

RENDERED: AUGUST 26, 2011; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2010-CA-002067-MR

MICHELE OWENS

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE A.C. MCKAY CHAUVIN, JUDGE
ACTION NO. 10-CI-003201

ANDREW CLOONEY;
COMPLETE LEGAL, LTD.;
AND COMPLETE LEGAL
SUPPORT, INC.

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: TAYLOR, CHIEF JUDGE; ACREE AND VANMETER, JUDGES.

VANMETER, JUDGE: Michele Owens appeals from the Jefferson Circuit Court order dismissing her claims against Complete Legal for lack of personal jurisdiction. For the following reasons, we affirm.

This action stems from Complete Legal’s subpoenaing and its procurement of Owens’ confidential academic records from the Court Reporting Institute (“CRI”) in Dallas, Texas. At the time, Owens was involved in a civil action against her former employer, Kentuckiana Reporters, in Jefferson Circuit Court (No. 07-CI-8322). During the damages phase of that suit, counsel for Kentuckiana, Andrew Clooney, hired Complete Legal to obtain Owens’ CRI records in connection with that lawsuit. The records were ultimately deemed inadmissible by the trial court.

Owens then brought the underlying suit against Clooney and Complete Legal alleging invasion of privacy, forgery, fraud, unauthorized practice of law and negligence based on the manner in which her records were obtained in Texas. Specifically, Owens alleges that Complete Legal forged fraudulent documents that purported to be a subpoena issued by court order to obtain her records from CRI. The trial court dismissed her claims against Complete Legal for lack of personal jurisdiction. This appeal followed.

On appeal, Owens argues that (1) Kentucky has specific personal jurisdiction over Complete Legal and (2) the exercise of personal jurisdiction over Complete Legal in Kentucky would not offend Complete Legal’s federal due process rights.¹ We disagree.

¹ Owens only argues the existence of “specific” personal jurisdiction over Complete Legal for claims arising out of or relating to Complete Legal’s contacts with Kentucky, not the existence of “general” personal jurisdiction, which requires a showing that Complete Legal has continuous and systematic contacts with Kentucky so as to justify Kentucky’s exercise of judicial power with regard to any and all claims Owens may have against Complete Legal. *See Crouch v. Honeywell Int’l, Inc.*, 682 F.Supp.2d 788, 792 (W.D.Ky. 2010) (differentiating between

The question of whether a trial court properly declined to exercise personal jurisdiction is an issue of law and our review, therefore, is *de novo*.

Appalachian Reg'l Healthcare, Inc. v. Coleman, 239 S.W.3d 49, 53-54 (Ky. 2007) (citations omitted).

First, Owens argues that Kentucky has specific personal jurisdiction over Complete Legal pursuant to Kentucky's long-arm statute, KRS² 454.210, which provides, in relevant part:

(2)(a) A court may exercise personal jurisdiction over a person who acts directly or by an agent, as to a claim arising from the person's:

1. Transacting any business in this Commonwealth;
2. Contracting to supply services or goods in this Commonwealth;
3. Causing tortious injury by an act or omission in this Commonwealth[.]

Recently, the Kentucky Supreme Court in *Caesars Riverboat Casino, LLC v. Beach*, 336 S.W.3d 51 (Ky. 2011), clarified that a two-step process should be used to determine whether personal jurisdiction exists, specifically overruling precedent that had collapsed this two-step process into a single inquiry of whether due process permits the exercise of personal jurisdiction. The Court explained,

[T]he proper analysis of long-arm jurisdiction over a nonresident defendant consists of a two-step process.

"specific" and "general" personal jurisdiction).

² Kentucky Revised Statutes.

First, review must proceed under KRS 454.210 to determine if the cause of action arises from conduct or activity of the defendant that fits into one of the statute's enumerated categories. If not, then *in personam* jurisdiction may not be exercised. When that initial step results in a determination that the statute is applicable, a second step of analysis must be taken to determine if exercising personal jurisdiction over the non-resident defendant offends his federal due process rights. To the extent *Wilson [v. Case*, 85 S.W.3d 589 (Ky. 2002)], *Cummings [v. Pitman*, 239 S.W.3d 77 (Ky. 2007)], and like cases hold otherwise, they are overruled.

Id. at 57.

Thus, we first proceed under KRS 454.210(2)(a) to determine whether Owens' cause of action arises from conduct or activity on the part of Complete Legal that fits into one of the statute's enumerated categories. Owens maintains that jurisdiction is proper under Subsections (1), (2), and (3) because the contractual agreement between Clooney and Complete Legal constitutes a business transaction and/or a contract to supply services in Kentucky which caused her tortious injury in Kentucky. Owens emphasizes that Complete Legal was aware that her records would be used in a pending civil proceeding in Kentucky.

However, controlling law is clear that these contacts are insufficient to invoke personal jurisdiction over a nonresident defendant in Kentucky. In *Tube Turns Div. of Chemetron Corp. v. Patterson Co.*, 562 S.W.2d 99 (Ky.App. 1978), a Kentucky corporation sued a Colorado corporation to recover the balance due on a contract for payment of goods. The court noted the following details regarding the nonresident defendant's contacts with Kentucky:

Patterson is a Colorado corporation. The initial contact with Patterson was made in Colorado by Tube Turns's Colorado representative. Subsequent negotiations were conducted by mail and telephone between Patterson in Colorado and Tube Turns's Louisville office. Patterson's order was accepted by Tube Turns in Louisville.

Patterson has no certificate of authority to transact business in Kentucky. It has never maintained an office, a post office box, or telephone directory listing for the purpose of transacting business in Kentucky. Patterson has no employees or agents in Kentucky, and it owns no property in Kentucky. Its employees and agents never physically entered Kentucky for the purpose of negotiating contracts or soliciting any business.

Id. at 99-100. The court ultimately concluded that “it would be unreasonable for Kentucky to exercise jurisdiction over Patterson solely on the basis of negotiations by telephone and mail which culminated in the acceptance of a single order in Louisville.” *Id.* at 100.

Additionally, a Kentucky federal court reached the same conclusion when it determined that it could not exercise personal jurisdiction over a nonresident defendant in *Papa John's Int'l, Inc. v. Entertainment Marketing & Communications Int'l, Ltd.*, 381 F.Supp.2d 638 (W.D.Ky. 2005). In *Papa John's*, a dispute arose over marketing services that were being provided to Papa John's by a New York corporation with its principal place of business in Connecticut. *Id.* at 640. The court noted that neither defendant conducted regular business in Kentucky or owned any property in Kentucky. *Id.* The court further noted that at no time during the business relationship did the defendants physically enter Kentucky; instead, “Papa John's employees in Kentucky communicated via

telephone, mail and email with Defendants in New York and Connecticut on the development of the marketing campaign.” *Id.* In declining to exercise personal jurisdiction, the court held:

There was virtually no evidence that Defendants solicited business in Kentucky or that they actually performed work in Kentucky. Plaintiffs produced no evidence that Defendants derived substantial revenues from business in Kentucky. Whatever agreement was reached, was not reached in Kentucky. . . . The facts here do not present the case of a corporation reaching out to create an on-going series of relationships with a Kentucky customer involving numerous billings, shipment of product to or from the state and substantial sums of money.

Id. at 643-44 (internal citations omitted).

The circumstances of the case at bar are similar to those in *Tube Turns* and *Papa John’s*. Clooney retained Complete Legal to perform services in Texas. Complete Legal is organized and incorporated in Texas and is not and never has been organized, incorporated, or licensed to conduct business in Kentucky. No representative of Complete Legal ever visited Kentucky to negotiate or complete this transaction and Complete Legal never subpoenaed documents in Kentucky. Further, all of the negotiations in this business relationship occurred via telephone or mail. Complete Legal has no offices in Kentucky, does not own property in Kentucky, does not have any employees located in Kentucky, has no equipment in Kentucky and has no post office or other mailing address in Kentucky. Moreover, Owens’ allegations that Complete Legal engaged in fraud and forgery involve activities that occurred in Texas.

With respect to Owens' argument that the court should exercise personal jurisdiction because Complete Legal was aware of the fact that the services it performed in Texas would impact a lawsuit pending in Kentucky, we note that in *Kennedy v. Ziesmann*, 526 F.Supp. 1328 (E.D.Ky. 1981), the court refused to extend personal jurisdiction to a doctor who treated a Kentucky resident on the mere allegation that his work would have some effect in Kentucky. In *Kennedy*, the physician resided and practiced in Ohio, and his private medical practice was incorporated in Ohio. He was not on staff at any Kentucky hospitals, did not own property in Kentucky, and did not have a bank account in Kentucky. *Id.* at 1329. He did, however, list his practice in directories that circulated in Kentucky and admitted to having operated on a few other Kentucky patients during the last five years. *Id.* Similar to Owens, the plaintiff in *Kennedy* urged the court to extend personal jurisdiction to the defendant because he “‘purposely’ caused a ‘consequence’ in Kentucky, since he knew plaintiff would return there bearing any ill effects his treatment may have caused her.” *Id.* at 1330-31. In rejecting the plaintiff’s theory, the court concluded that “[a]lthough [the defendant] might have foreseen that his treatment of plaintiff might have some indirect effects in Kentucky, more than that is required” for a court to exercise personal jurisdiction over a nonresident defendant. *Id.* at 1332. Here, unlike the physician in *Kennedy*, Complete Legal is not listed in any directories in Kentucky and does not otherwise solicit business here. The mere fact that Complete Legal may have known that its

actions in Texas might have an effect in Kentucky is alone insufficient to exercise personal jurisdiction.

Finally, Owens' claim that she should not have to travel to Texas to litigate her claims against Complete Legal is unpersuasive. Owens has chosen to assert claims against a Texas corporation that is only licensed to do business in Texas, whose office and employees are located in Texas, for actions it performed in Texas. The fact that it may be inconvenient for Owens to file suit in Texas is not dispositive of the personal jurisdiction issue before us. *See Tube Turns*, 562 S.W.2d at 100 (holding that the convenience of location is not enough to satisfy due process).

Since we hold that personal jurisdiction cannot be exercised under KRS 454.210(2)(a)(1), (2), or (3), we need not proceed to an analysis of whether the exercise of personal jurisdiction in these circumstances violates Complete Legal's federal due process rights. *Caesar's*, 336 S.W.3d at 57. Thus, the trial court did not err by dismissing Owens' claims against Complete Legal.³

The order of the Jefferson Circuit Court is affirmed.

ACREE, JUDGE, CONCURS.

TAYLOR, CHIEF JUDGE, DISSENTS.

³ Though the trial court's decision to dismiss Owens' claims against Complete Legal was based on different reasoning (the exercise of personal jurisdiction violates Complete Legal's federal due process rights), the rule is well-settled that an appellate court may affirm a lower court for any reason supported by the record. *McCloud v. Commonwealth*, 286 S.W.3d 780, 786 n19 (Ky. 2009).

BRIEFS FOR APPELLANT:

Kirk Hoskins
Louisville, Kentucky

BRIEF FOR APPELLEE:

Edward T. Depp
Lynsie T. Gaddis
Louisville, Kentucky