Ct. of Cal.*, 436 U.S. 84, 91 (1978).

224. *Id.* at 88, 92.

225. *Id.* at 94.

226. *Id.* at 93-4 (quoting *Hanson v. Denckla*, 357 U.S. 235, 253 (1958)).

227. *Id.* at 94.

228. *Gullo v. Gullo*, 2003 OK CIV APP 61, ¶ 12, 74 P.3d 612, 616 (citing *Kulko*, 436 U.S. at 92).

An Oklahoma court applied the reasoning in *Kulko* when a father appealed the trial court's finding of personal jurisdiction and ordered child support and the division of he and his former spouse's property.²²⁹ The disputed facts of *Gullo v. Gullo* provided that a wife and husband lived in Ohio, where she was abused.²³⁰ She moved to Oklahoma and filed for dissolution of marriage and sought child support.²³¹ The court determined that in this situation, the traditional criteria for obtaining personal jurisdiction over the nonresident defendant applied.²³² The husband did not have minimum contacts with Oklahoma, and the Oklahoma Court of Civil Appeals rejected the wife's argument that public policy for providing support for Oklahoma children sustained personal jurisdiction.²³³ Based on the court's decision in *Gullo*, Oklahoma courts are not likely to assert personal jurisdiction merely because of Oklahoma's interest in protecting victims of domestic violence that live in the state.²³⁴

Oklahoma adopted the Uniform Interstate Family Support Act (UIFSA) in the mid-1990s.²³⁵ Section 601-201 of Oklahoma's version of UIFSA provides:

- A. In a proceeding to establish or enforce a support order or to determine parentage, *a tribunal of this state may exercise personal jurisdiction over a nonresident individual . . . if:* 1. The individual is personally served with summons within this state; 2. The individual submits to the jurisdiction of this state by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction; 3. The individual resided with the child in this state; 4. The individual resided in this state and provided prenatal expenses or support for the child. 5. *The child resides in this state as a result of the acts or directives of the individual;* . . . 8. There is any other basis consistent with the constitutions of

229. *Id.* ¶ 5, 74 P.3d at 614.

230. *Id.* ¶¶ 2, 6, 74 P.3d at 614.

231. *Id.* ¶¶ 2, 3, 74 P.3d at 614. A wife claimed Oklahoma had jurisdiction under UIFSA because her child was in Oklahoma as a result of acts or directives of the nonresident parent to be charged with the support obligation, *see* 43 OKLA. STAT. § 601-201.A.5 (2001 & Supp. 2007), but the court rejected this argument because of the trial court's failure to make a finding of fact. *See Gullo*, ¶¶ 7, 9, 749 P.3d at 614.

232. *See id.* ¶ 23, 74 P.3d at 617 (citing *Taylor v. Phelan*, 912 F.2d 429, 431 (10th Cir. 1990)). *See also* 43 OKLA. STAT. §§ 601-201.A.5-.8 (2001 & Supp. 2007).

233. *Gullo* ¶ 30, 74 P.3d at 618.

234. *See id.* ¶ 15, 74 P.3d at 616.

235. 43 OKLA. STAT. §§ 601-100 to 601-901 (2001 & Supp. 2007).

this state and the United States for the exercise of personal jurisdiction.²³⁶

In *Powers v. District Court of Tulsa County*,²³⁷ the Supreme Court of Oklahoma held that 43 Okla. Stat. § 601-201.A.5., as a method of acquiring personal jurisdiction over a nonresident defendant, complied with due process.²³⁸

In *Powers*, the husband and wife resided in Missouri, where the husband allegedly abused the wife.²³⁹ The wife moved to Oklahoma and within a few days filed for legal separation, alimony, and child support, among other matrimonial-based claims.²⁴⁰ The nonresident husband filed a motion to dismiss for lack of personal jurisdiction in the District Court.²⁴¹ The husband's motion to dismiss was granted, because the court lacked personal jurisdiction over the nonresident defendant.²⁴² Upon reconsideration, the Oklahoma Supreme Court focused on the wife's argument that her husband's activities in Missouri "forced or directed her to move to Oklahoma."²⁴³ The wife distinguished her situation from the wife in *Kulko* and asserted that "her presence in Oklahoma did not result from her unilateral conduct and [her h]usband's mere acquiescence, but from purposeful conduct [of her h]usband."²⁴⁴ The court determined that in *Kulko*, the plaintiff-mother's conduct was unilateral because the nonresident defendant-father merely consented to his daughter living in California with her mother and sent her there.²⁴⁵ Likewise, Oklahoma has observed that "a parent's mere acquiescence, or agreement, in one state for a child's residence in a second state does not satisfy the 'effects test;' *i.e.*, the acquiescence does not thereby cause an 'effect' in the second state justifying *in personam* jurisdiction."²⁴⁶ The "effects" test recognizes that

236. See 43 OKLA. STAT. § 601-201.A (2001 & Supp. 2007) (emphasis added).

237. *Powers v. Dist. Ct. of Tulsa Co.*, 2009 OK 91, 227 P.3d 1060.

238. See *id.* ¶ 35, 227 P.3d at 1081.

239. *Id.* ¶ 15, 227 P.3d at 1072.

240. *Id.* ¶ 2, 227 P.3d at 1065.

241. *Id.* ¶ 14, 227 P.3d at 1071.

242. See *id.*

243. *Id.* ¶ 23, 227 P.3d at 1075.

244. *Id.* ¶ 23, 227 P.3d at 1075-76.

245. *Id.* ¶ 25, 227 P.3d at 1076-77 (citing *Kulko v. Super. Ct. of Cal.*, 436 U.S. 84, 94 (1978)).

246. See *id.* ¶ 25, 227 P.3d at 1077 (citing *Gullo v. Gullo*, 2003 OK CIV APP 61, ¶¶ 14-16, 74 P.3d 612, 626).

an individual may cause an effect in one state as a consequence of acts performed outside the state.²⁴⁷

In *Kulko*, the United States Supreme Court noted that the state of California had “not attempted to assert any particularized interest in trying such cases in its courts, by e.g. enacting a special jurisdictional statute.”²⁴⁸ But, unlike California law at the time *Kulko* was decided, Oklahoma had adopted Title 43, Section 601-201, which is a special jurisdictional statute.²⁴⁹ In *Powers*, the Oklahoma Supreme Court rejected the husband's argument and upheld the United States Supreme Court's due process jurisprudence that the defendant's “physical presence in Missouri and not Oklahoma is insufficient, by itself, to negate *in personam* jurisdiction based upon a minimum contacts test.”²⁵⁰ The court echoed the United States Supreme Court in *Kulko*, “The minimum contacts’ test . . . is not susceptible of mechanical application; rather, the facts of each case must be weighed to determine whether the requisite affiliating circumstances are present.”²⁵¹

In *Powers*, the court directed its attention to *In re Marriage of Malwitz*,²⁵² decided by the Colorado Supreme Court.²⁵³ In *Malwitz*, the court examined Colorado's UIFSA statute and the language identical to that contained in § 601-201 of Oklahoma's UIFSA statute, which provides a basis for personal jurisdiction over a nonresident defendant if “[t]he child resides in this state as a result of the acts or directives of the [defendant].”²⁵⁴ The Colorado Supreme Court found that based on the defendant's acts of domestic violence against the plaintiff in Texas, “the Defendant's actions were sufficient to constitute ‘acts or directives’ that caused [the plaintiff] to flee Texas for Colorado within the meaning of [UIFSA].”²⁵⁵ The court found that the affirmative acts of the defendant — persistent abuse and harassment — effectively forced his pregnant wife and her daughter to flee Texas for Colorado.²⁵⁶ Furthermore, “[a]lthough the

247. See *Kulko*, 436 U.S. at 96 (Court viewed this test as “reach[ing] wrongful activity outside the State causing injury within the State.”); see RESTATEMENT (SECOND) OF CONFLICTS OF LAWS § 37 (1971).

248. *Gullo*, ¶ 19, 74 P.3d at 616-17 (quoting *Kulko*, 436 U.S. at 98).

249. 43 OKLA. STAT. § 601-201 (2001 & Supp. 2007).

250. See *Powers*, 2009 OK 91, ¶ 24, 227 P.3d at 1075.

251. *Id.* ¶ 22 (citing *Kulko*, 436 U.S. at 92) (internal quotations omitted).

252. *In re Marriage of Malwitz*, 99 P.3d 56 (Colo. 2004).

253. See *Powers*, 2009 OK 91, ¶ 26, 227 P.3d at 1078 (citing *Malwitz*, 99 P.3d at 58-59).

254. See *id.* (quoting 43 OKLA. STAT. § 601-201.A.5).

255. *Malwitz*, 99 P.3d at 59.

256. See *id.* at 61.

defendant did not specifically direct [the plaintiff] to leave . . . [she was left] with little choice but to leave Texas and seek safety near her father's home in Colorado."²⁵⁷ There were affiliating circumstances that brought the defendant in *Malwitz* within Colorado's jurisdiction. First, the wife's only family resided in Colorado and the court determined the abusive husband knew or should have known that because of his actions his wife would flee to the protection of her family.²⁵⁸ Second, "very little time passed between the harassment" and abuse and the wife's fleeing from Texas to Colorado for shelter.²⁵⁹

The Oklahoma Supreme Court agreed with the Colorado Supreme Court and held:

Although acts of child and spouse abuse in one state are insufficient, by themselves, to create *in personam* jurisdiction over a non-resident spouse in a different state, we do agree with the Supreme Court of Colorado that affiliating circumstances such as those in *Malwitz* may provide the facts necessary to show that an abusive spouse is purposefully availing himself or herself of conducting activity in the forum state by directing and controlling where the abused spouse and child reside.²⁶⁰

The Oklahoma Supreme Court indicated what affiliating circumstances district courts should consider when deciding whether a plaintiff's location in Oklahoma is a result of the acts and directives of the defendant, thus conferring personal jurisdiction over the nonresident defendant.²⁶¹ In *Powers*, these affiliating circumstances included: (1) the husband's agreement and desire that his family go to Oklahoma; (2) the wife's relocation to Oklahoma as a result of the husband's physical abuse; (3) the wife's relocation to Oklahoma was the result of the husband's complete and abrupt failure of both spousal and child economic support; and (4) the husband's awareness that his lack of support required the wife and child to relocate to Oklahoma.²⁶² The court found that because the "[h]usband allegedly created the circumstances of his wife and child living in Oklahoma without his economic support . . . *Kulko* cannot . . . be read as

257. *Id.*

258. *See id.* at 59, 61.

259. *Id.* at 61.

260. *Powers v. Dist. Ct. of Tulsa Cnty.*, 2009 OK 91, ¶ 32, 227 P.3d 1060, 1080.

261. *See id.* ¶ 34, 227 P.3d at 1080.

262. *Id.* ¶ 30, 227 P.3d at 1078-79.

requiring a . . . wife and child to *always* seek legal relief *only* in the non-resident's state of residence."²⁶³

Section 601-201 cannot be read broader than what due process permits.²⁶⁴ In *Gullo*, the Court of Civil Appeals concluded that section 601-201 must be interpreted in harmony with due process and the United States Supreme Court's decision in *Kulko*.²⁶⁵ The Oklahoma Supreme Court held that allegations of spousal abuse committed by the nonresident spouse in another jurisdiction and the affiliating circumstances — including the nonresident spouse's purposeful conduct that caused the abused spouse to relocate in Oklahoma — may be used pursuant to Title 43, Section 601-201.A.5 of the Oklahoma Statutes to obtain personal jurisdiction over the nonresident spouse and is consistent with due process of law.²⁶⁶ The court noted that in *Malwitz*, the Colorado Supreme Court observed that “all states share a common interest in protecting victims of domestic abuse and providing an effective means for redress for such victims.”²⁶⁷ But the Oklahoma Supreme Court left the state's interest there and stated that “[a]n interest to protect children and spouses that is shared in common with other forums, whether from abuse or lack of economic support, *is insufficient, by itself*, to make Oklahoma a fair forum *as to a nonresident*.”²⁶⁸ While this may seem counter-intuitive to Oklahoma's desire to protect those residing within its borders, the constitutional guarantee of due process afforded defendants in civil disputes — including abusers — cannot be sacrificed in the name of public policy.

If the Oklahoma Supreme Court is correct in finding that Section 601-201 of Title 43 is a constitutional basis for exercising personal jurisdiction over a nonresident in family support cases, it is logical to extend this reasoning when seeking a victim protection order against a nonresident defendant. UIFSA as it exists today does not address victim protection

263. *Id.* ¶ 31, 227 P.3d at 1079-80.

264. *Id.* ¶ 28, 227 P.3d at 1078.

265. *Id.* ¶ 28, 227 P.3d at 1078 n. 52; *see also* *Gullo v. Gullo*, 2003 OK CIV APP 61, ¶¶ 18, 26, 74 P.3d 612, 616, 618.

266. *Powers*, 2009 OK 91, ¶ 36, 227 P.3d at 1081; *but see id.* ¶ 4, 227 P.3d at 1082 (Opala, J., concurring) (“**I must counsel against taking an activist posture on any unsettled point of federal constitutional law.** Instead of pressing today for desired changed in the current state of the law I would much rather await further developments in the U.S. Supreme Court's jurisprudence.”).

267. *Id.* ¶ 31, 227 P.3d at 1079 (quoting *In re Marriage of Malwitz*, 99 P.3d 56, 63 (Colo. 2004)).

268. *Id.* ¶ 31.

orders, and it would be erroneous to include the issuance of victim protection orders in this section of the Oklahoma Statutes.

The plain language of Oklahoma's Protection from Domestic Abuse Act does not address jurisdiction.²⁶⁹ Victim protection statutes of other states, such as Pennsylvania, overtly demand personal jurisdiction over the defendant.²⁷⁰ The best solution for Oklahoma is to add a provision to the Protection from Domestic Abuse Act that specifies jurisdiction regarding victim protection orders. This provision could include language quite similar to that in the Uniform Interstate Family Support Act (UIFSA).²⁷¹ The Protection from Domestic Abuse Act ought to read as follows: "In a proceeding to issue a victim protection order, a tribunal of this state may exercise personal jurisdiction over a nonresident individual if the victim resides in Oklahoma as a result of the acts or directives of the individual." The Protection from Domestic Abuse Act would then embody the state's particular interest in adjudicating these disputes and contain special jurisdictional language, thus comporting with constitutional due process.²⁷² Following *Powers*, Oklahoma could exercise jurisdiction if the nonresident defendant abused the plaintiff and affiliating circumstances existed to show the defendant-abuser purposefully availed himself of this forum by controlling where the victim resided by effectively forcing her to seek shelter in Oklahoma.²⁷³

Even if the method of ascertaining personal jurisdiction under UIFSA and *Powers* is not employed as a means of exercising personal jurisdiction over nonresident abusers in petitions for victim protection orders and the state cannot bring the abuser within its judicial jurisdiction, the victim residing in Oklahoma is not without a remedy. The primary criticism of requiring personal jurisdiction over the defendant is that while it ensures procedural due process to the defendant, it undermines the state's interest in the *prevention* of domestic violence. The abuser may continue to pose a threat to his victim after she flees to Oklahoma.²⁷⁴ The victim must be

269. See 22 OKLA. STAT. §§ 60-60.18 (2001 & Supp. 2007).

270. See 23 PA. CONS. STAT. ANN. § 6103(b) (West Supp. 2010) ("The right of the plaintiff to relief under this chapter shall not be affected by . . . [t]he defendant's absence from this Commonwealth or the defendant's nonresidence in this Commonwealth, *provided that the court has personal jurisdiction over the defendant . . .*") (emphasis added).

271. See Uniform Interstate Family Support Act, 43 OKLA. STAT. § 601-201 (2001 & Supp. 2009).

272. See *Gullo v. Gullo*, 2003 OK CIV APP 61, ¶ 19, 74 P.3d 612, 616-17 (quoting *Kulko v. Super. Ct. of Cal.*, 436 U.S. 84, 98 (1978)).

273. See *Powers v. Dist. Ct. of Tulsa Cnty.*, 2009 OK 91, ¶ 32, 227 P.3d 1060, 1080.

274. See GUIDE, *supra* note 171, at 60 (advising judges to "[u]se the state's long-arm

faced with the reality of abuse again before she is afforded the state's protection, because the abuser must establish minimum contacts with this state.

The first likely scenario and possible way that the abuser could establish minimum contacts with the state (without committing acts of physical violence within the state) is that the abuser pursues the victim into Oklahoma, where she is seeking shelter.²⁷⁵ Second, placing phone calls into the state may be enough to sustain personal jurisdiction because the abuser knows when he makes the calls that they are being purposefully directed at the victim in the state.²⁷⁶

Alternatively, the victim could always return to the place of abuse or where the defendant resides and apply for a victim protection order under that state's law. For example, Sarah from the opening hypothetical would need to return to Kansas. The jurisdictional issue does not arise if the petition for protection is filed in the defendant's state of residence. Furthermore, when Sarah comes back to Oklahoma, the valid Kansas order will be given "full faith and credit" by the state of Oklahoma.²⁷⁷ While this option is not the most desirable, it is effective, because the issuing court has personal jurisdiction over the defendant.

Unfortunately, all of these scenarios require a greater risk of danger to the victim than simply issuing the victim protection order as a status determination, or without affirmative relief. This is incongruent with Oklahoma's policy behind the passage of the Protection from Domestic Abuse Act. Another criticism of requiring personal jurisdiction is that it undermines the Oklahoma legislature's emphasis on access in the Protection from Domestic Abuse Act.²⁷⁸ Read to exclude applicability to nonresident

statute to obtain jurisdiction over out-of-state respondents who pose a continuing threat to victims who have fled across state lines").

275. See, e.g., *State v. Reyes*, 796 A.2d 879 (N.J. 2002). A husband abused his wife in New York. *Id.* at 880. The wife went to her sister's house in New Jersey for safety. *Id.* The husband came to the house in New Jersey. *Id.* Because the husband pursued his victim from New York and committed an act of violence against her in New Jersey (pounding on her sister's house), the court found there was personal jurisdiction. *Id.* at 888.

276. See *McNair v. McNair*, 856 A.2d 5, 13-15 (N.H. 2004) (phone calls were the acts upon which the cause of action was based and alleged in petition for victim protection order); *Beckers v. Seck*, 14 S.W.3d 139, 144 (Mo. Ct. App. 2000); *A.R. v. M.R.*, 799 A.2d 27, 31-32 (N.J. Super. Ct. App. Div. 2002) (holding that the abuser's mere promise to pursue the victim before she left the state where he resides would not have been enough to sustain personal jurisdiction). *But see* *Anderson v. Deas*, 615 S.E.2d 859, 862 (Ga. Ct. App. 2005) (requiring abuser's physical entry into Georgia to establish minimum contacts).

277. 22 OKLA. STAT. § 60.12.A (2001).

278. See 22 OKLA. STAT. § 60.2 (providing for standard filing forms and waiving filing

defendant-abusers, the Act only provides protection to a limited group of women — those whose abusers are located in the state and those who were abused in the state. Victims who escape the home they share with their abusers and come to Oklahoma looking for support and safety in the homes of their friends and family will not find further protection in emergency ex parte victim protection orders.

B. A Victim Protection Order Is Not a Status Determination Because It Does Not Alter the Relationship Status of the Victim and the Abuser

The adjudication of a plaintiff's status in relation to a defendant does not require personal jurisdiction over a nonresident defendant, because the court is not asserting a personal judgment against the defendant and the status of those within the state's borders is of great interest to the state.²⁷⁹ While states certainly have a strong interest in protecting victims, a victim protection order is not an adjudication of the victim's status because it does not alter the relationship between the parties.²⁸⁰ The Supreme Court of Iowa in *Bartsch* incorrectly held that a victim protection order “does not purport to grant affirmative relief against the defendant; it merely preserves the protected status accorded to the plaintiff.”²⁸¹ A significant flaw in the court's reasoning was its failure to support its proposition that “protected victim” is a recognized declaration on the status relationship between the plaintiff-victim and the defendant-abuser, and Oklahoma courts should not embrace this approach.

The *Bartsch* court relied on *In re Adoption of J.L.H.*, an Oklahoma Supreme Court case, in extending status jurisdiction to include the issuance of victim protection orders.²⁸² *J.L.H.* was an adoption case; adoption clearly affects the status relationship of the parties to the lawsuit.²⁸³ In *J.L.H.*, the biological mother-defendant was a nonresident of Oklahoma.²⁸⁴ The biological father and stepmother petitioned for the nonconsensual adoption of her children.²⁸⁵ The Oklahoma Court acknowledged that the

fees); *id.* § 60.3 (allowing for temporary victim protection orders to be granted ex parte).

279. See *Williams v. North Carolina*, 317 U.S. 287, 298-99; *Pennoyer v. Neff*, 95 U.S. 714, 734 (1877) (“The jurisdiction which every State possesses, to determine the civil status and capacities of all its inhabitants. . .”).

280. *But see Bartsch v. Bartsch*, 636 N.W.2d 3, 10 (Iowa 2001) (holding that a victim protection order is an adjudication of the victim's status).

281. *Id.* at 6.

282. See *id.* at 8 (citing *In re Adoption of J.L.H.*, 1987 OK 25, 737 P.2d 915).

283. See *In re Adoption of J.L.H.*, 1987 OK 25, ¶ 1, 737 P.2d 915, 917.

284. See *id.*, ¶ 2, 737 P.2d at 917.

285. See *id.*, ¶ 3, 737 P.2d at 917.

“minimum contacts doctrine . . . was fashioned to gauge the standards of due process for the exercise of jurisdiction to render an in personam judgment against one not served within the state.”²⁸⁶ In *J.L.H.*, however, no in personam judgment was sought against the nonresident mother; rather, the plaintiffs were asking the court to rule on the status relationship between the nonresident defendant and her children.²⁸⁷ The Oklahoma Supreme Court referred to the Restatement of Judgments and the Restatement of Conflict of Laws before extending status jurisdiction to non-consensual adoption.²⁸⁸ According to Section 7 of the Restatement of Judgments, “[a] state may exercise jurisdiction to establish or terminate a status if the status has a sufficient relationship to the state.”²⁸⁹ Those relationships include divorce, legal separation, marriage annulment, adoption, and child custody.²⁹⁰ In *J.L.H.*, the court found “Oklahoma’s cognizance is invoked to settle the status of [the nonresident defendant’s] minor children.”²⁹¹ What was adjudicated was a “quest to change the underage children’s parental status vis-a-vis [sic] their nonresident and noncustodial mother.”²⁹²

The Supreme Court of Iowa took the strong state interest in protecting victims and, without sound reasoning, twisted it into a status determination.²⁹³ A victim protection order does not parallel an adjudication affecting the family relationship; therefore, it is not a status determination. In fact, the Protection from Domestic Abuse Act specifically creates a cause of action for victims that are *not* in a legal relationship with their abusers.²⁹⁴ There is unquestionably a strong state interest in protecting victims of abuse, but that does not justify reclassifying a cause of action for equitable relief as a declaration of one’s status.²⁹⁵ If an

286. *Id.*, ¶ 9, 737 P.2d at 919.

287. *See id.*

288. *See id.* n.13.

289. RESTATEMENT (SECOND) OF JUDGMENTS § 7 (1982) (“Relationships sufficient to support exercises of such jurisdiction in matters of family status are stated in Restatement, Second, Conflict of Laws §§ 70-79.”).

290. *See* RESTATEMENT (SECOND) OF CONFLICT OF LAWS §§ 70-79 (1971).

291. *J.L.H.*, ¶ 9, 737 P.2d at 919 n.13.

292. *Id.* ¶ 9, 737 P.2d at 918.

293. *See Bartsch v. Bartsch*, 636 N.W.2d 3, 9 (Iowa 2001).

294. *See* 22 OKLA. STAT. §§ 60.1.1, 60.1.4-60.1.5 (2001 & Supp. 2007). Victims can file a petition for a victim protection order if they have lived or live in the same household with their abuser, regardless of their marital status, or if they have been in a dating relationship with their abuser. *See id.*

295. *See Bartsch*, 636 N.W.2d at 11 (Carter, J., dissenting) (“What Tara Bartsch sought from an Iowa court was not a declaration of her status, but rather a grant of injunctive relief

order of protection is not a status determination and the court issuing the order does not have personal jurisdiction, due process has been violated.

The concurring opinion in *Doe v. Iowa District Court for Scott County* echoed the arguments of the *Bartsch* dissent.²⁹⁶ The relief prescribed in a victim protection order goes “beyond a status determination and constitute[s] a grant of injunctive relief against the defendant, and . . . therefore require[s] that the defendant have minimum contacts with the State of Iowa sufficient to avoid offending historical and well-developed concepts of due process of law.”²⁹⁷ It is also noteworthy that while Iowa was the first state to rule on this issue, there is disagreement among its own high court, and the majority’s reasoning has rarely been followed by jurisdictions outside of Iowa.²⁹⁸

A victim protection order, which demands or forbids specific behavior between the parties, alters the relationship between plaintiff and defendant to the same degree as when the court enjoins one farmer from tilling the land of a neighboring farmer. The once-amicable relationship between the two farmers is likely to sour. Certainly, no one would argue this court order alters the status relationship between the farmers. There is a stark difference between commanding the defendant to do a specific act or to refrain from certain acts and establishing, modifying, or terminating a status relationship between a citizen of the state and a nonresident. A victim protection order is the former type of action.

C. Allowing a Distinction Between Prohibitive And Affirmative Relief to Have an Effect on Jurisdictional Requirements Is Without Precedent

The courts in *Spencer*, *Caplan*, *Hemenway*, and *Shah* found that so long as the victim protection order is limited to prohibitive orders and does not assert affirmative obligations on the nonresident defendant, personal jurisdiction over the nonresident defendant is not needed to satisfy due process.²⁹⁹ While this approach is appealing because it purports to ensure

against a party beyond the jurisdiction of the Iowa court. Nor did the district court attempt to adjudicate her status in any manner.”)

296. No. 06-0696, 2007 WL 913851, *1 (Iowa Ct. App. Mar. 28, 2007) (Miller, J., concurring).

297. *Id.*

298. *But see* *Caplan v. Donovan*, 879 N.E.2d 117, 124 (Mass. 2008). The Massachusetts Supreme Court did not adopt *Bartsch* in its pure form. The court defined constitutional limitations for status determinations and held that if the victim protection order provides for so-called affirmative relief, personal jurisdiction over the nonresident defendant is required. *Id.*

299. *Spencer v. Spencer*, 191 S.W.3d 14 (Ky. Ct. App. 2006); *Caplan v. Donovan*, 879 N.E.2d 117, 124-25 (Mass. 2008); *Hemenway v. Hemenway*, 992 A.2d 575, 582 (N.H.

due process and also supply effective relief to domestic violence victims, it is unfounded. These courts draw a distinction between ordering an abuser to do a specific act, such as attending domestic violence counseling³⁰⁰ or compensating the plaintiff,³⁰¹ and ordering him not to do a specific act, such as not contacting or abusing the plaintiff.³⁰² These distinctions are problematic at best — and specious at worst — because these courts demand different due process requirements based upon the so-called type of relief. The bottom line is that, whether termed “affirmative” or “prohibitive” relief, a victim protection order is an equitable remedy, and equitable remedies require personal jurisdiction.³⁰³

The distinctions between “affirmative” and “prohibitive” relief most likely derive from the distinctions some courts have made between prohibitory and mandatory injunctions. The Tenth Circuit examined these types of injunctions in *O Centro Espirita Beneficiente Uniao Do Vegetal v. Ashcroft*.³⁰⁴ The court observed that there are three types of historically disfavored preliminary injunctions, one of which is “mandatory as opposed to prohibitory.”³⁰⁵ The limited purpose of a preliminary injunction is to preserve the status quo.³⁰⁶ The Tenth Circuit held that disfavored injunctions, such as mandatory injunctions, are subject to higher scrutiny because they alter the status quo.³⁰⁷ While this distinction may be pertinent to a court’s decision-making process for granting or denying an injunction, this test is irrelevant determining whether jurisdiction exists to grant that injunction in the first place.

Oklahoma courts have also long recognized the differences between prohibitive and mandatory injunctions.³⁰⁸ A mandatory injunction is an extraordinary remedy that “commands the performance of some positive act.”³⁰⁹ The *Shah*, *Spencer*, *Caplan*, and *Hemenway* courts are mistaken to

2010); *Shah v. Shah*, 875 A.2d 931, 937 (N.J. 2005).

300. See *Spencer*, 191 S.W.3d at 19.

301. See *Caplan*, 879 N.W.2d at 125.

302. See *id.*

303. See 27A AM. JUR. 2D *Equity* § 62 (2008) (“A court cannot exercise its equitable powers if it does not have subject-matter jurisdiction and jurisdiction over the parties.”).

304. 389 F.3d 973, 977, *aff’d on other grounds*, *Gonzales v. O Centro*, 546 U.S. 418 (2006).

305. *Id.*

306. See *id.* (quoting *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981)).

307. *Id.* at 979-80.

308. *Dusbabek v. Local Bldg. & Loan Ass’n*, 1936 OK 769, ¶ 8, 63 P.2d 756, 759 (“[A]n injunction may be either preventative (prohibitory) to restrain the commission or the continuance of an act; or mandatory, to require the doing or undoing of an act.”).

309. *Dale v. City of Yukon*, 1980 OK CIV APP 55, ¶ 9, 618 P.2d 954, 957 (citing *Peck*

infer that personal jurisdiction is not required if the injunction is prohibitive. An injunction, whether classified as prohibitive or affirmative, is still a judgment against the person; therefore, personal jurisdiction is required to satisfy due process.³¹⁰

By misunderstanding the prohibitory-mandatory distinction among injunctions and mistakenly believing this distinction has jurisdictional effect, the *Shah* and *Spencer* courts indirectly acknowledged that victim protection orders are injunctions.³¹¹ These courts did not misconstrue the law on status jurisdiction when they arrived at this prohibitive-affirmative distinction; instead, they misconstrued the jurisdictional requisites for a court to issue a valid injunction. If victim protection orders are injunctions, as the *Shah* and *Spencer* courts appear to concede, then personal jurisdiction is required over a nonresident defendant.

Even if these courts correctly found that personal jurisdiction is not needed for issuing a prohibitive protective order, the benefits of this legal construct would not be felt in Oklahoma because *all* victim protection orders in Oklahoma contain so-called affirmative relief as a matter of law.³¹² When the Oklahoma Supreme Court decided the proper standard of review for victim protection orders, it warned that “the unwarranted issuance of a protective order can have unjustified, irreversible consequences for a defendant.”³¹³ The court emphasized the fact that, according to both state and federal law, if one has a victim protection order issued against him, he cannot possess a firearm.³¹⁴ The federal Gun Control Act provides that anyone against whom a victim protection order has been issued is precluded from owning, possessing, or transporting a firearm.³¹⁵

v. State, 1960 OK 89, ¶ 7, 350 P.2d 948, 950).

310. See *Chickasaw Tel. Co. v. Drabek*, 1996 OK 76, ¶ 9, 921 P.2d 333, 337. In *Drabek*, the court emphasized that “[e]quity follows the law” and due process requires personal jurisdiction over the parties in an action for an injunction. *Id.* ¶ 5, 921 P.2d at 335. The act to be enjoined was the defendant’s interference with the plaintiff’s installation of cable. See *id.* ¶¶ 2-3, 921 P.2d at 334-35. The injunction sought would *prohibit* the defendant from interfering with the plaintiff, not compel the defendant to take action. See *id.* ¶ 4, 921 P.2d at 335.

311. *Contra* *Caplan v. Donovan*, 879 N.E.2d 117, 123 (Mass. 2008). The *Caplan* court agreed with *Bartsch* that the issuance of a victim protection order requires status jurisdiction but that due process limitations barred affirmative relief. *Id.*

312. See *Petition for Protective Order and Petition for Emergency Temporary Protective Order*, *supra* note 23.

313. *Curry v. Streater*, 2009 OK 5, ¶ 11, 213 P.3d 550, 555.

314. See *id.* (citing 21 OKLA. STAT. § 1290.11(A)(8) (2001 & Supp. 2007) and 18 U.S.C. § 922(g) (2006)).

315. 18 U.S.C. § 922(g)(8).

The federal prohibitions on gun possession are “non-discretionary” and “not an option that the victim may request. The federal prohibitions are absolute.”³¹⁶ The state law of Oklahoma prohibits a person against whom a final protection order is entered from getting a concealed weapons license for three years after the date of the order.³¹⁷ The state law prohibiting the possession of a firearm only applies to a final protective order and does not apply to an ex parte emergency order.³¹⁸ The federal law, on the other hand, does not distinguish between emergency ex parte and final protective orders; both types of victim protection orders prohibit an abuser from possessing a firearm.³¹⁹

All three of the courts that adopted the middle-of-the road prohibitive-affirmative approach in determining whether personal jurisdiction over a nonresident defendant is necessary recognized that the surrender of firearms — whether in accordance with state law or by order of the court — is affirmative relief, and personal jurisdiction is required to make such an order.³²⁰ The Gun Control Act makes the surrender of firearms a mandatory order because it criminalizes possession of firearms by the abuser after a victim protection order has been issued.³²¹ Therefore, so-called affirmative relief is always embodied in a victim protection order, and personal jurisdiction is always required.

Two other problems arise from the reasoning of the prohibitive-affirmative distinction. Both are a drain on judicial resources. First, judges hearing requests for victim protection orders have wide discretion in the relief they can order.³²² This means that a trial judge would have to craft his or her orders according to whether personal jurisdiction was obtained, and rule on motions to dismiss for lack of personal jurisdiction based not just upon the relief sought by the victim but upon what relief the judge

316. Carbon, *supra* note 214, at 48.

317. 21 OKLA. STAT. § 1290.11(A)(8) (2001 & Supp. 2009).

318. *See id.*; *see also* 22 OKLA. STAT. §

60.11 (2001 & Supp. 2007) (“[E]ach ex parte or final protective order issued pursuant to the Protection from Domestic Abuse Act shall have a statement printed in bold-faced type or in capital letters containing the following information: . . . Possession of a firearm or ammunition by a defendant while an order is in effect may subject the defendant to prosecution for a violation of federal law even if the order does not specifically prohibit the defendant from possession of a firearm or ammunition.”); *see* Petition for Protective Order and Petition for Emergency Temporary Protective Order, *supra* note 23.

319. *See* 18 U.S.C. § 922(g) (2006).

320. *Spencer v. Spencer*, 191 S.W.3d 14, 19 (Ky. Ct. App. 2006); *Caplan v. Donovan*, 879 N.E.2d 117, 125 (Mass. 2008); *Shah v. Shah*, 875 A.2d 931, 140 (N.J. 2005).

321. *See* 18 U.S.C. § 922(g)(8) (2006).

322. *See* 22 OKLA. STAT. § 60.4(C)(1) (2001 & Supp. 2009).

might order that is “necessary to bring about the cessation of domestic abuse against the victim.”³²³ Some defendants may consent to the jurisdiction of the court by appearing. But if a nonresident defendant has not waived the right to object for lack of personal jurisdiction, he will be able to challenge jurisdiction of any judgment that says more than “stay away.” Existing victim protection orders would have to be examined retrospectively to determine if the nonresident defendant has a basis to challenge a court’s jurisdiction to issue initial and subsequent orders.

Second, if a court does not have personal jurisdiction when it issues a judgment against an individual, that order is not valid, and full faith and credit is not mandated by law. The Uniform Interstate Enforcement of Domestic Violence Protection Orders Act is not triggered unless the court has personal jurisdiction, ensuring the validity of the victim protection order.³²⁴ The court in *Shah* acknowledged this legal principle when it observed, “Should a court outside New Jersey having . . . personal jurisdiction over the plaintiff and defendant . . . issue an order adjudicating the domestic violence complaint, that order is afforded full faith and credit.”³²⁵ Judges would have to examine orders from other states for the presence of affirmative relief, and could only give full faith and credit to those issued against nonresident defendants over whom the foreign states had personal jurisdiction.

V. Conclusion

Unfortunately, the reality is that an abusive situation like Sarah and John’s is not terribly uncommon. Oklahoma has been a state at the forefront of recognizing the tragedy of domestic violence, creating awareness among society, and offering victims help. But Oklahoma, strong in its adherence to constitutional law, cannot sacrifice due process rights even in the name of something as appalling as domestic abuse — and Oklahoma need not do so. Oklahoma has recognized that the outer bounds of due process allow the exercise of personal jurisdiction over nonresident defendants when their abuse effectively forces their victims into the state. Language should be added to the Protection from Domestic Abuse Act clarifying this point. Oklahoma’s shared interest in preventing abuse, when coupled with acts of abuse committed by the defendant in another state and

323. *Id.*; see Petition for Protective Order and Petition for Emergency Temporary Protective Order, *supra* note 23.

324. See 22 OKLA. STAT. §§ 60.23.A., 60.23.D.3 (2001 & Supp. 2007).

325. *Shah*, 875 A.2d at 942 n.7.

the establishment of minimum contacts with Oklahoma by directing and controlling the wife's relocation to the state, justifiably subjects a nonresident defendant-abuser to the jurisdiction of the state.

Bevan J. Graybill