

STATE OF MICHIGAN
COURT OF APPEALS

T.C. SPANN BIBLE INSTITUTE and THOMAS
C. SPANN, JR.,

UNPUBLISHED
March 16, 2004

Plaintiffs-Appellants,

v

No. 240881
Wayne Circuit Court
LC No. 00-017617-CK

GAYLORD ENTERTAINMENT COMPANY,
d/b/a MYRRH RECORDS, WORD
ENTERTAINMENT, INC., IDEA
ENTERTAINMENT, INC., WORD MUSIC
GROUP, INC., and JIM CHAFFEE,

Defendants-Appellees,

and

CARVIN WINANS, CARVIN WINANS, JR.,
JUAN WINANS, MARVIN WINANS, JR.,
MICHAEL WINANS, JR., d/b/a WINANS
PHASE II,

Defendants.

Before: Sawyer, P.J., and Saad and Bandstra, JJ.

PER CURIAM.

Plaintiffs appeal as of right from an order entering a consent judgment on their behalf. We affirm.

This action originally involved twelve defendants. Defendants Carvin Winans, Carvin Winans, Jr., Juan Winans, Marvin Winans, Jr., Michael Winans, Jr., and Winans Phase II, are Michigan parties and are not named as appellees. The appellees here, defendants Gaylord Entertainment Company, Myrrh Records, Word Entertainment, Inc., Idea Entertainment, Inc., Word Music Group, Inc., and Jim Chaffee are Tennessee parties.

Plaintiffs first argue that the trial court improperly dismissed the Tennessee defendants for lack of personal jurisdiction. The trial court dismissed only one Tennessee defendant, Jim Chaffee, for lack of jurisdiction. The court did not decide whether jurisdiction was proper over

the other Tennessee defendants. Accordingly, this argument properly applies only to defendant Chaffee.

We review de novo a lower court decision regarding personal jurisdiction. *Poindexter v Poindexter*, 234 Mich App 316, 319; 594 NW2d 76 (1999). The test to determine whether a Michigan court may assert limited personal jurisdiction over an out-of-state defendant has two steps. *Jeffrey v Rapid American Corp*, 448 Mich 178, 184-185; 529 NW2d 644 (1995). The first question is whether the defendant possesses minimum contacts with Michigan so that asserting jurisdiction is consistent with due process requirements. *International Shoe Co v Washington*, 326 US 310, 316; 66 S Ct 154; 90 L Ed 95 (1945). The second question is whether the defendant comes within the reach of the Michigan long-arm statute, MCL 600.701. *W.H. Froh, Inc v Domanski*, 252 Mich App 220, 226; 651 NW2d 470 (2002). Neither of these requirements was satisfied as to defendant Chaffee.

First, the court correctly concluded that exercising personal jurisdiction over Chaffee would violate due process. As noted, due process requires that the non-resident defendant have minimum contacts with the forum state. *Jeffrey, supra* at 185. Michigan has construed the minimum contacts test to have three prongs:

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 so substantially connected with Michigan to make the exercise of jurisdiction over the defendant reasonable. [*Mozdy v Lopez*, 197 Mich App 356, 359; 494 NW2d 866 (1992).]

Plaintiffs argue that Chaffee subjected himself to jurisdiction in Michigan when he signed and sent corporate checks to plaintiffs as payments for defendant Winans Phase II under the parties' education fund agreement. But this is not evidence of Chaffee's personal contacts with Michigan. Chaffee signed and sent the checks as an officer of defendant Myrrh Records, not personally. Further, merely sending checks here from Tennessee does not constitute Michigan activity. Moreover, these payments were made pursuant to the Myrrh-Winans Phase II contract, not the contract that plaintiff relies upon in bringing this action.

That contract, the T.C. Spann-Winans Phase II agreement, was, as plaintiffs argue, executed in Michigan. Chaffee was not a party to this agreement, however, nor did his signature appear on the document. Plaintiffs cannot subject Chaffee to Michigan jurisdiction personally simply because he is an officer of a corporation that executed a contract in Michigan.

In sum, plaintiffs failed to show that Chaffee's personal contacts with Michigan gave rise to this suit. Plaintiffs have presented no evidence that Chaffee purposefully availed himself the privilege of doing business in Michigan or that he could reasonably have expected to be hailed into a Michigan court because of his actions here. Plaintiffs failed to make the required prima

facie showing of facts satisfying due process, and summary disposition was appropriate under MCR 2.116(C)(1).¹

Plaintiffs further argue that the trial judge should have been disqualified. Plaintiffs did not move for disqualification below and are therefore precluded from raising this issue on appeal. *In re Jackson*, 199 Mich App 22, 29; 501 NW2d 182 (1993); MCR 2.003.

We affirm.

/s/ David H. Sawyer
/s/ Henry William Saad
/s/ Richard A. Bandstra

¹ For these same reasons, we would further conclude that the requirements of the long arm statute were not satisfied as to Chaffee.