

**IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR  
LEE COUNTY, FLORIDA** **CIVIL ACTION**

**J. L. M.,  
Petitioner & wife,**

**vs.  
J. S. M.,  
Respondent & husband,**

**Case No. 0 DR N**

**ORDER REQUIRING AN EVIDENTIARY HEARING**

This matter having come before the court on 8/23/2010 on the husband's motion to dismiss, it is ordered:

**1. Findings**

The question is the court's jurisdiction, of all sorts, to resolve the issues in this case, that is, (1) subject matter jurisdiction over the marriage, *see* §61.021; (2) long-arm personal jurisdiction over the husband, even if the court has subject matter jurisdiction over the marriage, *see* §48.193(1)(e) and *see, e.g., Marshall v. Marshall*, 988 So.2d 644 (Fla. 4<sup>th</sup> DCA 2008); (3) subject matter jurisdiction over time-sharing and parental responsibility, *see* §61.514.

The parties' competing affidavits conflict. Therefore, the court cannot make findings of fact sufficient to determine whether the court has any jurisdiction.

**2. Ruling**

The court must hold an evidentiary hearing to determine the factual basis for the court's jurisdiction, if any.

*See Venetian Salami v. J. S. Parthenais*, 554 So.2d 499 (Fla. 1989) and *Weiler v. Weiler*, 861 So.2d 472, 476 (5<sup>th</sup> DCA 2003): "In determining if personal jurisdiction is proper under the long-arm statute, the trial court must first determine whether the complaint alleges sufficient jurisdictional facts to bring it under the statute. (*Citation omitted.*) If the allegations are disputed, the court must hold, as it did in this case, an evidentiary hearing." The same must be said when a factual question is raised about any jurisdiction, not only long arm jurisdiction. Whenever a jurisdictional question arises, the court cannot decide the question on the basis of competing affidavits in which the facts averred do not agree, and the court must hold an evidentiary hearing at which testimony is subject to cross examination and all of the evidence is admissible under the requirements of Chapter 90.

Therefore, either party may schedule the subject motion for an extended evidentiary hearing by contacting the court's judicial assistant. The court will not hear any other matter in this case until the court has determined whether or not it has jurisdiction to proceed.

Done and ordered in Fort Myers, Lee County, Florida, this \_\_\_\_\_

R. Thomas Corbin, Circuit Judge

Copies provided to:  
\_\_\_\_\_, Esq., and \_\_\_\_\_, Esq.