

FILED

Aug 05 2010, 8:47 am

Kevin L. Smith

CLERK
of the supreme court,
court of appeals and
tax court

ATTORNEYS FOR APPELLEES AARON
BRITVAN AND ALYSSA SEIDEN:

DAVID C. JENSEN
CARLY A. BRANDENBURG
 Eichhorn & Eichhorn, LLP
 Hammond, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

)
)
)
)
)
)
)
)
)
)
)
)
)

No. 45A03-1001-CT-31

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Diane Kavadias Schneider, Judge
Cause No. 45D01-0808-CT-63

August 5, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Chief Judge

Here, a New York law firm assisted its New York clients in adopting a baby. When the clients decided to adopt the baby of an Indiana mother and it was determined that the adoption would be finalized in Indiana, the New York law firm recommended an Indiana firm to its clients. The clients terminated the relationship with the New York firm, hired the Indiana firm, and directed the New York firm to forward its file and release their escrow fund to the Indiana firm. After the adoption took place, the clients learned that the adopted child had severe medical problems. They filed a lawsuit in Indiana against a number of parties, including the New York law firm, which sought to dismiss the claims against it for lack of personal jurisdiction. We find that the trial court properly dismissed the New York firm for lack of personal jurisdiction.

Appellants-plaintiffs Ellington Jeffrey, a minor, by his father and mother, Victor and Lynell Jeffrey, and Victor and Lynell Jeffrey, individually (collectively, the Jeffreys), appeal the trial court's order dismissing appellees-defendants Aaron Britvan and Alyssa Seiden. The Jeffreys argue that the trial court erred by concluding that it did not have personal jurisdiction over Britvan and Seiden. Finding no error, we affirm.

FACTS

Britvan and Seiden are licensed attorneys practicing in the state of New York, and neither is licensed in Indiana. Britvan is the founding and managing partner of New

York-based Law Office of Aaron Britvan, and Seiden is an associate attorney who worked for Britvan at the time the instant events occurred. Britvan concentrates his practice in adoption law.

On October 17, 2003, the Jeffreys, a married couple who live in New York, retained Britvan to help them adopt a child. To that end, Britvan prepared the petitions for certification as qualified adoptive parents and obtained child abuse clearance for both of the Jeffreys, pursuant to New York law.

In January 2006, a Gary, Indiana mother-to-be (the Birth Mother) contacted another of Britvan's clients, who had placed an advertisement in a Gary newspaper regarding their desire to adopt a child. The couple who placed the ad were not interested in adopting the Birth Mother's child, but they put her in touch with Britvan. Britvan's office, in turn, contacted the Jeffreys to inquire whether they were interested in adopting the Birth Mother's child. The Jeffreys communicated directly with the Birth Mother and ultimately decided to adopt her then-unborn baby.

In February 2006, after learning that the Jeffreys intended to adopt Birth Mother's baby, Britvan and his staff sought Birth Mother's medical and prenatal records, as required by New York law. On February 12, 2006, Birth Mother gave birth to a boy in Gary. Britvan's office requested medical records from the hospital, again as required by New York law.

Because Birth Mother resided in Indiana, Britvan recommended several law firms with a background in Indiana adoption law to Birth Mother and to the Jeffreys, including appellee-defendant Kirsh & Kirsh. Although Britvan has recommended Kirsh & Kirsh to

clients in the past who adopted children in Indiana, Britvan does not split fees or have a referral fee agreement with Kirsh & Kirsh.

On February 14, 2006, Kirsh & Kirsh, Britvan, and the Jeffreys agreed that the adoption would be finalized in Indiana to simplify the adoption process. Consequently, the Jeffreys no longer had a need for New York counsel. At that time, they retained Kirsh & Kirsh and discontinued their relationship with Britvan. See Appellant's App. p. 21-22 (Jeffrey's complaint, alleging that "[o]n or about February 2006, [Kirsh & Kirsh] initiated the adoption process and undertook the legal representation of [Birth Mother] and [the Jeffreys]"). That same day, Britvan's office forwarded its file on Birth Mother to Kirsh & Kirsh. On February 21, 2006, at the Jeffreys' instruction, Britvan transferred the balance of the Jeffreys' escrow account to Kirsh & Kirsh.

The adoption process was finalized in Indiana in August 2006. On December 7, 2006, a CT scan of the infant's head revealed that he had severe neurological defects that would prevent him from leading a normal life. According to the Jeffreys, there had been several abnormal test results while the baby was still in utero, but the Jeffreys did not receive those results until April 2007.

On August 28, 2008, the Jeffreys filed a lawsuit in Lake County and named a number of defendants, including Britvan and Seiden. The Jeffreys alleged that Britvan and Seiden committed malpractice by failing to obtain all relevant medical records about the Birth Mother and the baby. The Jeffreys further alleged that if Britvan and Seiden had obtained all of those records, the Jeffreys would have known about the baby's abnormal test results and would not have completed the adoption.

On October 20, 2008, Britvan and Seiden filed a motion to dismiss for lack of personal jurisdiction. The trial court initially granted the motion but then reversed itself and, pursuant to a January 23, 2009, agreed order, permitted the Jeffreys to conduct limited discovery and file a response to the motion to dismiss. Following discovery, briefing, and a July 29, 2009, hearing, the trial court granted the motion to dismiss on September 10, 2009, finding that there was no evidence that Britvan and Seiden engaged in any activities in Indiana and that “[t]he professional services at issue were performed in the state of New York for and on behalf of the Plaintiffs who also reside in the state of New York.” Appellants’ App. p. 15-16. The Jeffreys now appeal.

DISCUSSION AND DECISION

When reviewing a trial court’s ruling on a motion to dismiss for lack of personal jurisdiction, we apply a de novo standard of review. Attaway v. Omega, 903 N.E.2d 73, 76 (Ind. Ct. App. 2009). Personal jurisdiction, however, often turns on facts, and we review the trial court’s findings of fact for clear error. Id.

When a person attacks a trial court’s jurisdiction over him, he bears the burden of proof on that issue by a preponderance of the evidence, unless the lack of jurisdiction is apparent on the face of the complaint. Id.

General Personal Jurisdiction

There are two types of personal jurisdiction, general and specific. The defendant is subject to general jurisdiction, even in causes unrelated to his contacts with the forum state, if those contacts “are so ‘continuous and systematic’ that the defendant should

reasonably anticipate being haled into the courts of that state for any matter” Id. (quoting LinkAmerica Corp. v. Albert, 857 N.E.2d 961, 967 (Ind. 2006)).

The Jeffreys contend that the trial court had general jurisdiction over Britvan and Seiden because during the preceding five years, Britvan had recommended Kirsh & Kirsh and other Indiana attorneys when a birth mother requested information about adoption attorneys in Indiana. We do not agree that these contacts are significant enough to create general jurisdiction over Britvan and Seiden. Indeed, these brief contacts acknowledge the fact that Britvan is not licensed in Indiana and merely recommends Indiana adoption attorneys in whom he has confidence when a birth mother’s or a client’s need for Indiana attorneys arises.

The record reveals that Britvan and Seiden do not send employees to train in Indiana, conduct negotiations in Indiana, bank in Indiana, or purchase equipment in Indiana. Neither Britvan nor Seiden have ever set foot in Indiana and they do not maintain an office in Indiana. Furthermore, they do not seek out business or advertise in Indiana. Instead, they instruct their clients who wish to adopt a baby to advertise in newspapers in whatever location they desire. It is up to the clients to decide in which state(s) they want to advertise, to place the advertisements, and to field any responses to the advertisements they place. Most of Britvan’s clients’ adoptions are finalized in New York, even when the birth mother resides out of state. When, as here, the adoptions are finalized in another state, Britvan withdraws his representation. Under these circumstances, we find that the trial court properly concluded that it did not have general jurisdiction over Britvan and Seiden.

Specific Personal Jurisdiction

Specific jurisdiction

requires that the defendant has purposefully availed himself of the privilege of conducting activities within the forum state and that his conduct and connection with that state are such that he should reasonably anticipate being haled into court there. A single contact with the forum state may be sufficient to establish specific jurisdiction over a defendant if it creates a “substantial connection” with the forum state and the suit is related to that connection. A defendant cannot be haled into a jurisdiction “solely as a result of random, fortuitous, or attenuated contacts or of the unilateral activity of another party or a third person.” Burger King Corp. [v. Rudzewicz], 471 U.S. 462, 475 (1985)].

Attaway, 903 N.E.2d at 76-77 (some internal citations omitted). Trial Rule 4.4(A)

“serves as a handy checklist of activities that usually support personal jurisdiction,”

LinkAmerica, 857 N.E.2d at 967, and provides that a person submits to the jurisdiction of

Indiana Courts as to any action arising from the following acts:

- (1) doing any business in this state;
- (2) causing personal injury or property damage by an act or omission done within this state;
- (3) causing personal injury or property damage in this state by an occurrence, act or omission done outside this state if he regularly does or solicits business or engages in any other persistent course of conduct, or derives substantial revenue or benefit from goods, materials, or services used, consumed, or rendered in this state;
- (4) having supplied or contracted to supply services rendered or to be rendered or goods or materials furnished or to be furnished in this state;
- (5) owning, using, or possessing any real property or an interest in real property within this state;

- (6) contracting to insure or act as surety for or on behalf of any person, property or risk located within this state at the time the contract was made;
- (7) living in the marital relationship within the state notwithstanding subsequent departure from the state, as to all obligations for alimony, custody, child support, or property settlement, if the other party to the marital relationship continues to reside in the state; or
- (8) abusing, harassing, or disturbing the peace of, or violating a protective or restraining order for the protection of, any person within the state by an act or omission done in this state, or outside this state if the act or omission is part of a continuing course of conduct having an effect in this state.

The Jeffreys do not refer to subsections (2) through (8), instead focusing their argument on subsection (1), contending that Britvan and Seiden did business in Indiana specifically as part of their relationship with the Jeffreys, leading to the instant lawsuit.

Here, Britvan, Seiden, and the Jeffreys are all residents of New York. The services performed by Britvan and Seiden for the Jeffreys all occurred in New York, pursuant to New York law. Birth Mother responded to an advertisement placed by a different client of Britvan and ultimately sought out Britvan herself. Britvan and Seiden made a handful of telephone calls and sent several letters from New York to Indiana solely because they were obligated pursuant to New York law to gather information from certain nonparties about Birth Mother's medical records and prenatal care.

After the Jeffreys decided to adopt the baby, it became necessary to involve an Indiana law firm because Britvan was not licensed in Indiana. The Jeffreys, therefore, terminated their relationship with Britvan and hired Kirsh & Kirsh to finalize the adoption in Indiana. Kirsh & Kirsh initiated the adoption process in Indiana and

represented the Jeffreys throughout the proceedings. Britvan forwarded its file on Birth Mother and released the Jeffreys' escrow fund to Kirsh & Kirsh. Britvan and his staff did not monitor the adoption after that point and ceased all involvement with the Jeffreys.

Given these undisputed facts, we simply cannot find that Britvan and Seiden have purposefully availed themselves of the privilege of conducting activities within Indiana or that their conduct and connection with Indiana are such that they should have reasonably anticipated being haled into court here. See Hotmix & Bituminous Equip., Inc. v. Hardrock, 719 N.E.2d 824, 830 (Ind. Ct. App. 1999) (holding that minimum contacts for personal jurisdiction were lacking because “[a] nonresident defendant who had never been in Indiana, but had engaged in numerous phone calls, letters, and facsimile transmissions with the forum state regarding property located in Ohio, d[id] not compel the conclusion that the minimum contacts necessary to establish jurisdiction were present”). Therefore, we find that the trial court properly granted the motion to dismiss based on lack of personal jurisdiction.

The judgment of the trial court is affirmed and remanded for further proceedings.
NAJAM, J., and MATHIAS, J., concur.