

United States Court of Appeals  
For the Eighth Circuit

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No. 13-3102

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Virginia E. Scarpino

*Plaintiff - Appellant*

v.

David H. Bodian; Martin H. Bodian; Bodian & Bodian, LLP

*Defendants - Appellees*

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Appeal from United States District Court  
for the Eastern District of Missouri - St. Louis

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Submitted: April 25, 2014

Filed: May 6, 2014

[Unpublished]

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Before BYE, GRUENDER, and SHEPHERD, Circuit Judges.

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PER CURIAM.

In this action brought by Virginia Scarpino against her former attorneys, who are in New York, she appeals the district court's<sup>1</sup> orders dismissing her complaint for lack of personal jurisdiction and denying her motion to alter or amend the judgment.

After careful review, we conclude that the district court did not err in granting defendants' Federal Rule of Civil Procedure 12(b)(2) motion to dismiss for lack of personal jurisdiction. *See Miller v. Nippon Carbon Co.*, 528 F.3d 1087, 1090 (8th Cir. 2008) (de novo review of motion to dismiss for lack of personal jurisdiction); *see also Austad Co. v. Pennie & Edmonds*, 823 F.2d 223, 224, 226-27 (8th Cir. 1987) (New York law firm did not have sufficient contacts with state forum to confer personal jurisdiction where firm's only substantial connection with state was its representation of South Dakota corporation in connection with litigation taking place wholly outside South Dakota).

We further conclude that there is no merit either to Scarpino's waiver argument, *see* Fed. R. Civ. P. 12(h)(1)(B) (party waives personal-jurisdiction defense by failing to assert it in Rule 12(b)(2) motion or in responsive pleading), or to her due process argument, which assumes that a dismissal for lack of personal jurisdiction is an adjudication on the merits, *see Johnson v. Boyd-Richardson Co.*, 650 F.2d 147, 148 (8th Cir. 1981) (dismissal for lack of jurisdiction is not adjudication on merits). In addition, we conclude that the district court did not abuse its discretion in denying Scarpino's motion to alter or amend the judgment. *See Bernard v. U.S. Dep't of Interior*, 674 F.3d 904, 908 (8th Cir. 2012) (abuse-of-discretion standard of review). We thus affirm. *See* 8th Cir. R. 47B. We also deny Scarpino's pending motion.

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<sup>1</sup>The Honorable Henry E. Autrey, United States District Judge for the Eastern District of Missouri.