STATE OF MICHIGAN

COURT OF APPEALS

KEVIN BELL,

Plaintiff-Appellant,

v

RICHARD R. MANNAUSA, LOPATIN & MILLER, P.C., a/k/a LOPATIN, MILLER, FREEDMAN, BLUESTONE, HERSKOVIC, HEILMANN & DOMOL, JOSEPH W. MOCH, JOSEPH WILLIAM MOCH & ASSOCIATES, P.C., a/k/a MOCH & HENDRICKS, P.C., ROBERT C. DOMOL, MICHAEL McGORRY, and SILVERBERG, YOOD, SELLERS & McGORRY, P.C.,

Defendants-Appellees.

UNPUBLISHED
October 19, 1999

No. 209117; 209884
Wayne Circuit Court
LC No. 97-733336 NM

Before: Gribbs, P.J., and O'Connell and R. B. Burns*, JJ.

PER CURIAM.

This is a legal malpractice case. In Docket No. 209117, plaintiff appeals as of right from a January 9, 1998, order dismissing all the defendants for lack of jurisdiction. In Docket No. 209884, plaintiff appeals by leave granted from a subsequent order also dismissing the defendants for lack of jurisdiction. We reverse.

The basic underlying facts are not in dispute. Plaintiff, while in the military and residing in Mississippi, was seriously injured in a car fire in Louisiana. He retained the New York defendants -- Michael McGorry; and Silverberg, Yood, Sellers & McGorry, P.C. -- to pursue a claim against those liable for his injuries. The New York defendants contacted attorneys in Grand Rapids, Michigan -- defendants Joseph W. Moch; Joseph William Moch & Associates, P.C.; a/k/a Moch & Hendricks, P.C. -- to pursue the same claims. In turn, the Grand Rapids defendants contacted the Detroit defendants -- attorneys Richard Mannausa; Robert C. Domol; and Lopatin & Miller, P.C.; a/k/a

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

Lopatin, Miller, Freedman, Bluestone, Herskovic, Heilmann & Domol -- to pursue the claims. However, by the time plaintiff's personal injury claim was filed, first in Michigan and later in Mississippi, the applicable Louisiana statute of limitations had run and the lawsuits were dismissed. Plaintiff then brought this legal malpractice action in Michigan, which the trial court dismissed for lack of personal jurisdiction.

Plaintiff claims on appeal that the trial court erred in dismissing the New York defendants for lack of personal jurisdiction. We agree. Whether a court has personal jurisdiction over a party is a question of law which we review de novo. *Poindexter v Poindexter*, 234 Mich App 316, 319; 594 NW2d 76 (1999).

"Although the plaintiff bears the burden of establishing the jurisdictional facts, a court must resolve a motion for summary disposition for lack of personal jurisdiction on the evidence submitted by both parties." *Mozdy v Lopez*, 197 Mich App 356, 359-360; 494 NW2d 866 (1992); see also MCR 2.116(C)(1) and (G)(5). However, the plaintiff "need only make a prima facie showing of jurisdiction to defeat a motion for summary disposition" on jurisdictional grounds. *Commissioner of Ins v Albino*, 225 Mich App 547, 557; 572 NW2d 21 (1997) (quoting *Jeffrey v Rapid Am Corp*, 448 Mich 178, 184; 529 NW2d 644 (1995)). "[F]or the purpose of deciding the motion," "[a]ll factual disputes . . . are resolved in the plaintiff's (nonmovant's) favor." *Albino*, *supra*, 225 Mich App at 557 (quoting *Jeffrey*, *supra*, 448 Mich at 184).

The only relevant evidence introduced below was a retainer agreement between plaintiff and the New York defendants, a letter from the New York defendants to the Grand Rapids defendants, and a letter from the Grand Rapids defendants to the Detroit defendants. The retainer agreement between plaintiff and the New York defendants allows the lawyer, "in his discretion, [to] employ associate counsel to assist him in prosecuting the Client's claim at [the] attorney's expense." The New York defendants admitted in their motion that they referred plaintiff's case to the Grand Rapids defendants. At oral argument, the New York defendants further admitted that they "contact[ed] [the Grand Rapids defendants] and asked him to look at the case and asked him if he would accept it," that the Grand Rapids defendants "accepted it right here in Michigan," that "[t]here's an agreement between my client, [the New York defendants], and [the Grand Rapids defendants]," and that the New York defendants "transfer[red] the entire file to . . . Grand Rapids." This is confirmed by the letter from New York to Grand Rapids, which states:

> Please find enclosed Agreement of Retainer together with authorizations, authorizing the release of any and all records to [y]our firm or you. Pursuant to our agreement, we will receive 33 and 1/3 % of the fee on the above-entitled matter and will be responsible for 33 and 1/3 % of any disbursements incurred in relation to this matter. It is my understanding that you will be proceeding to Louisiana to view the automobile personally in the next few weeks. I would ask that you keep me appraised of the situation.

The New York defendants claimed that they did not know that the case had been re-referred to the Detroit defendants. However, the New York defendants admitted sending "several letters" to the

Grand Rapids defendants "that say, Please update us on the status of this case." In turn, the Grand Rapids defendants sent one or more letters to the Detroit defendants stating that:

> A review of my files indicates I have not heard from your office in a while regarding this matter.
>
> I would appreciate your contacting me as soon as possible with an update as to what is happening and whether you need any additional information or assistance from my office.

The New York defendants further represented that, during the limited discovery conducted below, plaintiff asked the Grand Rapids defendants to produce "basically the referral agreement correspondence; the entire file, basically." The Grand Rapids defendants apparently "respond[ed] hat (sic) there are no such documents, [and] that he doesn't have the file." However, in their joint answer, the Grand Rapids defendants admitted that they accepted plaintiff's case on a referral from the New York defendants; and the Detroit defendants admitted that they accepted plaintiff's case on a referral from the Grand Rapids defendants, that they filed lawsuits in Michigan and Mississippi on plaintiff's behalf, that they were dismissed on statute of limitations grounds -- the Mississippi action having been dismissed with prejudice -- and that no appeals were taken from those decisions.

The first question is whether the New York defendants are subject to limited jurisdiction under Michigan's long-arm statute. *Albino, supra*, 225 Mich App at 558. In relevant part, Michigan's long-arm statutes, whether applicable to corporations or individuals, state that:

> The existence of any of the following relationships between an individual [or a corporation] or his agent and the state shall constitute a sufficient basis . . . to exercise limited personal jurisdiction over the individual [or corporation] and to enable the court to render personal judgments against the individual [or corporation] or his representative arising out of an act which creates any of the following relationships:
>
> (1) The transaction of any business within the state.
>
> (2) The doing or causing an act to be done, or consequences to occur, in the state resulting in an action for tort.
>
> * * *
>
> (5) Entering into a contract for services to be rendered or for materials to be furnished in the state by the defendant. [MCL 600.705; MSA 27A.705; see also MCL 600.715; MSA 27A.715.]

We note that "*limited* jurisdiction . . . exposes a nonresident to suit in Michigan only for a cause which arose out of the relationship serving as a basis for such jurisdiction." *Sifers v Horen*, 385 Mich 195, 199; 188 NW2d 623 (1971) (emphasis original).

Interpreting subsection (1) of the long-arm statutes, the Supreme Court has stated that "[t]he phrase 'transaction of any business' is construed as broader than 'doing business.'" *Sifers, supra,* 385 Mich at 199. The Court emphasized that "[t]he word 'any' means just what it says. It includes 'each' and 'every'" business transaction in this state, and "comprehends 'the slightest.'" *Sifers, supra,* 385 Mich at 199 n 2. The Court concluded that "[i]t can scarcely be doubted that the negotiations in Michigan resulting in defendant's retainer come within the concept of the transaction of 'any' business." *Sifers, supra,* 385 Mich at 199 (footnote omitted).

The New York defendants could also be arguably found to have "[e]nter[ed] into a contract for services to be rendered or for materials to be furnished in the state by defendant." MCL 600.705(5); MSA 27A.705(5); see also MCL 600.715(5); MSA 27A.715(5). The Supreme Court has indicated that "furnishing is a broader concept than the simple concept of delivery." *Starbrite Dist, Inc v Excelda Mfg Co*, 454 Mich 302, 307; 562 NW2d 640 (1997). The Court found that, when defendant "delivered the goods it manufactured to a common carrier in St. Louis, specifying that the goods should be shipped to a specific Michigan address," "the long-arm statute was satisfied because the defendant entered into a contract for materials to be furnished in Michigan." *Starbrite, supra,* 454 Mich at 307-308.

We note that the Supreme Court has interpreted the long-arm statute "to the farthest limits permitted by due process." *Sifers, supra,* 385 Mich at 199; see also *Aaronson v Lindsay & Hauer Int'l Ltd*, 235 Mich App 259, 263 and n 1; ___ NW2d ___ (1999); *Kiefer v May*, 46 Mich App 566, 571; 208 NW2d 539 (1973). Thus, "where it is found that personal jurisdiction does not offend due process, it consequently cannot violate this state's long-arm statute." *Commissioner of Ins v Arcilio*, 221 Mich App 54, 73; 561 NW2d 412 (1997).

Nevertheless, we note that due process requires that a three prong test for minimum contacts be satisfied:

> First, the defendant must have purposefully availed himself of the privilege of conducting activities in Michigan, thus invoking the benefits and protections of this state's laws. Second, the cause of action must arise from the defendant's activities in the state. Third, the defendant's activities must be substantially connected with Michigan to make the exercise of jurisdiction over the defendant reasonable. [*Starbrite, supra,* 454 Mich at 309 (quoting *Jeffrey, supra,* 448 Mich at 186 (quoting *Mozdy, supra,* 197 Mich App at 359)).]

"The defendant's own conduct and connection with the forum must be examined in order to determine whether the defendant should reasonably anticipate being haled into court" in Michigan; "[t]he unilateral acts of unrelated third parties may not be used to justify the imposition of personal jurisdiction." *Jeffrey, supra,* 448 Mich at 187. Thus, "[j]urisdiction may be properly exercised over a corporate defendant *when it reaches beyond its own state and purposefully avails itself of the privilege of exploiting forum-based business opportunities*." *Jeffrey, supra,* 448 Mich at 187 (emphasis added). Further, because "it is an inescapable fact of modern commercial life that a substantial amount of business is transacted solely by mail and wire communications across state lines," it is well settled that

"[j]urisdiction may not be avoided simply because the corporate defendant has never physically been present in the forum state." *Jeffrey, supra,* 448 Mich at 188 (quoting in part *Burger King v Rudzewicz*, 471 US 462, 476; 105 S Ct 2174; 85 L Ed 2d 528 (1985)).

Lastly, "[o]nce the threshold requirement of minimum contacts is satisfied, a court must still consider whether the exercise of personal jurisdiction comports with fair play and substantial justice." *Jeffrey, supra,* 448 Mich at 188-189. Among the factors to be considered are: "the burden on the defendant, the forum state's interest in adjudicating the dispute, the plaintiff's interest in adjudicating the dispute, the plaintiff's interest in obtaining convenient and effective relief, the interstate judicial system's interest in obtaining the most efficient resolution of controversies, and the shared interest of the several states in furthering fundamental substantive social policies." *Jeffrey, supra,* 448 Mich at 189. "These factors may sometime (sic) serve to establish the reasonableness of jurisdiction a lesser showing of minimum contacts;" on the other hand, "[t]o defeat jurisdiction, a defendant who has purposefully directed its activities at forum residents must present a compelling case that the presence of some other considerations render jurisdiction unreasonable." *Jeffrey, supra,* 448 Mich at 189.

In the present case, unlike in *Sifers*, there is no evidence that any negotiations involving the New York defendants took place in Michigan. That is not dispositive, however. In this case, the evidence and admissions on the record show that the New York defendants purposefully reached into Michigan, contacted the Grand Rapids defendants, asked them to take plaintiff's case, negotiated an agreement to share costs and fees, and sent plaintiff's entire file to Michigan. The New York defendants also stayed involved to some degree in the case, sending several letters requesting an update, and confirming plans for the Grand Rapids defendants to go see the car. The Grand Rapids defendants confirmed that they accepted the referral, and forwarded the file to the Detroit defendants, who eventually filed two lawsuits on plaintiff's behalf which were dismissed on statute of limitations grounds. Based on those unsuccessful lawsuits, plaintiff has filed this tort action.

In view of these facts, we conclude that plaintiff made a sufficient showing to defeat the New York defendants' motion for summary disposition under subsections (1), (2) and (5) of the long-arm statutes. The New York defendants reached into Michigan to engage in a business transaction, they caused a lawsuit to be filed here which resulted in a tort action, and furnished materials to the Grand Rapids defendants.

We also conclude that the New York defendants have sufficient minimum contacts with Michigan because they purposefully availed themselves of the privilege of doing business with Michigan lawyers, invoking the benefits and protections of Michigan laws governing referral agreements. The malpractice action arose from the referral. Although the burden to the New York defendants is not insubstantial, the other two groups of defendants are located in Michigan, the alleged malpractice was committed at least in part in Michigan, and no other state has a more substantial interest in the dispute. We therefore reverse the trial court's decision to dismiss the suit against the New York defendants for lack of personal jurisdiction.

Plaintiff next argues that the trial court erred when it concluded that it did not have personal jurisdiction over Michigan defendants. We agree. Both the Grand Rapids defendants and the Detroit

defendants admitted practicing law in Michigan, having their principal places of business in Michigan; all were served in Michigan. They therefore clearly subject to the trial court's jurisdiction. See MCL 600.701(1) and (2); MSA 27A.701(1) and (2); MCL 600.711(1) and (3); MSA 27A.711(1) and (3).

Lastly, plaintiff argues that the trial court erred in entering a second order of dismissal, which -- unlike the bench opinion -- purported to dismiss the case with prejudice, because jurisdiction had already vested with this Court. We agree. Reviewing this issue de novo, we agree that, because plaintiff had already filed a claim of appeal from the praecipe order entered on the day of the hearing, the trial court had no subject-matter jurisdiction to enter a the second order. *Co-Jo, Inc v Strand*, 226 Mich App 108, 118; 572 NW2d 251 (1997); see also *Alliance for the Mentally Ill v Dep't of Community Health*, 231 Mich App 647, 659; 588 NW2d 133 (1998).

We decline to address plaintiff's claim that he was denied due process (by the trial court's dismissal of the Michigan defendants without prior notice) because that issue was not raised or decided below. *Alford v Pollution Control Indus*, 222 Mich App 693, 699; 565 NW2d 9 (1997).

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Roman S. Gribbs
/s/ Peter D. O'Connell
/s/ Robert B. Burns