IN THE COURT OF APPEALS OF IOWA

No. 0-632 / 09-1917
Filed September 22, 2010

JEREMY STATLER, Individually and as Executor of the ESTATE OF GERALD GEORGE STATLER; BRANDON STATLER, Individually and as Executor of the ESTATE OF GERALD GEORGE STATLER and as Parent of KYLEE STATLER; RUTH STATLER; APRIL MILLER; ZION STATLER; and AMY STATLER, Individually and as Parent of KYLEE STATLER,
Plaintiffs-Appellees,

vs.

JAMES F. FAUST, PACER TRANSPORT, INC., and XTRA LEASE, L.L.C.,
Defendants-Appellees,

and

RUBEN AGUIRRE d/b/a/ EAGLE TRAILER REPAIR,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Robert A. Hutchison, Judge.

In this interlocutory appeal, Ruben Aguirre challenges the district court's denial of his motion to dismiss for lack of personal jurisdiction. **REVERSED.**

Megan Antenucci and Nicholas S.J. Olivencia of Whitfield & Eddy, P.L.C., Des Moines, for appellant.

Stephen D. Hardy and Ashleigh E. O'Connell of Grefe & Sidney, P.L.C., Des Moines, for appellee Xtra Lease.

Jason C. Palmer and Thomas M. Boes of Bradshaw, Fowler, Proctor & Fairgrave, P.C., Des Moines, and Michael J. Mullen of Kralovec & Marquard, Chartered, Chicago, Illinois, for appellees Faust and Pacer Transport.

Roxanne Conlin, Des Moines, for plaintiffs-appellees.

Considered by Vaitheswaran, P.J., and Eisenhauer and Danilson, JJ.

DANILSON, J.

Ruben Aguirre[1] filed an application for interlocutory appeal of the district court's order overruling his motion to dismiss for lack of personal jurisdiction. The application was granted and the case transferred to this court.

When reviewing a district court's decision to exercise personal jurisdiction, we accept as true the allegations of the petition and the contents of uncontroverted affidavits. *Hodges v. Hodges*, 572 N.W.2d 549, 551 (Iowa 1997). The district court's findings of fact have the effect of a jury verdict and are binding on appeal if supported by substantial evidence. *Capital Promotions, L.L.C. v. Don King Prods.*, 756 N.W.2d 828, 833 (Iowa 2008). But we are not bound by the trial court's conclusions of law or its application of legal principles. *Hodges*, 572 N.W.2d at 551.

This case arises out of an accident that happened on September 27, 2008, on combined Interstate Highways I-80 and I-35 as those routes overpass Iowa Highway 141. The rear two wheels came off a semi-trailer traveling north on I-35; one wheel bounced over the median, striking the hood and windshield of a pickup. The pickup then became airborne, struck the median on Highway 141, causing the vehicle to somersault. The driver of the pickup, Gerald Statler, was killed, and his son Brandon was injured.

[1] Defendant Ruben Aguirre was incorrectly identified in the plaintiffs' petition as "Ruben Monzon"; and his first name appears in the record with alternate spellings of "Ruben" and "Rueben." We use the spelling contained in his affidavit, which was submitted on the issue of personal jurisdiction.

The semi-trailer was owned by XTRA Lease, had been leased to Pacer Transport, and was being driven by James Faust. Faust took delivery of the semi-trailer at XTRA's Phoenix, Arizona, branch location.

On August 25, 2009, plaintiffs filed a ten-count suit against XTRA Lease, Pacer Transport, James Faust, and Aguirre doing business as Eagle Trailer Repair. The claims which were asserted against Aguirre include wrongful death, loss of consortium, negligence, and res ipsa loquitur.

Aguirre filed a motion to dismiss for lack of personal jurisdiction. In challenging Iowa's jurisdiction, Aguirre avowed he did business in California, Nevada, and Arizona; had never been to Iowa; had never done business in Iowa; had no personal or business bank accounts in Iowa; did not advertise in Iowa; did not have an office in Iowa; and had no contacts "whatsoever" with the state. He further avowed the XTRA office that contacted him was in Phoenix, Arizona, and that "he had no idea where the trailer would be taken after my inspection." He argues he has not had the requisite minimum contacts with Iowa, he has not purposefully directed any actions toward Iowa, and neither foreseeabilty nor the stream of commerce theory is sufficient to confer personal jurisdiction.

The district court's findings include the following:

> Federal law and regulations of the United States Department of Transportation require a specific DOT inspection of trailers used in interstate commerce at least once each year. The trailer in question had its most recent inspection prior to the September 27, 2008 incident in Iowa on August 20, 2008. The inspection was performed by defendant Aguirre d/b/a Eagle Trailer Repair (hereinafter referred to as "Eagle"). . . .
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> XTRA Lease, L.L.C. is one of the largest over-the-road trailer rental and leasing companies in North America, with a fleet of over 100,000 trailers. The company has branch locations in over 80 cities across the United States, including Cedar Rapids, Iowa.

> Eagle is in the business of repairing, servicing and inspecting trailers. It is authorized to conduct inspections on trailers to be used in interstate commerce, as occurred here. According to XTRA Lease computer records, since 2005 it has issued over 10,000 purchase orders for work done by Eagle at nine different locations in California, Arizona, Nevada and Utah.

The district court concluded:

> Here defendant routinely inspects trailers that he well knows, or at least has every reason to know, will be continually used on the interstate highways. Indeed Eagle holds itself out as authorized to inspect trailers to be used in interstate commerce. Since Interstate 80 is one of only three interstate highways that run from coast to coast, defendant should foresee that the trailers it inspects will at times be traveling through Iowa. Under these circumstances, the Court concludes that Iowa does have jurisdiction. *See Joss v. Bridgestone Corp.*, 2009 WL 1323040 (D. Mont. May 11, 2009); *National Fire Insurance Co. of Pittsburgh v. Aerohawk Aviation, Inc*., 2005 WL 1505787 (D. Idaho June 24, 2005).
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> The Court further concludes that subjecting defendant to court proceedings in Iowa comports with notions of fair play and substantial justice. It is true that suit in one of the western states where Eagle conducts business might be more convenient to defendant Eagle. However, the slight burden resulting on Eagle from a lawsuit in Iowa is outweighed by the other factors appropriate for the Court to consider. . . . Iowa has a strong interest in adjudicating the dispute here as the incident resulting in plaintiffs' claimed injuries occurred here, the other parties are all properly subject to Iowa jurisdiction, and the entire dispute can be resolved in Iowa in one proceeding. The shared interest of all states in furthering safe travel on the interstate highways can be promoted as well in Iowa as in any other state.

The district court overruled the motion to dismiss, and Aguirre appeals.

"The Due Process Clause of the Fourteenth Amendment to the federal constitution limits the power of the state to assert personal jurisdiction over a nonresident defendant to a lawsuit." *Ross v. First Sav. Bank*, 675 N.W.2d 812, 815 (Iowa 2004). Pursuant to Iowa Rule of Civil Procedure 1.306, Iowa's jurisdictional rule, "Every corporation, individual, personal representative, partnership or association that shall have the necessary minimum contact with

the state of Iowa shall be subject to the jurisdiction of the courts of this state. . . ." "This rule authorizes the widest jurisdictional parameters allowed by the Due Process Clause." *Capital Promotions*, 756 N.W.2d at 833. Thus, in determining whether Aguirre is subject to Iowa's personal jurisdiction, the relevant inquiry is whether the exercise of jurisdiction would offend due process. *See Aquadrill, Inc. v. Envtl. Compliance Consulting Serv., Inc.,* 558 N.W.2d 391, 392-93 (Iowa 1997).

Before a defendant can be made to defend a lawsuit in a foreign jurisdiction, his or her contacts with the forum state must be such that the defendant "should reasonably anticipate being haled into court there." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297, 100 S. Ct. 559, 567, 62 L. Ed. 2d 490, 501 (1980). Foreseeability alone is not "a sufficient benchmark for personal jurisdiction." *Id.* at 295, 100 S. Ct. at 566, 62 L. Ed. 2d at 500; *accord Smalley v. Dewberry*, 379 N.W.2d 922, 925 (Iowa 1986) (rejecting personal jurisdiction existed where defendant's "sole relationship was that he sold an automotive part in Tennessee to an Iowa soldier" in Tennessee; "fact that the soldier might be expected to return the part to Iowa is solely a matter of foreseeability"). While we agree with the district court that *Smalley* is distinguishable and thus not controlling, we cannot conclude the defendant's ability to foresee the trailers he inspects might be traveling in Iowa is sufficient to find Aguirre subject to the jurisdiction of Iowa courts.

The United States Supreme Court has stated two requirements that must be shown by the plaintiff before a defendant may be subject to the jurisdiction of a state's courts:

> Where a forum seeks to assert specific jurisdiction over an out-of-state defendant who has not consented to suit there, [due process] is satisfied if the defendant has "purposefully directed" his activities at residents of the forum and the litigation results from alleged injuries that "arise out of or relate to" those activities.

Burger King Corp. v. Rudzewicz, 471 U.S. 462, 472-73, 105 S. Ct. 2174, 2182, 85 L. Ed. 2d 528, 540-41(1985) (citations omitted); *accord Capital Promotions*, 756 N.W.2d at 834 (noting five factors previously employed "retain their relevancy" but "no longer provide a useful framework for determining personal jurisdiction under current case law").

> Once the plaintiff has established the required minimum contacts, the court must determine whether the assertion of personal jurisdiction would comport with fair play and substantial justice. In making this determination, a court may consider
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> > the burden on the defendant, the forum State'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.
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> These considerations sometimes serve to establish the reasonableness of jurisdiction upon a lesser showing of minimum contacts than would otherwise be required. On the other hand, jurisdictional rules may not be employed in such a way as to make litigation so gravely difficult and inconvenient that a party unfairly is at a severe disadvantage in comparison to his opponent.

Capital Promotions, 756 N.W.2d at 834 (internal quotations and citations omitted).

Iowa courts have struggled in analyzing what constitutes sufficient "minimum contacts." *See State ex rel. Miller v. Baxter Chrysler Plymouth, Inc.*, 456 N.W.2d 371 (Iowa 1990), *Smalley*, 379 N.W.2d at 922, *Svendsen v. Questor Corp.*, 304 N.W.2d 428 (Iowa 1981), *Edmundson v. Miley Trailer Co*., 211 N.W.2d 269 (Iowa 1973). While foreseeability alone is not sufficient for personal

jurisdiction, *Smalley*, 379 N.W.2d at 925, minimum contacts with foreseeability which is a "virtual certainty" has been found sufficient. *Baxter Chrysler Plymouth, Inc.*, 456 N.W.2d at 376 (finding personal jurisdiction for suit against corporate car dealership defendants based on advertising in the *Omaha World Herald*, television advertising over an Omaha television station by the defendant Baxter Chrysler Plymouth, and telephone listings and advertisements in the U.S. West Yellow Page Directory for Council Bluffs, Iowa). In *Baxter Chrysler Plymouth*, the court wrote:

> We believe that the contacts which exist between the corporate defendants and the State of Iowa are clearly insufficient to subject them to suit in the Iowa courts on any cause of action to the same extent as Iowa domiciliaries. *Their acts in advertising within this state are sufficient*, however, to render them amenable to suit here in an action which seeks to halt that advertising on the ground that it is unlawful. The acts of advertising also establish in personam jurisdiction over these defendants for that portion of the attorney general's action which seeks to invoke the other sanctions which are provided in the relevant regulatory statutes for injuries which flow directly from the alleged unlawful advertising.

456 N.W.2d at 377 (emphasis added).

As we read it, the district court's analysis here is based upon a conclusion that trailers inspected by the defendant would travel through Iowa was not only foreseeable, but a virtual certainty.[2] Even this virtual certainty is not sufficient, however, absent a finding that the "defendant has 'purposefully directed' his activities at residents of the forum." *Burger King Corp.*, 471 U.S. at 472-73, 105

[2] The district court's findings, and much of appellees' argument, are premised on the federal regulation of interstate commercial vehicles. We acknowledge Title 49 of the United Staets code and accompanying rules provide the extensive regulation of interstate travel. However, we believe the regulations cited by the district court and appellees address the issue of foreseeability, which is not contested.

S. Ct. at 2182, 85 L. Ed. 2d at 540-41; *accord Capital Promotions*, 756 N.W.2d at 835 (noting "we look for any purposeful conduct . . . directed to Iowa").[3]

The purposeful availment requirement has been aptly explained by the Eighth Circuit Court of Appeals, stating:

> Due process requires that there be sufficient "minimum contacts" between the nonresident defendant and the forum state such that "maintenance of the suit does not offend traditional notions of fair play and substantial justice." Sufficient minimum contacts exist when the "defendant's conduct and connection with the forum state are such that he [or she] should reasonably anticipate being haled into court there." In assessing the defendant's reasonable anticipation, "it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." The "'purposeful availment' requirement ensures that a defendant will not 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.'" "Jurisdiction is proper, however, where the contacts proximately result from actions by the defendant *himself* that create a 'substantial connection' with the forum State."

Stanton v. St. Jude Med., Inc., 340 F.3d 690, 693-94 (8th Cir. 2003) (internal citations omitted) (finding processor who coated St. Jude's fabric onto heart

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[3] The unpublished cases cited by the district court each find the foreign defendant purposely directed activities at the forum state. The federal district court in Idaho described Cessna as a "well-known and long-standing national presence" and concluded it did not exceed due process in asserting personal jurisdiction "over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum state." *National Union Fire Ins.*, 2005 WL 1505787.

The Montana district court wrote:

> Whether this marketing and selling is done by subsidiary Firestone or by directly Bridgestone is immaterial. When Bridgestone placed its products in the stream of commerce, *Bridgestone intended those products to reach Montana consumers and Bridgestone tires did reach Montana consumers. Considering Bridgestone's intent to service the Montana market and reap the benefits of the Montana market, it is not unreasonable to expect Bridgestone to now defend its product in this same market.*

Joss, 2009 WL 1323040 (emphasis added).

valves distributed by St. Jude's did not purposefully avail itself to the State of Nebraska even if processor knew or should have known the fabric it processed would end up in Nebraska as whatever contacts processor had with Nebraska were the results of actions of St. Jude, not the processor). Similarly, any contacts Aguirre had with the State of Iowa were attenuated and due to the unilateral activity of XTRA. We reach this decision notwithstanding that Aquirre is described as an "agent" of XTRA under the federal regulations.

Aguirre's affidavit establishes that he did business in California, Nevada, and Arizona. While the district court found that XTRA has an office in Iowa, the district court did *not* find that Aguirre did business with the Iowa office. In fact, the district court found, "since 2005 [XTRA] has issued over 10,000 purchase orders for work done by Eagle at nine different locations *in California, Arizona, Nevada and Utah.*" Aguirre has never been to Iowa, does not advertise in Iowa, and has no contacts whatsoever with this state. While it might have been foreseeable that trailers inspected by Aguirre might travel through Iowa, nothing in this record supports a finding that Aguirre purposely directed activities to Iowa.

Viewing the record made below most favorably to the plaintiffs, and accepting as true the allegations of the petition and the contents of uncontroverted affidavit, we conclude the defendant Aguirre did not have the required minimum contacts with Iowa to support personal jurisdiction over the defendant in this state. The district court erred in overruling Aguirre's motion to dismiss.

REVERSED.