

556 So.2d 516  
 District Court of Appeal of Florida,  
 Second District.

Judith CARVER, Appellant,

v.

Donna JOHNSON, as guardian and next  
 friend of Amy Lynn Torre, a minor, Appellee.

No. 89-01392.

|  
 Feb. 7, 1990.

### Synopsis

Ex-wife filed suit against former husband's widow to impose constructive trust on insurance proceeds received by widow. Widow moved to dismiss complaint for failing to allege legally sufficient basis for exercise of court's long-arm jurisdiction. The Circuit Court, Sarasota County, [Becky A. Titus, J.](#), denied motion, and widow appealed. The District Court of Appeal, [Altenbernd, J.](#), held that allegations in ex-wife's complaint were legally insufficient to invoke trial court's long-arm jurisdiction.

Reversed and remanded.

West Headnotes (2)

#### [1] Courts

##### 🔑 Allegations, pleadings, and affidavits

To bring action against nonresident defendant, plaintiff must allege facts which warrant jurisdiction over defendant, or allege legal basis for jurisdiction in language of statute authorizing service of process. [West's F.S.A. § 48.193](#); [West's F.S.A. RCP Rule 1.070\(i\)](#).

[Cases that cite this headnote](#)

#### [2] Courts

##### 🔑 Allegations, pleadings, and affidavits

Allegations in ex-wife's complaint against former husband's widow, that widow had received insurance proceeds from Florida life insurer in foreign state in which

she resided, were legally insufficient to invoke trial court's long-arm jurisdiction in action arising from husband's alleged breach of obligation imposed by divorce decree regarding designation of beneficiary on life policy. [West's F.S.A. § 48.193](#); [West's F.S.A. RCP Rule 1.070\(i\)](#).

[Cases that cite this headnote](#)

### Attorneys and Law Firms

\*517 [James L. Essenson](#), Sarasota, for appellant.

[Leslie D. Talbot](#) of Icard, Merrill, Cullis, Timm, Furen & Ginsburg, P.A., Sarasota, for appellee.

### Opinion

[ALTENBERND](#), Judge.

The defendant, Judith Carver, appeals a non-final order denying her motion to dismiss for lack of personal jurisdiction. We reverse because the plaintiff's complaint contains neither a legal basis for jurisdiction in the language of a statute authorizing service of process nor a factual basis for long-arm jurisdiction.

Donna Johnson filed this action as guardian of her daughter, Amy Lynn Torre. The complaint alleges that she and John Torre entered into a marital settlement agreement in July 1982, which was later incorporated into their final judgment of dissolution of marriage in Sarasota, Florida. The agreement provided that Mr. Torre would maintain a life insurance policy and designate the couple's minor child as the beneficiary.

Before Mr. Torre died in December 1987, he designated his sister, Ms. Carver, as the life insurance beneficiary rather than his daughter. The plaintiff's complaint alleges that Ms. Carver is a resident of Michigan, and that the insurance proceeds were distributed to Ms. Carver from Sarasota, Florida. The complaint does not contain any other factual allegations connecting Ms. Carver to Florida. The complaint does not contain an allegation that jurisdiction is predicated upon any statute that would legally authorize service of process. [Fla.R.Civ.P. 1.070\(i\)](#). Ms. Carver was served with this complaint in

Michigan. The complaint seeks a constructive trust over the insurance proceeds.

Ms. Carver responded to the complaint by filing a motion to dismiss for lack of personal jurisdiction. She did not file any affidavits opposing jurisdiction. Instead, she simply argued that the complaint, on its face, failed to allege a factual or legal basis upon which the court could have personal jurisdiction over her. The trial court denied Ms. Carver's motion to dismiss.

[1] [2] We reverse the trial court's order because Ms. Johnson's complaint is legally insufficient to invoke the trial court's long-arm jurisdiction over Ms. Carver, as a nonresident. In bringing her action against a nonresident defendant, Ms. Johnson either had to allege facts which warranted jurisdiction over the nonresident, *Elmex Corp. v. Atlantic Fed. Sav. & Loan Ass'n of Fort Lauderdale*, 325 So.2d 58 (Fla. 4th DCA 1976), or allege a legal basis for jurisdiction pursuant to rule 1.070(i). Ms. Carver's alleged receipt of insurance proceeds from Florida does not fall within any of the acts enumerated within section

48.193, Florida Statutes (1987), or otherwise authorize jurisdiction.

Because Ms. Carver did nothing more than raise the legal sufficiency of Ms. Johnson's complaint as pleaded, the trial court should permit Ms. Johnson to amend her complaint on remand. If the amended complaint contains adequate allegations of jurisdiction, then the jurisdictional issue should be resolved through the evidentiary procedure described by the Florida Supreme Court in its recent decision in *Venetian Salami Co. v. Parthenais*, 554 So.2d 499 (Fla.1989).

Reversed and remanded for further proceedings consistent herewith.

FRANK, A.C.J., and PARKER, J., concur.

**All Citations**

556 So.2d 516, 15 Fla. L. Weekly D392