STATE OF MINNESOTA
IN COURT OF APPEALS
A11-2320

Clint Pharmaceuticals,
Respondent,

vs.

Northfield Urgent Care, LLC,
Appellant.

Filed September 4, 2012
Affirmed
Hooten, Judge

Rice County District Court
File No. 66-CV-11-736

Nathan J. Knoernschild, Thomsen & Nybeck, P.A., Bloomington, Minnesota (for respondent)

Jonathan K. Reppe, Reppe Law Office, PLLC, Northfield, Minnesota (for appellant)

Considered and decided by Wright, Presiding Judge; Ross, Judge; and Hooten, Judge.

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

HOOTEN, Judge

Appellant challenges the district court's denial of its motion to vacate a foreign judgment. Because respondent presented the district court with prima facie evidence of service upon appellant relative to the foreign court proceeding and appellant failed to

meet its evidentiary burden to show that the foreign judgment was predicated on ineffective service of process, we affirm.

FACTS

In August 2009, Dr. Kevin Bardwell, president and owner of Northfield Urgent Care, a Minnesota medical clinic, ordered flu vaccine from respondent, Clint Pharmaceuticals, a licensed distributer of flu vaccine located in Tennessee, by signing a credit application and order form. The agreement in the credit application and order form provided in relevant part:

> This agreement is binding and is made voluntarily by the undersigned customer for the purpose of obtaining credit to purchase products from Clint Pharmaceuticals, Inc. . . . Customer agrees that any lawsuit arising from the customer's account shall be brought in the State of Tennessee, Davidson County, and shall be subject to the laws of Tennessee. . . . Flu Vaccine orders may not be cancelled. All refrigerated products are non-returnable, with the exception of 2009 Fluzone. Fluzone 2009−10 customer[s] may return up to 25% of product after February 1, 2010 to be credited toward future Fluzone orders.

On August 18, 2009, 100 vials of the flu vaccine were delivered to appellant for use during the 2009−10 flu season and appellant paid respondent $9,995 for the vaccine.

The parties dispute whether Dr. Bardwell ordered flu vaccine from respondent for the 2010−11 flu season. Dr. Bardwell acknowledges that, sometime in 2010, he had a conversation with a representative from respondent about flu vaccine but denies that he ordered any vaccine. Respondent claims that its business records indicate that Dr. Bardwell telephoned respondent on numerous occasions seeking more vaccine for the 2009−10 season, that he was told such vaccine was unavailable, and that, on November

30, 2009, Dr. Bardwell ordered 150 vials of vaccine for the 2010−11 season. Respondent attempted to enforce this order under the terms of the credit application agreement, but appellant refused to pay for, or accept delivery of, the vaccine for the 2010-11 season.

Because of the dispute between the parties, respondent filed a civil warrant in Tennessee General Sessions Court[1] in Davidson County, Tennessee, on November 1, 2010. The warrant stated that the action was for a "[b]reach of contract in an amount below $25,000.00, plus attorney fees and costs," and that a hearing would take place on December 6, 2010. Respondent sent this warrant by registered mail to Dr. Bardwell, as the registered agent for appellant. Dr. Bardwell's wife, who worked as a receptionist at the clinic, handled questions regarding appellant on its Facebook site, and appeared prominently on appellant's website, signed for and accepted the registered letter on behalf of Dr. Bardwell on November 8, 2010. On December 6, 2010, appellant's attorney sent a letter by facsimile to the Tennessee court acknowledging that the case was presumably "brought to enforce an alleged oral contract for the purchase of flu vaccine" and indicating that the appellant had received the civil warrant. The letter further declared that appellant would not appear at the December 6, 2010 hearing because Tennessee did not have personal jurisdiction over appellant and because service of process had been ineffective.

At the December 6, 2010 hearing in Tennessee court, respondent obtained a judgment against appellant for damages of $20,250 and attorney fees and costs of

[1] This Tennessee court appears to be similar to Minnesota's conciliation court, with limits on amounts in controversy and the jurisdiction of the court, and no record of the proceeding.

$7,087.50. On March 10, 2011, respondent filed an action in Rice County District Court under the Uniform Enforcement of Foreign Judgments Act, Minn. Stat. §§ 548.26–.33 (2010), to enforce this judgment in Minnesota. Respondent served a garnishment summons and had approximately $13,000 frozen in appellant's bank account.

Appellant responded by filing a motion for a temporary injunction and motion to vacate a foreign judgment, claiming that, because of ineffective service of process upon appellant relative to the Tennessee court proceeding, the foreign judgment was not enforceable. The district court initially enjoined respondent from executing upon its judgment at a hearing on August 15, 2011. However, in an order filed on September 26, 2011, the district court denied appellant's motion for a temporary injunction and for vacation of the judgment, concluding that appellant failed to meet its burden of proof to show that the foreign judgment was unenforceable due to a lack of personal jurisdiction and inadequate service of process. The current appeal is from this order.

D E C I S I O N

Foreign judgments are to be given the same effect as Minnesota judgments. Minn. Stat. § 548.27. However, a defendant has a right "to contest an action brought on the basis of a foreign court's judgment by demonstrating that the foreign court rendered the judgment in the absence of personal jurisdiction over the defendant." *Griffis v. Luban*, 646 N.W.2d 527, 531 (Minn. 2002). "Minnesota courts will uphold a foreign court's exercise of personal jurisdiction over a nonresident defendant when two requirements are met: (1) compliance with the foreign state's law providing jurisdiction, and (2) the

exercise of jurisdiction under circumstances that do not offend the Due Process Clause of the federal constitution." *Id*.

The existence of personal jurisdiction and the effectiveness of service of process are both questions of law, which this court reviews de novo. *Van Note v. 2007 Pontiac*, 787 N.W.2d 214, 217 (Minn. App. 2010); *Christian v. Birch*, 763 N.W.2d 50, 58 (Minn. App. 2009), *review granted* (Minn. May 27, 2009) *and appeal dismissed* (Minn. July 15, 2009). "But in conducting this review, we must apply the facts as found by the district court unless those factual findings are clearly erroneous." *Shamrock Dev., Inc. v. Smith*, 754 N.W.2d 377, 382 (Minn. 2008); *Van Note*, 787 N.W.2d at 217−18; *Christian*, 763 N.W.2d at 58.

When a defendant challenges personal jurisdiction, the plaintiff has the burden to establish a factual basis for that jurisdiction. *Dent-Air, Inc. v. Beech Mountain Air Serv., Inc.*, 332 N.W.2d 904, 907 n.1 (Minn. 1983) (citing *Hardrives, Inc. v. City of LaCrosse, Wis.*, 307 Minn. 290, 293, 240 N.W.2d 814, 816 (1976)). "At the pretrial stage, however, the plaintiff's allegations and supporting evidence [regarding personal jurisdiction] are to be taken as true." *Id.* The burdens are different for service of process, however, "[o]nce the plaintiff submits evidence of service, a defendant who challenges the sufficiency of service of process has the burden of showing that the service was improper." *Shamrock Dev., Inc.*, 754 N.W.2d at 384.

Under Tennessee law, an exercise of personal jurisdiction is predicated on effective service of process. *Young v. Kittrell*, 833 S.W.2d 505, 507 (Tenn. Ct. App. 1992) ("Jurisdiction of the parties is premised on their being properly subject to service

of process, i.e., to being haled into the given court."); *Yousif v. Clark*, 317 S.W.3d 240, 246 (Tenn. Ct. App. 2010) (applying this rule to proceedings in general sessions court). Tennessee law allows service of a civil warrant as follows:

> Service by mail upon a partnership or unincorporated association, included a limited liability company, that is named defendant upon a common name shall be addressed to a partner or managing agent of the partnership or to an officer or managing agent of the association, or to an agent authorized by appointment or by law to receive service on behalf of the partnership or association.

Tenn. Code Ann. § 16-15-904(d) (2009).[2] "When process is served by mail[,] . . . an affidavit of the person making service setting forth the personal compliance of this section and the return receipt shall be sent to and filed with the clerk of the court." Tenn. Code Ann. § 16-15-902(c) (2009). "If the return receipt is signed by the defendant or any person designated by this section or by statute, service on the defendant is complete." *Id.*

Appellant argues that Tennessee rules regarding service of process were not strictly followed and that service of process was therefore ineffective insofar as respondent failed to show that Dr. Bardwell, as the president and owner of appellant, actually signed the receipt for the civil warrant. However, Tennessee case law interpreting service of process rules does not support appellant's claim that courts are to strictly construe service of process rules and statutes. Rather, Tennessee courts have declared that service upon an organizational defendant may be made upon an individual if that person is so integrated with the organization that he or she will know what to do

[2] The Tennessee Rules of Civil Procedure are inapplicable in the Tennessee General Sessions Court. Tenn. R. Civ. P. 1 ("The Rules of Civil Procedure shall not apply to general sessions courts.").

with the papers that are served. *Hall v. Haynes*, 319 S.W.3d 564, 575 (Tenn. 2010). "'Generally, service is sufficient when made upon an individual who stands in such a position as to render it fair, reasonable and just to imply the authority on [her] part to receive service.'" *Id.* at 575 (quoting *Garland v. Seaboard Coastline R.R.*, 658 S.W.2d 528, 531 (Tenn. 1983) (alteration in original)). As explained by the Tennessee court, the stated purpose of the rules on service of process is "'to insure that process is served in a manner reasonably calculated to give a party defendant adequate notice of the pending judicial proceedings.'" *Id.* at 575 (quoting *Garland*, 658 S.W.2d at 530).

Respondent, in showing prima facie proof of service upon appellant, provided evidence that it sent the civil warrant to Dr. Bardwell at appellant's address and that a return receipt was signed by Dr. Bardwell's wife, whom appellant admits was an employee. In support of its claim that Dr. Bardwell's wife was intertwined with the operation of the clinic, respondent showed that Dr. Bardwell's wife was prominently displayed with Dr. Bardwell in a photograph on the clinic's website and that she interacts with commenters on the clinic's Facebook site. Respondent also submitted affidavits executed by its attorney in Tennessee, averring that he served appellant by certified mail, that "[t]he issue of service of process was discussed at the hearing with the [Tennessee] Court, and [that] the Court determined that service was proper under Tennessee law." Finally, respondent submitted the Tennessee judgment, indicating that the Tennessee court believed that the exercise of personal jurisdiction, including effective service of process, was proper. This evidence satisfied respondent's prima facie burden of proof of service of process.

Once respondent made a prima facie showing of service upon appellant, the burden of proof then shifted to appellant in its challenge to the effectiveness of service of process upon it. While appellant's counsel argued that Dr. Bardwell's wife was not authorized to accept service on behalf of appellant, there is no affidavit or other evidence in the record supporting such assertion. Appellant failed to demonstrate that Mrs. Bardwell was not authorized to sign the return receipt on her husband's behalf or explain why she did not have such authority. Rather, the record shows that Dr. Bardwell received the civil warrant, giving him notice of the December 6, 2010, hearing. He was aware of the impending court proceeding in Tennessee, knew of the issues involved in the proceeding, and knowingly chose not to attend. Because there is no affidavit or other evidence indicating that Dr. Bardwell's wife was not authorized to accept and sign for a civil warrant on behalf of appellant and because there is uncontested evidence that Dr. Bardwell received the civil warrant prior to the hearing, appellant did not meet its burden of proof in showing that service was ineffective.

We must also determine whether Tennessee's exercise of personal jurisdiction over appellant complied with Tennessee law and the Due Process Clause of the federal constitution. *Griffis*, 646 N.W.2d at 531. The district court found that it did, because appellant consented to personal jurisdiction in Tennessee by signing the credit application and order form, which contained a forum-selection clause.

It is well settled that, within a commercial context, a party may "stipulate in advance to submit their controversies for resolution within a particular jurisdiction," thereby giving express or implied consent to the personal jurisdiction of the selected

court. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 n.14, 105 S. Ct. 2174, 2182 n.14 (1985). "Generally, a forum selection clause is enforceable and binding upon the parties." *Lamb v. MegaFlight, Inc.*, 26 S.W.3d 627, 631 (Tenn. Ct. App. 2000) (citing *Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 12, 92 S. Ct. 1907, 1914 (1972)). "Where such forum-selection provisions have been obtained through freely negotiated agreements and are not unreasonable and unjust, their enforcement does not offend due process." *Burger King Corp.*, 471 U.S. at 472 n.14, 105 S. Ct. at 2182 n.14 (citation and quotations omitted); *see also Dominium Austin Partners, L.L.C. v. Emerson*, 248 F.3d 720, 726 (8th Cir. 2001) ("Due process is satisfied" when a party consents to personal jurisdiction in a foreign forum "by entering into a contract that contains a valid forum selection clause").

Appellant does not claim that the forum-selection clause in the credit application and order form was a product of fraud or duress, that it is unconscionable, or that the clause itself is unreasonable and unjust. Rather, appellant claims that the current controversy is not governed by the agreement.

The form, signed by Dr. Bardwell as the owner of appellant in August of 2009, does not limit itself to only the 2009−10 flu vaccine order. Rather, it clearly provides that the agreement set forth in the form is "for the purpose of obtaining credit to purchase products from" respondent. The agreement also states that "[f]lu vaccine orders may not be cancelled," and references the possibility of returning 2009 flu vaccine for a credit towards future orders of flu vaccine. The agreement clearly contemplates future orders being made on the credit account established by the form. As such, the forum-selection clause in the credit application is binding on the parties in the instant dispute. Because

appellant has consented to the personal jurisdiction of the Tennessee court, it is not necessary for this court to engage in a due process analysis regarding whether appellant had sufficient "minimum contacts" with the state within the meaning of *International Shoe Co. v. Washington*, 326 U.S. 310, 66 S. Ct. 154 (1945).

Because the district court correctly decided that appellant failed to meet its evidentiary burden in challenging service of process, and because appellant agreed to the forum-selection clause in the credit agreement with respondent, we conclude that the district court did not err in denying appellant's motion to vacate the foreign judgment.

Affirmed.