



FUNDAMENTALLY SPEAKING

# POINT TO THE POWER – THE JURISDICTIONAL AND RESIDENCY REQUIREMENTS OF A DIVORCE

BY DANIEL FINDLING

In the first year of law school, many students are exposed to the Socratic method of cooperative argument based on asking and answering questions. One of my first lessons in law school was the necessity to “point to the power.” Whether a statute, case law, or even common law, it was not enough to have an understanding of the law, you had to be able to “point to the power” meaning the authority, and cite the specific statute, case law, or common law to support a position.

In Michigan, there is no common-law authority to grant a judgment of divorce. The jurisdiction of the circuit courts in matters of divorce is strictly statutory. *Yedinak v. Yedinak*, 383 Mich. 409; 175 N.W.2d 706 (1970); *Flynn v. Flynn*, 367 Mich. 625, 116 N.W.2d 907 (1962), and *Hatch v. Hatch*, 323 Mich. 581; 36 N.W.2d 152 (1949).

The official power to make a legal decision and to grant a judgment of divorce is found in Michigan Compiled Laws 600.1021(1) which provides in pertinent part:

“(1) Except as otherwise provided by law, the family division of circuit court has sole and exclusive jurisdiction over the following cases commenced on or after January 1, 1998:

Cases of divorce and ancillary matters as set forth in the following statutes: . . .

...”

At first glance, Michigan Compiled Laws section 552.9 appears to address residency and venue, the county where the case must be heard. However, the statute is in fact a jurisdictional limitation. MCL 552.9 provides in pertinent part:

A judgment of divorce shall not be granted by a court in this state in an action for divorce unless the complainant or defendant has resided in this state for 180 days immediately preceding the filing of the complaint and, except as otherwise provided in subsection (2), the complainant or defendant has resided in the county in which the complaint is filed for 10 days immediately preceding the filing of the complaint.”

In *Stamadianos v. Stamadianos*, 425 Mich 1, 385 N.W. 24604 (1986), the Michigan Supreme Court has held that both the 180-day state residency requirement and the ten-day county residency requirement set forth in MCL 552.9

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are a jurisdictional limitation on the circuit court's power to enter a divorce decree. *Id.* at 7.

In *Hartzler v. Radeka et al.*, 265 Mich 451, 251 N.W. 544 (1922), the Michigan Supreme Court held that domicile and residence are synonymous:

Domicile is the place where a person has his home, with no present intention of removing, and to which he intends to return after going elsewhere for a longer or shorter time.

Residence has a more restricted meaning and may be the place where he lives while engaged in work or duty which keeps him away from his domicile. In Michigan the terms are used as synonymous. *Gluc v. Klein*, 226 Mich. 175, 197 N. W. 691.", *Id.* at 452.

A statutory exception exists to the ten-day county residency (jurisdictional) requirement set forth in Michigan Compiled Laws section 552.9. Section (2) of the statute provides the exception:

(2) A person may file a complaint for divorce in any county in the state without meeting the 10-day requirement set forth in subsection (1) if all of the following apply and are set forth in the complaint:

(a) The defendant was born in, or is a citizen of, a country other than the United States of America.

(b) The parties to the divorce action have a minor child or children.

(c) There is information that would allow the court to reasonably conclude that the minor children are at risk of being taken out of the United States of America and retained in another country by the defendant.

Notably, in *Kar v. Nanda*, 291 Mich. App. 284, 805 NW 24609 (2011) the Michigan Court of Appeals held that the residency requirement under MCL 552.9(1) does not require an intent to remain permanently and indefinitely. *Id.* at 294. Also see *Funk v. Funk*, unpublished opinion per curiam of the Court of Appeals, issued April 2, 2010 (Docket No. 319467).

The game mousetrap is a Rube Goldberg machine, a complicated device that performs simple tasks. In many ways, a discussion of the jurisdictional and residency requirements of a divorce is like navigating the game of mousetrap. Pointing to the power has never been so much fun.

### About the Author

*Daniel Findling is a divorce and family law attorney in practice for over 20 years and managing director of Findling Law, PLC, a divorce law firm with attorneys who share the core value of practicing law to help people navigate change in their life without compromising principles. Daniel is a proud father of three, private pilot, prolific blogger and lecturer. A 1971 graduate of Shaarey Zedek Beth Hayeld very good student award, a 1993 graduate of Wayne State University Bachelor of Public Affairs, magna cum laude and a 1997 graduate of Wayne State University Juris Doctor, cum laude. A member of Pi Sigma Alpha – National Political Science Honors Society, recipient of the Bronze Key Certificate – Wayne State University Law School, a DBusiness Top Lawyer, Super Lawyer, Crains Detroit Business Top Lawyer, Hour Detroit Top Lawyer and Avvo Top Divorce Attorney.*

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