STATE OF MINNESOTA
IN COURT OF APPEALS
A08-2137

Terry Drake, et al.,
Appellants,

vs.

Ryan Norman Brady, et al.,
Respondents.

Filed September 15, 2009
Affirmed in part, reversed in part, and remanded
Ross, Judge

Otter Tail County District Court
File No. 56-CV-08-1830

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Considered and decided by Larkin, Presiding Judge; Ross, Judge; and Schellhas, Judge.

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

ROSS, Judge

This appeal arises from a dispute between two Minnesota couples and a Canadian tour company. The couples truncated their Canadian fishing excursion and allegedly refused to pay. The Canadian tour company attempted to collect payment by obtaining a

default judgment in an Ontario small-claims court and filing the judgment in two Minnesota district courts. We must decide whether Minnesota courts have personal jurisdiction over the tour company, whether the Minnesota couples are entitled to declaratory relief from a Canadian judgment registered against them in Minnesota, and whether the couple's suit against the tour company can proceed. Because the exercise of jurisdiction over the Canadian company does not offend traditional notions of fair play and substantial justice, we reverse the district court's conclusion that it lacked personal jurisdiction. Because the Minnesota couples failed to carry their burden to obtain declaratory relief, we affirm the district court's dismissal of the declaratory judgment claim. And we remand for the district court to consider whether res judicata bars the Minnesota couples' fraud and deceptive-trade-practices claims.

FACTS

Ontario, Inc., a Canadian corporation operated as Northern Outposts by Ryan and Kathryn Brady,[1] arranges fly-in fishing trips to Ontario, Canada. Terry and Susan Drake of Fergus Falls and Harlan and Elizabeth Strong of Maple Plain arranged for Northern Outposts to fly the Strongs, the Drakes, and the Drakes' two children to a remote location in Northern Ontario to fish for five days. After the Drakes represented that Susan Drake had become ill, the two couples made arrangements with Northern Outposts to end the excursion ahead of schedule and to take an unscheduled flight back home.

[1] Because no party disputes that all respondents should be treated identically, we will refer to them collectively as Northern Outposts.

But after the Drakes and Strongs returned home, the Drakes stopped payment on the check they issued to pay for the trip, asserting that they were dissatisfied. Northern Outposts sued for damages and obtained a default judgment against the Drakes and Strongs in an Ontario small-claims court. Northern Outposts then filed the Canadian judgment against the nonpaying Minnesota couples in two Minnesota counties. The Drakes and Strongs sued in the district court, complaining that Northern Outposts and its operators engaged in consumer fraud and deceptive trade practices, and they sought a declaratory judgment asserting that the Canadian judgment against them could not be recognized in Minnesota under this state's Uniform Foreign Country Money–Judgments Recognition Act.

Northern Outposts moved the district court to dismiss. The district court granted the motion after concluding that it lacked personal jurisdiction over the defendants and that the Canadian judgment was entitled to recognition in Minnesota. The Drakes and Strongs appeal.

D E C I S I O N

I

The Drakes and Strongs argue that the district court erred when it concluded that it lacked personal jurisdiction over Northern Outposts. Whether the district court has personal jurisdiction over a defendant is a question of law subject to de novo review. *Marshall v. Inn on Madeline Island*, 610 N.W.2d 670, 673 (Minn. App. 2000). When personal jurisdiction is challenged, a plaintiff has the burden to establish that the defendant's contacts with Minnesota were sufficient to establish jurisdiction. *Juelich v.*

Yamazaki Mazak Optonics Corp., 682 N.W.2d 565, 569–70 (Minn. 2004). Facts alleged that support the existence of personal jurisdiction are taken as true and viewed in the light most favorable to the plaintiff. *Nw. Airlines, Inc. v. Friday*, 617 N.W.2d 590, 592 (Minn. App. 2000).

Waiver

The Drakes and Strongs first present an argument raised in but not addressed by the district court. They argue that Northern Outposts waived its objection to the court's exercise of personal jurisdiction by registering the judgment against them in Hennepin County after the suit commenced.

The waiver argument is not persuasive. "Generally, a defendant submits to the court's jurisdiction only by taking some affirmative step invoking the power of the court or implicitly recognizing its jurisdiction." *Juelich v. Yamazaki Mazak Optonics Corp.*, 670 N.W.2d 11, 16 (Minn. App. 2003), *aff'd*, 682 N.W.2d 565 (Minn. 2004). A party challenging personal jurisdiction does so as a defense. Minn. R. Civ. P. 12.02. That defense may be waived by submitting to the court's jurisdiction even if the defense is properly asserted in an answer or responsive pleading. *Juelich*, 670 N.W.2d at 16. But whether a party's action constitutes waiver of the defense only concerns actions taken in relation to a pending proceeding. *See Peterson v. Eishen*, 512 N.W.2d 338, 340 (Minn. 1994) (explaining that a person who "takes or consents to any step *in a proceeding* which assumes that jurisdiction exists or continues" accepts the court's jurisdiction) (emphasis added) (superseded by rule on other grounds, Minn. R. Juv. Prot. P. 46.02, as recognized in *In re Welfare of Children of S.C.*, 656 N.W.2d 580, 583-84 (Minn. App. 2003));

Juelich, 670 N.W.2d at 16 (citing *Peterson*, and listing actions *pertinent to a particular proceeding* that do not constitute waiver). The action that the Drakes and Strongs suggest constitutes waiver of the personal-jurisdiction defense is Northern Outposts's docketing of a foreign judgment in Hennepin County District Court. That docketing was not a step in this proceeding, nor does the act assume that jurisdiction over Northern Outposts exists or continues. That Northern Outposts docketed a judgment in Minnesota does not establish that it has waived its defense in this proceeding. The Drakes and Strongs have not established that Northern Outposts has waived its personal-jurisdiction defense.

Personal Jurisdiction

The district court concluded that it lacked both general and specific personal jurisdiction over Northern Outposts. The Drakes and Strongs argue explicitly that the court has general jurisdiction and implicitly that it has specific jurisdiction. We consider whether general or specific personal jurisdiction exists.

Minnesota courts may exercise personal jurisdiction if the state long-arm statute and federal due process requirements are satisfied. *TRWL Fin. Establishment v. Select Intern., Inc.*, 527 N.W.2d 573, 575–76 (Minn. App. 1995). Minnesota's long-arm statute and the federal Due Process Clause are co-extensive, meaning that if the requirements of the federal constitution for personal jurisdiction are met, the requirements of Minnesota's personal-jurisdiction statute are also satisfied. *Marshall*, 610 N.W.2d at 673. Minnesota courts may therefore simply apply federal law to ascertain whether personal jurisdiction exists. *Id.*

For personal jurisdiction over a defendant to exist, the defendant's contact with the state must be sufficient to ensure that the exercise of jurisdiction "does not offend traditional notions of fair play and substantial justice." *Id.* at 674 (quotation omitted). According to this "minimum contacts" analysis, the defendant must have "purposefully avail[ed] itself of the privilege of conducting activities within" the state. *Id.* (quoting *Hanson v. Denckla*, 357 U.S. 235, 253, 78 S. Ct. 1228, 1240 (1958)). Due process also requires that a defendant be able to "reasonably anticipate" the exercise of personal jurisdiction. *Id.*

General personal jurisdiction exists when a party's contacts with the forum state are "continuous and systematic." *Domtar, Inc. v. Niagara Fire Ins. Co.*, 533 N.W.2d 25, 30 (Minn. 1995) (quotation omitted). By contrast, "[s]pecific jurisdiction can arise from a single contact with the forum if the cause of action arose out of that contact." *Marshall*, 610 N.W.2d at 674. Minnesota courts consider five factors to determine the existence of personal jurisdiction: "(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 these contacts, (4) The interest of the state in providing a forum, (5) The convenience of the parties." *Id.* The first three factors are given greater weight than the final two. *Id.*

The Quantity of Contacts

There is no significant dispute concerning the quantity of Northern Outposts's contacts with Minnesota. The district court concluded that Northern Outposts's appearance at the 2007 Minneapolis Sports Show gave rise to the cause of action, and the

respondents do not dispute this conclusion on appeal. The Drakes and Strongs assert that Northern Outposts "regularly attended the Minneapolis Sports Show." This allegation is taken as true, and it supports the exercise of personal jurisdiction. *See Friday*, 617 N.W.2d at 592. The district court correctly concluded that this factor supports the exercise of personal jurisdiction.

The Nature and Quality of Contacts

The nature and quality of contacts also favors the exercise of personal jurisdiction over Northern Outposts. This factor concerns whether the defendant "purposefully availed itself of the benefits and protection of Minnesota Law" such that the defendant had "fair warning" it might be subject to a lawsuit in Minnesota. *TRWL*, 527 N.W.2d at 576 (quotation omitted). A defendant has fair warning if it engages in activities that are "purposefully directed" at Minnesota residents. *Id.* (quotation omitted). Actively seeking out business in the state is generally considered purposeful availment. *Kreisler Mfg. Corp. v. Homstad Goldsmith, Inc.*, 322 N.W.2d 567, 572 (Minn. 1982). The relevant difference is whether the defendant initiated or was "drawn into contact" with the forum. *Id.*

The district court identified the Drakes and Strongs as the aggressors in the transaction. It concluded that because they approached Northern Outposts at the Minneapolis Sports Show and later initiated contact by telephone to arrange the excursion, there was no purposeful availment and that this factor weighed against the exercise of personal jurisdiction. It reasoned that Northern Outposts's contact with Minnesota was "casual in nature." The district court concluded that Northern Outposts's

annual presence at the sports show was insufficient to subject the defendants to the court's jurisdiction. We reach a different conclusion.

The nature of Northern Outposts's annual presence in Minnesota supports the exercise of personal jurisdiction. The district court concluded that the Drakes and Strongs "initiated" the transaction, but their contact to arrange the excursion occurred only after they met with Northern Outposts at a Minnesota trade show. The facts, as alleged by the couples and construed in their favor, establish that Northern Outposts actively solicits the business of Minnesota residents by attending the sports show annually.[2] Northern Outposts was not "drawn in" to Minnesota by telephone contact with Harlan Strong; Harlan Strong was drawn in to do business with Northern Outposts after the company solicited his business in person in Minnesota.

This is not a case in which the unilateral activity of a plaintiff instigated the relationship between the parties. *See id*. at 572 (distinguishing initiating and being drawn into contact with the forum). This is a case in which the defendants' active solicitation in Minnesota is sufficient to support the exercise of personal jurisdiction over them. *See BLC Ins. Co. v. Westin, Inc.*, 359 N.W.2d 752, 755 (Minn. App. 1985), *review denied* (Minn. Apr. 15, 1985); *see also Hanson*, 357 U.S. at 251, 78 S. Ct. at 1238 (concluding insufficient contacts existed in the absence of "solicitation of business in that State either in person or by mail").

[2] Northern Outposts denies attending the sports show in 2008 "as scheduled," because they did not want to encounter the Drakes or Strongs there.

The Remaining Personal Jurisdiction Factors

The district court concluded that the source and connection of the cause of action arose out of Northern Outposts's contacts with the state, supporting the exercise of specific personal jurisdiction. Northern Outposts does not dispute that conclusion. The conclusion appears to be justified based on the discussion of the two factors above. Northern Outposts also presents no argument contradicting the district court's determination that Minnesota has an interest in providing a litigation forum for the Drakes and Strongs. And the district court concluded that the convenience of the parties is a neutral factor, as either party's home forum would be inconvenient for the other.

Under the relevant factors, the district court erred when it decided it could not exercise personal jurisdiction over Northern Outposts. Four of the five factors, including all three of the weightier factors, argue in favor of the exercise of personal jurisdiction. Traditional notions of fair play and substantial justice would not be offended by the exercise of personal jurisdiction over the defendants.

II

The Drakes and Strongs sought a declaratory judgment establishing that the Canadian judgment is not entitled to recognition by Minnesota courts in light of Minnesota's Uniform Foreign Country Money–Judgments Recognition Act. The act provides that foreign judgments are not recognized when the foreign country did not have personal jurisdiction over the defendant, or "in the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action." Minn. Stat. § 548.35, subd. 4(a)(2), (b)(6) (2008). In a declaratory-judgment

action, the burden of proof is on the plaintiff to establish that a declaratory judgment is warranted. *Ketterer v. Indep. Sch. Dist. No. 1*, 248 Minn. 212, 227–29, 79 N.W.2d 428, 439–40 (1956) (affirming a district court's dismissal of declaratory-judgment action where plaintiff "failed to sustain the required burden of proof").

The district court properly dismissed the declaratory-judgment claim because the Drakes and Strongs failed completely to provide the district court with the legal basis necessary to prevail. They argued that the Canadian court did not properly exercise jurisdiction over them and that Canada was a seriously inconvenient forum. But they provided no argument or citation to controlling authority, either to the district court or to this court, discussing Canada's substantive law of personal jurisdiction or explaining how the Canadian small-claims court misapplied that law. They acknowledge in their brief that Minnesota courts "apply the law of the foreign state as construed by the courts of that state" to decide whether the foreign court had personal jurisdiction. *S.V. Mgmt. Co. v. Ellis*, 472 N.W.2d 674, 676 (Minn. App. 1991), *review denied* (Minn. Sept. 13, 1991). But that is as close as they come to the issue. The Drakes and Strongs gave the district court no basis to analyze whether, let alone to conclude that, they are entitled to a declaration that the Canadian judgment cannot be recognized on the basis that the Canadian court lacked personal jurisdiction over them.

The Drakes and Strongs also contend that Canada was a seriously inconvenient forum. But serious inconvenience is relevant only if jurisdiction rests "only on personal service." *See* Minn. Stat. § 548.35, subd. 4(b)(6) (stating that a district court may decline to recognize a judgment premised on personal service if obtained in a seriously

inconvenient forum). Because the Drakes and Strongs did not describe the basis of the Canadian court's exercise of personal jurisdiction, whether erroneous or not, it is impossible to determine whether this ground for nonrecognition applies. We therefore affirm the district court's dismissal of the declaratory-judgment claim.

III

Northern Outposts argues that res judicata bars the Drakes' and Strongs' claims. They contend that the default judgment bars all claims "arising from the original circumstances," including the claims of fraud and deceptive trade practices. The district court did not reach this issue because it disposed of the suit on personal-jurisdiction grounds. We generally do not consider issues raised in but not decided by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). Because we reverse the district court's personal-jurisdiction determination, we remand without considering the res judicata defense to allow the district court to address it in the course of resolving the remaining claims.

We observe that it appears the district court went beyond the parties' arguments and analysis when it held that the Canadian small claims court had personal jurisdiction over the Drakes and Strongs. Neither party has adequately explained the legal basis for the reach of Canadian personal jurisdiction sufficient to justify a decision that the Canadian court did or did not properly exercise jurisdiction. The district court's conclusion similarly identifies and discusses no Canadian jurisdictional authority. To successfully assert the affirmative defense of res judicata, Northern Outposts has the burden on remand to establish that the Drakes and Strongs had a full and fair opportunity

to litigate their claims. *See MacRae v. Group Health Plan, Inc.*, 753 N.W.2d 711, 716 (Minn. 2008) (stating that a party asserting an affirmative defense has the burden of proving the defense's elements); *Brown-Wilbert, Inc. v. Copeland Buhl & Co.*, 732 N.W.2d 209, 220 (Minn. 2007) (describing the application of res judicata); *Sautter v. Interstate Power Co.*, 567 N.W.2d 755, 757 (Minn. App. 1997) (identifying res judicata as an affirmative defense). On remand, the district court is encouraged to entertain additional briefing on the relevant Canadian law so the parties can properly frame the issue and the district court can decide whether the Drakes' and Strongs' claims are barred under res judicata by the Canadian judgment.

Affirmed in part, reversed in part, and remanded.