

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

DEPARTMENT OF REVENUE, o/b/o)
G.J.W.,)
)
Appellant,)
)
v.)
)
B.E.F., SR.,)
)
Appellee.)
_____)

Case No. 2D11-890

Opinion filed October 24, 2012.

Appeal from the Circuit Court for Polk
County; John Radabaugh, Judge.

Pamela Jo Bondi, Attorney General,
and William H. Branch, Assistant
Attorney General, Tallahassee, for
Appellant.

No appearance for Appellee.

KELLY, Judge.

The Department of Revenue appeals from the trial court's order that
dismisses its complaint to determine paternity on the basis that the Department failed to
establish personal jurisdiction over the appellee/putative father who resides in North

Carolina. Because the complaint alleges sufficient facts to establish long-arm jurisdiction, we reverse and remand for further proceedings.

Section 48.193, Florida Statutes (1991), states, "[w]ith respect to a proceeding for paternity," a person subjects himself to the jurisdiction of the courts of this state by "engaging in the act of sexual intercourse within this state with respect to which a child may have been conceived." § 48.193(1)(h). The Department's complaint to determine paternity on behalf of the mother alleged that "the court has personal jurisdiction of the Defendant/Respondent in that the child may have been conceived in the State of Florida." The complaint further alleges, "[o]n or about December 1991, named Plaintiff/Petitioner and Defendant/Respondent began associating with each other and became intimate and, thereafter, had sexual intercourse, and named Plaintiff/Petitioner became pregnant with child."

Thus, the complaint alleges that the mother and the appellee engaged in sexual intercourse resulting in the conception of the child in Florida. Although the complaint does not perfectly track the language of the statute, these facts sufficiently establish a basis for long-arm jurisdiction over the appellee. See Rafaeil v. Rafaeil, 832 So. 2d 202 (Fla. 2d DCA 2002) (holding that to establish long-arm jurisdiction over a nonresident putative father, a complaint to establish paternity must allege that the mother and the father engaged in sexual intercourse within the state of Florida which resulted in the conception of the child).

Accordingly, we reverse and remand for further proceedings.

VILLANTI, J., Concur.
ALTENBERND, J., Concur with opinion.

ALTENBERND, Judge, Concurring.

I concur in this opinion, but write to emphasize the unusual facts of this case. The Department filed this paternity action in March 2010, alleging that B.E.F., Sr., had sexual intercourse and may have conceived a child in Florida in late December 1991. The child was born in September 1992.

B.E.F., Sr., filed an answer before he filed a motion to dismiss. He did not file any affidavit and has not created an evidentiary issue as to whether he engaged in this activity in Florida in 1991. The complaint was dismissed exclusively on the basis that the Department failed to establish personal jurisdiction over the appellee/putative father. He has raised waiver and other defenses that have not yet been resolved.