

## THE STATE OF NEW HAMPSHIRE

### SUPREME COURT

**In Case No. 2004-0878, In the Matter of Julie A. Foshay and Gordon E. Cole, the court on November 3, 2005, issued the following order:**

The petitioner, Julie A. Foshay, appeals an order of the trial court denying her motion to dismiss petition for lack of jurisdiction. We reverse.

The record reflects that this matter was originally filed in 1996 as a petition to determine paternity and other issues related to the birth of the parties' two children. In 2004, the petitioner filed a motion to dismiss for lack of jurisdiction. Although there may be some dispute concerning the type of jurisdiction cited before the trial court, the sole issue presented in this appeal is whether the trial court lacked subject matter jurisdiction, an issue that may be raised at any stage in judicial proceedings. See Route 12 Books & Video v. Town of Troy, 149 N.H. 569, 575 (2003) (issue of subject matter jurisdiction can be raised at any time in proceedings because it can be neither waived nor conferred where it does not already exist).

RSA 458-A:3 (2004) provides that a New Hampshire court has jurisdiction to make a child custody determination by initial or modification decree only if the child lives in or has lived in the State within six months of the time of the commencement of the proceeding or it is in the best interests of the child that the court assume jurisdiction because the child and at least one contestant have a significant connection to this State and there is substantial evidence within the court's jurisdiction concerning the child's present or future care and relationships. A New Hampshire court may also assume jurisdiction if another State declines to exercise jurisdiction after finding that this State is the more appropriate forum.

In this case, neither the children nor the parties to the action live within New Hampshire; nor have they done so in the last several years. Other than the protracted litigation in this case, neither the children nor the parties have a significant connection to New Hampshire. Given this lack of connection, it cannot be said that there is substantial evidence within the trial court's jurisdiction concerning the children's present or future care or relationships. Although the Massachusetts court declined to exercise jurisdiction, it specifically

authorized refiling if we determined that New Hampshire courts lack jurisdiction to hear this matter. Given the limitations imposed by statute, we conclude that the trial court lacked jurisdiction to hear this case. Accordingly, we reverse.

Reversed.

BRODERICK, C.J., and DALIANIS and DUGGAN, JJ., concurred.

**Eileen Fox**  
**Clerk**