Third District Court of Appeal

State of Florida, July Term, A.D. 2013

Opinion filed December 4, 2013.
Not final until disposition of timely filed motion for rehearing.

No. 3D12-3045
Lower Tribunal No. 11-16507

Chris Taylor, M.D.,
Appellant,

vs.

Hilda Patricia Gutierrez,
Appellee.

An Appeal from a non-final order from the Circuit Court for Miami-Dade County, Diane V. Ward, Judge.

Foreman Friedman and Darren W. Friedman, for appellant.

Nicolas G. Sakellis, Tonya J. Meister and Michael F. Guilford, for appellee.

Before SHEPHERD, C.J., and WELLS and SALTER, JJ.

WELLS, Judge.

Chris Taylor, M.D., the defendant below, appeals from a non-final order denying his motion to dismiss for lack of personal jurisdiction. B ecause the trial court erred in determining that Dr. Taylor's contacts with the State of Florida were sufficient to confer general jurisdiction over him under Florida's long arm statute, section 48.193(2) of the Florida Statutes (2011), and because federal due process considerations were not met, we reverse.

On May 29, 2010, Hilda Patricia Gutierrez and her husband embarked on a seven night cruise aboard Royal Caribbean Cruise Line's Oasis of the Seas. A couple of days into the cruise, Gutierrez visited the ship's medical facility as it was approaching Labadee, Haiti, complaining of severe abdominal pain. She was seen by a ship's nurse and Dr. Taylor, a shipboard physician. Dr. Taylor diagnosed and treated her for gastritis. Her condition worsened and, upon reaching port in Mexico, Gutierrez disembarked the ship and went to a Mexican hospital where she underwent abdominal surgery. There, she was allegedly treated for abdominal sepsis and multiple organ failures. She thereafter suffered a cerebral hemorrhage.

On May 27, 2011, Gutierrez filed the underlying negligence action against Dr. Taylor and Royal Caribbean Cruises, Ltd. in the Miami-Dade Circuit Court. With respect to personal jurisdiction, the complaint alleged, in relevant part, that the circuit court had general jurisdiction over Dr. Taylor—a British citizen who does not live in Florida, does not own real property in Florida and who is not

licensed to practice in Florida—because of his "substantial and not isolated activity within the State of Florida," as evidenced by his contacts with the State in connection with his career position as a shipboard physician for Florida-based cruise lines. No allegations were made in the Amended Complaint regarding any medical treatment performed by Dr. Taylor with respect to Gutierrez either in the State of Florida or within Florida territorial waters.

Dr. Taylor moved to quash service of process, to dismiss for lack of personal jurisdiction and to dismiss for failure to state a cause of action. He also participated in jurisdictional discovery—i.e., responding to jurisdictional interrogatories and attending a deposition via Skype. The matter then came before the lower court for hearing on October 9, 2012. Therein, the parties agreed that the court should defer ruling on the motion to quash service and focus solely on the two motions to dismiss.

On October 16, 2012, the court below entered the order on appeal. Therein, the court denied the motion to dismiss for failure to state a cause of action. That ruling is not the subject of this appeal. The court also denied the motion to dismiss for lack of personal jurisdiction, finding that while specific jurisdiction did not exist over Dr. Taylor under Florida's long arm statute, see section 48.193(1)[1], it

[1] Gutierrez does not appeal the trial court's determination that specific jurisdiction does not lie in this case. Even if she did, we would affirm this finding as the record demonstrates that Dr. Taylor did not provide any medical services to her in

nevertheless had general jurisdiction over him under the following provision of the statute:

> A defendant who is engaged in substantial and not isolated activity within this state, whether such activity is wholly interstate, intrastate, or otherwise, is subject to the jurisdiction of the courts of this state, whether or not the claim arises from that activity.

§ 48.193(2), Fla. Stat. (2011).

The court based its finding of general jurisdiction on the following contacts between Dr. Taylor and the State of Florida, all of which relate to his nine-year career as a shipboard doctor: entering into employment agreements in Florida with Florida-based cruise lines (Carnival Cruise Lines and Royal Caribbean Cruise Lines); attending annual medical conferences in Florida and from time to time making presentations at same; receiving advanced cardiac life support recertification in Florida; vacationing from time to time in Florida; having two bank accounts in Florida; and working aboard a cruise ship that embarked/disembarked at a Florida port one day a week. In addition, because for all intents and purposes Dr. Taylor worked and resided exclusively on a cruise ship, the trial court felt compelled to relax both the stringent jurisdictional standard required under Florida's long arm statute and the constitutional analysis set forth in

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Florida or within Florida territorial waters. See Small v. Chicola, 929 So. 2d 1122, 1124 (Fla. 3d DCA 2006) (finding the trial court did not have specific jurisdiction over a shipboard doctor where the record demonstrated the plaintiff was not treated in Florida territorial waters).

the well-established case law in order to redress what it clearly deemed a nefarious scheme by Dr. Taylor to avoid being sued not only in a Florida court, but in ***any*** court:

> This court is cognizant of the technology now available to people all over the world that enables them to conduct their life's business without being "tethered" to a particular locale. For that reason, the court cannot simply rely on the standard "brick and mortar" factors in determining whether an individual has sufficient contacts in Florida to establish jurisdiction (e.g., physical location of office, home, etc.). In an age where people across the globe have access to fax machines, emails, cell phones, Skype and other advances, almost anyone could run a business from an igloo or a grass hut as long as they have satellite capabilities. For that reason, the courts should have a broader view of what constitutes a "connection" and not allow defendants to live their lives as nothing more than a shell game to thwart jurisdiction.

We review the trial court's denial of the motion to dismiss for lack of personal jurisdiction de novo. See E & H Cruises, Ltd. v. Baker, 88 So. 3d 291, 293 (Fla. 3d DCA 2012).

Setting aside the trial court's opinion that Dr. Taylor has consciously engaged in a "shell game to thwart jurisdiction"—which is far from an established fact on this record—we find that none of the factors relied upon by the trial court, whether viewed individually or collectively, are sufficient to confer general jurisdiction over him. Indeed, contrary to the trial court's expressed desire to employ a relaxed, "broader" view of general jurisdiction, it is well settled that "the requirement of continuous and systematic general business contacts establishes a

'***much higher threshold***' than the 'minimum contacts' required to assert specific jurisdiction." American Overseas Marine Corp. v. Patterson, 632 So. 2d 1124, 1127-28 (Fla. 1st DCA 1994) (emphasis added) (quoting Reliance Steel Products Co. v. Watson, ESS, Marshall & Enggas, 675 F.2d 587, 589 (3d Cir. 1982)); see also Biloki v. Majestic Greeting Card Co., Inc., 33 So. 3d 815, 820 (Fla. 4th DCA 2010) ("General jurisdiction requires far more wide-ranging contacts with the forum state than specific jurisdiction, and it is thus more difficult to establish." (quoting Canel v. Rubin, 20 So. 3d 463, 466 (Fla. 2d DCA 2009))); Elmlund v. Mottershead, 750 So. 2d 736, 737 (Fla. 3d DCA 2000) (recognizing that section 48.193(2) "requires a substantially heightened degree of Florida activity," and finding no general jurisdiction over a shipboard physician who had "incidental, almost entirely personal contacts with this state between voyages"). The "continuous and systematic business contacts" required to confer general jurisdiction must be "'extensive and pervasive, in that a significant portion of the defendant's business operations or revenue [are] derived from established commercial relationships in the state.'" Ciaizzo v. Am. Royal Arts Corp., 73 So. 3d 245, 259 (Fla. 4th DCA 2011) (quoting Trs. of Columbia Univ. in City of N.Y. v. Ocean World, S.A., 12 So. 3d 788, 793 (Fla. 4th DCA 2009)); Patterson, 632 So. 2d at 1127-28. The facts alleged and established here simply fall short of these mandates.

Entering into an employment agreement in Florida, even an agreement that acknowledges Florida as the only place where disputes arising under the agreement may be entertained and which indemnifies the Florida "employer,"[2] does not confer general jurisdiction over an individual. See Bilocki, 33 So. 3d at 821 (denying general jurisdiction where it was alleged, in part, that the defendant had signed several employment agreements in Florida, recognizing that there "needs to be more than a contractual relationship for general jurisdiction to apply"); Barnett v. Carnival Corp., No. 06-22521-CIV, 2007 WL 1526658, at *4 (S.D. Fla. 2007) (finding that the forum selection clause contained in a shipboard doctor's employment agreement did not confer general jurisdiction because the plaintiff was not a signatory to the agreement); Farrell v. Royal Caribbean Cruises, Ltd., No. 11-24399-CV, 2013 WL 178367, at *2 (finding no general jurisdiction where ship's nurse had appointed cruise line "as her exclusive agent in Florida by way of their employment/indemnification agreements").

Attending annual industry conferences in Florida and securing medical certifications issued by the State of Florida during those conferences also does not confer general jurisdiction. See E & H Cruises, Ltd., 88 So. 3d at 294 (attending

[2] Dr. Taylor contracts with Royal Caribbean (and earlier with Carnival Cruise Lines) as an independent contractor. Dr. Taylor, who has been to Royal Caribbean's headquarters only once while waiting to board a ship, does not negotiate these contracts with Royal Caribbean. He either accepts them or does not and receives and signs them while at sea.

annual networking events and conventions in Florida found insufficient to confer general jurisdiction); Farrell, 2013 WL 178367, at *2 (obtaining medical education in Miami insufficient to confer general jurisdiction over shipboard nurse). This is particularly so in this case. As Dr. Taylor without contradiction confirmed, these conferences were conducted in Miami by the Miami-based cruise lines with which he contracted. While Dr. Taylor testified that he could have refused to attend these conferences or to speak at them, "it wouldn't have been looked upon favorably" by the companies which contracted his services. Moreover, the conferences were geared to and attended primarily by cruise ship physicians and nurses, and importantly provided courses necessary to secure essential certifications. Specifically, Dr. Taylor testified that he took courses and training which allowed him to secure at least one of the certifications—the ACLS (advanced cardiac life support) certification—that was required for him to work aboard a cruise ship. As case law confirms, these activities did not confer general jurisdiction over Dr. Taylor.

Of course, vacationing in Florida is insufficient to confer general jurisdiction over a person. See Two Worlds United v. Zylstra, 46 So. 3d 1175, 1178 (Fla. 2d DCA 2010) (holding that coming "to Florida only a few times a year to visit friends and family" was insufficient to satisfy section 48.193(2) and due process requirements); Radcliffe v. Gyves, 902 So. 2d 968, 972 n.4 (Fla. 4th DCA 2005),

disapproved on other grounds, Kitroser v. Hurt, 85 So. 3d 1084, 1089-90 (Fla. 2012) (finding that "sporadic or occasional family vacations" to Florida are "insufficient" to establish general jurisdiction under Florida's long arm statute). Similarly, having a Florida bank account is not enough. See Int'l Textile Grp., Inc. v. Interamericana Apparel Co., No. 08-22859-CIV, 2009 WL 4899404, at *2 (S.D. Fla. 2009); E & H Cruises, Ltd., 88 So. 3d at 294; La Reunion Française v. La Costeña, 818 So. 2d 657, 659 (Fla. 3d DCA 2002). The testimony regarding Dr. Taylor's two accounts at Bank of America was that in 2006, Bank of America representatives came on board the Carnival cruise ship on which Dr. Taylor was then working to encourage cruise line employees to open accounts. Although Dr. Taylor was always paid in cash while at sea and deposited his salary in a bank account on the Isle of Jersey, Bank of America made opening a new account so easy that he opened two accounts believing it might prove convenient. According to Dr. Taylor he maintained only a minimum balance and made use of only the debit card attached to the accounts. When the debit card expired, Bank of America required him to provide a new address before it would issue a new card.[3] To satisfy this demand, he provided the Miami address of his friend and former manager at Carnival Cruise Lines, Steve Williams, who had recruited him to work for Royal Caribbean. We agree with Dr. Taylor that neither maintaining these

[3] The address that appeared on the initial account statements was that of Carnival's corporate headquarters, located in Doral, Florida.

accounts, see La Reunion Française, 818 So. 2d at 659, nor engaging in any of the other activities detailed above, whether considered alone or together, constitute the continuous and systematic contacts necessary to establish general jurisdiction over him.

The record is that Dr. Taylor is a citizen of Great Britain where he was born, raised, attended medical school, and still has family. Dr. Taylor has never resided in Florida; he has never owned or rented real property in Florida; he is not licensed to practice medicine here; and he has never owned or operated a business (or medical practice) in this State. The crux of the matter therefore falls upon the last factor relied on by both the court below and our dissenting colleague, that is, the fact that the foreign flagged vessel on which Dr. Taylor works returns to its Florida home port for the embarkation/debarkation process one day a week, during which time Dr. Taylor may or may not see passengers and crew members in some limited capacity as a shipboard doctor.

To this end, the record establishes that the ship's medical center is closed on the morning on which the ship returns to its Florida home port to disembark passengers. However, should an emergency arise while the ship is returning to

port, emergency treatment is rendered either by Dr. Taylor or any other ship's doctor who may be on duty at the time[4]:

> Generally speaking, the ship's medical center is closed when the ship is in . . . the home port day. . . . There will be occasions when emergencies happen . . . on the last few hours of the cruise on the – prior to arrival, where emergency care has to be rendered.

The ship's medical center then remains closed until ***some unspecified time*** during the evening after the ship has left port. And, while either Dr. Taylor or any other ship's doctor would provide emergency medical care to either passengers or crew while the ship is departing, the medical clinic was open for that one hour on the evening of departure primarily to care for crew members since passengers generally would not have been on board long enough to become seriously ill:

> The medical center is usually open just for one hour in the evenings [on embarkation day], which 99 percent of the time is simply for crew members because most of the guests have only been onboard by that time a couple of hours, which is generally not enough time to become significantly ill.

Thus, while there is no evidence that Dr. Taylor actually treated any passenger or crew member while in Florida or its territorial waters, the evidence shows that it is likely, as Dr. Taylor candidly admitted, that he rendered emergency treatment to someone in Florida territorial waters while coming into or going out of port:

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[4] Dr. Taylor testified that he is not always the only ship physician on board and that if the ship is a two physician ship, he will be on call on these occasions only every other week. Steve Williams, Director of Fleet Medical Operations for Royal Caribbean, testified that large ships like the Oasis of the Seas have three physicians and five nurses on board who share these duties.

Q. So you have provided medical care in the State of Florida onboard the Royal Caribbean ships, Correct?

MR. FRIEDMAN [COUNSEL FOR DR. TAYLOR]: Objection to form.

[DR. TAYLOR]: There will have been occasions, I'm sure.

BY MS. MEISTER [COUNSEL FOR GUTIERREZ]:

Q. So you're not denying that you provided medical care to patients in the State of Florida, correct?

A. On an emergency basis, that is correct.

Q. What about the crew members, didn't you see crew members while in the State of Florida on a nonemergency basis, that were sick or had an injury or for whatever reason need to see a doctor?

A. The ship's medical center was generally open one hour on embarkation day, ***which I'm no expert on the nautical miles, but that was probably within Florida territorial waters***.

Q. So for that one hour, you would treat patients while the ship ***was likely in Florida territory waters***, correct?

A. That ***could be*** the case, yes.

Q. Was that ever not the case?

. . . .

[DR. TAYLOR]: Yes, very much so, because when there's more than one doctor on the ship, not every doctor is working the clinic. So if it's a two-doctor ship, you may only work that clinic every other week.

(Emphasis added).[5]

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[5] Steve Williams, Director of Fleet Medical Operations for Royal Caribbean, confirmed this testimony in his own deposition:

> Q. . . . Were there designated medical center hours?
>
> A. Yes.
>
> Q. Okay. What were those hours?
>
> A. Typically when the ship was at sea or outside its home port, they would be 8 in the morning till 11. And then in the afternoon it would be from 3 to 6, or 4 to 7, depending on the itinerary and the port.
>
> . . . .
>
> Q. Now, you indicated those hours were when the vessel was at sea. What were the clinic hours on embarkation, debarkation dates?
>
> A. Typically the clinics will be closed in the mornings, so when the ship comes into the home port, the clinic is not open. And then typically the clinic would open in the afternoon, usually just for a couple hours between 5 and 7 and that would be typically after the ship has left port.
>
> . . . .
>
> Q. If I understand correctly, Royal Caribbean allows its ship's physicians to perform medical service aboard its vessel, which is foreign flagged, in Florida ports and in Florida waters, limited to onboard the vessel; is that fair?
>
> A. Well, yeah, I mean, our physicians and nurses are expected to respond to medical emergencies when they're on the vessel, especially if it's an emergency. . . .
>
> Q. Okay. And it's not just medical emergencies, because they have clinic hours where they provide non-medical emergency medical

This is not the "stuff" that general jurisdiction is made of since it is neither continuous nor systematic and, thus, does not satisfy the stringent requirements of either section 48.193(2) or the due process considerations set forth by the United States Supreme Court in Helicopteros Nacionales de Colombia S.A. v. Hall, 466 U.S. 408 (1984).[6] See Caiazzo, 73 So. 3d at 252 (finding that "substantial and not

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> treatment also, I mean, someone got a cut on their hand and they need a few stitches–I don't know, maybe that's not a good example. But—
>
> A. Let me help you.
>
> Q. Okay, thank you.
>
> A. Typically, no. Because, for instance, you mentioned Florida. When the OASIS is in port in Florida, the clinic isn't open, so we don't have a clinic in the morning and the clinic in the afternoon is usually [open] after the ship has left.
>
> Because when the ship is getting ready to leave, there are all sorts of drills and things that happen to guests and crew, so it's a busy time. So typically our clinic hours are after the ship has left.
>
> Now, at what point the ship is three miles off the coast, I don't know. But I would say, generally speaking, there aren't that many non-emergency things happening in the medical center that the physicians are involved with, while the ship is in Florida state water, if that helps.

[6] The Helicopteros court found insufficient to satisfy the continuous and systematic general business contacts needed to support general jurisdiction over a Columbian company evidence that the Columbian company had sent its chief executive to Texas to negotiate a contract; accepted checks into its New York bank account drawn on a Texas bank; purchased millions of dollars in helicopters and equipment from Texas; sent pilots to Texas for training and to ferry purchased helicopters to

isolated activity" set forth in section 48.193(2) is the functional equivalent to "continuous and systematic general business contacts," and that "[b]ecause substantial, continuous, and systematic business contacts is the standard for both subsection (2) of Florida's long-arm statute and the due process requirement for general jurisdiction, a finding of substantial, continuous and systematic business contacts will satisfy both the long arm statute and the due process requirements of Helicopteros"); Farrell, 2013 WL 178367 at *4 (confirming that although a ship "carrying" the defendant nurse had docked in Florida 159 times, no evidence existed that she was on duty or had treated patients during some or all of those times); .

To this end, we find Hesterly v. Royal Caribbean Cruises Ltd., No. 06-22862-CIV, 2008 WL 516495, (S.D. Fla. 2007) particularly persuasive on this point. Hesterly similarly involved a Royal Caribbean cruise ship that returned to a South Florida port following a weeklong voyage for embarkation/disembarkation of passengers, with the ship being in Florida's territorial waters for a total of approximately twelve hours, one day a week. Id. at *2. The record in that case established that the shipboard infirmary was open from 8:00 a.m. to noon while the vessel was in the Florida port, during which time the ship's doctors were available to treat departing passengers for approximately two and half hours and crew

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South America; and sent management and maintenance personnel to Texas for training and consultation.

members for the entire four hours. Id. Furthermore, "[t]aking all inferences in favor of Plaintiff," the trial court assumed that "the infirmary reopened as the new passengers boarded the vessel." Unlike this case, the ship doctors in Hesterly maintained that they had never actually seen any passengers or crew members in the infirmary while it was within Florida's territorial waters. Nevertheless, the court found that, even if the doctors had seen a few patients while the cruise ship was in Florida's territorial waters, that it was "hard to imagine how this minimal activity could amount to substantial and not isolated general business activity in the State of Florida by foreign doctors treating seaman inside a foreign flagged vessel." Id. at *10. Particularly since "the amount of time spent within Florida's territorial boundaries during the doctors's [sic] . . . contracts was very minimal" and the doctor's performed the majority of their medical services "on the high seas and at foreign ports of call." Id. We find Hesterly sufficiently analogous to the instant matter and conclude that Dr. Taylor's contacts with the State of Florida were not sufficient to confer general jurisdiction over him. See also Caiazzo, 73 So. 3d at 259 (noting that "courts have found that a company's level of business in Florida may be insufficient to constitute 'continuous and systematic business activities' when only a *de minimis* percentage of the total sales is derived from its sales to Florida").

We also note that this case is not at all like Dean v. Johns, 789 So. 2d 1072 (Fla. 1st DCA 2001), which found general jurisdiction existed over a non-resident doctor from Alabama. The doctor in that case, who practiced a subspecialty of neurology in Birmingham, Alabama, "always" accepted Florida patient referrals from a Florida doctor located in the Florida panhandle. Id. at 1075. The record further established that he had treated over 3,200 Florida patients; that he was licensed to practice medicine in Florida; that he had subjected himself to Florida regulations for the practice of medicine in Florida; that he regularly consulted with Florida physicians by telephone; that he gave reports to Florida physicians for use in treating Florida patients in Florida, and that he owned property in Florida. Id. at 1078. Based on all of these contacts with the State of Florida, none of which are present here, the First District found that section 48.193(2) and due process concerns were satisfied.

Accordingly, because Dr. Taylor's contacts with the State of Florida were not sufficient to meet either Florida's long arm statute, section 48.193, or the federal due process considerations set forth by the United States Supreme Court in Helicopteros, the court below erred in finding general jurisdiction over him. We therefore reverse the order denying Dr. Taylor's motion to dismiss for lack of personal jurisdiction, and remand with instructions to enter an order of dismissal.

Reversed and remanded with instructions.

SHEPHERD, C.J., concurs.

SALTER, J. (dissenting).

I respectfully dissent based on the unique facts elicited by Ms. Gutierrez during jurisdictional discovery. In this case, unlike the reported opinions relied upon by my colleagues and Dr. Taylor, a non-Florida resident, the cruise ship doctor systematically and continuously staffed an onboard medical clinic and treated passengers and crew while Royal Caribbean Cruise Line (RCCL) vessels were in Florida territorial waters. In my view, these activities were sufficient to establish jurisdiction over Dr. Taylor under section 48.193(2), Florida Statutes (2011), and to satisfy the "minimum contacts" requirements.

I. The Jurisdictional Allegations and Course of Discovery

Ms. Gutierrez alleged in her amended complaint against RCCL and Dr. Taylor that she and her husband boarded an RCCL vessel in May 2010 at Port Everglades, Florida, for a seven-night cruise in the western Caribbean. On the second night of the cruise, Ms. Gutierrez experienced intense abdominal pain and was taken by wheelchair to the medical facility aboard the vessel. She alleged that Dr. Taylor diagnosed and treated her for gastritis, when in fact she was suffering from a much more serious and dangerous abdominal infection. She alleges that she and her husband were told she could not be evacuated from the vessel and taken to an on-shore hospital, when in fact air ambulance service could have been

arranged. Ms. Gutierrez sought medical assistance at the ship's next port. Ultimately, she claims, she suffered abdominal sepsis, multiple organ failures, and a cerebral hemorrhage as a result of the negligence and misinformation on the part of RCCL and Dr. Taylor.

The pertinent jurisdictional allegations within the amended complaint included allegations that Dr. Taylor engaged in business subjecting him to Florida jurisdiction under section 48.193(2) by, among other things:

> [25. a. (1)] Providing shipboard medical care to passengers and/or crew members, to include passengers and/or crew members aboard the [RCCL vessel] and other cruise ships for voyages to include the voyage at issue <u>while in the territorial waters of the State of Florida</u>;
>
> [25. a. (2)] Operating, conducting, engaging in, or carrying on a business or business venture in the State of Florida by fact of operating shipboard Medical Facilities, to include the one onboard the [RCCL vessel] and other cruise ships for voyages to include the voyage at issue <u>while in the territorial waters of the State of Florida</u> . . . .

(Emphasis supplied).

Dr. Taylor filed, among other motions, a motion to dismiss the amended complaint for lack of personal jurisdiction and a three-page sworn declaration disclaiming, in essence, citizenship, residency, property ownership, operation of a business, licensure as a physician, having an office or agency, or engaging in substantial business, in the State of Florida. During jurisdictional discovery, counsel for Ms. Gutierrez established an array of contacts with and in Florida,

including the ownership of bank accounts in Miami, attendance and instruction at cruise ship medical courses in South Florida, the solicitation and execution of his contracts in Miami with cruise lines including RCCL, and occasional shore side visits to see friends. I agree with my colleagues that many of these contacts (such as attendance and instruction at medical courses in Florida) have been ruled in prior cases to be "incidental" to a cruise ship physician's medical duties and thus insufficient to support personal jurisdiction under section 48.193(2). See, e.g., Farrell v. Royal Caribbean Cruises, Ltd., 2013 WL 178367 (S.D. Fla. Jan. 4, 2013).

Dr. Taylor's deposition testimony, however, included confirmation that his medical duties included treatment of crew members and passengers while a vessel was in Florida ports and coastal waters:

> Q. It's my understanding that during the time that you worked for Royal Caribbean, you worked on some vessels that had the home port in the State of Florida, correct?
>
> A. Yes.
>
> Q. And when working on those ships with the home port in Florida, you provided medical care to patients onboard the ship in the State of Florida, correct?
>
> [Counsel for Dr. Taylor]: Objection to form.
>
> A. [Dr. Taylor]: Generally speaking, the ship's medical center is closed when the ship is in embarkation day, which would be the home port day. That's for reasons that we have to take care of supplies.

The medical center is usually open just for one hour in the evenings, which 99 percent of the time is simply for crew members because most of the guests have only been onboard by that time a couple of hours, which is generally not enough time to become significantly ill.

There will be occasions when emergencies happen, both on the day of departure and on the last few hours of the cruise on the – prior to arrival, where emergency care has to be rendered.

Q. So you have provided medical care in the State of Florida onboard the Royal Caribbean ships, correct?

[Counsel for Dr. Taylor]: Objection to form.

A. [Dr. Taylor]: There will have been occasions, I'm sure.

Q. So you're not denying that you provided medical care to patients in the State of Florida, correct?

A. On an emergency basis, that is correct.

Q. What about the crew members, didn't you see crew members while in the State of Florida on a nonemergency basis, that were sick or had an injury or for whatever reason need to see a doctor?

A. The ship's medical center was generally open one hour on embarkation day, which I'm no expert on the nautical miles, but that was probably within Florida territorial waters.

Q. So for that one hour, you would treat patients while the ship was likely in Florida territory waters, correct?

A. That could be the case, yes.

Q. Was that ever not the case?

[Counsel for Dr. Taylor]: Objection to form.

A. Yes, very much so, because when there's more than one doctor on the ship, not every doctor is working the clinic. So if it's a two-doctor ship, you may only work that clinic every other week.

Q. Okay.

A. And then, of course, it's dependent on whether people come in.

Q. So, if you're on a ship that was in a Florida port on a weekly basis, then likely you would see patients on a weekly basis within the State of Florida, if you're on duty that particular day?

[Counsel for Dr. Taylor]: Objection to form.

A: Yes, if I was on duty.[7]

. . .

Q. Sir, with respect to your treatment of patients in the State of Florida, do you have copies of medical records or other records which would indicate patients that you treated in the State of Florida?

A. No, I don't.

(Footnote added).

Additional evidence established that Dr. Taylor had been in port on duty aboard RCCL vessels 32 days in 2010 during embarkment and disembarkment visits to Florida ports, and additional days over the several years Dr. Taylor served RCCL and another cruise line based in Florida.

Following jurisdictional discovery, the trial court heard the motion to dismiss for lack of jurisdiction and denied it in a detailed order, determining that

[7] Despite these admissions, Dr. Taylor's initial brief claims, incorrectly, that "Dr. Taylor did not provide any medical treatment in Florida or its territorial waters."

specific personal jurisdiction under section 48.193(1) had not been acquired over Dr. Taylor, and that general personal jurisdiction had been acquired under section 48.193(2). This appeal followed.

II. Analysis

It is undisputed that Ms. Gutierrez's illness and treatment occurred outside the territorial waters of Florida, and thus the trial court's rejection of specific personal jurisdiction under section 48.193(1) is correct. With regard to section 48.193(2), we apply two tests under the oft-cited case of Venetian Salami Co. v. Parthenais, 554 So. 2d 499 (Fla. 1989), strictly construing the long-arm statute in favor of the non-resident defendant. Ferguson v. Estate of Campana, 47 So. 3d 838 (Fla. 3d DCA 2010).

A. "Substantial and Not Isolated Activity in Florida"

The first test is whether Dr. Taylor engaged in "substantial and not isolated activity within this state" over the course of his six years with another cruise line and three years with RCCL. My colleagues are correct that a number of our opinions establish that personal vacations in Florida between cruises, visits to be interviewed by cruise lines, the execution of agreements in Florida, and similar "incidental" or "almost personal" contacts[8] fall short of the "continuous and systematic business contacts" with Florida required to establish general personal

[8] Elmlund v. Mottershead, 750 So. 2d 736, 737 (Fla. 3d DCA 2000).

jurisdiction under 48.193(2). See E&H Cruises, Ltd. v. Baker, 88 So. 3d 291 (Fla. 3d DCA 2012).

But those state and federal cases before this one, it appears, have not involved a cruise line physician whose duties and actual activities over a course of years (and for out-and-back cruises from Florida ports) included the treatment of crew members and passengers while a vessel is in Florida territorial waters and while it is docked in a Florida port. In Rinker v. Carnival Corp., 2011 WL 3163473 (S.D. Fla. July 26, 2011), a citizen of, and nurse registered in, Australia worked aboard a Florida-based cruise line's vessels, often departing from and returning to Florida ports. The court concluded that her contacts with Florida fell short of the continuous and systematic contacts necessary to establish general jurisdiction, finding specifically that, although she had been aboard a ship that docked in Florida 16 times, "the evidence shows that [the nurse] never provided any medical care while aboard a ship that was docked in Florida." Id. at *4.

Similarly, in Farrell, an RCCL nurse was a citizen and resident of South Africa. She was aboard RCCL cruise ships when they docked in Florida 159 times. The court concluded that medical training in Miami, the appointment of RCCL as her agent under a contract, and management by RCCL's shore side medical department in her administration of onboard treatment (in international waters), were not sufficient to establish general jurisdiction, noting again

specifically that "[n]o evidence has been produced, however, establishing that [the nurse] was on duty and/or treated any passengers while the ships were docked in Florida" and "there is no evidence that [the nurse] treated any patients while docked in Florida ports." Farrell at *2, *3.

And again, in the case cited as "particularly persuasive" by my colleagues, Hesterly v. Royal Caribbean Cruises, Ltd., 2008 WL 516495 (S.D. Fla. 2008), the cruise ship physician defendants' affidavits stated that they "never treated any patients while the vessel was within the State of Florida," and the plaintiff provided no deposition testimony to contradict the affidavits.[9] Id. at *4. In contrast, in the case at hand Dr. Taylor testified that it was a regular part of his assignment as a paid physician to be on duty, and when necessary to treat patients, while the vessel was in Florida waters and returning to Miami, docked in Miami, and leaving Miami, weekly, over a course of nine years.

This is not a distinction without a difference, as any Florida-based ship's captain with a casino aboard might explain—the unregulated gambling prohibited by Florida law doesn't begin until the ship is in international waters.[10] Providing

[9] In Hesterly, the plaintiff did not take the depositions of the defendant doctors. In their interrogatory answers, "Both doctors answered that they never treated any patients while the vessel was docked in Florida or while the vessel was within the territorial waters of the State of Florida." Id. at *1 n.1.

[10] Spectrum Gaming Grp., Gambling Impact Study: Part I, Section A 30 (Commissioned by Fla. Leg.)(July 1, 2013), available at

medical treatment in Florida ports and territorial waters for compensation, over a course of years, and from week to week, is not "incidental, almost entirely personal" activity. And included within that scope of work is the duty of being available, as part of Dr. Taylor's duties, to treat crew members and patients during those times the vessel was in a Florida port or territorial waters. As one of RCCL's attorneys explained to the trial judge in a hearing explaining why RCCL should not have to produce daily patient logs (redacted to eliminate names or other private information about individual patients) for the days the ship was in port or in Florida waters:

> …if it's their position that, you know, whether he was practicing medicine in Florida territorial waters is what's relevant, then arguably all they need to know is the number of times he was on a ship and that ship was in a port of Florida or in Florida waters. It doesn't matter whether [Dr. Taylor] saw four people or zero people. You know, he's practicing medicine regardless of whether or not he's treating someone. Just like if I'm in my office and I don't have a client, that doesn't mean I'm not practicing law. So there's no reason for them to have, you know, X number of patients.

I agree with that candid assessment, and I question whether RCCL should be able to feature on-line marketing videos regarding its onboard medical services (as jurisdictional discovery established in this case)—apparently available while the ship is in Florida and Florida waters—while Dr. Taylor disclaims Florida jurisdiction over him.

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http://www.leg.state.fl.us/GamingStudy/docs/FL_Gambling_Impact_Study_Part1A.pdf (last visited October 18, 2013).

B. "Minimum Contacts" and Constitutional Due Process

The second of the two Venetian Salami tests—"minimum contacts" with Florida for federal and state constitutional purposes—is also satisfied. In assessing a defendant's contacts, "'the facts of each case must always be weighed in determining whether personal jurisdiction would comport with fair play and substantial justice,' and 'any talismanic jurisdictional formulas' are expressly rejected."[11] In the present case, the exercise of personal jurisdiction over Dr. Taylor can hardly be labelled unfair or unjust. His regular personal presence in Florida, and his professional duties and treatment performed in Florida ports and waters, constituted a purposeful availment of the privilege of performing medical services in Florida,[12] such that he could "reasonably anticipate being haled into court" in Florida. World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980).

My colleagues' reliance on Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408 (1984), warrants further analysis. In that case, four United States citizens perished in a helicopter crash in Peru. The decedents were

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[11] Mark A. Sessums and Brian M. Monk, A Wrinkle in Time: Personal Jurisdiction's Evolution – Pleading, Proving and Defending Personal Jurisdiction Issues, 87 Fla. Bar. J. 16, 19 (Nov. 2013) (quoting Burger King Corp. v. Rudzewicz, 471 U.S. 462, 485-86 (1985)).

[12] Hanson v. Denckla, 357 U.S. 235, 253 (1958).

employed by a Peruvian venture with an office in Texas. The helicopter was owned by Helicopteros, a Colombian company. An executive of Helicopteros had flown to Houston to discuss the Peruvian project, but Helicopteros had never conducted its business (flying helicopters for oil and construction companies in South America) anywhere in Texas. Id. at 411. The families of the decedents initiated wrongful death actions in Texas against a group of defendants that included Helicopteros, and the question was whether general jurisdiction over Helicopteros had been established.

The Supreme Court of the United States reversed the decision of the Supreme Court of Texas (which had upheld general jurisdiction in that state), holding that "the one trip to Houston by [Helicopteros's] chief executive officer for the purpose of negotiating the transportation-services contract with [the Peruvian venture] cannot be described or regarded as a contact of a 'continuous and systematic' nature." Id. at 416. The Court also rejected the plaintiffs' arguments that the acceptance by Helicopteros of payment checks drawn on a Houston bank, and visits to Texas by Helicopteros personnel for purchases and training, were a sufficient basis for general jurisdiction. Id. at 417.

Simply stated, Helicopteros never offered to provide, and never provided, any helicopter flights in Texas. Such flights were the business of Helicopteros, and that business was conducted in Colombia and elsewhere in South America. In the

case at hand, Dr. Taylor's business is as a doctor. His willingness and ability to deliver such services to passengers in Florida ports and territorial waters was established. Dr. Taylor's availability, and those services, were continuous and systematic by virtue of the weekly schedules of RCCL and its ships over a course of years. Those facts made it foreseeable that Dr. Taylor would be haled into court in Florida.

Conclusion

Dr. Taylor could easily be considered a doctor without a country,[13] residing aboard ship and in international waters rather than a specific home or country. But this case, unlike prior state and federal precedent on the point, features competent, substantial evidence that the physician's paid duties and patient treatment (frequent, recurring, and continuing over a course of years) included medical duties and services while in Florida ports and territorial waters. Accordingly, I would affirm the trial court's order denying Dr. Taylor's motion to dismiss the amended complaint for lack of personal jurisdiction.

I disagree with the majority's view that the trial court relaxed the requirements of "well-established case law in order to redress what it clearly deemed a nefarious scheme by Dr. Taylor to avoid being sued not only in a Florida

[13] Edward Everett Hale imagined "The Man Without a Country," an American who renounced his citizenship and thereafter moved only from ship to ship, in a short story published in The Atlantic magazine in December 1863.

court but in **any** court….” (Emphasis in the original). This is apparently the first case in which a non-resident shipboard physician has conceded under oath that his medical duties included availability and services rendered to patients in Florida ports and territorial waters, on an almost weekly basis over a course of years.

For these reasons, I would affirm, and I respectfully dissent from my colleagues’ opinion.