STATE OF MINNESOTA
IN COURT OF APPEALS
A12-2208

Coloplast A/S, et al.,
Respondents,

vs.

Spell Pless Saura, PC
(f/k/a Welch Spell, PC), et al.,
Appellants,

Lindquist & Vennum, PLLP, et al.,
Respondents.

Filed June 3, 2013
Affirmed
Cleary, Judge

Hennepin County District Court
File No. 27-CV-12-12601

Daniel Q. Poretti, Benjamin C. Johnson, Nilan Johnson Lewis PA, Minneapolis, Minnesota (for respondents Coloplast A/S, et al.)

Stephen J. Foley, Benjamin R. Skjold, Joanna M. Salmen, Foley & Mansfield, PLLP, Minneapolis, Minnesota; and

Robert G. Gilbreath (pro hac vice), Hawkins Parnell Thackston & Young LLP, Dallas, Texas (for appellants)

Considered and decided by Cleary, Presiding Judge; Kalitowski, Judge; and Hooten, Judge.

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

CLEARY, Judge

Appellants challenge the district court order denying their motion to dismiss for lack of personal jurisdiction. Appellants argue that they did not engage in continuous and systematic contacts with Minnesota sufficient to justify general jurisdiction; that the cause of action does not arise out of their contacts with Minnesota; and that Minnesota does not have an interest in supplying a forum for respondents' dispute with them. Appellants also argue that the district court erred by determining sua sponte that a Minnesota statute of limitations should apply to the dispute. We affirm.

FACTS

Appellant Spell Pless Saura, PC (Spell Pless), formerly known as Welch Spell, PC, is a law firm located in Georgia. Spell Pless provided legal services for respondents from the 1990s until 2008.[1] Respondent Coloplast A/S is a company that is incorporated under the laws of Denmark, and its headquarters are located there. Respondent Coloplast Corporation (Coloplast) is a wholly-owned subsidiary of Coloplast A/S. Coloplast is incorporated under the laws of Delaware, and its headquarters are located in Minneapolis. Until 2006, Coloplast's headquarters were located in Georgia. Appellant James Tramonte is an attorney who used to work for Spell Pless and provided legal services for

[1] The parties dispute when Spell Pless stopped providing legal services to respondents. We accept as true respondents' statement from the complaint that appellants provided legal services until 2008. *See Hardrives, Inc. v. City of LaCrosse, Wis.*, 307 Minn. 290, 293, 240 N.W.2d 814, 816 (1976) ("At the pretrial stage . . . the plaintiff need only make a prima facie showing of sufficient Minnesota-related activities through the complaint and supporting evidence, which will be taken as true.").

respondents. Appellant Lawrence Pless is an attorney who currently works for Spell Pless and also provided legal services for respondents. Both Tramonte and Pless reside in Georgia. Lindquist & Vennum, PLLP, and April Hamlin are named defendants in this cause of action, but did not challenge jurisdiction and are not involved in this appeal.

Respondents develop and sell medical devices and products. In 2005, Coloplast A/S informed Spell Pless that it intended to acquire certain assets of Mentor Corporation (Mentor), a Minnesota corporation, including the stock of various Mentor entities, Mentor's corporate headquarters in California, Mentor's sales locations in Europe and Asia, and research, development, and production facilities in Europe, Oklahoma, and Minnesota. Spell Pless represented Coloplast A/S during the acquisition process by completing due diligence, reporting to Coloplast A/S's executives in Denmark, negotiating the terms of the acquisition, and drafting relevant documents. Spell Pless represented Coloplast A/S from its offices in Georgia, and attorneys of Spell Pless traveled to California, New York, and London during the negotiations. The acquisition was successfully completed in 2006.

One specific asset that Coloplast A/S acquired from Mentor was a penile-implant product line. Beginning in the 1980s, the research and development for this product line was financed by a group of investors with whom Mentor had formed a limited partnership. The partnership was called the Mentor Development Limited Partnership (MDLP), and Mentor served as the general partner. The limited partners received periodic royalty payments, and Mentor had the right to terminate the partnership subject to specific termination payments.

After Coloplast A/S successfully acquired Mentor's assets, Spell Pless advised Coloplast A/S regarding the MDLP. Coloplast was substituted as the general partner of the MDLP. Spell Pless drafted the document that substituted Coloplast as the general partner, the General Partner Transfer and Substitution Agreement (GPTSA), which was executed in August 2006. Spell Pless also drafted administrative guidelines for the MDLP. At different times, Tramonte and Pless each served as the Director of Partner Relations for the MDLP, overseeing the administration of the partnership on behalf of Coloplast. In that role, Tramonte and Pless regularly communicated with limited partners regarding partnership business. In 2006, the name of the MDLP was changed to Coloplast Development Limited Partnership ("CDLP"). The MDLP and the CDLP were both formed under the laws of Minnesota. Appellants filed the partnership paperwork with the Minnesota Secretary of State to change the partnership name to CDLP and to change the general partner from Mentor to Coloplast.

From 2006 until the fall of 2008, Spell Pless continued to represent respondents, advising them regarding the administration of the CDLP and the role of Coloplast as the general partner of the CDLP. During this time, Spell Pless also counseled respondents in their capacities as operating companies. In October 2006, Coloplast began to move its headquarters from Georgia to Minnesota. As part of the move, Coloplast also transitioned its legal representation from Spell Pless to an in-house Minnesota legal team.

During the transition, appellants frequently worked with the Minnesota legal team, communicating with the Minnesota office by telephone, mail, and email.[2]

In August 2008, Coloplast retained Lindquist & Vennum to represent it regarding the CDLP. In October 2009, Coloplast informed the limited partners of the CDLP that the partnership would be terminated at the end of 2009. Coloplast told the limited partners that the termination sum, as determined by the partnership agreement, would be a cash payout equal to the amount that each limited partner had originally invested, totaling slightly more than $1 million. The cash payout was significantly less than the alternate termination sum, a payout of stock shares, also offered under the partnership agreement. Many of the limited partners objected to the offered cash payout and instituted an arbitration proceeding in 2010. In December 2011, the arbitrators awarded the limited partners more than $12 million.

The present action arises from the legal representation provided by Spell Pless, Tramonte, and Pless regarding the acquisition of Mentor's assets and management of the CDLP. Respondents allege breach of contract and negligence by appellants, specifically claiming that appellants are liable for

> failing, amongst other things, to follow [respondents'] directions to avoid the assumption of liability for [Mentor's] pre-acquisition conduct in regards to the MDLP/CDLP; by drafting and/or negotiating the GPSTA which created liability for [respondents] for Mentor's pre-acquisition breaches; by

[2] Appellants highlight the fact that the complaint specifically states that Tramonte represented respondents in 2006. The evidence demonstrates that Tramonte was performing work for respondents as late as 2009. Because the complaint does not state that Tramonte performed legal work for respondents *only* in 2006, we accept as true the evidence that Tramonte was performing work for appellants through 2009.

> advising [respondents] to execute the GPSTA without properly advising [respondents] of the import of the terms of the GPSTA; and by failing to advise [respondents] of the obligations of the general partner to the limited partners of the MDLP/CDLP.

Appellants filed a motion to dismiss for lack of personal jurisdiction. The district court denied the motion, holding that respondents had made a prima facie case that the requirements for personal jurisdiction were satisfied. This interlocutory appeal follows.

D E C I S I O N

Whether personal jurisdiction exists is a question of law that is reviewed de novo. *Juelich v. Yamazaki Mazak Optonics Corp.*, 682 N.W.2d 565, 569 (Minn. 2004). Minnesota's long-arm statute, Minn. Stat. § 543.19 (2012), sets forth when Minnesota courts may take jurisdiction over nonresident defendants, stating:

> Subdivision 1. . . . [A] court of this state with jurisdiction of the subject matter may exercise personal jurisdiction over any foreign corporation or any nonresident individual, . . . 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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> (2) transacts any business within the state; or
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> . . . .
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> (4) commits any act outside Minnesota causing injury or property damage in Minnesota, subject to the following exceptions when no jurisdiction shall be found:
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> (i) Minnesota has no substantial interest in providing a forum; or
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> (ii) the burden placed on the defendant by being brought under the state's jurisdiction would violate fairness and substantial justice.
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> . . . .

> Subd. 3. Only causes of action arising from acts enumerated in subdivision 1 may be asserted against a defendant in an action in which jurisdiction over the defendant is based upon this section.

Minnesota courts have "repeatedly held that the legislature designed the long-arm statute to extend the personal jurisdiction of Minnesota courts as far as the Due Process Clause of the federal constitution allows." *Valspar Corp. v. Lukken Color Corp.*, 495 N.W.2d 408, 410 (Minn. 1992).

"To satisfy the Due Process Clause, a plaintiff must show that a defendant has 'minimum contacts' with a forum state such that maintaining jurisdiction there does not offend 'traditional notions of fair play and substantial justice.'" *Lorix v. Crompton Corp.*, 680 N.W.2d 574, 577 (Minn. App. 2004) (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S. Ct. 154, 158 (1945)), *review denied* (Minn. Sept. 21, 2004). "The nonresident must be able to reasonably anticipate being haled into the state's court." *Dent-Air, Inc. v. Beech Mountain Air Serv., Inc.*, 332 N.W.2d 904, 907 (Minn. 1983) (citing *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297, 100 S. Ct. 559, 567 (1980)).

"Minnesota uses a five-factor test . . . to determine if minimum contacts exist." *Nat'l City Bank of Minneapolis v. Ceresota Mill Ltd. P'ship*, 488 N.W.2d 248, 252 (Minn. 1992). The factors to be considered are: "(1) the quantity of the contacts with the forum state; (2) the nature and quality of the contacts; (3) the source and connection of the cause of action with the contacts; (4) the interest of the state in providing a forum; and (5) the convenience of the parties." *Id.* at 252–53. "The first three factors determine

whether minimum contacts exist and the last two factors determine whether the exercise of jurisdiction is reasonable according to traditional notions of fair play and substantial justice." *Juelich*, 682 N.W.2d at 570.

There is a distinction between general and specific jurisdiction. *See Valspar*, 495 N.W.2d at 411. "In a general jurisdiction case, a defendant conducts so much business within a state that it becomes subject to the jurisdiction of that state's courts for any purpose." *Id.* "Specific jurisdiction exists when the cause of action arises out of or is related to the defendant's contacts with the forum." *Lorix*, 680 N.W.2d at 578.

"When jurisdiction is challenged, the plaintiff bears the burden of proving that sufficient contacts exist with the forum state to support personal jurisdiction." *Id.* at 577 (quotation omitted). "At the pretrial stage, however, the plaintiff need only make a prima facie showing of sufficient Minnesota-related activities through the complaint and supporting evidence, which will be taken as true." *Hardrives*, 307 Minn. at 293, 240 N.W.2d at 816. "[I]n doubtful cases, doubts should be resolved in favor of retention of jurisdiction." *Id.* at 296, 240 N.W.2d at 818.

General Jurisdiction

Appellants first argue that general jurisdiction does not exist because the business contacts that they had with Minnesota were negligible. Respondents argue that appellants had continuous and systematic contacts with Minnesota sufficient to confer general jurisdiction because they continued to represent respondents for two years after Coloplast's headquarters moved to Minnesota.

General jurisdiction exists when a defendant has continuous and systematic contacts with the forum state that "are so substantial and are of such a nature that the state may assert jurisdiction over the defendant even for causes of action unrelated" to those contacts. *Lorix*, 680 N.W.2d at 578, 581.

Appellants did not conduct systematic business in Minnesota; they were only involved with the state because of their relationship with respondents regarding the Mentor acquisition and the CDLP. It is undisputed that appellants did not have an office in Minnesota, were not licensed in Minnesota, did not solicit any business in Minnesota, and never visited Minnesota. General jurisdiction does not exist here.

Specific Jurisdiction

Quantity of the Contacts with Minnesota

Appellants represented respondents regarding the Mentor acquisition and the CDLP from 2006–2008. In 2006, they drafted the acquisition documents and the GPTSA. Spell Pless filed the partnership paperwork with the Minnesota Secretary of State. Tramonte and Pless represented the CDLP and communicated with limited partners on behalf of the partnership, an entity formed under Minnesota law. After Coloplast began to move its headquarters from Georgia to Minnesota in October 2006, appellants continued to provide legal representation and frequently communicated with the Minnesota office by telephone, mail, and email. This quantity of contacts supports the exercise of jurisdiction.

Nature and Quality of the Contacts

Appellants' contacts were in the nature of providing legal advice regarding the rights and obligations of respondents with respect to the acquisition of Mentor's assets and the facilitation of the CDLP. "It is vital that the defendant's conduct and connection with the forum [s]tate are such that [the defendant] should reasonably anticipate being haled into court there." *Nat'l City Bank*, 488 N.W.2d at 253 (quotations omitted) (emphasis omitted). "The test is whether the defendant had 'fair warning' of being sued in the forum state." *Real Props., Inc. v. Mission Ins. Co.*, 427 N.W.2d 665, 668 (Minn. 1988) (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472, 105 S. Ct. 2174, 2182 (1985)). "[A] defendant is deemed to have 'fair warning' if it has 'purposefully directed' its activities at residents of the forum." *Real Props., Inc.*, 427 N.W.2d at 668 (citing *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 774, 104 S. Ct. 1473, 1478 (1984)).

Appellants argue that specific jurisdiction does not exist because the cause of action does not arise out of their contacts with Minnesota. They also argue that gaining a pecuniary benefit from contacts with the state is not enough to confer jurisdiction, nor is the mere existence of an attorney-client relationship. Finally, they contend that phone and mail contacts alone are not sufficient to confer jurisdiction.

The existence of an attorney-client relationship and a few phone and mail contacts are not the sole basis for conferring jurisdiction here. Appellants were representing respondents, administering their Minnesota-formed partnership, and giving them legal

advice about the partnership. They communicated with the Minnesota headquarters regarding this representation for almost two years.

It is clear that appellants purposefully directed their activities toward a Minnesota resident. They willingly represented respondents regarding their acquisition of Mentor's assets and their facilitation of the CDLP. They contacted Coloplast's Minnesota headquarters to render legal services regarding the CDLP, a partnership governed by the laws of Minnesota. They also contacted the Minnesota Secretary of State to file partnership paperwork. The nature and quality of appellant's contacts support the exercise of jurisdiction.

Source and Connection of the Cause of Action with the Contacts

The source of the cause of action here is the legal advice that appellants gave respondents regarding their acquisition of Mentor's assets, the substitution of Coloplast as the general partner of the CDLP, and the obligations of Coloplast to the limited partners of the CDLP. Appellants argue that the only acts that they committed that are related to the cause of action were the drafting of the acquisition documents and the GPTSA. Appellants contend that, because these events took place in Georgia in 2005–2006, there were not sufficient Minnesota contacts to confer jurisdiction at that time. *See Steel v. United States*, 813 F.2d 1545, 1549 (9th Cir. 1987) (stating that "the fair warning that due process requires arises not at the time of the suit, but when the events that gave rise to the suit occurred").

The complaint alleges that appellants failed to "advise [respondents] of the obligations of the general partner to the limited partners of the MDLP/CDLP." Accordingly, appellants' legal advice to respondents regarding the CDLP between 2006 and 2008 relates to this cause of action. Because appellants' contacts with the forum, through their communication with the Minnesota headquarters and filings with the Minnesota Secretary of State, arise from or relate to the cause of action, this factor also weighs in favor of the exercise of jurisdiction.

Minnesota's Interest in Providing a Forum

Minnesota has an interest in providing a forum for residents who have been wronged. *Dent-Air*, 332 N.W.2d at 908. Coloplast's headquarters are located in Minnesota, and Minnesota has an interest in providing a forum to address its alleged injuries. This interest supports the exercise of jurisdiction.

Convenience of the Parties

"In analyzing this factor, we balance the interests of the plaintiff in trying the case in a particular forum against the inconvenience to the nonresident defendant for having to defend in the plaintiff's forum." *Schuler v. Meschke*, 435 N.W.2d 156, 161 (Minn. App. 1989), *review denied* (Minn. Apr. 19, 1989). "[J]urisdiction should be exercised unless, despite the contacts, the court finds that Minnesota jurisdiction is improper on forum-non-conveniens grounds." *Hardrives*, 307 Minn. at 299–300, 240 N.W.2d at 819.

"The doctrine of forum non conveniens allows a district court with jurisdiction over the subject matter and the parties discretion to decline jurisdiction over a cause of action when another forum would be more convenient for the parties, the witnesses, and

the court." *Paulownia Plantations de Panama Corp. v. Rajamannan*, 793 N.W.2d 128, 133 (Minn. 2009).

Appellants are located in Georgia, and Coloplast's headquarters are located in Minnesota. At least one of the parties and some witnesses will have to travel whether this action is heard in Minnesota or Georgia. The inconvenience to appellants for having to defend this lawsuit in Minnesota does not outweigh the interests of respondents in trying the lawsuit here. *See Hardrives*, 307 Minn. at 299, 240 N.W.2d at 819 ("[T]he convenience issue cannot be dispositive since plaintiff does have some right to choose [the] forum and there is no serious inconvenience either way."). Nor is jurisdiction improper on forum-non-conveniens grounds. Because minimum contacts exist and the exercise of jurisdiction does not offend traditional notions of fair play and substantial justice, jurisdiction is proper in this situation.

In its order, the district court explained that the doctrine of forum non conveniens allows a court to dismiss an action based on the "convenience of the parties but only if an alternate forum is adequate and available." The court then concluded that Georgia is not an adequate and available forum because the statute of limitations may preclude any remedy. Appellants misinterpreted the court's analysis, which related to the fifth factor for determining whether specific jurisdiction exists, as a conclusion regarding choice-of-law principles. Because the district court did not make any determinations regarding choice of law, and that issue is not relevant to the narrow jurisdictional question before this court, we do not address the parties' arguments about whether this lawsuit should be governed by the laws of Georgia or Minnesota.

Affirmed.