An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA01-269

NORTH CAROLINA COURT OF APPEALS

Filed: 5 March 2002

LINDA SUE WILKINSON,
Plaintiff-Appellee,

v. Buncombe County
No. 98 CVD 2851

JIMMY W. WILKINSON,
Defendant-Appellant.

Appeal by defendant from order entered 4 October 2000 by Judge Earl J. Fowler, Jr., in Buncombe County District Court. Heard in the Court of Appeals 31 January 2002.

No brief filed by plaintiff-appellee.

Carol B. Andres, for defendant-appellant.

BRYANT, Judge.

This is an appeal from an order denying defendant's motion to dismiss an alimony and equitable distribution action for lack of personal jurisdiction. The relevant facts are as follows. In 1980, plaintiff and defendant were married in Texas. In June 1996, the couple was residing in Ft. Meade, Maryland, where defendant served in the United States Army, when defendant received orders to report for overseas duty in Korea. Plaintiff decided to reside in North Carolina while defendant was overseas. In December 1997, defendant received orders to return to post in Ft. Meade. On his

way home, he stopped in Asheville, North Carolina, to visit plaintiff. After three days, he continued to Ft. Meade.

On 22 June 1998, defendant filed for divorce and division of community property in Angelina County, Texas. On 26 June 1998, plaintiff filed for temporary and permanent alimony, equitable distribution, an interim distribution of the marital estate, plus costs and fees in Buncombe County, North Carolina. Defendant made a limited appearance in Buncombe County District Court to challenge personal jurisdiction on 9 November 1998. The court denied defendant's motion to dismiss for lack of jurisdiction in an order entered 4 October 2000. Defendant appealed. For the reasons stated herein we reverse the order of the trial court.

Although defendant brings an interlocutory appeal from a denial of his motion to dismiss an action for temporary and permanent alimony and equitable distribution, he has an immediate right to appeal. *See* N.C.G.S. § 1-277 (1999); *Retail Investors, Inc. v. Henzlik Inv. Co.*, 113 N.C. App. 549, 552, 439 S.E.2d 196, 198 (1994) (holding that immediate right to appeal lies from denial of motion to dismiss for lack of personal jurisdiction). "The standard of review of an order determining personal jurisdiction is whether the findings of fact by the trial court are supported by competent evidence in the record; if so, this Court must affirm the order of the trial court." *Replacements, Ltd. v. MidweSterling*, 133 N.C. App. 139, 140-41, 515 S.E.2d 46, 48 (1999) (citing *Better Business Forms, Inc. v. Davis*, 120 N.C. App. 498, 462 S.E.2d 832 (1995)).

A two-step analysis applies when determining whether a court may exercise in personam jurisdiction over a non-resident defendant. First, is there statutory authority that confers jurisdiction on the court? *Dillon v. Numismatic Funding Corp.*, 291 N.C. 674, 675, 231 S.E.2d 629, 630 (1977). This is determined by looking at North Carolina's "long arm" statute, N.C.G.S. § 1-75.4 (1999). *Id.* Second, if statutory authority confers in personam jurisdiction over the defendant, does the exercise of in personam jurisdiction violate the defendant's due process rights? *Id.*

A North Carolina court has in personam jurisdiction over a defendant in an action arising within this State when the defendant is present within the State. N.C.G.S. § 1-75.4(1)(a). In this case, defendant was present in North Carolina for three days on his way from Korea to Maryland. Therefore, the statutory requirement has been met.

The exercise of in personam jurisdiction must also comport with due process by ensuring that the defendant have minimum contacts in the forum state. *Godwin v. Walls,* 118 N.C. App. 341, 353, 455 S.E.2d 473, 482, *rev. allowed,* 341 N.C. 419, 461 S.E.2d 757 (1995). This requirement has not been met. Minimum contacts must be such that the exercise of in personam jurisdiction "does not offend 'traditional notions of fair play and substantial justice.'" *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316, 90 L. Ed. 95, 102 (1945) (quoting *Milliken v. Meyer*, 311 U.S. 457, 463, 85 L. Ed. 278, 283 (1940)). The defendant must have invoked the benefits and protections of the laws of the forum state by

purposely availing himself of the privilege of doing business in that state. *Godwin,* 118 N.C. at 353, 455 S.E.2d at 482. "This relationship between the defendant and the forum must be 'such that he should reasonably anticipate being haled into court there.'" *Tom Togs, Inc. v. Ben Elias Indus. Corp.*, 318 N.C. 361, 365, 348 S.E.2d 782, 786 (1986) (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297, 62 L. Ed. 2d 490, 501 (1980)).

In determining minimum contacts, the court looks at several factors, including: 1) the quantity of the contacts; 2) the nature and quality of the contacts; 3) the source and connection of the cause of action with those contacts; 4) the interest of the forum state; and 5) the convenience to the parties. *Corbin Russwin, Inc. v. Alexander's Hardware, Inc.*, ___ N.C. App. ___, ___, ___ S.E.2d ___, ___ (Dec. 18, 2001) (COA00-1097); *Phoenix Am. Corp. v. Brissey*, 46 N.C. App. 527, 530-31, 265 S.E.2d 476, 479 (1980). The court must not apply these factors mechanically, but must weigh them and determine what is fair and reasonable to both parties. *Phoenix Am. Corp.* at 531, 265 S.E.2d at 479 (citing *Farmer v. Ferris*, 260 N.C. 619, 625, 133 S.E.2d 492, 497 (1963)). No single factor controls; rather, all factors "must be weighed in light of fundamental fairness and the circumstances of the case." *B.F. Goodrich Co. v. Tire King of Greensboro, Inc.*, 80 N.C. App. 129, 132, 341 S.E.2d 65, 67 (1986).

In this case, defendant had been stationed in Korea in the Army when he was transferred to Ft. Meade, Maryland. Defendant stopped in Asheville for three days to see plaintiff, before

returning to Maryland to find a place for the couple to reside. A stop-over of three days is insufficient contact for defendant to reasonably anticipate being haled into court in this State.

We considered a similar issue in *Shamley v. Shamley*, 117 N.C. App. 175, 455 S.E.2d 435 (1994). In that case, the plaintiff-husband left New Jersey and purchased a tract of land in North Carolina without involving his wife. He then titled the property in joint names without her knowledge and built a house. The wife remained in New Jersey, had never resided in North Carolina, and had only visited this State twice for a total of ten days. The husband sued for absolute divorce and equitable distribution in North Carolina. The wife contested jurisdiction, and the district court agreed. This Court affirmed, holding that "[d]efendant's only voluntary contacts with North Carolina were during a brief visit in which she looked at houses with defendant and another visit in which she purchased an automobile. We find that defendant could not, on the basis of these contacts, reasonably anticipate being haled into court here." *Shamley v. Shamley*, 117 N.C. App. 175, 182, 455 S.E.2d 435, 439 (1994).

For the reasons stated above, we reverse.

Reversed.

Judges TIMMONS-GOODSON and SMITH concur.

Report per Rule 30(e).