

RENDERED: October 31, 2003; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-001580-MR

EDWARD PRELL

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE THOMAS J. KNOFF, JUDGE
ACTION NO. 01-CI-005695

JIM NASI CUSTOMS COMPANY
d/b/a SAXON CYCLE ACCESSORIES

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: BAKER AND SCHRODER, JUDGES; and HUDDLESTON, SENIOR
JUDGE.¹

BAKER, JUDGE: Edward Prell brings this appeal from a July 18,
2002, Opinion and Order of the Jefferson Circuit Court. We
affirm.

¹ Senior Status Joseph R. Huddleston sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution.

Prell is a Kentucky resident, and Jim Nasi Customs Company d/b/a Saxon Cycle Accessories ("Jim Nasi") is an Arizona corporation. Jim Nasi is in the business of building and selling custom motorcycle parts and accessories. Jim Nasi's only place of business is in the state of Arizona where all of its employees are located. No representative of the corporation has ever been in Kentucky. Additionally, the corporation had never been involved in litigation in Kentucky and had never registered for authorization to do business in Kentucky

Prell became interested in Jim Nasi's products after an article he saw in *Easy Rider* magazine; thereafter, he telephoned Jim Nasi and ordered a custom built part. The part cost \$3,100.00 and was subsequently shipped to Prell in Kentucky.

Prell initiated the instant action in the Jefferson Circuit Court against Jim Nasi alleging that the motorcycle part was defective and claiming breach of warranties and unfair trade practices. Jim Nasi then filed a motion to dismiss for lack of personal jurisdiction. The court allowed the parties to conduct limited discovery upon the issue of jurisdiction. On July 18, 2002, the circuit court entered an Opinion and Order granting Jim Nasi's motion to dismiss for lack of in personam jurisdiction. This appeal follows.

Prell initially argues that Jim Nasi "regularly engages in the sale of products in interstate commerce." Prell, however, fails to advance an argument as to why the circuit court's dismissal was erroneous. Indeed, Prell also fails to cite a single case or statute. We are simply unable to discern Prell's first argument.

Prell next argues the circuit court erred by concluding that in personam jurisdiction over Jim Nasi offends the due process clause. We disagree.

In order to determine whether our exercise of jurisdiction over Jim Nasi is proper under the due process clause, we must consider the three-pronged test enunciated in Tube Turns Division of Chemetron Corp. v. Patterson Co., Ky. App., 562 S.W.2d 99, 100 (1978):

First, the defendant must purposely avail himself of the privilege of acting in the forum state or causing a consequence in the forum state. Second, the cause of action must arise from the defendant's activities there. Finally, the acts of the defendant or consequences by the defendant must have a substantial enough connection with the forum state to make the exercise of jurisdiction over the defendant reasonable.

Indeed, as pointed out by our Supreme Court in Wilson v. Case, Ky., 85 S.W.3d 589, 593 (2002), "this test synthesized the relevant factors set forth by (International Shoe Company v. Washington, 326 U.S. 310, 66 S. Ct. 154, 90 L. Ed. 95 (1945))

and its progeny into a more succinct and workable three-pronged analysis to determine the outer limits of personal jurisdiction based upon a single act." It is well-established that all three prongs of the test must be met before the due process clause is satisfied.

In the case at hand, we are unable to conclude that all three prongs of the test are satisfied. It is undisputed that Prell contacted Jim Nasi to purchase the part. The record indicates that the terms of delivery were free on board at Jim Nasi's Arizona location; therefore, Prell paid to have the part shipped to his address in Kentucky. Also, Jim Nasi's sales records reflect that it has had no income from transactions in Kentucky for the last three years. Utilizing the above three-prong test, we are simply unable to conclude that the cause of action arose from Jim Nasi 's activities in Kentucky and that there exists a "substantial enough connection to the Commonwealth to make jurisdiction" over Jim Nasi reasonable. Indeed, we do not view the exercise of personal jurisdiction over Jim Nasi as comporting with traditional notions of fair play and substantial justice under the due process clause. See Wilson, 85 S.W.3d 589.

Prell further asserts that Kentucky's long arm statute (Kentucky Revised Statutes 454-210(2)(a)) authorizes the

exercise of personal jurisdiction over Jim Nasi. As pointed out in Wilson:

[C]ourts have determined that the "long-arm statute within this jurisdiction allows Kentucky courts to reach to the full constitutional limits of due process and entertaining jurisdiction over non-resident defendants." Mohler v. Dorado Wings, Inc., Ky. App., 675 S.W.2d 404, 405 (1984); Info-med, Inc. v. National Healthcare, Inc., 669 F. Supp. 793 (W.D. Ky. 1987). At the same time, the limits of due process serve as a safeguard to insure that state courts comply with the federal Constitutional requirements. Therefore, Kentucky's jurisdictional reach cannot exceed those prescribed limits.

Id. at 592.

As we have determined the exercise of personal jurisdiction over Jim Nasi would offend the due process clause, we consider Jim Nasi 's contention that Kentucky could exercise personal jurisdiction under our long-arm statute as moot.

For the foregoing reasons, the Opinion and Order of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEFS AND ORAL ARGUMENT FOR
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BRIEF AND ORAL ARGUMENT FOR
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