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Twin Pines, LLC, appellee, v. Mary A. Rice, appellant.

___ N.W.3d ___

Filed April 2, 2024. No. A-23-477.

1. **Courts: Time: Judges: Words and Phrases: Appeal and Error.** A district court's ruling on a motion to extend the time for filing a statement of errors is reviewed for an abuse of discretion. A judicial abuse of discretion exists if the reasons or rulings of a trial judge are clearly untenable, unfairly depriving a litigant of a substantial right and denying just results in matters submitted for disposition.
2. **Judgments: Appeal and Error.** When a jurisdictional question does not involve a factual dispute, the issue is a matter of law. An appellate court reviews questions of law independently of the lower court's conclusion.
3. **Jurisdiction: Words and Phrases.** Personal jurisdiction is the power of a tribunal to subject and bind a particular entity to its decisions.
4. **Due Process: Jurisdiction: States.** Before a court can exercise personal jurisdiction over a nonresident defendant, the court must determine, first, whether the long-arm statute is satisfied and, second, whether minimum contacts exist between the defendant and the forum state for personal jurisdiction over the defendant without offending due process.
5. **Constitutional Law: Jurisdiction: States.** Nebraska's long-arm statute extends Nebraska's jurisdiction over nonresidents having any contact with or maintaining any relation to this state as far as the U.S. Constitution permits.
6. **Due Process: Jurisdiction: States.** When a state construes its long-arm statute to confer jurisdiction to the fullest extent constitutionally permitted, the inquiry collapses into the single question of whether jurisdiction comports with due process.
7. **Due Process: Jurisdiction.** The Due Process Clause of the U.S. Constitution limits a state court's power to exercise jurisdiction over a defendant.

8. **Due Process: Jurisdiction: States.** The determination of whether a court has personal jurisdiction is not simply mechanical or quantitative, but requires the consideration of the quality and nature of the defendant's activities to ascertain whether the defendant has the necessary minimum contacts with the forum to satisfy due process.
9. **Jurisdiction: States.** Generally, specific jurisdiction permits suits that arise out of or relate to a defendant's activities in the forum state while general jurisdiction allows all kinds of suits against defendants in their place of domicile.
10. ____: ____. The expansion of states' jurisdiction based on the minimum contacts analysis did not supersede states' jurisdiction over those physically present within their borders.
11. **Due Process: Jurisdiction.** Jurisdiction based on physical presence alone constitutes due process because it is one of the continuing traditions of our legal system that define the due process standard of traditional notions of fair play and substantial justice.
12. **Jurisdiction: Service of Process.** Being served in Nebraska subjects the defendant to the jurisdiction of its courts.

Appeal from the District Court for Douglas County, Molly B. Keane, Judge, on appeal thereto from the County Court for Douglas County, Marcela A. Keim, Judge. Judgment of District Court affirmed.

Louie M. Ligouri, of Ligouri Law Office, for appellant.

Gregory C. Scaglione, of Koley Jessen, P.C., L.L.O., for appellee.

Pirtle, Chief Judge, and Riedmann and Welch, Judges.

Pirtle, Chief Judge.

INTRODUCTION

Twin Pines, LLC, brought an action against Mary A. Rice in the county court for Douglas County. The service of summons was completed by the Nemaha County sheriff's office while Rice, who is not a Nebraska resident, was physically in Nebraska. Upon Rice's motion to dismiss for lack of personal jurisdiction, the county court dismissed the action. On appeal

to the district court for Douglas County, the district court reversed the county court's dismissal and found the instate service of process was sufficient to subject Rice to the jurisdiction of Nebraska courts. Rice now appeals that judgment. For the reasons that follow, we affirm.

BACKGROUND

On May 9, 2022, Rice sold a property located in Rock Port, Missouri, to Twin Pines, a Missouri limited liability company. Along with purchasing the property, Twin Pines also bought most of the items in the home, including a gas range and dishwasher. Twin Pines alleges that when Rice moved out of the residence on August 3, she took the gas range and dishwasher in violation of the agreement.

On August 26, 2022, Twin Pines filed a complaint in the county court, seeking damages for Rice's retention of the gas range and dishwasher. On August 31, the Nemaha County sheriff's office served Rice at her place of work in Auburn, Nebraska. Rice is not a Nebraska resident, and she asserts her only connection to the state is that she works in Nebraska. On September 9, Rice motioned to dismiss the lawsuit for lack of personal jurisdiction.

On October 27, 2022, a hearing was held on Rice's motion to dismiss. On November 29, the county court found there was no connection between the lawsuit and the State of Nebraska, so it dismissed the complaint.

On December 19, 2022, Twin Pines filed a notice of intention to prosecute an appeal and requested the production of a bill of exceptions. The bill of exceptions was filed in the district court on February 1, 2023. On February 3, the district court entered a scheduling order, which included, in relevant part, that "[Twin Pines] shall comply with Neb. Ct. R. [§] 6-1518." Although the rule has since been amended, see Neb. Ct. R. § 6-1518(B) (rev. 2023), at the time of the proceedings, § 6-1518(B) (rev. 2022) stated:

> Within 10 days of filing the bill of exceptions in an appeal to the district court, the appellant shall file with the district court a statement of errors which shall consist of a separate, concise statement of each error a party contends was made by the trial court. Each assignment of error shall be separately numbered and paragraphed. Consideration of the cause will be limited to errors assigned, provided that the district court may, at its option, notice plain error not assigned. This rule shall not apply to small claims appeals.

Despite § 6-1518's mandate and the court's scheduling order, Twin Pines did not file its statement of errors until March 29. In this statement of errors, Twin Pines assigned the county court erred in granting the motion to dismiss, finding that Nebraska did not have personal jurisdiction over Rice, and failing to find that Douglas County was an appropriate venue for the action.

On June 1, 2023, the district court entered an order reversing the county court's dismissal of the case. The district court's order first excused Twin Pines' untimely statement of errors. In doing so, the court stated:

> [T]here was no evidence that the delayed filing of the statement of errors prejudiced Rice. The motion to dismiss only took up two issues, and the order stemming from that motion only dealt with personal jurisdiction. Twin Pines' assignments of error were not a surprise to Rice. Further, Rice's briefing clearly articulates the central issue, which indicates that the delayed statement of errors failed to harm Rice significantly.

Next, citing precedent from the U.S. Supreme Court, the district court determined that the instate service of process was sufficient for the court to have personal jurisdiction over Rice. The court then declined to address the question of venue because the county court did not previously address it. With the district court's reversal of the county court's dismissal of the action, Rice filed the present appeal on June 26, 2023.

ASSIGNMENTS OF ERROR

Rice assigns, reordered, combined, and restated, that the district court erred by (1) excusing Twin Pines' failure to file its statement of errors in compliance with § 6-1518(B) of the Uniform District Court Rules of Practice and Procedure and in violation of the district court's own scheduling order, (2) reversing the county court's factual finding that "the requirements of the Nebraska Long Arm Statute and the Due Process Clause" had not been met for obtaining personal jurisdiction over her, and (3) finding that Nebraska had personal jurisdiction over her.

STANDARD OF REVIEW

[1] A district court's ruling on a motion to extend the time for filing a statement of errors is reviewed for an abuse of discretion. See *Houser v. American Paving Asphalt*, 299 Neb. 1, 907 N.W.2d 16 (2018). A judicial abuse of discretion exists if the reasons or rulings of a trial judge are clearly untenable, unfairly depriving a litigant of a substantial right and denying just results in matters submitted for disposition. *Radmanesh v. Radmanesh*, 315 Neb. 393, 996 N.W.2d 592 (2023).

[2] When a jurisdictional question does not involve a factual dispute, the issue is a matter of law. *Paw K. v. Christian G.*, 315 Neb. 781, 1 N.W.3d 467 (2024). An appellate court reviews questions of law independently of the lower court's conclusion. *Id.*

ANALYSIS

Statement of Errors

Rice assigns the district court erred in excusing Twin Pines' failure to file its statement of errors within 10 days after the filing of the bill of exceptions as required by its own scheduling order and the then-operative § 6-1518(B). Rice argues that because the district court was obligated to enforce its scheduling order and the court rule, Twin Pines' noncompliance should have limited the court's review to plain error.

We determine that Rice's assignment of error fails because the district court did not abuse its discretion in extending the time for Twin Pines to file its statement of errors. In *Houser v. American Paving Asphalt, supra*, the Nebraska Supreme Court discussed the district courts' authority to extend the filing deadline required by § 6-1518(B). The company's bill of exceptions was filed on January 7, 2016, and the company filed its brief on March 21. However, it was not until the homeowner filed his brief that the company realized it had not filed a statement of errors. After the district court allowed the company an extension, it filed its statement of errors on April 15.

In its decision, the Supreme Court held that it was within the district court's discretion to extend the time for filing a statement of errors in an appeal from the county court. *Houser v. American Paving Asphalt, supra.* It reasoned that "through their inherent judicial power, [district courts] have the authority to do all things reasonably necessary for the proper administration of justice." *Id.* at 15, 907 N.W.2d at 26. This inherent authority extends to allowing additional time for filing a statement of errors. *Houser v. American Paving Asphalt, supra.* As such, the court held a district court's decision to excuse an untimely statement of errors will be upheld absent an abuse of discretion. See *id.*

Although the Supreme Court determined the decision was within the district court's discretion, it found the district court in *Houser* abused its discretion in extending the company's time to file its statement of errors. The court found this to be an abuse of discretion because the statement was not filed until after the homeowner's brief was already submitted and because the delay was solely due to the company's negligence. See *id*.

In the current case, the district court did not abuse its discretion in extending the filing deadline. The bill of exceptions was filed on February 1, 2022, but Twin Pines did not file its statement of errors until March 29. However, unlike in

Houser, neither party had filed their briefs before the statement of errors was eventually filed. Twin Pines filed its brief 2 days later, on March 31, and Rice filed hers on April 7. Based on this, we conclude that the district court did not abuse its discretion in extending Twin Pines' time to file its statement of errors.

Factual Finding

We next address Rice's assignment of error in which she contends the district court erroneously reversed the county court's factual finding. She argues the county court's determination that "the requirements of the Nebraska Long Arm Statute and the Due Process Clause" had not been met was a finding of fact that the district court erroneously disturbed by making its own factual finding. We disagree.

We determine this assignment of error fails because the determination of personal jurisdiction in this matter is a question of law. As stated previously, when a jurisdictional question does not involve a factual dispute, the issue is a matter of law. *Paw K. v. Christian G.*, 315 Neb. 781, 1 N.W.3d 467 (2024). There are no disputed facts in this matter. Neither party contests that Twin Pines is a Missouri company, that the contract was made and executed in Missouri, that the subject property is in Missouri, that Rice is not a Nebraska resident, or that Rice was served while physically present in Nebraska. The only question at issue is whether the instate service of process was sufficient for Nebraska to have personal jurisdiction over Rice, which is not a factual question, but a legal one. Therefore, the county court's finding was a legal determination. An appellate court reviews questions of law independently of the lower court's conclusion. *Id.* As such, the district court had no obligation to accept the county court's finding and did not commit error by not doing so.

Personal Jurisdiction

Rice next assigns the district court erred in finding that Nebraska courts have personal jurisdiction over her. She

argues Nebraska has no interest in hearing a case brought by a Missouri company against a Missouri resident concerning conduct that occurred in Missouri. With this, Rice asserts the court's exercise of personal jurisdiction does not comply with due process because she does not have the necessary minimum contacts with Nebraska, it is not fair and reasonable, and it violates principles of state sovereignty because the State of Missouri has a greater interest in resolving the matter.

[3-6] We determine the county court has personal jurisdiction over Rice because she was served with process while physically in Nebraska. Personal jurisdiction is the power of a tribunal to subject and bind a particular entity to its decisions. *Wheelbarger v. Detroit Diesel*, 313 Neb. 135, 983 N.W.2d 134 (2023). Before a court can exercise personal jurisdiction over a nonresident defendant, the court must determine, first, whether the long-arm statute is satisfied and, second, whether minimum contacts exist between the defendant and the forum state for personal jurisdiction over the defendant without offending due process. *Yeransian v. Willkie Farr*, 305 Neb. 693, 942 N.W.2d 226 (2020). Nebraska's long-arm statute extends Nebraska's jurisdiction over nonresidents having any contact with or maintaining any relation to this state as far as the U.S. Constitution permits. *Yeransian v. Willkie Farr, supra.* When a state construes its long-arm statute to confer jurisdiction to the fullest extent constitutionally permitted, the inquiry collapses into the single question of whether jurisdiction comports with due process. *Id.*

[7] The Due Process Clause of the U.S. Constitution limits a state court's power to exercise jurisdiction over a defendant. *Ford Motor Co. v. Montana Eighth Judicial Dist. Court*, 592 U.S. 351, 141 S. Ct. 1017, 209 L. Ed. 2d 225 (2021). In days long gone, a tribunal's jurisdiction over persons was necessarily limited by the geographic bounds of the forum. *Daimler AG v. Bauman*, 571 U.S. 117, 134 S. Ct. 746, 187 L. Ed. 2d 624 (2014) (citing *Pennoyer v. Neff*, 95 U.S. 714, 24 L. Ed. 565 (1877)). However, the U.S. Supreme Court had changed

this rule in *Internat. Shoe Co. v. Washington*, 326 U.S. 310, 66 S. Ct. 154, 90 L. Ed. 95 (1945), where it transformed the jurisprudence concerning personal jurisdiction. In that case, the Court held that a tribunal's authority was no longer purely restricted to its territorial limits. See *id.* Instead, it stated:

> [D]ue process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice."

Id., 326 U.S. at 316 (emphasis omitted).

[8] Accordingly, since the U.S. Supreme Court's decision in *Internat. Shoe Co. v. Washington, supra*, the determination of whether a court has personal jurisdiction is not simply mechanical or quantitative, but requires the consideration of the quality and nature of the defendant's activities to ascertain whether the defendant has the necessary minimum contacts with the forum to satisfy due process. See *Wheelbarger v. Detroit Diesel, supra.* In this sense, *Internat. Shoe Co.* expanded the scope of state court jurisdiction. See *Mallory v. Norfolk Southern R. Co.*, 600 U.S. 122, 139, 143 S. Ct. 2028, 216 L. Ed. 2d 815 (2023) (stating that minimum contact analysis "[u]nquestionably . . . expand[ed]—not contract[ed]—state court jurisdiction").

[9] Elaborating on the minimum contacts analysis in subsequent decisions, the U.S. Supreme Court distinguished between specific, or case-linked, jurisdiction and general, or all-purpose, jurisdiction. *BNSF R. Co. v. Tyrrell*, 581 U.S. 402, 137 S. Ct. 1549, 198 L. Ed. 2d 36 (2017). Generally, specific jurisdiction permits suits that "'arise out of or relate to'" a defendant's activities in the forum state while general jurisdiction allows all kinds of suits against defendants in their place of domicile. *Ford Motor Co. v. Montana Eighth Judicial Dist. Court*, 592 U.S. at 359. This dichotomy

between general and specific jurisdiction dominates the contemporary framework for personal jurisdiction. See *id.*

[10] However, the U.S. Supreme Court has acknowledged that the expansion of states' jurisdiction based on the minimum contacts analysis did not supersede states' jurisdiction over those physically present within their borders. In a plurality opinion in *Burnham v. Superior Court of Cal., Marin County*, 495 U.S. 604, 619, 110 S. Ct. 2105, 109 L. Ed. 2d 631 (1990), Justice Scalia, writing for the plurality, noted that "[n]othing in *International Shoe* or the cases that have followed it, however, offers support for the . . . proposition . . . that a defendant's presence in the forum is not only unnecessary to validate novel, nontraditional assertions of jurisdiction, but is itself no longer sufficient to establish jurisdiction." In other words, *Internat. Shoe Co.* might have expanded the scope for personal jurisdiction, but it did not do away with the historical tradition that defendants are subject to jurisdiction anywhere they are present. See *Burnham v. Superior Court of Cal., Marin County, supra.* See, also, *Mallory v. Norfolk Southern R. Co., supra.*

In *Burnham v. Superior Court of Cal., Marin County, supra*, a New Jersey resident traveled to California to conduct business and visit his children who had been brought there by his estranged wife. While in California, he was served personally with process for a California proceeding initiated by his wife to increase his support obligation. *Id*. Relying on the framework from *Internat. Shoe Co. v. Washington*, 326 U.S. 310, 66 S. Ct. 154, 90 L. Ed. 95 (1945), the New Jersey resident argued the California court lacked jurisdiction over him on the basis that he lacked minimum contacts with the state. While the U.S. Supreme Court unanimously agreed that the tag or transient jurisdiction was valid and that the California court had personal jurisdiction, the justices were unable to reach a majority opinion as to the reasoning. *Burnham v. Superior Court of Cal., Marin County, supra.*

[11] Justice Scalia's opinion determined that the requirements of due process are satisfied when a defendant is physically present in the forum state. *Id.* He opined that "jurisdiction based on physical presence alone constitutes due process because it is one of the continuing traditions of our legal system that define the due process standard of 'traditional notions of fair play and substantial justice.'" *Id.*, 495 U.S. at 619. In sum, Justice Scalia reasoned in *Burnham* that because the American legal tradition had always acknowledged tag or transient jurisdiction as conferring personal jurisdiction, it per se comported with the requirements of due process.

Justice Brennan's concurring opinion generally agreed that a defendant served with process while voluntarily present in the forum state was subject to that state's jurisdiction. *Burnham v. Superior Court of Cal., Marin County, supra.* However, he rejected the notion that tag jurisdiction "automatically comports with due process simply by virtue of its 'pedigree,'" noting that pursuant to *Shaffer v. Heitner*, 433 U.S. 186, 97 S. Ct. 2569, 53 L. Ed. 2d 683 (1977), "every assertion of state-court jurisdiction, even one pursuant to a 'traditional' rule such as transient jurisdiction, must comport with contemporary notions of due process." *Burnham v. Superior Court of Cal., Marin County*, 495 U.S. at 629, 632. Therefore, he believed due process also required an "'independent inquiry into the . . . fairness of the prevailing in-state service rule.'" *Id.*, 495 U.S. at 629.

Despite the justices' differences in reasoning, the result was a unanimous recognition that tag jurisdiction was constitutionally valid in most cases, at least where the defendant was voluntarily and knowingly in the forum state at the time process was served. 4 Charles Alan Wright et al., Federal Practice and Procedure § 1067.3 (2017).

In a recent decision, the U.S. Supreme Court has given credence to the ongoing validity of tag jurisdiction. In *Mallory v. Norfolk Southern R. Co.*, 600 U.S. 122, 143 S. Ct. 2028,

216 L. Ed. 2d 815 (2023), an ex-employee domiciled in Virgnia brought an action against the railroad in a Pennsylvania state court. In asserting the state court had jurisdiction over the railroad, the former employee pointed to a Pennsylvania statute requiring out-of-state corporations to consent to personal jurisdiction in Pennsylvania as a condition of registering to do business in the state. *Id.* In a plurality opinion, the Court determined Pennsylvania's statute complied with the requirements of the Due Process Clause of the 14th Amendment. *Mallory v. Norfolk Southern R. Co., supra.*

Writing for the plurality, Justice Gorsuch provided a history of the Court's jurisprudence concerning personal jurisdiction, which included several comments about tag jurisdiction. In doing so, he stated:

> In [*Burnham v. Superior Court of Cal., Marin County*, 495 U.S. 604, 110 S. Ct. 2105, 109 L. Ed. 2d 631 (1990),] the defendant contended that [*Internat. Shoe Co. v. Washington*, 326 U.S. 310, 66 S. Ct. 154, 90 L. Ed. 95 (1945),] implicitly overruled the traditional tag rule holding that individuals physically served in a State are subject to suit there for claims of any kind. . . . This Court rejected that submission. Instead, as Justice Scalia explained, *International Shoe* simply provided a "novel" way to secure personal jurisdiction that did nothing to displace other "traditional ones."

Mallory v. Norfolk Southern R. Co., 600 U.S. at 139-40. Later in the opinion, Justice Gorsuch discussed an argument by the railroad where it attempted to assert that the filing of paperwork in Pennsylvania was only a formality that did not override the requirements of due process. In dismissing this argument, Justice Gorsuch cited the "tag rule": "Then there is the tag rule. The invisible state line might seem a trivial thing. But when an individual takes one step off a plane after flying from New Jersey to California, the jurisdictional consequences are immediate and serious." *Id.* 600 U.S. at 145.

Even Justice Barrett's dissent in *Mallory* gives support to the endurance of tag jurisdiction as a means to obtain personal jurisdiction over a defendant. While Justice Barrett took issue with the plurality's determination that "registration jurisdiction" for a corporation is just as valid as "tag jurisdiction," she did not contest the primary finding in *Burnham v. Superior Court of Cal., Marin County*, 495 U.S. 604, 110 S. Ct. 2105, 109 L. Ed. 2d 631 (1990), that tag jurisdiction remains an effective basis for general jurisdiction:

> In *Burnham*, we acknowledged that tag jurisdiction would not satisfy the contacts-based test for general jurisdiction. Nonetheless, we reasoned that tag jurisdiction is "both firmly approved by tradition and still favored," making it "one of the continuing traditions of our legal system that define[s] the due process standard of 'traditional notions of fair play and substantial justice.'" . . . *Burnham* thus permits a longstanding and still-accepted basis for jurisdiction to pass *International Shoe*'s test.

Mallory v. Norfolk Southern R. Co., 600 U.S. 122, 171, 143 S. Ct. 2028, 216 L. Ed. 2d 815 (2023) (Barrett, J., dissenting) (citations omitted).

In the matter at hand, Rice contends the U.S. Supreme Court's holding in *Burnham* and comments in *Mallory* are nonbinding upon this court because those decisions were only plurality opinions. There is support for this view, because the U.S. Supreme Court has acknowledged that it is not bound by plurality opinions because they do not represent the views of a majority of the court. See *CTS Corp. v. Dynamics Corp. of America*, 481 U.S. 69, 107 S. Ct. 1637, 95 L. Ed. 2d 67 (1987). See, also, *Altria Grp., Inc. v. Good*, 555 U.S. 70, 129 S. Ct. 538, 172 L. Ed. 2d 398 (2008) (Thomas, J., dissenting). With this assertion, Rice argues we should not rely on the holding in *Burnham* and the comments in *Mallory*.

Instead, Rice maintains we should look to the U.S. Supreme Court's holding in *Shaffer v. Heitner*, 433 U.S. 186, 97 S. Ct.

2569, 53 L. Ed. 2d 683 (1977), along with many other cases, where the Court has signaled the predominance of the minimum contacts analysis. In *Shaffer*, the Court concluded that "all assertions of state-court jurisdiction must be evaluated according to the standards set forth in *International Shoe* and its progeny." 433 U.S. at 212. With this, Rice contends that despite her being served in Nebraska, we must still evaluate whether she has the necessary minimum contacts with the state to satisfy due process as described in *Internat. Shoe Co. v. Washington*, 326 U.S. 310, 66 S. Ct. 154, 90 L. Ed. 95 (1945).

However, in both *Mallory* and *Burnham*, the U.S. Supreme Court signaled against this reading of *Shaffer.* In *Mallory*, Justice Gorsuch stated that the Court "has previously cautioned litigants and lower courts against (mis)reading *Shaffer* as suggesting that *International Shoe* discarded every traditional method for securing personal jurisdiction that came before." 600 U.S. at 141. Justice Scalia also commented on the holding in *Shaffer* in his *Burnham* opinion:

> The logic of *Shaffer*'s holding . . . does not compel the conclusion that physically present defendants must be treated identically to absent ones. As we have demonstrated at length, our tradition has treated the two classes of defendants quite differently, and it is unreasonable to read *Shaffer* as casually obliterating that distinction.

495 U.S. at 621. While we acknowledge that these comments are also nonbinding as they are within the same nonbinding plurality opinions discussed above, they certainly constitute persuasive authority.

But even if we were to disregard the comments of Justices Scalia and Gorsuch regarding *Shaffer*, the holding in *Burnham*, and the discussions in *Mallory*, due to their nonbinding nature, we must give effect to the precedents of the Nebraska Supreme Court. In *Stewart v. Hechtman*, 254 Neb. 992, 581 N.W.2d 416 (1998), the Nebraska Supreme Court,

in a unanimous decision, cited to Justice Scalia's opinion in *Burnham* to find that Nebraska courts have jurisdiction over defendants served within the state.

[12] In *Stewart v. Hechtman, supra*, the court held that Nebraska courts could exercise jurisdiction over a Florida resident because he was served in Nebraska. In its decision, the court first cited to *Dale Electronics, Inc. v. Copymation, Inc.*, 178 Neb. 239, 132 N.W.2d 788 (1965), where it stated:

> "Historically, the jurisdiction of courts to render judgments in personam was grounded on their de facto power over the defendant's person. Presence within the territorial jurisdiction of a court was prerequisite to the rendition of a judgment personally binding the defendant. Now, however, as capias ad respondendum has given way to personal service of summons or other forms of notice, due process requires only that to subject a defendant to a judgment in personam if he be not present within the territory of the forum, he have certain minimum contacts with it . . . ."

Stewart v. Hechtman, 254 Neb. at 997, 581 N.W.2d at 420. However, the court went on to cite Justice Scalia's opinion in *Burnham v. Superior Court of Cal., Marin County*, 495 U.S. 604, 110 S. Ct. 2105, 109 L. Ed. 2d 631 (1990), for the proposition that "service of process confers state court jurisdiction over [a] physically present nonresident, regardless of whether he was only briefly in state or whether [the] cause of action is related to his activities there." *Stewart v. Hechtman*, 254 Neb. at 997, 581 N.W.2d at 420. With this, the court concluded that being served in Nebraska subjected the defendant to the jurisdiction of its courts. See *Stewart v. Hechtman, supra.*

Accordingly, we conclude that serving Rice while she was physically present in Nebraska subjected her to the jurisdiction of Nebraska courts and complied with the requirements of due process. Consequently, the district court did not err in reversing the judgment of the county court.

CONCLUSION

We conclude that the district court did not abuse its discretion in extending the time for Twin Pines to file its statement of errors. Additionally, we determine the district court did not err in making its own legal determination and reversing the county court's dismissal of the action, because the county court had personal jurisdiction over Rice.

Affirmed.