

STATE OF MICHIGAN
COURT OF APPEALS

VED SOFTWARE SERVICES, INC.,

Plaintiff-Appellant,

v

JOSEPH SAHAYA S.B. FERNANDO,

Defendant-Appellee.

UNPUBLISHED

November 27, 2001

No. 224393

Oakland Circuit Court

LC No. 99-019469-CK

Before: Whitbeck, P.J., and Neff and Hoekstra, JJ.

PER CURIAM.

Plaintiff VED Software Services, Inc., appeals as of right the trial court's order dismissing this action for lack of personal jurisdiction. We decide this appeal without oral argument pursuant to MCR 7.214(E). We reverse.

I. Basic Facts And Procedural History

VED Software is a Michigan corporation that provides software, consulting, and programming services to its clients. VED Software recruited and hired defendant Joseph Fernando, a citizen of India, paying the cost for his move from India to Michigan in May 1999. For three to four weeks, VED Software trained Fernando in Michigan, where he signed his employment agreement. VED Software then assigned him to a client in California, where Fernando moved in June 1999.

Fernando's employment agreement with VED Software included a clause that generally prohibited him from soliciting or providing services to VED Software's clients or the clients' employees without VED Software's consent. This clause applied through two years after Fernando left his employment with VED Software. The agreement also stated that "Employer or Employee may bring suit without a jury under this Agreement in Oakland County, Michigan."

In a November 1999 letter, Fernando informed VED Software that he was resigning. He indicated that he had accepted an offer with the client to whom VED Software had assigned him. In response, VED Software sent Fernando a letter reminding him of the provisions in the employment agreement. Fernando apparently failed to heed VED Software's reminder.

VED Software then sued Fernando in Oakland Circuit Court alleging breach of contract and tortious interference with business relations and contract. Fernando moved to dismiss the complaint on the basis of lack of personal jurisdiction. However, VED Software argued that

Fernando, through the employment agreement, consented to jurisdiction in Michigan and that Michigan courts have jurisdiction over Fernando under the long-arm statute.¹ The trial court disagreed. Avoiding the issue whether Fernando consented to personal jurisdiction in Michigan, the trial court concluded that Fernando's contacts with Michigan were insufficient for courts of this state to exercise personal jurisdiction over him. Consequently, the trial court granted Fernando's motion for summary disposition under MCR 2.116(C)(1), dismissing VED Software's complaint.

In this appeal, VED Software maintains that Fernando consented to personal jurisdiction in Michigan. Further, it claimed, that the trial court erred in finding that Fernando lacked sufficient minimum contacts with Michigan to allow the exercise of personal jurisdiction.

II. Standard Of Review And Legal Standard For Summary Disposition

Review de novo is appropriate for an order granting summary disposition.² A motion for summary disposition may be granted under MCR 2.116(C)(1) when "[t]he court lacks jurisdiction over the person or property." Generally, whether to exercise personal jurisdiction over a defendant must be determined in light of the particular facts of the case.³ Consequently, it makes perfect sense that the court rule require that, when determining whether personal jurisdiction exists, the trial court must examine all the documentary evidence on the record.⁴

III. Personal Jurisdiction

MCL 600.705, Michigan's long-arm statute concerning individuals, provides in relevant part:

[T]he relationships between an individual or his agent and the state shall constitute a sufficient basis of jurisdiction to enable the courts of record of this state to exercise limited personal jurisdiction over the individual and to enable such courts to render personal judgments against the individual or his representative arising out of the act or acts which create any of the following relationships:

- (1) The transaction of any business within the state;

Courts construe the phrase "transaction of any business" broadly.⁵ "The word 'any' means just what it says. It includes 'each' and 'every.' It comprehends 'the slightest.'"⁶

¹ See MCL 600.705.

² *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

³ *Jeffrey v Rapid American Corp*, 448 Mich 178, 187; 529 NW2d 644 (1995).

⁴ MCR 2.116(G)(5).

⁵ *Sifers v Horen*, 385 Mich 195, 199; 188 NW2d 623 (1971).

⁶ *Id.* at 199, n 2 (citations omitted).

According to the record, Fernando traveled to Michigan to work for VED Software. He signed his employment agreement in Michigan. He received training from VED Software for approximately for three weeks in Michigan. Fernando received his paychecks in Michigan, which were deposited in his account in a Michigan financial institution. Clearly, the business VED Software and Fernando conducted with each other occurred in Michigan. Therefore, VED Software provided sufficient evidence to meet the requirements of the statute.

Nevertheless, to exercise limited personal jurisdiction over a defendant, jurisdiction must *also* satisfy due process.⁷ To determine whether exercising jurisdiction meets the constitutional standard, courts apply a three-pronged test that focuses on the defendant's contacts with the state:

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 substantially connected with Michigan to make the exercise of jurisdiction over the defendant reasonable.^[8]

This test aims to ensure that exercising jurisdiction “‘does not offend “traditional notions of fair play and substantial justice””⁹ by focusing on conduct that tends to reveal that the defendant could reasonably anticipate being haled into court in the forum state.¹⁰

“The unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State. The application of that rule will vary with the quality and nature of the defendant's activity, but 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.”^[11]

There is no question that Fernando “purposefully availed himself of the privilege of conducting activities in Michigan” by traveling from India to Michigan to gain employment with VED Software, a Michigan corporation. He executed his employment contract, received training, and, for a short period, resided in Michigan. Fernando also obtained and maintains a financial account in Michigan, into which he deposited paychecks from plaintiff. As for VED Software's cause of action arising from Fernando's activities in Michigan, Fernando breached

⁷ See *Witbeck v Bill Cody's Ranch Inn*, 428 Mich 659, 666; 411 NW2d 439 (1987).

⁸ *Jeffrey*, *supra* at 186, quoting *Mozdy v Lopez*, 197 Mich App 356, 359; 494 NW2d 866 (1992).

⁹ *Witbeck*, *supra* at 666, quoting *Int'l Shoe Co v Washington*, 326 US 310, 316; 66 S Ct 154; 90 L Ed 95 (1945) and citing *Burger King Corp v Rudzewicz*, 471 US 462, 474; 105 S Ct 2174; 85 LEd2d 528 (1985).

¹⁰ *Witbeck*, *supra* at 667.

¹¹ *Id.*, quoting *Hanson v Denckla*, 357 US 235, 253; 78 S Ct 1228; 2 L Ed 2d 1283 (1958).

the employment contract signed in Michigan, affecting his Michigan corporate employer. Finally, we do not need to decide whether Fernando actually consented to personal jurisdiction in Michigan. Still, his activities in this state, added to the explicit clause in his contract with VED Software referring to jurisdiction in Oakland County, only underscores the reasonableness of personal jurisdiction in this case.

Being haled into court in Michigan certainly was not the product of Fernando's "random," "fortuitous," or "attenuated" contacts" with this state or VED Software's unilateral activities.¹² Though there is likely some amount of burden Fernando will have to bear in defending this suit while living in California, we cannot say that VED Software's concern for adjudicating this dispute in a convenient location is less important given Fernando's rather substantial contacts with VED Software in this state.¹³ Therefore, the trial court erred in granting Fernando's motion for summary disposition.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ William C. Whitbeck

/s/ Janet T. Neff

/s/ Joel P. Hoekstra

¹² *Witbeck, supra* at 667, quoting *Keeton v Hustler Magazine, Inc.*, 465 US 770, 774; 104 S Ct 1473; 79 L Ed 2d 790 (1984).

¹³ See, generally, *Witbeck, supra* at 669.