STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1797

C. H. Robinson Worldwide, Inc.,
Respondent,

vs.

XPO Logistics, Inc., et al.,
Defendants,

Louis J. Amo, Jr., et al.,
Appellants,

Robert A. Martin,
Co-Appellant.

Filed June 9, 2014
Affirmed
Johnson, Judge

Hennepin County District Court
File No. 27-CV-12-16003

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Considered and decided by Rodenberg, Presiding Judge; Cleary, Chief Judge; and Johnson, Judge.

U N P U B L I S H E D O P I N I O N

JOHNSON, Judge

C.H. Robinson Worldwide, Inc., commenced this action in the Hennepin County District Court against nine defendants. Six defendants who are not residents of Minnesota moved to dismiss the action for lack of personal jurisdiction. The district court denied the motions, and the moving defendants brought this interlocutory appeal. We affirm.

FACTS

For the purposes of this appeal, we will assume as true the facts alleged in the plaintiff's pleadings, which are as follows.

C.H. Robinson is a Minnesota corporation that is engaged in the business of providing logistical and transportation services. XPO Logistics, Inc. is a Connecticut corporation and a competitor of C.H. Robinson. Six XPO employees are both defendants in the district court and respondents on appeal: Louis J. Amo, Jr., M. Sean Fernandez, Robert A. Martin, Gregory W. Ritter, Jacob K. Schnell, and Timothy V. Thomas. Of those six individuals, four are former employees of C.H. Robinson: Martin, Ritter, Schnell, and Thomas.

In February 2013, C.H. Robinson served and filed its first amended complaint, which alleges eight causes of action: (1) breach of contract, (2) tortious interference with

contractual relations, (3) tortiuous interference with prospective contractual relations, (4) misappropriation of trade secrets, (5) breach of fiduciary duty and duty of loyalty, (6) violation of the Computer Fraud and Abuse Act, (7) inducing, aiding, and abetting breaches; and (8) conspiracy.

In April 2013, Ritter, Thomas, Schnell, Fernandez, and Amo jointly moved to dismiss the action for lack of personal jurisdiction. Martin simultaneously moved separately to dismiss the action for lack of personal jurisdiction. *See* Minn. R. Civ. P. 12.02.

In August 2013, the district court denied the defendants' motions. The district court issued a 38-page order and memorandum in which it reasoned as follows: (1) the district court has personal jurisdiction over Schnell and Martin on the ground that they entered into an agreement with C.H. Robison that includes a forum-selection clause that makes Minnesota the venue of any litigation arising from the agreement; (2) the district court has personal jurisdiction over Ritter and Thomas on the ground that they have the constitutionally required minimum contacts with Minnesota; and (3) the district court has personal jurisdiction over Amo and Fernandez on the ground that the claims against them are "closely related" to the ongoing litigation.

In September 2013, Ritter, Thomas, Schnell, Fernandez, and Amo jointly filed a notice of appeal from the district court's order. *See Marshall v. Inn on Madeline Island*, 610 N.W.2d 670, 673 (Minn. App. 2000) (stating that order denying motion to dismiss for lack of personal jurisdiction is appealable as of right). Shortly thereafter, Martin filed

a notice of related appeal. In November 2013, this court issued an order to clarify that Martin is a co-appellant, not a respondent/cross-appellant.

D E C I S I O N

Appellants argue that the district court erred by denying their motions to dismiss for lack of personal jurisdiction.

In Minnesota, personal jurisdiction over an out-of-state defendant is governed by a statute, which provides, in relevant part:

> [A] court of this state with jurisdiction of the subject matter may exercise personal jurisdiction over any foreign corporation or any nonresident individual, or the individual's personal representative, in the same manner as if it were a domestic corporation or the individual were a resident of this state. This section applies if, in person or through an agent, the foreign corporation or nonresident individual:
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> (1) owns, uses, or possesses any real or personal property situated within this state; or
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> (2) transacts any business within the state; or
>
> (3) commits any act in Minnesota causing injury or property damage; or
>
> (4) commits any act outside Minnesota causing injury or property damage in Minnesota, subject to the following exceptions when no jurisdiction shall be found:
>
> (i) Minnesota has no substantial interest in providing a forum; or
>
> (ii) the burden placed on the defendant by being brought under the state's jurisdiction would violate fairness and substantial justice.

Minn. Stat. § 543.19, subd. 1 (2012). This statute authorizes the state to reach as far as the United States Constitution allows in the exercise of personal jurisdiction: "If the personal jurisdiction requirements of the federal constitution are met, the requirements of the long-arm statute will necessarily be met also." *Marshall*, 610 N.W.2d at 673 (alteration in original) (quotation omitted). Consequently, Minnesota courts apply federal caselaw to determine whether personal jurisdiction exists. *Id.*

Federal caselaw provides that, for a state to exercise personal jurisdiction over an out-of-state defendant, the defendant must have "minimum contacts" with the forum state so that exercising personal jurisdiction over the defendant does not offend "traditional notions of fair play and substantial justice." *International Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S. Ct. 154, 158 (1945) (quotation omitted). To have the required minimum contacts, the defendant must have purposefully availed himself of the privilege of conducting activities within the jurisdiction "such that he should reasonably anticipate being haled into court there." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474, 105 S. Ct. 2174, 2183 (1985) (quotation omitted); *see also Hanson v. Denckla*, 357 U.S. 235, 253, 78 S. Ct. 1228, 1240 (1958); *V.H. v. Estate of Birnbaum*, 543 N.W.2d 649, 656-57 (Minn. 1996).

If a defendant has challenged the existence of personal jurisdiction, the plaintiff has the burden to show that the defendant has sufficient contacts with Minnesota to support the district court's exercise of jurisdiction. *Juelich v. Yamazaki Mazak Optonics Corp.*, 682 N.W.2d 565, 569-70 (Minn. 2004). If a plaintiff commences an action against multiple defendants, the plaintiff must establish personal jurisdiction over each

defendant.[1] *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 781 n.13, 104 S. Ct. 1473, 1482 n.13 (1984). At the pre-trial stage, a plaintiff's allegations in the complaint and supporting affidavits are assumed to be true for the purposes of determining whether personal jurisdiction exists. *Marquette Nat'l Bank of Minneapolis v. Norris*, 270 N.W.2d 290, 292 (Minn. 1978). Any "doubts" about jurisdiction are "resolved in favor of retention of jurisdiction." *Hardrives, Inc. v. City of LaCrosse*, 307 Minn. 290, 296, 240 N.W.2d 814, 818 (1976). This court applies a *de novo* standard of review to a district court's ruling on personal jurisdiction. *Juelich*, 682 N.W.2d at 569.

Before we analyze the appellants' contentions, we pause to note that the facts, issues, and arguments in this appeal are strikingly similar to those in *C.H. Robinson Worldwide, Inc. v. FLS Transp., Inc.*, 772 N.W.2d 528 (Minn. App. 2009), *review denied* (Minn. Nov. 24, 2009). We are bound to follow all published opinions of this court. *See* Minn. Stat. § 480A.08, subd. 3(b), (c) (2012); *Doe v. Lutheran High Sch. of Greater Minneapolis*, 702 N.W.2d 322, 330 (Minn. App. 2005), *review denied* (Minn. Oct. 26, 2005). We are especially constrained in our resolution of appellants' arguments in this appeal because the *FLS* opinion has particularly strong precedential value due to the strong similarity of its facts and its reasoning. For that reason, it is unnecessary in this opinion to reiterate every step of the analysis that was articulated in *FLS*.

[1]Notwithstanding this general principle, we have grouped Ritter and Thomas together and Amo and Fernandez together, consistent with the manner in which their common counsel have presented the relevant facts and their clients' respective arguments.

A. Appellant Martin

The district court concluded that it has personal jurisdiction over Martin because he consented to jurisdiction in Minnesota by agreeing to a forum-selection clause that makes Minnesota the venue of any litigation arising from the agreement.

A valid forum-selection clause is sufficient to confer personal jurisdiction over a defendant. *Dominium Austin Partners, L.L.C. v. Emerson*, 248 F.3d 720, 726-27 (8th Cir. 2001); *see also Burger King Corp.*, 471 U.S. at 472 n.14, 105 S. Ct. at 2182 n.14. "Due process is satisfied when a defendant consents to personal jurisdiction by entering into a contract that contains a valid forum selection clause." *Dominium Austin Partners*, 248 F.3d at 726. As a general rule, a forum-selection clause is presumed to be valid. *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 9-10, 92 S. Ct. 1907, 1913 (1972).

Martin entered into a written confidentiality and noncompetition agreement with C.H. Robinson during his employment. The agreement contains a section entitled "Governing Law," which provides that Minnesota law governs the interpretation and enforceability of the agreement, that "any legal action brought to enforce the terms of [the agreement] shall be brought in Hennepin County District Court, State of Minnesota or the United States District Court for the District of Minnesota," and that Martin consents to the jurisdiction of those courts.

Martin does not dispute that he entered into a confidentiality and noncompetition agreement that includes a forum-selection clause. Rather, he contends that the agreement is unenforceable because of a lack of consideration. If a forum-selection clause "is not ancillary to an employment contract, it must be supported by independent consideration

to be enforceable." *Sanborn Mfg. v. Currie*, 500 N.W.2d 161, 164 (Minn. App. 1993). "The adequacy of consideration for restrictive covenants signed during an ongoing employment relationship will depend upon the facts of each case." *Freeman v. Duluth Clinic, Ltd.*, 334 N.W.2d 626, 630 (Minn. 1983). "The mere continuation of employment can be used to uphold [confidentiality and noncompetition agreements], but the [agreement] must be bargained for and provide the employee with real advantages." *Id.*; *see also Davies & Davies Agency, Inc. v. Davies*, 298 N.W.2d 127, 130-31 (Minn. 1980); *FLS*, 772 N.W.2d at 534.

In its first amended complaint, C.H. Robinson alleges that Martin's confidentiality and noncompetition agreement was "supported by valuable consideration, including . . . opportunities for restricted stock awards and bonuses . . . for which he otherwise would not have been eligible." In 2006, Martin signed an agreement, in which he acknowledged that he received restricted stock units as "part of the compensation and consideration available to me in return for and as condition of the various agreements I previously have entered into with [C.H. Robinson], which agreements may include, among others, . . . [a] Confidentiality and Noncompetition Agreement." Martin signed similar agreements in 2007, 2008, and 2010, in which he acknowledged that he received bonuses in those years that were "part of the compensation and consideration available to me in return for . . . other various agreements I previously have entered into with [C.H. Robinson], which agreements may include, . . . [a] Confidentiality and Noncompetition Agreement." C.H. Robinson's allegations and evidence are, at this stage of the case, sufficient to state a

prima facie case of personal jurisdiction and, thus, sufficient to withstand a motion to dismiss. *See FLS*, 772 N.W.2d at 534.

Thus, the district court did not err by concluding it has personal jurisdiction over Martin because he consented to jurisdiction in Minnesota by agreeing to a forum-selection clause. In light of this conclusion, we need not address Martin's additional arguments regarding the sufficiency of his contacts with Minnesota.

B. Appellant Schnell

The district court concluded that it has personal jurisdiction over Schnell because he also consented to jurisdiction in Minnesota by agreeing to a forum-selection clause.

Schnell entered into a written confidentiality and noncompetition agreement with C.H. Robinson during his employment. His agreement contains a forum-selection clause that is identical to the forum-selection clause in Martin's agreement. Like Martin, Schnell contends that his agreement is unenforceable because of a lack of consideration. The allegations in the first amended complaint relating to Schnell are nearly identical to those relating to Martin. We have rejected Martin's contentions. We reject Schnell's contentions for the same reasons. *See id.*

Schnell also contends that the agreement containing the forum-selection clause is unenforceable because it is a contract of adhesion. More specifically, Schnell contends that the agreement was not "bargained for," that he was "instructed" to sign it, and that he "negotiated no terms" of that agreement. We rejected essentially the same contention in *FLS*, a case involving the same plaintiff, the same agreement and forum-selection clause, the same causes of action, similar underlying facts, and the same procedural posture. *Id.*

at 534. In this case, the forum-selection clause is not written in technical jargon and is contained in an easy-to-understand, three-and-one-half-page contract. In addition, Schnell is an individual with sophisticated business experience, and there is nothing in the record to indicate that he was unable to evaluate the terms of this agreement or the forum-selection clause. For these reasons, Schnell's contention fails. *See id.*

Thus, the district court did not err by concluding that it has personal jurisdiction over Schnell because he consented to jurisdiction in Minnesota by agreeing to a forum-selection clause. In light of this conclusion, we need not address Schnell's additional arguments regarding the sufficiency of his contacts with Minnesota.

C. Appellants Ritter and Thomas

The district court concluded that it has personal jurisdiction over Ritter and Thomas because they have the requisite minimum contacts with Minnesota based on their status as former employees of C.H. Robinson and based on their conduct. Ritter and Thomas contend that the district court erred in its minimum-contacts analysis.

To determine whether the exercise of personal jurisdiction is consistent with due process, Minnesota courts should consider the following five factors: "(1) the quantity of contacts with [Minnesota]; (2) the nature and quality of those contacts; (3) the connection of the cause of action with these contacts; (4) the interest of [Minnesota in] providing a forum; and (5) the convenience of the parties." *Juelich*, 682 N.W.2d at 570. The first three factors, which are the "primary factors," assess whether the requisite minimum contacts exist; the last two factors, the "secondary factors," determine whether the exercise of jurisdiction comports with traditional notions of fair play and substantial

justice. *Marquette Nat'l Bank*, 270 N.W.2d at 295. The first three factors carry the most weight in the court's overall personal-jurisdiction determination. *Dent-Air, Inc. v. Beech Mountain Air Serv., Inc.*, 332 N.W.2d 904, 907 (Minn. 1983). Specific personal jurisdiction "'may be satisfied for a particular cause of action if a defendant had limited contacts with the forum state that arise from or relate to a plaintiff's claim.'" *FLS*, 772 N.W.2d at 537 (quoting *Davis v. Minnesota Mining & Mfg. Co.*, 590 N.W.2d 159, 162 (Minn. App. 1999), *review denied* (Minn. June 16, 1999)). "[T]he defendant's actual presence in the forum state is not necessary to establish minimum contacts." *Id.*

We reiterate our observation that this appeal is, for all practical purposes, nearly identical to *FLS*. Accordingly, our analysis of the five factors is guided in significant part by our analysis in *FLS*. *See id.* at 536-38.

First and Second Factors

With respect to the first two factors (the quantity and the nature of the contacts) we relied on the following facts in *FLS* in concluding that the requisite minimum contacts were present: (1) appellants "had on-going, regular contact with Minnesota during their employment, via phone, e-mail, and respondent's computer network"; (2) "as employees they relied on respondent to handle travel, expense reimbursement, and personnel issues and administrative matters necessary to enter into the business deals they procured"; (3) "the former employees' benefits were administered from Minnesota"; (4) "their supervisors were located in Minnesota"; (5) "they visited Minnesota for training"; and (5) "they all signed agreements with [C.H. Robinson] containing a Minnesota choice-of-law provision." *Id.* at 537 (quotation marks omitted).

In this case, both Ritter and Thomas are former employees of C.H. Robinson who did not work in Minnesota. C.H. Robinson asserts that Ritter and Thomas participated in business processes and procedures that were handled in C.H. Robinson's Minnesota headquarters, that they utilized C.H. Robinson's computer system, which is located in Minnesota, that their compensation and benefits were generated and administered from C.H. Robinson headquarters in Minnesota, that they attended C.H. Robinson training programs in Minnesota, and that their managers were located in Minnesota. In light of C.H. Robinson's allegations, the quantity and the nature of Ritter's and Thomas's contacts with Minnesota are practically identical to the contacts that were deemed sufficient in *FLS*. *See id.* Thus, the first two factors weigh in favor of personal jurisdiction.

Third Factor

FLS also informs our analysis of the third factor (the relationship between Thomas's and Ritter's contacts with Minnesota and C.H. Robinson's causes of action). We reasoned in *FLS* that the third factor weighed in favor of personal jurisdiction because there was "a direct connection between the [employees'] conduct and [C.H. Robinson's] causes of action . . . in that the causes of action arise directly from alleged breaches of and tortious interference with contracts with [C.H. Robinson], a Minnesota corporation." *Id.* at 538.

Similarly, in this case, C.H. Robinson is suing XPO, a competitor; two of XPO's officers; and six XPO employees who are former C.H. Robinson employees. C.H. Robinson alleges in its amended complaint that Ritter and Thomas engaged in tortious

conduct by seeking out C.H. Robinson employees for hire so that XPO could take advantage of C.H. Robinson's customer goodwill and confidential and proprietary information, in violation of binding restrictive covenants; by inducing the solicitation of C.H. Robinson customers and carriers, in violation of those same restrictive covenants; by inducing C.H. Robinson employees to misappropriate C.H. Robinson's confidential information and trade secrets; and by misappropriating other confidential information belonging to C.H. Robinson. The causes of action alleged in C.H. Robinson's amended complaint are very similar to the causes of action alleged by C.H. Robinson in the *FLS* case. *See id.* at 532-33. There are direct connections between Ritter's and Thomas's alleged tortious conduct and C.H. Robinson's causes of action "in that the causes of action arise directly from alleged breaches of and tortious interference with contracts with [C.H. Robinson], a Minnesota corporation." *See id.* at 538.

Ritter and Thomas contend that, even if they had sufficient contacts with Minnesota at some point in the past, their contacts now are "stale" and, thus, do not support the district court's exercise of personal jurisdiction over them. Ritter and Thomas note that they have not worked for C.H. Robinson for more than a decade. C.H. Robinson does not agree that Ritter's and Thomas's contacts are so distant in time. C.H. Robinson has alleged that Ritter and Thomas have more recently engaged in tortious conduct with a direct connection to Minnesota. Specifically, C.H. Robinson has alleged that, as recently as 2012, Ritter and Thomas tortiuously solicited or induced the solicitation of C.H. Robinson employees and misappropriated other confidential

information belonging to C.H. Robinson. Accordingly, Ritter's and Thomas's staleness argument is not supported by the factual record.

The connection between Thomas's and Ritter's contacts with Minnesota and C.H. Robinson's causes of action are strong and very similar to those in *FLS*. *See id.* Thus, the third factor weighs in favor of personal jurisdiction.

Fourth and Fifth Factors

The district court also relied on *FLS* in reasoning that the fourth and fifth factors (the interest of Minnesota in providing a forum and the convenience of the parties) support the assertion of personal jurisdiction over Ritter and Thomas. Ritter and Thomas do not challenge the district court's reasoning with respect to the fourth and fifth factors. Thus, as the district court reasoned, the fourth and fifth factors weigh in favor of personal jurisdiction.

In sum, all five factors weigh in favor of the district court's exercise of personal jurisdiction over Ritter and Thomas. *See id.* at 536-38. Thus, the district court did not err by denying the motion to dismiss with respect to Ritter and Thomas.

D. Appellants Amo and Fernandez

The district court concluded that it has personal jurisdiction over Amo and Fernandez because they are "closely related" to the ongoing litigation.

In *FLS*, we applied the "closely related" doctrine to conclude that certain defendants, "though not parties to the [confidentiality and noncompetition agreements], were bound by the forum-selection clauses therein because they were 'closely related' to the dispute." *Id.* at 534. Under the doctrine, a person who did not agree to a forum-

selection clause may nonetheless be bound by it if the person is "'closely related to the dispute such that it becomes foreseeable that [the person] will be bound.'" *Id.* (quoting *Medtronic, Inc. v. Endologix, Inc.*, 530 F. Supp. 2d 1054, 1056 (D. Minn. 2008)). "'In order to bind a non-party to a forum-selection clause, the party must be closely related to the dispute such that it becomes foreseeable that it will be bound.'" *Id.* at 535 (quoting *Hugel v. Corporation of Lloyd's*, 999 F.2d 206, 209 (7th Cir. 1993)).

In *FLS*, some of the defendants were former employees of C.H. Robinson, but some were employees of FLS who had not been employed by C.H. Robinson. *Id.* at 533, 534-35. Nonetheless, we held in *FLS* that such persons may be subject to the jurisdiction of a Minnesota court. *Id.* at 536. Amo and Fernandez are similar to the latter category of appellants in *FLS* in that they never have worked for C.H. Robinson, are not Minnesota residents, and did not sign confidentiality and noncompetition agreements with C.H. Robinson. *See id.* The factual allegations against Amo and Fernandez in this case are, for purposes of this appeal, nearly identical to the corresponding allegations in *FLS*. *See id.* at 532-33. Specifically, C.H. Robinson has alleged that Amo and Fernandez knew or should have known that certain persons had entered into contractual confidentiality and noncompetition agreements with C.H. Robinson but nonetheless induced the breaches of those agreements. In light of *FLS*, Amo and Fernandez are "sufficiently closely related to the dispute . . . such that they should reasonably anticipate defending themselves in a Minnesota court." *Id.* at 535-36.

Amo and Fernandez acknowledge the reasoning and result of *FLS* but contend that *FLS* is "flawed" and must be overruled. Their contention is contrary to this court's

respect for precedent. This court's opinion in *FLS* is published and, thus, precedential. *See* Minn. Stat. § 480A.08, subd. 3(b), (c). We are "bound by the doctrine of stare decisis, which directs that 'we adhere to former decisions in order that there might be stability in the law.'" *Doe*, 702 N.W.2d at 330 (quoting *Oanes v. Allstate Ins. Co.*, 617 N.W.2d 401, 406 (Minn. 2000)); *see also State v. M.L.A.*, 785 N.W.2d 763, 767 (Minn. App. 2010), *review denied* (Minn. Sept. 21, 2010). Accordingly, we decline to overrule our own precedent.

In sum, the district court did not err by concluding that appellants have sufficient contacts with Minnesota to support the district court's exercise of jurisdiction. *See Juelich*, 682 N.W.2d at 573.

Affirmed.