

No. \_\_\_\_\_

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**In The  
Supreme Court of the United States**

—◆—  
ANNA CLADAKIS,

*Petitioner,*

v.

SHERRIE ALLISON MILLER,

*Respondent.*

—◆—  
**On Petition For A Writ Of Certiorari  
To The Supreme Court Of Mississippi**

—◆—  
**PETITION FOR WRIT OF CERTIORARI**

—◆—  
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**QUESTION PRESENTED**

Whether a state court's assertion of personal jurisdiction arising out of the alleged commission in part of a tort within the state comports with due process when none of the parties to the dispute is a resident of the state, the only material injury occurred out of state, and the other states whose interests are affected by the exercise of personal jurisdiction in the state emphatically reject the substantive basis for the suit.

**PARTIES TO THE PROCEEDINGS  
IN THE LOWER COURTS**

Sherrie Allison Miller

Anna Cladakis

Provident Advertising & Marketing, Inc. – This is a Florida corporation with its principal place of business in Florida. Eighty percent (80%) of the stock in this corporation is owned by Provident Management Corporation, and employees are paid under the tax identification number for Provident Management.

Provident Management Corporation – This is a Florida corporation with its principal place of business in Florida.

Hooters, Incorporated – This entity was incorrectly identified in multiple ways in the lower courts. This is a Florida corporation with its principal place of business in Florida.

Hooters of America, Inc. – Since January 24, 2011, this Georgia entity has been known as Hooters of America, LLC.

## TABLE OF CONTENTS

	Page
Question Presented .....	i
Parties to the Proceedings in the Lower Courts.....	ii
Table of Contents .....	iii
Table of Authorities .....	vi
Petition for Writ of Certiorari .....	1
Opinions Below .....	1
Jurisdiction .....	1
Constitutional and Statutory Provisions In- volved.....	2
Statement of the Case .....	4
Reasons for Granting the Petition.....	9
I. IN SANCTIONING THE EXERCISE OF PERSONAL JURISDICTION OVER CLADAKIS, THE MISSISSIPPI COURT OF APPEALS DECIDED IN THE AFFIR- MATIVE AN IMPORTANT FEDERAL QUESTION THAT THIS COURT HAS HERETOFORE NOT ENTERTAINED BUT THAT WARRANTS RESOLUTION: WHETHER A NONRESIDENT DEFEN- DANT’S ALLEGED COMMISSION OF EVEN PART OF A TORT WITHIN A STATE IS <i>IPSO FACTO</i> SUFFICIENT UNDER THE DUE PROCESS CLAUSE TO ESTABLISH “MINIMUM CONTACTS” WITH THE STATE FOR PURPOSES OF SPECIFIC JURISDICTION .....	9

## TABLE OF CONTENTS – Continued

	Page
A. This Court Employs a Highly Fact-Sensitive Inquiry In Determining Whether “Minimum Contacts” Exist In Any Given Case.....	10
B. The Decision Below Would Create a Categorical Rule Deeming “Minimum Contacts” to Exist in Every Case In Which Even a Modicum of Tortious Activity Is Alleged to Have Occurred within the State.....	12
II. THE MISSISSIPPI COURT OF APPEALS’S DECISION DEPARTED IN SIGNIFICANT REGARDS FROM THIS COURT’S PRECEDENT ON THE CONSTITUTIONAL REASONABLENESS OF A STATE’S EXERCISE OF PERSONAL JURISDICTION AGAINST A NONRESIDENT DEFENDANT .....	14
A. The Court of Appeals Grossly Miscalculated Mississippi’s Interest In Adjudicating a Dispute Involving Exclusively Nonresidents Where the Only Alleged Harm Occurred Out of State .....	16
B. The Decision Below Offends the Fourteenth-Amendment-Ensured Sovereignty of the Several States .....	18
Conclusion.....	21

## TABLE OF CONTENTS – Continued

Page

## APPENDIX

January 15, 2015 Order of the Mississippi Supreme Court denying Cladakis’s petition for writ of certiorari to that court.....	App. 1
October 14, 2014 decision of the Mississippi Court of Appeals denying motions for re-hearing .....	App. 3
Decision of the Mississippi Court of Appeals in <i>Miller v. Provident Advertising &amp; Marketing, Inc.</i> , 155 So. 3d 181 (Miss. Ct. App. 2014) (en banc) .....	App. 5
Order Granting Anna Cladakis’s Motion for Award of Costs and Attorney Fees entered by the Circuit Court of Desoto County, Mississippi, on November 6, 2012.....	App. 37
Order entered by the Circuit Court of Desoto County, Mississippi, for the Seventeenth Judicial District at Hernando on May 11, 2012, and filed on May 15, 2012.....	App. 43

## TABLE OF AUTHORITIES

## Page

## CASES

<i>Asahi Metal Indus. Co. v. Superior Court of Cal., Solano Cnty.</i> , 480 U.S. 102 (1987).....	<i>passim</i>
<i>Burger King v. Rudzewicz</i> , 471 U.S. 462 (1985).....	10, 11, 19
<i>Keeton v. Hustler Magazine, Inc.</i> , 465 U.S. 770 (1984).....	11, 12
<i>Kulko v. Superior Court of Cal.</i> , 436 U.S. 84 (1978).....	11, 12
<i>McGee v. Int’l Life Ins. Co.</i> , 355 U.S. 220 (1957).....	16
<i>Miller v. Provident Adver. &amp; Mktg., Inc.</i> , 155 So. 3d 181 (Miss. Ct. App. 2014).....	<i>passim</i>
<i>Travelers Health Ass’n v. Virginia</i> , 339 U.S. 643 (1950).....	11
<i>Walden v. Fiore</i> , 134 S. Ct. 1115 (2014).....	11, 12, 14
<i>World-Wide Volkswagen Corp. v. Woodson</i> , 444 U.S. 286 (1980).....	14, 15, 18

## CONSTITUTIONAL PROVISIONS

U.S. Const. amend. XIV .....	2, 10, 18
------------------------------	-----------

## STATUTES

28 U.S.C. § 1257(a).....	2
Miss. Code Ann. § 13-3-57 (Rev. 2012) .....	3

TABLE OF AUTHORITIES – Continued

Page

RULES AND REGULATIONS

Miss. R. Civ. Proc. 12 .....6



## PETITION FOR WRIT OF CERTIORARI

Anna Cladakis petitions for a writ of certiorari to review the judgment of the Court of Appeals of the State of Mississippi.



### OPINIONS BELOW

The en banc opinion of the Mississippi Court of Appeals is reported at 155 So. 3d 181 (Miss. Ct. App. 2014).

In the aforementioned opinion, the Mississippi Court of Appeals reversed in part the decision of the trial court, specifically the Order entered by the Circuit Court of Desoto County, Mississippi, for the Seventeenth Judicial District at Hernando on May 15, 2012, and the Order Granting Anna Cladakis's Motion for Award of Costs and Attorney Fees entered by the trial court on November 6, 2012. Said orders are unreported but are reproduced in the Appendix to this Petition (App.).



### JURISDICTION

On June 17, 2014, the Mississippi Court of Appeals rendered its decision in *Miller v. Provident Advertising & Marketing, Inc.*, 155 So. 3d 181 (Miss. Ct. App. 2014) (en banc).

On June 27, 2014, Cladakis filed a motion for rehearing. On July 1, 2014, the plaintiff, Sherrie

Allison Miller, filed a petition for rehearing. On October 14, 2014, the Mississippi Court of Appeals denied both motions for rehearing by decision without published opinion. Two justices voted to grant Cladakis's motion for rehearing. *See App. 3-4.*

On October 28, 2014, Cladakis filed a petition for writ of certiorari to the Mississippi Supreme Court. On January 15, 2015, Cladakis's petition for writ of certiorari was denied by the Mississippi Supreme Court with two justices voting to grant. *App. 1-2.*

This Court's jurisdiction is invoked under 28 U.S.C. § 1257(a).

Rule 29.4(b) and (c) are not applicable and, accordingly, notification required by said rules has not been made.



### **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

Section 1 of the Fourteenth Amendment of the United States Constitution provides as follows:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person

within its jurisdiction the equal protection of the laws.

Mississippi's long-arm statute, found at Mississippi Code Annotated section 13-3-57 (Rev. 2012) and entitled "Service on nonresident business not qualified to do business in state; survival of cause of action in death or inability to act; service on nonresident executor, administrator, etc.," reads as follows:

Any nonresident person, firm, general or limited partnership, or any foreign or other corporation not qualified under the Constitution and laws of this state as to doing business herein, who shall make a contract with a resident of this state to be performed in whole or in part by any party in this state, or who shall commit a tort in whole or in part in this state against a resident or nonresident of this state, or who shall do any business or perform any character of work or service in this state, shall by such act or acts be deemed to be doing business in Mississippi and shall thereby be subjected to the jurisdiction of the courts of this state. Service of summons and process upon the defendant shall be had or made as is provided by the Mississippi Rules of Civil Procedure.

Any such cause of action against any such nonresident, in the event of death or inability to act for itself or himself, shall survive against the executor, administrator, receiver, trustee, or any other selected or appointed representative of such nonresident. Service of process or summons may be had or made

upon such nonresident executor, administrator, receiver, trustee or any other selected or appointed representative of such nonresident as is provided by the Mississippi Rules of Civil Procedure, and when such process or summons is served, made or had against the nonresident executor, administrator, receiver, trustee or other selected or appointed representative of such nonresident it shall be deemed sufficient service of such summons or process to give any court in this state in which such action may be filed, in accordance with the provisions of the statutes of the State of Mississippi or the Mississippi Rules of Civil Procedure, jurisdiction over the cause of action and over such nonresident executor, administrator, receiver, trustee or other selected or appointed representative of such nonresident insofar as such cause of action is involved.

The provisions of this section shall likewise apply to any person who is a nonresident at the time any action or proceeding is commenced against him even though said person was a resident at the time any action or proceeding accrued against him.



### **STATEMENT OF THE CASE**

This case involves a Mississippi state common-law tort claim in which the plaintiff, Sherrie Allison Miller (hereinafter “Plaintiff”), sought damages from Anna Cladakis (hereinafter “Cladakis”) for injuries

allegedly sustained by Plaintiff for alienation of affections of Plaintiff's former husband, John Daly (hereinafter "Daly").

Plaintiff filed her original complaint against Cladakis on February 25, 2011, in Desoto County, Mississippi. At the time of the filing of the Complaint and at all other times relevant hereto, Miller was a resident of the state of Tennessee, Cladakis was a resident of the state of Florida, and Daly was a resident of the states of Tennessee, Arkansas, and Florida (though not simultaneously).

On March 15, 2011, Plaintiff filed a First Amended Complaint in which, in an apparent attempt to create a nexus with Mississippi, she alleged as follows:

. . . [t]he separation and eventual divorce [of Plaintiff and John Daly] were proximately caused by the actions and conduct of Anna Cladakis, the paramour, through conduct and activity that was initiated and centered in DeSoto County, Mississippi via sexual and other improper contact between Cladakis and Daly.

Amend. Compl. ¶ VII, *Miller v. Provident Adver. & Mktg., Inc.*, CA No. CV2011-061 GCD (DeSoto Cnty., Miss. Circuit Ct.).

Plaintiff sought to file a second amended complaint which purported to identify two specific dates of alleged sexual and/or improper conduct: "inter alia, January 1, 2007, and April 13, 2007." *See Miller v.*

*Provident Adver. & Mktg., Inc.*, 155 So. 3d 181, 186-87 (Miss. Ct. App. 2014) (en banc).

Cladakis filed an answer and motion to dismiss the complaints against her pursuant to Rule 12 of the Mississippi Rules of Civil Procedure, contending that Mississippi did not have personal jurisdiction over her. The trial court agreed and granted Cladakis's motion to dismiss, finding that to force her to litigate in Mississippi would "offend traditional notions of fair play and substantial justice" because Mississippi had little, if any, interest in adjudicating a dispute between two nonresidents of Mississippi regarding their respective relationships with another non-resident of the state. *See* App. 48.

Plaintiff appealed the order of the trial court dismissing her claims against Cladakis. By decision dated June 17, 2014, the Court of Appeals of Mississippi reversed, holding that Plaintiff established a prima facie case for personal jurisdiction. App. 30. It held that Mississippi's exercise of jurisdiction over Cladakis comported with due process because, if the allegations in the amended complaint were true, Cladakis purposefully had availed herself to tortious activities within the state, and allowing the suit did not offend traditional notions of fair play and substantial justice. App. 26-30. In so holding, the Mississippi Court of Appeals stated as follows:

P32. The comments to the Second Restatement of Conflict of Laws recognize:

A state has an especial interest in exercising judicial jurisdiction over those who commit torts within its territory. This is because torts involve wrongful conduct which a state seeks to deter, and against which it attempts to afford protection, by providing that a tortfeasor shall be liable for damages which are the proximate result of his tort.

Restatement (Second) of Conflict of Laws § 36(1) cmt. c. (1971). Mississippi has refused to abolish the tort of alienation of affection. *Fitch*[ v. *Valentine*], 959 So. 2d [1012,] 1018-19 (¶¶15-16) [(Miss. 2007)]; *Bland*[ v. *Hill*], 735 So. 2d [414,] 418 (¶17) [(Miss. 1999)]. The purpose of this cause of action is to protect “love, society, companionship, and comfort that form the foundation of a marriage.” *Fitch*, 959 So. 2d at 1019 (¶16). In *Knight*[ v. *Woodfield*], the supreme court held that it did not offend “traditional notions of fair play and substantial justice” for a non-resident defendant to litigate in Mississippi for an alienation-of-affection claim. *Knight*, 50 So. 3d [995,] 1001 (¶21) [(Miss. 2011)]. While the state’s interest is not as strong in this case as it was in *Knight* since the marriage at issue is not a Mississippi marriage, we still conclude that Mississippi has “an especial interest” in this case. The Legislature, in modifying our state’s long-arm statute in 1980, expressed the public policy of the state to provide a forum for nonresidents to pursue compensation for torts committed in whole or in part in this state. See *Camp*[ v. *Roberts*],

462 So. 2d [726,] 727 [(Miss. 1985)]; 1980 Miss. Law, Ch. 437.

P33. The trial court recognized Miller's strong interest in obtaining effective relief for the alienation-of-affection tort she alleges occurred within our borders. Miller lacks a viable alternative forum to adjudicate that claim, since both Tennessee and Florida have abolished alienation-of-affection as a cause of action. This fact increases Mississippi's interest in adjudicating this claim.

*Miller*, 155 So. 3d at 193-94.

Cladakis moved for rehearing, which the Court of Appeals denied. Two of the Court of Appeals judges, however, voted to grant Cladakis's motion for rehearing. *See* App. 3-4.

Cladakis thereafter sought review of the Court of Appeals's reversal of the trial court's dismissal of this case as against her for lack of personal jurisdiction as well as the denial of her motion for rehearing by petitioning to the Mississippi Supreme Court for a writ of certiorari. The Mississippi Supreme Court denied the petition on January 15, 2015. Two of the justices of that court voted to grant the petition. *See* App. 1-2.





**REASONS FOR GRANTING THE PETITION**

- I. IN SANCTIONING THE EXERCISE OF PERSONAL JURISDICTION OVER CLADAKIS, THE MISSISSIPPI COURT OF APPEALS DECIDED IN THE AFFIRMATIVE AN IMPORTANT FEDERAL QUESTION THAT THIS COURT HAS HERETOFORE NOT ENTERTAINED BUT THAT WARRANTS RESOLUTION: WHETHER A NONRESIDENT DEFENDANT'S ALLEGED COMMISSION OF EVEN PART OF A TORT WITHIN A STATE IS *IPSO FACTO* SUFFICIENT UNDER THE DUE PROCESS CLAUSE TO ESTABLISH "MINIMUM CONTACTS" WITH THE STATE FOR PURPOSES OF SPECIFIC JURISDICTION.**

In rendering the decision below, the Mississippi Court of Appeals took liberties in its jurisdictional analysis that have no precedent in this Court. It determined that, accepting as true that Cladakis and Daly engaged in sexual activity within the state of Mississippi, such commission of a tort, or at least part of a tort, within Mississippi constituted sufficient "minimum contacts" between Cladakis and the state for purposes of personal jurisdiction. The Court of Appeals's holding would categorically declare *every* exercise of state long-arm jurisdiction based on an alleged commission of all or part of a tort within the state to be satisfactory under a "minimum contacts" inquiry. That, this Court has never before ruled. The Court should take now the opportunity to declare its

stance on this potentially dangerous innovation in the field of jurisdiction-related due process.

**A. This Court Employs a Highly Fact-Sensitive Inquiry In Determining Whether “Minimum Contacts” Exist In Any Given Case.**

The Due Process Clause of the Fourteenth Amendment of the United States Constitution restricts the ability of a state court to exercise personal jurisdiction over a nonresident defendant. *Asahi Metal Indus. Co. v. Superior Court of Cal., Solano Cnty.*, 480 U.S. 102, 108 (1987). Even if the exercise of jurisdiction in such a case is proper under the state’s long-arm statute, in the absence of some substantial or continuous and systematic activity on the part of the defendant within the state, it must comport with due process in two regards: (1) the defendant must have purposefully established “minimum contacts” in the forum state; and (2) the exercise of jurisdiction must not offend “traditional notions of fair play and substantial justice.” *Burger King v. Rudzewicz*, 471 U.S. 462, 474-76 (1985). If these requirements are met, the state may exercise what is known as “specific jurisdiction” over the defendant with respect to any claim arising out of or relating to the defendant’s forum-related activities. *Id.* at 472 n.15.

The “minimum contacts” necessary for the exercise of personal jurisdiction “must have a basis in ‘some act by which the defendant *purposefully avails*

itself of the privilege of conducting activities with the forum State, thus invoking the benefits and protections of its laws.’” *Asahi Metal*, 480 U.S. at 109 (quoting *Burger King*, 471 U.S. at 475) (emphasis added). Further, “the suit-related conduct must create a substantial connection with the forum State.” *Walden v. Fiore*, 134 S. Ct. 1115, 1121 (2014). This Court has found a substantial connection where a defendant “deliberately” engaged in significant activities with the state, *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 781 (1984), or where acts of the defendant created “continuous obligations” or “continuing and wide-reaching contacts” between himself and residents of the state, *Travelers Health Ass’n v. Virginia*, 339 U.S. 643, 648 (1950) and *Burger King*, 471 U.S. at 479-80. However, where the contacts between the defendant and the forum state are “random,” “fortuitous,” or “attenuated,” the defendant must not be haled into court in the state. *Keeton*, 465 U.S. at 774.

This Court has admonished that “the ‘minimum contacts’ test . . . is not susceptible of mechanical application.” *Kulko v. Superior Court of Cal.*, 436 U.S. 84, 92 (1978). Rather, “the facts of each case must be weighed to determine whether the requisite ‘affiliating circumstances’ are present.” *Id.* (quoting *Hanson v. Denckla*, 357 U.S. 235, 246 (1958)). The determination of whether sufficient contacts exist such that jurisdiction is proper “is one in which few answers will be written ‘in black and white. The greys are dominant and even among them the shades are

innumerable.’” *Id.* (quoting *Estin v. Estin*, 334 U.S. 541, 545 (1948)).

**B. The Decision Below Would Create a Categorical Rule Deeming “Minimum Contacts” to Exist in Every Case In Which Even a Modicum of Tortious Activity Is Alleged to Have Occurred within the State.**

In this case, the Court of Appeals determined that Cladakis had “minimum contacts” with the state of Mississippi because the activity in which she allegedly engaged in the state constituted part of the tort for which she is being sued. *Miller v. Provident Adver. & Mktg., Inc.*, 155 So. 3d 181, 193 (Miss. Ct. App. 2014) (en banc). The court did not rely on any additional facts and circumstances to guide its analysis. The court further did not address whether there existed a “substantial connection” between Cladakis and the state.

While “physical entry into the State . . . is certainly a relevant contact,” *Walden*, 134 S. Ct. at 1122, it is not a fact that this Court has viewed in isolation. Instead, the Court focuses always on “the relationship among the defendant, the forum, and the litigation” to decide whether the nonresident defendant purposefully availed herself of the benefits of the forum state such that she could reasonably have expected to be haled there into court. *Keeton*, 465 U.S. at 775. Here, accepting as true the facts as alleged, the only benefit Cladakis derived from the state of

Mississippi is a few days of recreation. Her physical presence in the state was at most sporadic, and she was not there to obtain economic gain. The harm she allegedly caused to the Plaintiff's marriage, which was domiciled in Tennessee, could have occurred only in Tennessee. Under these facts, Cladakis could not reasonably have expected that her short-lived, tenuous connection with the state of Mississippi would subject her to the jurisdiction of its courts in relation to harm allegedly occurring to a Tennessee resident in the state of Tennessee.

However, the Court of Appeals did not consider any of the attenuating facts in this case. Instead, it concluded that Cladakis's alleged commission in Mississippi of at least part of the tort of alienation of affections was *ipso facto* an establishment of "minimum contacts" with the state. Such a categorical rule, which would circumvent the first step in the due process analysis in every case in which the exercise of long-arm jurisdiction against a nonresident defendant is based on in-state tortious activity, is a significant expansion of existing Supreme Court precedent. It would have broad implications in allowing a state to police activity that has very little connection to the state simply because a nonresident actor exercising her constitutional right to travel lands in the state however briefly. The legality of this sort of super-sovereignty is a matter of important federal constitutional law that warrants consideration by this Court and that should not be surrendered to the self-regulation of the states.

**II. THE MISSISSIPPI COURT OF APPEALS'S DECISION DEPARTED IN SIGNIFICANT REGARDS FROM THIS COURT'S PRECEDENT ON THE CONSTITUTIONAL REASONABLENESS OF A STATE'S EXERCISE OF PERSONAL JURISDICTION AGAINST A NONRESIDENT DEFENDANT.**

Once the court below concluded that Cladakis had established “minimum contacts” with the state of Mississippi, it then impermissibly allowed the needs and interests of the Plaintiff to drive the second part of the jurisdictional analysis. When properly employed, this step of the inquiry would determine the reasonableness of asserting jurisdiction over the nonresident defendant by asking whether, under all the circumstances, it “offend[s] ‘traditional notions of fair play and substantial justice’” to do so. *Asahi Metal*, 480 U.S. at 113 (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)). “Minimum requirements inherent in the concept of ‘fair play and substantial justice’ may defeat the reasonableness of jurisdiction even if the defendant has purposefully engaged in forum activities.” *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980). While the plaintiff’s interest in obtaining relief is one of the factors that inform the reasonableness analysis, the Court of Appeals apparently ignored that “[d]ue process limits on the State’s adjudicative authority principally protect the liberty of the nonresident defendant – *not the convenience of plaintiffs.*” *Walden*, 134 S. Ct. at 1122 (emphasis added).

In placing undue significance upon the needs of the Plaintiff, the court below erroneously failed to afford proper weight to and/or misapplied other factors this Court has declared relevant to an examination of the reasonableness of the exercise of jurisdiction, among them “the forum State’s interest in adjudicating the dispute,” “the burden on the defendant,” the availability of an alternative forum, and “the shared interests of the several States in furthering fundamental substantive social policies.” *Woodson*, 444 U.S. at 292. A balancing of all of the circumstances, with guidance from this Court’s prior decisions, reveals that the exercise of personal jurisdiction over Cladakis in Mississippi is manifestly unreasonable. In permitting the state of Mississippi to exceed the limits of federal constitutional due process by asserting personal jurisdiction over a nonresident in a suit brought by another nonresident for only out-of-state harm, the Court of Appeals in this case decided an important federal question in a manner that is contrary to this Court’s precedent. Review is warranted to resolve the conflict between the decision below and the prior decisions of this Court.

**A. The Court of Appeals Grossly Miscalculated Mississippi's Interest In Adjudicating a Dispute Involving Exclusively Nonresidents Where the Only Alleged Harm Occurred Out of State.**

The Court of Appeals committed error in weighing Mississippi's interest in adjudicating this dispute. It ignored the fact that no material injury is alleged to have occurred in Mississippi. It also downplayed the significance of the fact that the Plaintiff is a nonresident of Mississippi. *Miller*, 155 So. 3d at 193-94. In concluding that Mississippi has an "especial interest" in entertaining this suit, *see id.*, the decision below conflicts with existing precedent from this Court.

Certainly, states have a "manifest interest in providing effective means of redress for [their] residents." *McGee v. Int'l Life Ins. Co.*, 355 U.S. 220, 223 (1957). However, in *Asahi Metal Industry Co. v. Superior Court of California*, this Court explained that where "the plaintiff is not a . . . resident" of the forum state, that state's "legitimate interests in the dispute have considerably diminished." 480 U.S. at 114. Accordingly, this Court in *Asahi* concluded that California's interest in adjudicating an indemnification claim brought by a Taiwanese corporation against a Japanese corporation was "slight," even where the liability sought to be indemnified came to exist in California. *Id.*



Additionally, in *Asahi*, this Court recognized that California's interest in the dispute was lacking not only because none of the parties resided in California, but also because "it [was] not at all clear . . . that California law should govern the question whether a Japanese corporation should indemnify a Taiwanese corporation on the basis of a sale made in Taiwan and a shipment of goods from Japan to Taiwan." *Id.* at 115. Similarly, in this case, it is doubtful that Mississippi is the state with the most significant relationship, and therefore the state whose substantive law will apply, to a Tennessee resident's claim for alienation of affections suffered in Tennessee against a Florida defendant who is alleged to have been the paramour of a third party residing in Tennessee.<sup>1</sup>

Given that the Plaintiff is not a resident of Mississippi, the bulk of the alleged tort was committed outside of the state, and the alleged injury was incurred in Tennessee, Mississippi has virtually no interest in entertaining this dispute between the Plaintiff and another nonresident to which no Mississippi substantive law is likely to apply. This factor weighs heavily against the assertion of jurisdiction in this case.

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<sup>1</sup> As the decision below recognizes, Mississippi employs the "most-significant-relationship test" to determine choice of substantive law. See *Miller v. Provident Adver. & Mktg., Inc.*, 155 So. 3d 181, 194 n.15 (Miss. Ct. App. 2014)(en banc)(citing *Hancock v. Watson*, 962 So. 2d 627, 629-30 (Miss. Ct. App. 2007)).

**B. The Decision Below Offends the Fourteenth-Amendment-Ensured Sovereignty of the Several States.**

This Court has long recognized that the due process restrictions on personal jurisdiction serve in part “to ensure that the States, through their courts, do not reach beyond the limits imposed on them by their status as coequal sovereigns in a federal system.” *Woodson*, 444 U.S. at 292. In *World-Wide Volkswagen Corp. v. Woodson*, this Court explained:

[T]he Framers [of the Constitution] . . . intended that the States retain many essential attributes of sovereignty, including, in particular, the sovereign power to try causes in their courts. The sovereignty of each State, in turn, implied a limitation on the sovereignty of all of its sister States – a limitation express or implicit in both the original scheme of the Constitution and the Fourteenth Amendment.

Hence, . . . the reasonableness of asserting jurisdiction over the defendant must be assessed “in the context of our federal system of government,” *International Shoe Co. v. Washington*, 326 U.S., at 317, [as] the Due Process Clause ensures not only fairness, but also the “orderly administration of the laws,” *id.*, at 319.

444 U.S. at 293-94. Accordingly, this Court has admonished that, in determining the reasonableness of an exercise of personal jurisdiction, the courts must take into consideration the interests of the “several

states in furthering substantive social policies.” *Burger King*, 471 U.S. at 477 (quotation omitted). This “calls for a court to consider the procedural and substantive policies of other [states] whose interests are affected by the assertion of jurisdiction by [the forum state].” *Asahi Metal*, 480 U.S. at 115.

In this case, the Court of Appeals noted that both Florida, where Cladakis resides, and Tennessee, where Plaintiff and Daly reside and where their marriage was domiciled, have abolished the tort of alienation of affections. *Miller*, 155 So. 3d at 194. However, it determined that this fact did not “weigh against furthering the shared interests of the several States in furthering fundamental substantive social policies” because Mississippi would employ choice-of-law rules to determine which state’s substantive law – whether Mississippi, Florida, or Tennessee – applies to the dispute. *Id.* at 194 n.13 (internal quotation marks omitted).

Curiously, while concluding that Mississippi’s application of choice-of-law rules will adequately accommodate the fact that Florida and Tennessee have rejected the Plaintiff’s cause of action, the Court of Appeals failed to recognize that should the courts of Florida or Tennessee be called upon to entertain this suit, those courts would be required to employ the same choice-of-law analysis, thereby accommodating the competing substantive policies of Mississippi. In one breath, the Court of Appeals highlighted the distinction between the forum of a lawsuit and the governing law of the claims asserted therein, and in

another breath it conflated the concepts. The court erroneously failed to observe that Plaintiff has a viable alternative forum for adjudicating her claim in Florida or Tennessee, where Cladakis would be subject to personal jurisdiction, because even though neither of these states recognizes a cause of action for alienation of affections, the courts of either state would apply Mississippi substantive law to the dispute if and to the extent a choice-of-law analysis should so require.

By insisting upon asserting personal jurisdiction over Cladakis and entertaining this out-of-state dispute, Mississippi is, in effect, in a backdoor manner, imposing its tort of alienation of affections upon the states of Tennessee and Florida, which long ago emphatically rejected the tort. Should Mississippi, a state that serves as an entertainment destination to residents of abutting states, none of which maintains a cause of action for alienation of affections, be permitted to police the region and provide a sanctuary for nonresident aggrieved spouses to pursue their heart-balm claims, the doctrine of state sovereignty will be corrupted. The decision below warrants this Court's review and reversal because it offends the courts and state legislatures of Tennessee and Florida, and invites similar wrongs as against other states in future cases.



**CONCLUSION**

This petition for writ of certiorari should be granted.

Respectfully submitted,

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*Anna Cladakis*

**Serial: 195808**

**IN THE SUPREME COURT OF MISSISSIPPI**

**No. 2012-CT-01198-SCT**

***SHERRIE ALLISON MILLER***      ***Appellant***

***v.***

***PROVIDENT ADVERTISING  
AND MARKETING, INC.,  
PROVIDENT MANAGEMENT  
CORPORATION, INC.,  
HOOTERS, INCORPORATED,  
HOOTERS OF AMERICA, INC.  
AND ANNA CLADAKIS***      ***Appellees***

**Consolidated with:  
No. 2013-CT-00262-SCT**

***SHERRIE ALLISON MILLER***      ***Appellant***

***v.***

***PROVIDENT ADVERTISING  
AND MARKETING, INC.,  
PROVIDENT MANAGEMENT  
CORPORATION, INC.,  
HOOTERS, INCORPORATED,  
AND ANNA CLADAKIS***      ***Appellees***

**ORDER**

(Filed Jan. 15, 2015)

Now, before the Court is the Petition for Writ of Certiorari filed by Anna Cladakis. After due consideration, the Court finds that the petition should be denied.

IT IS THEREFORE ORDERED that the Petition for Writ of Certiorari filed by Anna Cladakis is hereby denied.

SO ORDERED, this the 8 day of January, 2015.

/s/ Josiah Dennis  
JOSIAH DENNIS COLEMAN,  
JUSTICE FOR THE COURT

TO DENY: DICKINSON AND RANDOLPH, P.JJ.,  
LAMAR, KITCHENS, PIERCE, KING,  
AND COLEMAN, JJ.

TO GRANT: WALLER, C.J., AND CHANDLER, J.

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**Supreme Court of Mississippi**  
**Court of Appeals of the State of Mississippi**  
*Office of the Clerk*

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October 14, 2014

This is to advise you that the Mississippi Court of Appeals rendered the following decision on the 14th day of October, 2014.

Court of Appeals Case # 2012-CA-01198-COA  
Trial Court Case # CV2011-061GCD

Sherrie Allison Miller v. Provident Advertising and Marketing, Inc., Provident Management Corporation, Inc., Hooters, Incorporated, Hooters of America, Inc. and Anna Cladakis

Consolidated with:  
2013-CA-00262-COA  
Sherrie Allison Miller v. Provident Advertising and Marketing, Inc., Provident Management Corporation, Inc., Hooters, Incorporated, and Anna Cladakis

The appellant's motion for rehearing is denied. Maxwell, J., not participating.



The appellee's motion for rehearing is denied. Griffis, P.J., and Roberts, J., would grant. Maxwell, J., not participating.

\*NOTICE TO CHANCERY/  
CIRCUIT/COUNTY COURT CLERKS\*

If an original of any exhibit other than photos was sent to the Supreme Court Clerk and should now be returned to you, please advise this office in writing immediately.

**Please note: Pursuant to MRAP 45(c), amended effective July, 1, 2010, copies of opinions will not be mailed. Any opinion rendered may be found at [www.mssc.state.ms.us](http://www.mssc.state.ms.us) under the Quick Links/Supreme Court/Decision for the date of the decision or the Quick Links/Court of Appeals/Decision for the date of the decision.**

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TRIAL COURT

DISPOSITION: APPELLEES' MOTIONS  
TO DISMISS GRANTED

DISPOSITION: AFFIRMED IN PART; REVERSED  
AND REMANDED IN PART –  
06/17/2014

MOTION FOR RE-  
HEARING FILED:  
MANDATE ISSUED:

**CONSOLIDATED WITH:**

**NO. 2013-CA-00262-COA**

**SHERRIE ALLISON MILLER APPELLANT**

**v.**

**PROVIDENT ADVERTISING APPELLEES  
AND MARKETING, INC.,  
PROVIDENT MANAGEMENT  
CORPORATION, INC.,  
HOOTERS, INCORPORATED,  
AND ANNA CLADAKIS**

DATE OF

JUDGMENT: 11/6/2012

TRIAL JUDGE: GERALD W. CHATHAM SR.

COURT FROM

WHICH APPEALED: DESOTO COUNTY  
CIRCUIT COURT

ATTORNEY FOR

APPELLANT: DRAYTON D. BERKLEY

ATTORNEYS FOR

APPELLEES: PAUL BROOKS EASON  
VICKIE HARDY JONES  
WILLIAM EDGAR COCHRAN  
EMIL EUGENE THORNTON  
CEEJAYE S. PETERS

CAREN B. NICHOL  
STANFORD G. WILSON

NATURE OF  
THE CASE:

TORTS – OTHER THAN  
PERSONAL INJURY &  
PROPERTY DAMAGE

TRIAL COURT

DISPOSITION:

MOTION FOR COSTS AND  
ATTORNEYS' FEES GRANTED  
IN FAVOR OF APPELLEE ANN  
CLADAKIS

DISPOSITION:

REVERSED AND RENDERED –  
06/17/2014

MOTION FOR RE-

HEARING FILED:

MANDATE ISSUED:

**EN BANC.**

**BARNES, J., FOR THE COURT:**

¶1. Sherrie Allison Miller sued Anna Cladakis in the DeSoto County Circuit Court for alienation of affection and intentional infliction of emotional distress. Miller also sued Cladakis's alleged employers: Provident Advertising and Marketing Inc. (Provident), Provident Management Corporation Inc., Hooters Inc., and Hooters of America LLC<sup>1</sup> (HOA), (in aggregate the "Entity Defendants"). The trial court determined it lacked personal jurisdiction over Cladakis and the Entity Defendants and dismissed Miller's

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<sup>1</sup> Hooters of America LLC was previously known as Hooters of America, Inc.

suit. On appeal, we affirm dismissal of the Entity Defendants for lack of personal jurisdiction, but reverse and remand as to jurisdiction over Cladakis for Miller's alienation-of-affection claim. Additionally, we find error in the trial court's imposition of Cladakis's costs and attorneys' fees under the Litigation Accountability Act.

**STATEMENT OF FACTS  
AND PROCEDURAL HISTORY**

¶2. Miller and John Daly, residents of Tennessee, were married on July 29, 2001, in Tennessee. They divorced on February 19, 2010. Miller filed her initial complaint in the DeSoto County Circuit Court on February 25, 2011, alleging that Cladakis's improper conduct and contact with Daly was the proximate cause of Miller and Daly's separation and eventual divorce. Further, the alleged improper contact, consisting of cell phone calls, text messages, and sexual encounters occurred between Daly and Cladakis, a Florida resident who was temporarily located in DeSoto County. Miller's complaint also alleged that Cladakis interfered with Miller's home in Tennessee by having her utilities shut off, interfered with the divorce proceedings in Tennessee from Daly, and interfered with the care and visitation/custodial rights of Miller and Daly's son. The complaint alleged Cladakis's interferences intentionally inflicted emotional distress upon Miller. Additionally, Miller alleged that the Entity Defendants were negligent in their supervision, training, retention, and hiring of

Cladakis because they knew that Cladakis was having improper contact with Daly and that Cladakis's conduct was intentionally inflicting emotional distress upon Miller. Therefore, Miller claimed the Entity Defendants were jointly and severally liable for damages Miller suffered, including:

[L]oss of her marital estate including property; loss of society, companionship, love, and affection; loss of aide, services, and physical assistance; loss of sexual relations; loss of participation together in activities, duties, and responsibilities of making a home; past and future mental distress; and any other damages proven to have proximately result[ed] from the conduct of . . . Cladakis and/or [the Entity Defendants].

¶3. Also on February 25, 2011, Miller filed two subpoenas duces tecum on Verizon Wireless, without notice to Cladakis or the Entity Defendants, requesting the phone and text message records of Cladakis and Daly from February 1, 2007, through February 25, 2011. Miller then filed another subpoena duces tecum on March 2, 2011, requesting privileged documents from Daly's attorneys, including invoices for Daly, memorandums of telephone conversations with Cladakis, emails to and from Cladakis, and text messages to and from Cladakis. On March 15, 2011, Cladakis filed a notice of special appearance and a motion to quash the subpoena duces tecum requesting her cell phone

records.<sup>2</sup> In the motion to quash, Cladakis asserted that she was “making a special appearance without waiving any substantive or procedural rights.” Further, Cladakis asserted that she intended to “file a motion to dismiss the complaint filed against her, as [the circuit c]ourt lack[ed] personal jurisdiction and subject matter jurisdiction.” Miller filed her first amended complaint on March 15, 2011, which was essentially identical to her original complaint.

¶4. Miller sought to have Cladakis’s motion to quash stricken because it contained the names of two attorneys not licensed in Mississippi or admitted pro hac vice. She also responded to the motion to quash by asserting that the trial court had jurisdiction of the case because the tort was conducted in whole or in part in Mississippi, and the cell phone records were necessary as proof of her alienation-of-affection claim. In response, Cladakis filed an amended notice of special appearance, which removed the names of the two attorneys not licensed in Mississippi and kept the name and signature of the attorney licensed in Mississippi. She also filed an amended motion to quash the subpoena duces tecum, which also removed the names of the two attorneys not licensed in Mississippi and left the licensed attorney.

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<sup>2</sup> On March 15, 2011, Daly also filed a motion to quash the subpoena duces tecum requesting his cell phone records. Miller also submitted another subpoena duces tecum almost identical to the March 2, 2011 subpoena duces tecum requesting information from Daly’s attorneys.

¶5. Then, on March 31, 2011, Cladakis filed a notice of removal to federal court. The United States District Court for the Northern District of Mississippi entered an order on February 6, 2012, remanding the case to state court because all the defendants failed to consent to removal within thirty days, and Miller “did not waive her right to object to removal and has timely moved for remand.” The federal court mailed a certified copy of the remand order to the state court on February 16, 2012.

¶6. HOA filed its motion to dismiss on February 15, 2012. One argument raised in its motion to dismiss was the trial court’s lack of personal jurisdiction. The same day, HOA submitted the affidavit of Doug White, vice president of human resources for HOA, in which he states that HOA is a Georgia corporation with its principal place of business in Georgia, does not do any business in the state of Mississippi, and never employed Cladakis. Miller, however, submitted a UCC filing that seems to indicate HOA does do some business in Mississippi. The filing indicates HOA was the owner of a security system placed at 682 Goodman Road in Horn Lake, Mississippi. Miller also filed a business card for a Hooters restaurant on Goodman Road in Horn Lake, Mississippi, which referenced HOA.

¶7. The following day, HOA filed its answer to Miller’s complaint, again asserting the trial court lacked personal jurisdiction. In her answer to the complaint and a separate motion to dismiss, both filed on February 16, 2012, Cladakis asserted that Miller’s complaint



should be dismissed for several reasons, including the trial court's lack of personal jurisdiction over her. Also on February 16, 2012, the remaining Entity Defendants filed their motions to dismiss, likewise claiming, among other things, that the trial court lacked personal jurisdiction.

¶8. On February 27, 2012, Miller moved to file a second amended complaint, which would have given two specific dates of the alleged sexual and/or improper conduct, "inter alia, January 1, 2007, and April 13, 2008." All of the defendants opposed Miller's motion to amend her complaint, via a joint motion filed on March 9, 2012.

¶9. On April 20, 2012, several amended affidavits were filed by Hooters Inc., Provident, and Provident Management Corporation. Hooters Inc. filed the affidavit of Neil G. Kiefer, President of Hooters Inc., stating that Hooter's Inc. is a Florida corporation, doing business in Florida, and does not do business in Mississippi. Hooter's Inc. never employed or paid Cladakis. It is a separate company from the other Entity Defendants. As to the other defendants, Provident filed the affidavit of Wilson F. Williams, vice president and chief financial officer, stating that Provident (a Florida corporation) hired Cladakis, but only to do marketing work for the corporation in Florida, not Mississippi. The affidavit further states that the company never sent Cladakis to Mississippi, and only does marketing and advertising for Hooters restaurants in Florida, New York, and Illinois. Provident

employees are paid under Provident Management Corporation, a Florida corporation.

¶10. The trial court heard arguments on a variety of motions from Miller, Cladakis, and the Entity Defendants on April 23, 2012. On May 15, 2012, the trial court granted the defendants' motions to dismiss for lack of personal jurisdiction. The court found that while Mississippi's long-arm statute applied for Miller's allegations that the defendants committed a tort in whole or in part in Mississippi, Miller did not establish sufficient minimum contacts with Mississippi to satisfy due process. Further, the trial court found even if minimum contacts were established, "forcing the Defendants to litigate this matter in Mississippi would offend traditional notions of fair play and substantial justice." By separate order filed the same day, the trial court denied Miller's request to amend her complaint because it determined that it lacked personal jurisdiction over Cladakis and the Entity Defendants.

¶11. Following the trial court's dismissal of her complaint, Miller timely filed a motion to alter or amend the judgment dismissing Cladakis and the Entity Defendants. While Miller's motion to amend was pending, Cladakis filed a motion for an award of costs and attorneys' fees pursuant to the Litigation Accountability Act codified in Mississippi Code Annotated sections 11-55-1 through -15 (Rev. 2012), which she had raised in her answer. The trial court denied Miller's motions to alter or amend as to the Entity Defendants and as to Cladakis. Miller timely filed her

notice of appeal on July 20, 2012, and a statement of her issues for appeal on July 30, 2012. She amended the statement of issues on the following day. In it, Miller alleged that the trial court could not address any other issues, including Cladakis's pending motion for costs and fees, because the notice of appeal filed on July 20, 2012, divested the trial court of jurisdiction.

¶12. On July 27, 2012, the trial court held a hearing on Cladakis's motion for costs and attorneys' fees; however, after receiving notice of the hearing, neither Miller nor her attorneys were present. By order on November 6, 2012, the trial court granted Cladakis's motion for costs and attorneys' fees of \$78,307.22, because "[o]bjectively speaking, [Miller] had no hope of success in proceeding with a claim for alienation of affection in which none of the parties were residents of Mississippi and none of the states where the parties reside recognize a claim for alienation of affection."

¶13. Miller's brief contains twenty-six issues for review; however, we find the most important issues to be personal jurisdiction and assessment of attorneys' fees. We find the remaining issues are either moot or without merit; however, we address them, as needed, throughout this opinion.

## ANALYSIS

### I. JURISDICTION

#### A. *Personal Jurisdiction*

¶14. The trial court found it lacked personal jurisdiction over all the defendants.<sup>3</sup>

¶15. The standard of review for jurisdictional issues is de novo. *Joshua Properties LLC v. D1 Sports Holdings LLC*, 130 So. 3d 1089, 1092 (¶8)(Miss. 2014) (citation omitted). For a motion to dismiss, “the allegations of the complaint, except as controverted by the defendants’ affidavits, must be taken as true.” *Hogrobrooks v. Progressive Direct*, 858 So. 2d 913, 920 ¶22 (Miss. Ct. App. 2003) (quoting *Strong v. RG Indus. Inc.*, 691 F. Supp. 1017, 1018 (S.D. Miss. 1988)). “[W]hen no pretrial evidentiary hearing is held, the

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<sup>3</sup> Miller submits that Cladakis waived her personal-jurisdiction defense by filing a pre-answer motion to quash without preserving this defense and by entering numerous appearances beyond a special appearance. Miller further argues that, because Cladakis waived her personal-jurisdiction defense, the Entity Defendants are subject to personal jurisdiction as well. We disagree. Cladakis’s motion to quash preserved her personal-jurisdiction defense and subsequent motions indicated that she was not waiving any substantive or procedural rights and was primarily in pursuit of having Miller’s complaint dismissed for a variety of reasons, chiefly due to the trial court’s lack of personal jurisdiction. Based on the evidence in the record, we find that Cladakis did not waive her defense of personal jurisdiction, and this issue is without merit. Miller’s argument that the Entity Defendants were subject to personal jurisdiction due to Cladakis’s waiver is unsupported by cited authority, and also without merit.

plaintiff must only make a prima facie showing of personal jurisdiction.” *Id.* at 919 (¶22). The plaintiff’s uncontroverted allegations of jurisdiction are presumed true. “Where the defendant, through affidavits shows that personal jurisdiction is lacking . . . the plaintiff, through contrary affidavits, can reestablish [the] presumption” in favor of the plaintiff’s allegations. In the circumstance of “dueling affidavits,” “the disputed jurisdictional facts are constructed in favor of the plaintiff.” Jeffrey Jackson, *Personal Jurisdiction*, 1 Mississippi Civil Procedure § 2:33 (2014).

¶16. Here, Miller only needs to establish a prima facie case for personal jurisdiction, as no evidentiary hearing occurred prior to the order of dismissal. Miller and Daly are residents of Tennessee and were married in Tennessee. Cladakis is a resident of Florida who was temporarily located in DeSoto County, Mississippi, during the alleged improper conduct. Cladakis’s alleged employers, the Entity Defendants, are nonresident defendants.

¶17. Miller alleged in her first amended complaint, upon which the defendants’ motions to dismiss are based, that Cladakis’s improper conduct and activity, while in Mississippi, interfered with Miller’s Tennessee marriage to Daly. “[T]he separation and eventual divorce [of Miller and her husband] were proximately caused by the actions and conduct of Anna Cladakis, the paramour, [through] conduct and activity that was initiated and centered in DeSoto County, Mississippi

via sexual and other improper contact between Cladakis and Daly.”<sup>4</sup> The complaint also alleged that

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<sup>4</sup> Miller moved to file a second amended complaint, which would have given two specific dates of the alleged sexual and/or improper conduct, “inter alia, January 1, 2007, and April 13, 2008.” In her requests for admission, Miller asked Cladakis to admit that on these dates Cladakis was engaged in sexual encounters with Daly on his tour bus parked in Mississippi, and that she knew Daly was married at the time. The trial court, however, granted the defendants’ motions for an extension of time to respond to discovery until ten days after the court ruled on the defendants’ jurisdictional motions. The trial court later held in its order dismissing the case on jurisdictional grounds that the propounded discovery “is unlikely to lead to any additional information that would be material to the Court’s decision in this case.” At oral argument before the trial court, counsel for Cladakis contended that the two dates referenced in the second amended complaint were the only attempts in the complaints to explain Cladakis’s relationship with Mississippi, and that it would be “futile” to allow the amendment. The amendment was denied on the same date the case was dismissed.

Miller raises the issue that the trial court erred in granting defendants’ motions to dismiss before ruling upon her motion to amend her complaint. After considering the motions, briefs, responses, and oral arguments, the trial court dismissed Miller’s motion to amend as moot due to its dismissal for lack of personal jurisdiction. We find Miller’s argument is moot as to the Entity Defendants. On remand Miller may re-file whatever motions she deems appropriate as to Cladakis.

Miller also argues that the trial court erred in not amending her complaint to list the Entity Defendants by their proper corporate names and that Hooters Inc. was properly served. We cannot find anything in the record to indicate that the trial court found any error in the Entity Defendants’ names or that Hooters Inc. was not served properly. Additionally, we cannot find where Miller requested the trial court to amend her complaint to correct the Entity Defendants’ names, nor does she provide citation to the record pointing to any disagreement about whether

(Continued on following page)

Cladakis intentionally inflicted emotional distress upon Miller before and after the divorce.

¶18. This Court must conduct a two-step analysis to determine whether to exercise personal jurisdiction over a nonresident defendant: (1) whether the nonresident defendant can be sued in Mississippi under the State's long-arm statute; and if so, (2) whether the statute's application complies with the Due Process Clause. *Knight v. Woodfield*, 50 So. 3d 995, 998 (¶12) (Miss. 2011) (citation omitted). Mississippi's long-arm statute provides:

Any nonresident person . . . who shall commit a tort *in whole or in part in this state* against a resident or nonresident of this state . . . shall by such act or acts be deemed to be doing business in Mississippi and shall thereby be subjected to the jurisdiction of the courts of this state.

Miss. Code Ann. § 13-3-57 (Rev. 2012) (emphasis added). Despite the defendants' allegations that there is no long-arm jurisdiction because the injury did not occur in Mississippi, the trial court concluded that the complaint states a cause of action for a tort committed at least in part in Mississippi.<sup>5</sup> We agree.

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Hooters Inc. was served properly. These arguments are moot and without merit.

<sup>5</sup> See *Camp v. Roberts*, 462 So. 2d 726 (Miss. 1985) (overruled in part on other grounds) (New York resident brought alienation of affection action in Mississippi against another nonresident; supreme court found complaint contained sufficient

(Continued on following page)

¶19. The elements of alienation of affection are: “(1) wrongful conduct of the defendant; (2) loss of affection or consortium; and (3) causal connection between such conduct and loss.” *Knight*, 50 So. 3d at 1000 (¶19) (quoting *Fitch v. Valentine*, 959 So. 2d 1012, 1025 (¶36) (Miss. 2007)). While “a claim for alienation of affections does not require that the plaintiff prove an adulterous relationship,”<sup>6</sup> sexual activity may well serve as an inducement for one spouse to abandon his/her spouse. See *Ainsworth v. Gildea*, No. 3:09cv68-DPJ-JCS, 2010 WL 4007320, at \*1 (S.D. Miss. Oct. 12, 2010). As such, the alleged sexual activity between Cladakis and Daly within the state of Mississippi, which contributed to the breakup of Daly’s marriage with Miller, constituted a tort committed, at least in part, within this state, and satisfies the long-arm statute.

¶20. For the Entity Defendants, Miller claims Cladakis was “in the course and scope of her employment or agency” with them, and her improper conduct with Daly was “initiated and centered in DeSoto County, Mississippi.” The complaint alleges the Entity Defendants are vicariously liable for Cladakis’s improper conduct. Miller contends the Entity Defendants were doing business in Mississippi.

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allegations of tort committed in part within state to come within state long-arm jurisdiction).

<sup>6</sup> *Hancock v. Watson*, 962 So. 2d 627, 630 (¶12) (Miss. Ct. App. 2007) (quoting *Bland v. Hill*, 735 So. 2d 414, 417 (¶13) (Miss. 1999)).



¶21. HOA's affidavit by White states HOA is a Georgia corporation with its principal place of business in Georgia, and does not do any business in the state of Mississippi. Miller submitted a UCC filing indicating HOA does do some business in Mississippi – HOA was the owner of a security system placed at 682 Goodman Road in Horn Lake, Mississippi. Miller also filed a business card for a Hooters restaurant on Goodman Road in Horn Lake, Mississippi, which evidences some relationship with HOA. While these documents do raise the question of whether HOA was doing some business in Mississippi, Miller has not challenged the affidavit of White that HOA did not employ Cladakis. Therefore, the allegation that HOA has committed a tort in whole or in part in Mississippi is without foundation.

¶22. The affidavit of Hooters Inc. stated it is a Florida corporation, doing business in Florida, and does not do business in Mississippi. Hooter's Inc. never employed or paid Cladakis. It is a separate company from the other Entity Defendants. Miller has not challenged these representations by counter-affidavit. As with HOA, there is no prima facie case that Hooters Inc. committed a tort in whole or in part in Mississippi, which would subject it to jurisdiction within this state.

¶23. As to the other defendants, Provident's affidavit by Williams stated that Provident (a Florida corporation) hired Cladakis, but only to do marketing work for the corporation in Florida, not Mississippi. The affidavit further states that the company never

sent Cladakis to Mississippi, and only does marketing and advertising for Hooters restaurants in Florida, New York, and Illinois.<sup>7</sup> Miller has filed no competing affidavits to challenge Provident's position that Cladakis's employment did not include work in Mississippi. Further, Miller has not alleged in her complaint or any affidavit how any sexual impropriety between Cladakis and Daly, or other conduct that might have alienated Daly's affection for Miller, was related to the course and scope of Cladakis's employment. *See Baker Donelson Bearman Caldwell & Berkowitz P.C. v. Seay*, 42 So. 3d 474, 487-88 (¶¶38-39) (Miss. 2010) (attorney's affair with wife of former client was clearly beyond attorney's course and scope of employment, so law firm could not be vicariously liable to former client for any tort arising out of affair, as affair was not motivated by desire to benefit firm). Accordingly, any minimum contacts of Cladakis cannot be attributed to Provident or Provident Management Corporation under principles of agency. *See generally* Jeffrey Jackson, *Personal Jurisdiction*, 1 Mississippi Civil Procedure § 2:21 (2014) ("[C]onduct of those agents acting in their corporate capacity will 'count' for the corporations for which they act." (citing *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)) ("[S]ince the corporate personality is a . . . fiction, it is clear that . . . its 'presence' without, as well as within its state of origin can be manifested

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<sup>7</sup> Provident employees are paid under Provident Management Corporation, a Florida corporation.

only by activities carried on in its behalf only by those authorized to act for it.”); *see also* *McFadin v. Gerber*, 587 F.3d 753, 761-62 (5th Cir. 2009) (conduct insufficient to establish relevant agency relationship).

¶24. Therefore, we affirm the dismissal of the Entity Defendants.

¶25. However, we find that Miller has established a *prima facie* showing of personal jurisdiction over Cladakis for the purpose of her alienation-of-affection claim. Once long-arm jurisdiction is established, the plaintiff must still show that the nonresident defendant has sufficient “minimum contacts” with the forum state “such that the maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’” *Int’l Shoe*, 326 U.S. at 316 (citation omitted). “The ‘minimum contacts’ inquiry is fact intensive and no one element is decisive; rather the touchstone is whether the defendant’s conduct shows that it ‘reasonably anticipates being haled into court.’” *McFadin*, 587 F.3d at 759 (citations omitted). “The defendant ‘must not be haled into a jurisdiction solely as a result of ‘random,’ ‘fortuitous,’ or ‘attenuated’ contacts, or of the ‘unilateral activity of another party or third person.’” *Id.* (citations omitted).

¶26. Regarding the two types of minimum contacts, those for specific and general jurisdiction, we find in the present case that general jurisdiction is not present, as there is no showing that contacts with the forum are “systematic and continuous.” *See Estate of Jones v. Phillips*, 992 So. 2d 1131, 1140-41 (¶20)

(Miss. 2008) (citing *Helicopteros Nacionales de Colombia S.A. v. Hall*, 466 U.S. 408, 414 (1984)). However, after a careful review of the record, we find Miller has established a prima facie case of specific jurisdiction over Cladakis for alienation of affection.

¶27. To make a prima facie showing for specific jurisdiction, a three-prong test must be satisfied:

- (1) The non-resident defendant must purposefully direct his activities or consummate some transaction with the forum or resident thereof; or perform some act by which he purposefully avails himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws;
- (2) the claim must be one which arises out of or relates to the defendant's forum-related activities; and
- (3) the exercise of jurisdiction must comport with fair play and substantial justice, i.e. it must be reasonable.

*Brayton Purcell LLP v. Recordon & Recordon*, 606 F.3d 1124, 1128 (9th Cir. 2010) (citations omitted). The plaintiff has the burden of proving the first two prongs. If satisfied, the burden shifts to the defendant to prove jurisdiction would be unreasonable. *Id.*

¶28. The United States Court of Appeals for the Fifth Circuit has stated that:

When a nonresident defendant commits a tort within the state, or an act outside the

state that causes tortious injury within the state, that tortious conduct amounts to sufficient minimum contacts with the state by the defendant to constitutionally permit courts within that state, including federal courts, to exercise personal adjudicative jurisdiction over the tortfeasor.

*McFadin*, 587 F.3d at 761 (quoting *Guidry v. U.S. Tobacco Co.*, 188 F.3d 619, 628 (5th Cir. 1999)). In *Elkhart Engineering Corp. v. Werke*, 343 F.2d 861, 868 (5th Cir. 1965), the same court had held that “[w]hen a non-resident has voluntarily entered a state and invoked the protections of its laws, it does not in our view offend ‘traditional notions of fair play and substantial justice’ to require the non-resident to answer in the courts of that state for any tortious acts committed while there.” The court quoted extensively from the rationale of Judge Learned Hand in *Kilpatrick v. Texas & Pacific Railway Co.*, 166 F.2d 788, 791 (2nd Cir. 1948):

It is settled that, given the proper procedural support for doing so, a state may give judgment in personam against a non-resident, who has only passed through its territory, if the judgment be upon a liability incurred while he was within its borders. That, we conceive, rests upon another principle. The presence of the obligor within the state subjects him to its law while he is there, and allows it to impose upon him any obligation which its law entails upon his conduct. Had it been possible at the moment when the putative liability arose to set up a pie-powder

court pro hac vice, the state would have had power to adjudicate the liability then and there; and his departure should not deprive it of the jurisdiction in personam so acquired.

*Werke*, 343 F.2d at 867-68.

¶29. In tort cases, there are two alternate tests for determining whether the nonresident defendant “purposefully availed” himself to the forum. *Blueskygreenland Envtl. Solutions, LLC v. 21st Century Planet Fund LLC*, No. 12-81234-CIV, 2014 WL 1341277, at \*5 (S.D. Fla. April 4, 2014). The first test is the *Calder*<sup>8</sup> effects test, where “a nonresident defendant’s single tortious act can establish purposeful availment, without regard to whether the defendant had any other contacts with the forum state. . . .” *Id.* “The ‘effects test’ provides an additional means, unavailable in contract cases, of determining the appropriateness of personal jurisdiction – one that is based on a plaintiff’s ties to the forum state and the harm suffered by the plaintiff.”<sup>9</sup> *Id.* This test does not “supplant the traditional minimum contacts test for

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<sup>8</sup> *Calder v. Jones*, 465 U.S. 783 (1984).

<sup>9</sup> Under the “*Calder*-effects” test, a nonresident defendant’s single tortious act can establish purposeful availment, without regard to whether the defendant had any other contacts with the forum state, but only where the tort: (1) [was] intentional; (2) [was] aimed at the forum state; and (3) caused harm that the defendant should have anticipated would be suffered in the forum state.

*Blueskygreenland*, 2014 WL 1341277, at \*5.

purposeful availment applicable in contract and torts cases alike.” *Id.* Under the “traditional” test,

the court assesses the nonresident’s contacts with the forum state and asks whether those contacts: (1) are related to plaintiff’s cause of action; (2) involve some act by which the defendant purposefully availed itself of the privileges of doing business within the forum; and (3) are such that the defendant should reasonably anticipate being haled into court in the forum.

*Id.*

¶30. Regarding the alienation-of-affection claim, the trial court reasoned that specific jurisdiction cannot exist because Cladakis did not direct her text messages and phone calls to a resident of Mississippi, since Daly was a resident of Tennessee. This analysis is correct up to a point. Under the Calder-effects test, any telephone calls from Cladakis to Daly from outside the state would not be sufficient to establish jurisdiction, as there would be no likelihood of damage suffered in the forum state. However, this analysis fails to take into consideration the alleged sexual encounters between Cladakis and Daly within the state of Mississippi.<sup>10</sup> Cladakis has not filed any

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<sup>10</sup> Miller claims the record shows Cladakis engaged in at least forty-one phone calls with Daly while within Mississippi. Phone records show that she made some phone calls from Mississippi, but they do not identify to whom. There is no affidavit identifying Daly’s phone number. Therefore, for the purpose of

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affidavit contradicting the allegations of Miller’s complaint. Accordingly, these allegations must be accepted as true for the purposes of the motion to dismiss. As previously noted, the alleged sexual activity between Cladakis and Daly within the state of Mississippi, which contributed to the breakup of Daly’s marriage with Miller, constituted a tort committed, at least in part, within this state. For whatever reason Cladakis and Daly chose Mississippi for the site of their liaisons, this Court finds that decision constituted a purposeful availment to activities within the state for purposes of personal jurisdiction.

¶31. The final step in the due-process analysis is whether the maintenance of the suit offends traditional notions of “fair play and substantial justice.” *Knight*, 50 So. 3d at 1000 (¶20) (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476 (1985)). The analysis depends on: “(1) the forum state’s interest in adjudicating the dispute; (2) the plaintiff’s interests in obtaining convenient and effective relief; (3) the interstate judicial system’s interest in obtaining the most efficient resolution of controversies; and (4) the shared interest of the several states in furthering fundamental social policies.” *Id.* The defendants bear the burden of proof on this issue. *McFadin*, 587 F.3d at 759. “[I]t is rare to say the assertion of jurisdiction is unfair after minimum contacts have been shown.”

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this analysis, we will disregard any phone contact originated by Cladakis within this state and focus on the alleged sexual impropriety.



*Id.* at 759-60; *Thomas v. Skrip*, 876 F. Supp. 2d 788, 796 (S.D. Miss. 2012) (citation omitted).

¶32. The comments to the Second Restatement of Conflict of Laws recognize:

A state has an especial interest in exercising judicial jurisdiction over those who commit torts within its territory. This is because torts involve wrongful conduct which a state seeks to deter, and against which it attempts to afford protection, by providing that a tortfeasor shall be liable for damages which are the proximate result of his tort.

Restatement (Second) of Conflict of Laws § 36(1) cmt. c (1971). Mississippi has refused to abolish the tort of alienation of affection. *Fitch*, 959 So. 2d at 1018-19 (¶¶15-16); *Bland*, 735 So. 2d at 418 (¶17). The purpose of this cause of action is to protect “love, society, companionship, and comfort that form the foundation of a marriage.” *Fitch*, 959 So. 2d at 1019 (¶16). In *Knight*, the supreme court held that it did not offend “traditional notions of fair play and substantial justice” for a non-resident defendant to litigate in Mississippi for an alienation-of-affection claim. *Knight*, 50 So. 3d at 1001 (¶21). While the state’s interest is not as strong in this case as it was in *Knight* since the marriage at issue is not a Mississippi marriage,<sup>11</sup> we

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<sup>11</sup> See generally Jeffrey Jackson, *Personal Jurisdiction*, 1 Mississippi Civil Procedure § 2:28 (2014) (state’s interest is diminished where party bringing the case is not a forum resident).

still conclude that Mississippi has “an especial interest” in this case. The Legislature, in modifying our state’s long-arm statute in 1980, expressed the public policy of the state to provide a forum for nonresidents to pursue compensation for torts committed in whole or in part in this state. *See Camp*, 462 So. 2d at 727; 1980 Miss. Law, Ch. 437.

¶33. The trial court recognized Miller’s strong interest in obtaining effective relief for the alienation-of-affection tort she alleges occurred within our borders. Miller lacks a viable alternative forum to adjudicate that claim, since both Tennessee and Florida have abolished alienation-of-affection as a cause of action. This fact increases Mississippi’s interest in adjudicating this claim.

¶34. Permitting this suit to proceed would not hamper the interstate judicial system’s interest in obtaining the most efficient resolution to the controversy. The trial court noted the distance between Mississippi and Florida, where Cladakis resides, is not great. Also, it will be convenient for Miller to have this claim in Mississippi courts, as it is close to her resident state of Tennessee. Since the sexual activities between Cladakis and Daly allegedly occurred in the state, witnesses and evidence may be found here.<sup>12</sup> While it may no longer be as convenient for

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<sup>12</sup> The comments to the Second Restatement of Conflicts of Law further recognize:

[W]itnesses in a tort action will usually reside in the state where the complained act took place. Hence the

(Continued on following page)

Cladakis, her burden is not a compelling reason to justify lack of jurisdiction. Further, there is no competing forum for this case, as Florida and Tennessee have abolished the tort of alienation of affection.

¶35. While this last fact would seem to weigh against furthering the “shared interest of the several States in furthering fundamental substantive social policies,” the *Burger King* Court noted that this factor may be accommodated by applying the proper choice-of-law rules<sup>13</sup> rather than finding jurisdiction unconstitutional. *Burger King*, 471 U.S. at 476-77. Accordingly, the interests of the separate states would not be violated.

¶36. Because Miller’s prima facie showing evidences that Cladakis availed herself of the “privilege of conducting activities” with Daly in the state of Mississippi, we do not find it improper to bring her back into Mississippi to defend the alienation-of-affection case that arose out of those alleged activities.

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inconvenience to a non-resident defendant in being forced to defend the action in the state will be counterbalanced to some extent by the fact that he will thereby be spared the cost and trouble of transporting his witnesses to another state.

Restatement (Second) of Conflict of Laws § 36(1) (cmt. c).

<sup>13</sup> The trial court, at some point, will have to apply the “most-significant-relationship test” to determine which substantive law controls this case. See *Hancock v. Watson*, 962 So. 2d 627, 629-30 (¶10) (Miss. Ct. App. 2007). If the law of Tennessee or Florida applies to Miller’s claim for alienation of affection, the claim will be dismissed. See *id.*

¶37. While the parties and trial court have focused almost exclusively on Miller's claim for alienation of affection, specific jurisdiction must be established for each claim if the plaintiff's claims relate to different forum contacts with the defendant. *Seifert v. Helicopteros Atuneros Inc.*, 472 F.3d 266, 274 (5th Cir. 2006). Therefore, personal jurisdiction over Miller's intentional-infliction-of-emotional-distress claim must be considered separately from her alienation-of-affection claim. Miller's complaint(s) stated that Cladakis inflicted emotional distress upon Miller by: providing false reports to the police and human-services authorities regarding the care of Miller and Daly's son; causing Miller's utilities to be cut off; interfering with the education of the son; and interference with Miller's visitation and custodial rights regarding the son. Miller's complaint does not allege that any of the acts related to this claim occurred in Mississippi. Further, her complaint makes no claim that the sexual activity between Cladakis and Daly that allegedly occurred in Mississippi inflicted emotion distress. Accordingly, we have no jurisdiction over Miller's claims for intentional infliction of emotion distress, and we affirm dismissal of this claim in its entirety.

***B. Trial Court's Jurisdiction Following Federal Court Removal***

¶38. Miller argues that the trial court lacked jurisdiction to hear the motions to dismiss because the motions were filed prior to the federal court's mailing the trial court a certified copy of the order of

remand.<sup>14</sup> The federal court's order of remand was entered on February 7, 2012, but was not mailed to the trial court until February 16, 2012. HOA filed its motion to dismiss on February 15, 2012, one day prior to the federal-court mailing. The motions of the remaining defendants were filed on February 16, 2012, the day of the federal mailing. The trial court heard argument on the motions on April 23, 2012, and ruled on May 15, 2012.

¶39. It is well settled that any action taken in state court following a notice of removal to the federal court is of no force or effect prior to remand. *Crawford v. Morris Transp. Inc.*, 990 So. 2d 162, 169 (¶21) (Miss. 2008) (citing *Rayner v. Raytheon Co.*, 858 So. 2d 132, 133-34 (¶6) (Miss. 2003)). Relying on the Fifth Circuit case of *Arnold v. Garlock*, 278 F.3d 426, 436-38 (5th Cir. 2001), Miller asserts that the defendants' motions were not properly before the trial court for review

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<sup>14</sup> Title 28, section 1447(c) of the United States Code (2012) provides:

A motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after the filing of the notice of removal under section 1446(a). If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded. An order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal. A certified copy of the order of remand shall be mailed by the clerk to the clerk of the State court. The State court may thereupon proceed with such case.

because they were filed prior to the date the federal court mailed the notice of remand. In *Arnold*, the Fifth Circuit stated: “[T]he federal court is not divested of jurisdiction until the remand order, citing the proper basis under [28 United States Code section] 1447(c), is certified and mailed by the clerk of the district court.” *Arnold*, 278 F.3d at 438. However, in *Sibley v. Lincoln*, C.A. No. C-07-258, 2007 WL 2176979, at \*4 (S.D. Tex. July 27, 2007), the district court for the Southern District of Texas explained that the *Arnold* holding analyzes when a district court is divested of jurisdiction to review its own order of remand, which is once the certified copy of the remand order is mailed to the trial court. That particular issue is not at issue in the present case; thus *Arnold* offers no support for Miller’s argument.

¶40. Miller also relies on *Rayner* to support her position. However, *Rayner*’s exact language provides that “once removed to federal court, a case remains within the jurisdiction of the federal courts until an order is entered remanding the matter back to the state court.” *Rayner*, 858 So. 2d at 133 (¶6). Further, “until there is a remand order, the state court cannot proceed in a case that has been removed to federal court.” *Id.* at 134 (¶10). *Rayner* does not provide that jurisdiction is divested when the order of remand is mailed, but rather, when the order is entered. The federal court entered its order of remand on February 7, 2012, almost ten days before any motions to dismiss were filed.

¶41. Miller has not presented any authority that a state court lacks jurisdiction to consider a motion filed after entry of a federal court order of remand but before its mailing. *Megibow v. Caron.org*, 105 A.D.3d 549 (N.Y. App. Div. 2013), holds to the contrary. Further, HOA, the only defendant that actually filed its motion to dismiss prior to the mailing of the remand order, moved *ore tenus* at the April 23, 2012 argument to refile the motion for the court's consideration. Miller has not provided any authority that this corrective action, if necessary, was not effective.

¶42. We find this issue to be without merit.

## II. ATTORNEYS' FEES

¶43. The trial court granted Cladakis \$78,307.22 in attorneys' fees under the Litigation Accountability Act, finding Miller "had no hope of success in proceeding with a claim for alienation of affection in which none of the parties were residents of Mississippi and none of the states where the parties reside recognize a claim for alienation of affection." Section 11-55-3(a) allows imposition of fees when the claim is "frivolous, groundless in fact or in law, or vexatious, as determined by the court." *Choctaw Inc. v. Campbell-Cherry-Harrison-Davis & Dove*, 965 So. 2d 1041, 1044-45 (¶7) (Miss. 2007). Obviously, our reversal of the trial court's judgment regarding jurisdiction undermines the trial court's position on attorneys' fees

as well. Accordingly, we reverse the award of attorneys' fees to Cladakis.<sup>15</sup>

¶44. However, even if we were to affirm dismissal of the case for lack of jurisdiction, we would nonetheless reverse and render the award of attorneys' fees. The issue is reviewed under an abuse-of-discretion standard. *Id.* at 1045 (¶8). The reviewing court uses the same test to determine whether a claim is frivolous under both Mississippi Rule of Civil Procedure 11 and the Litigation Accountability Act. *Choctaw Inc.*, 965 So. 2d at 1044 (¶7) (citing *Leaf River Forest Prods. v. Deakle*, 661 So. 2d 188, 197 (Miss. 1995)). “[A] claim is frivolous ‘only when, *objectively* speaking, the pleader or movant has no hope of success.’” *Id.* (quoting *Stevens v. Lake*, 615 So. 2d 1177, 1184 (Miss. 1993)). “Though a case may be weak or ‘light-headed,’ that is not sufficient to label it frivolous.” *Id.* at 1045 (¶7) (quoting *Deakle*, 661 So. 2d at 195).

¶45. The supreme court in *Camp* held that, under our long-arm statute, a nonresident plaintiff can sue a nonresident defendant in the state for alienation of affection that occurred in whole or in part within our state. *Camp*, 462 So. 2d at 727. The trial court concluded that the long-arm statute was satisfied in this case. It was only when conducting the “fact intensive” inquiry as to minimum contacts or balancing policy

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<sup>15</sup> We find Miller's issue regarding the trial court's alleged lack of jurisdiction to conduct a hearing on attorneys' fees and costs following Miller's filing of her notice of appeal to be moot.



factors to determine whether the exercise of jurisdiction was unfair or unreasonable that any problem arose. We could not conclude Miller's claims "had no hope of success" when her case fell within our long-arm statute. Accordingly, we would find the trial court abused its discretion in awarding attorneys' fees to Cladakis even if we affirmed as to jurisdiction.

**¶46. THE JUDGMENT OF THE CIRCUIT COURT OF DESOTO COUNTY IS AFFIRMED IN PART; REVERSED AND REMANDED IN PART; AND REVERSED AND RENDERED IN PART. ALL COSTS OF THIS APPEAL ARE DIVIDED EQUALLY BETWEEN THE APPELLANT AND APPELLEE CLADAKIS.**

**LEE, C.J., IRVING, P.J., ISHEE, CARLTON, FAIR AND JAMES, JJ., CONCUR. GRIFFIS, P.J., AND ROBERTS, J., DISSENT WITHOUT SEPARATE WRITTEN OPINION. MAXWELL, J., NOT PARTICIPATING.**

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IN THE CIRCUIT COURT OF  
DESOTO COUNTY, MISSISSIPPI  
FOR THE SEVENTEENTH  
JUDICIAL DISTRICT AT HERNANDO

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SHERRIE ALLISON MILLER,

Plaintiff,

v.

PROVIDENT ADVERTISING  
AND MARKETING, INC.,           Docket No. CV2011  
PROVIDENT MANAGEMENT   061GCD  
CORPORATION, INC.,  
HOOTERS, INCORPORATED,  
HOOTERS OF AMERICA, INC.  
AND ANNA CLADAKIS,

Defendants.

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ORDER GRANTING ANNA CLADAKIS' MOTION  
FOR AWARD OF COSTS AND ATTORNEY FEES

(Filed Nov. 6, 2012)

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This cause came before the Court on July 27, 2012, on "Anna Cladakis' Motion for Award of Costs and Attorney Fees," Plaintiff's "Response to Anna Cladakis Motion for Award of Costs and Attorney Fees and Supplements to Rule 59(e) Motions to Alter or Amend May 15, 2012 Judgments Dismissing Defendants for Lack of Personal Jurisdiction Jury Demanded," "Anna Cladakis' Reply in Opposition to Plaintiff's Response to Anna Cladakis Motion for

Award of Costs and Attorney Fees and Supplements to Rule 59(e) Motions to Alter and Amend May 15, 2012 Judgments Dismissing Defendants for Lack of Personal Jurisdiction,” the affidavit and statements of William E. Cochran, Jr., counsel for Anna Cladakis, and the entire record in this matter. Neither Plaintiff nor her counsel, Drayton Berkley, were present for the hearing on July 27, 2012. From all of the above, the Court finds the following:

1. Plaintiff filed her Complaint in this matter on February 25, 2011, asserting a claim, among others, for alienation of affection. Numerous pleadings and motions then were filed by the parties and discovery was sought by Plaintiff. “Plaintiff’s First Request for Admissions to Anna Cladakis,” which was filed with the Court as exhibit 2 of Plaintiff’s “Rebuttals/Replies to Defendants Joint Objections to Motion to Amend and Motion to Extend Time to Respond to Motions to Dismiss with Authority Jury Demanded,” sought discovery of irrelevant and salacious details of Cladakis’ relationship with John Daly.

2. On May 12, 2012, this Court entered an Order dismissing Cladakis from this action, finding that this Court lacks personal jurisdiction over Cladakis.

3. Miss. Code Ann. § 11-55-1 et seq. provides for the assessment of attorney fees and costs against an attorney or party for actions and claims that are brought without substantial justification or

interposed for harassment. Miss. Code Ann. § 11-55-5(1). The phrase “without substantial justification” when used with reference to an action or claim means that it is “frivolous, groundless in fact or in law, or vexatious, as determined by the court.” Miss Code Ann. § 11-55-3(a).

4. In determining whether to assess attorney’s fees and costs, the court shall consider, among other factors, “the extent to which any effort was made to determine the validity of any action, claim or defense before it was asserted” and whether the action was prosecuted, in whole or in part, in bad faith or for improper purpose. Miss. Code Ann. § 11-55-7(a)&(d).

5. Objectively speaking, Plaintiff had no hope of success in proceeding with a claim for alienation of affection in which none of the parties were residents of Mississippi and none of the states where the parties reside recognize a claim for alienation of affection. As noted in this Court’s order filed May 15, 2012, dismissing Cladakis for lack of personal jurisdiction, forcing Cladakis to litigate this matter in Mississippi would offend traditional notions of fair play and substantial justice. Further, when considered in their totality, the factors that weigh in favor of the exercise of personal jurisdiction in this case are substantially outweighed by those that do not. For all of these reasons, the Court finds that Plaintiff’s action was brought without substantial justification.

6. The Court further finds that Plaintiff’s action, the claims asserted against Cladakis and the

discovery sought from Cladakis by Plaintiff were interposed, in whole or in part, in bad faith or for improper purpose as they were intended for the purpose of imposing annoyance, embarrassment, oppression and undue burden and expense on Cladakis and Plaintiff's former husband, John Daly.

7. The Court also questions the extent to which effort was made to determine the validity of Plaintiff's claims as evidenced by her filing an amended complaint and seeking leave to file a second amended complaint.

WHEREFORE, this Court hereby orders Plaintiff to pay Cladakis' costs and attorney fees incurred in defending this action and a judgment should be, and is hereby, awarded against Plaintiff in favor of Cladakis in the amount of \$78,307.22.

IT IS FURTHER ORDERED ADJUDGED AND DECREED that this order is a final judgment pursuant to Mississippi Rule of Civil Procedure 54(b), there being no just reason for delay.

SO ORDERED this the 6th day of November, 2012

/s/ Gerald Chatham  
Honorable Gerald Chatham  
Circuit Court Judge

RESPECTFULLY SUBMITTED BY:

/s/ William E. Cochran, Jr.

Vickie Hardy Jones (TN #18021)  
William E. Cochran, Jr. #100512 (MS)  
BLACK MCLAREN JONES RYLAND  
& GRIFFEE, P.C.  
530 Oak Court Drive, #360  
Memphis, Tennessee 38117  
901-762-0535 (Telephone)  
Attorney for Anna Cladakis

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document has been served on:

Drayton D. Berkley, Esq. BERKLEY LAW FIRM, LLC 81 Monroe Avenue, Suite 400 Memphis, Tennessee 38103	Ceejaye S. Peters, Esq. BAKER DONELSON BERMAN CALDWELL & BERKOWITZ, PC 4268 1-55 North Meadowbrook Office Park Jackson, Mississippi 39211
Stanford G. Wilson, Esq. ELARBEE, THOMPSON, SAPP & WILSON, LLP 800 International Tower 229 Peachtree Street, N.E. Atlanta, Georgia 30303	E. Gene Thornton, III, Esq. Caren B. Nichol, Esq. EVANS PETREE, PC 1000 Ridgeway Loop Road, Suite 200 Memphis, Tennessee 38120

App. 42

via regular U.S. Mail, postage prepaid on the 27th  
day of July, 2012.

/s/ William E. Cochran, Jr.

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IN THE CIRCUIT COURT OF  
DESOTO COUNTY, MISSISSIPPI

SHERRIE ALLISON MILLER	PLAINTIFF
VS.	CAUSE NO.
PROVIDENT ADVERTISING AND MARKETING, INC., PROVIDENT MANAGEMENT CORPORATION, HOOTER'S INC, HOOTERS OF AMERICA, LLC, and ANNA CLADAKIS	CV2011-061GCD          DEFENDANTS

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ORDER

(Filed May 15, 2012)

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This cause came before the Court on the Defendant, Anna Cladakis's *Motion to Dismiss* and the Court, having reviewed considered the motion, briefs and responses thereto, and also having heard arguments of counsel regarding the same, finds the following:

1. In her motion, the Defendant asserts that this Court lacks personal jurisdiction. Although the Defendant has also asserted other arguments in support of dismissal of the claims against her, the issue of personal jurisdiction must be resolved before this Court can proceed on the merits of this case. *Petters v. Petters*, 560 So.2d 722,723 (Miss. 1990). At this time, the Court finds that the issue has been fully and adequately briefed and argued by the parties and also



finds that additional briefing and/or jurisdictional discovery is unlikely to lead to any additional information that would be material to the Court's decision in this case.

2. When determining whether a Mississippi court may exercise personal jurisdiction over a nonresident defendant, the courts use a two-step process. *Knight v. Woodfield*, 50 So.3d 995, 998 (¶12) (Miss. 2011) (citing *Horne v. Mobile Area Water & Sewer Systems*, 897 So.2d 972, 976 (Miss. 2003)). First, we must determine whether the nonresident defendant is amenable to suit in Mississippi by virtue of our long-arm statute. MISS. CODE ANN. § 13-3-57 (Rev. 2002); *Id.* If so, we must then determine whether the exercise of personal jurisdiction over the nonresident defendant would be consistent with the Due Process Clauses of the state and federal constitutions. *Id.*

3. Mississippi's long-arm statute states, in relevant part:

*Any nonresident person . . . who shall commit a tort in whole or in part in this state against a resident or nonresident of this state . . . shall by such act or acts be deemed to be doing business in Mississippi and shall thereby be subjected to the jurisdiction of the courts of this state.*

MISS. CODE ANN. § 13-3-57 (Rev.2002) (emphasis added). Accordingly, in order to determine whether our long-arm statute confers jurisdiction in this case, we must decide whether Cladakis has committed a

tort, in whole or in part, in Mississippi. *Knight*, 50 So.3d at 999. As stated in the statute, the fact that the victim may also be a non-resident is immaterial for the purposes of this inquiry.

4. We previously have held that our long-arm statute extends to nonresident defendants who commit the tort of alienation of affections in Mississippi. *Id.* (citing *Camp v. Roberts*, 462 So.2d 726, 727 (Miss.1985)), overruled on other grounds by *Saunders v. Alford*, 607 So.2d 1214 (Miss.1992)). The tort of alienation of affections is comprised of the following elements: “(1) wrongful conduct of the defendant; (2) loss of affection or consortium; and (3) causal connection between such conduct and loss.” *Id.* (quoting *Fitch v. Valentine*, 959 So.2d 1012, 1025 (Miss.2007)). In the Plaintiff’s First Amended Complaint, Miller alleges that “the separation and eventual divorce [of Miller and her husband] were proximately caused by the actions and conduct of Anna Cladakis, the paramour, thru conduct and activity that was initiated and centered in DeSoto County, Mississippi via sexual and other improper conduct between Cladakis and Daly.<sup>1</sup>” Taken as true, these allegations are sufficient to show that Cladakis committed the tort of alienation, in whole or in part, in Mississippi. Accordingly, the requirements of our long-arm statute are satisfied. (See, e.g. *Knight*, 50 So.3d at 999 (plaintiff’s allegations that paramour’s actions of

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<sup>1</sup> This language is unchanged in the Plaintiff’s proposed Second Amended Complaint.

“texting, calling, and emailing” the Plaintiff’s wife while the wife was located in Mississippi “were the direct and proximate cause of the alienation” of his wife’s affection were sufficient to show that the par-amour “committed the tort, *in whole or in part*, in Mississippi”) (emphasis in original)).

5. The second step of the analysis is to determine whether the Due Process Clause allows Mississippi courts to exercise jurisdiction over the nonresident defendant. *Id.* (citing *Home*, 897 So.2d at 976). Federal law controls this inquiry. *Id.*

6. The Due Process Clause of the Fourteenth Amendment provides: “No State shall . . . deprive any person of life, liberty, or property without due process of law. . . .” U.S. CONST. AMEND. XIV. Regarding the Due Process Clause and personal jurisdiction, the United States Supreme Court has held:

[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.* (citing *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S.Ct. 154, 90 L.Ed. 95 (1945)). A defendant has the requisite minimum contacts with a state when “it purposely avails itself to the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.”

*Hanson v. Denkla*, 357 U.S. 235, 253, 78 S.Ct. 1228, 1240, 2 L.Ed.2d 1283 (1958). When the suit “arises out of or is related to” the defendant’s contacts with the forum, such a “a single purposeful contact is sufficient to satisfy the due process requirement of minimum contacts.” *Petroleum Helicopters, Inc. v. Avco Corp.*, 804 F.2d 1367, 1370 (5th Cir.1986); *Brown v. Flowers Indus., Inc.*, 688 F.2d 328, 333-34 (5th Cir.1982).

7. Further, however, even if the Defendant has the required minimum contacts with the State of Mississippi, maintenance of the suit in Mississippi against the Defendant must not offend traditional notions of “fair play and substantial justice.” *Knight*, 50 So.2d at 1000 (citing *Burger King Corp.*, 471 U.S. at 476, 105 S.Ct. 2174)). This analysis depends on: “(1) the forum state’s interest in adjudicating the dispute; (2) the plaintiff’s interests in obtaining convenient and effective relief; (3) the interstate judicial system’s interest in obtaining the most efficient resolution of controversies; and (4) the shared interest of the several states in furthering fundamental social policies.” *Id.*

8. In the instant case, while the contact alleged to have occurred was not directed at a Mississippi resident, the contact was alleged to have occurred in Mississippi. Additionally, the instant lawsuit “arises out of or is related to” this alleged contact. Caselaw accordingly dictates that such contact is sufficient to satisfy the Due Process requirement of minimum contacts.

9. However, despite the Defendant's contact with Mississippi, this Court finds that forcing the Defendant to litigate this matter in Mississippi would offend traditional notions of fair play and substantial justice. Mississippi has little interest, if any at all, in adjudicating this dispute between residents of Florida and Tennessee regarding both parties' respective relationships with a Tennessee resident. While Mississippi does have an interest in providing a forum for its own residents who are injured by nonresident defendants, this Court does not have an interest in adjudicating disputes between non-residents in this instance. The fact that real property located within Mississippi was at issue during divorce proceedings between the Plaintiff and her former husband is wholly insufficient to create a compelling interest in this case.

10. This Court also finds that while the Plaintiff's only interest in obtaining relief in Mississippi is a strong one, her choice of litigating in Mississippi was influenced more by necessity than by convenience, since both of her alternative fora have abolished the tort of alienation of affection. And though the distance between Florida (where the Defendant resides) and Mississippi is not great, it is clear that the societal policies of the several states are at odds with one another in this particular situation, as both the Tennessee and Florida courts and/or legislature have expressed their disdain for the action of alienation of affection. See *Rotwein v. Gersten*, 36 So.2d 419 (Fla. 1948); *Dupuis v. Hand*, 814 S.W.2d 340 (Tenn. 1991).

When considered in their totality, the factors that weigh in favor of the exercise of personal jurisdiction in this case are substantially outweighed by those that do not.

11. Based on the foregoing, the Court finds that it would not be fair, just or efficient to exercise personal jurisdiction over Defendant Cladakis in this particular action. Accordingly, Cladakis's *Motion to Dismiss* based on a lack of personal jurisdiction is well-taken and should be granted. Being without personal jurisdiction over this Defendant, the Court will dismiss any other pending motions regarding the claims made against her.

IT IS THEREFORE ORDERED AND ADJUDGED that the Defendant's *Motion to Dismiss* is hereby GRANTED, with each party responsible for their own costs.

IT IS FURTHER ORDERED AND ADJUDGED that all other pending motions regarding the Plaintiff's claims against Defendant Cladakis be DISMISSED.

SO ORDERED this the 11th day of May, 2012.

/s/ Gerald Chatham Sr.  
HONORABLE GERALD W. CHATHAM,  
CIRCUIT COURT JUDGE

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