

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-001648-MR

DAY A. TAYLOR

APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE AUDRA J. ECKERLE, JUDGE
ACTION NO. 14-CI-000469

BRISTOL WEST INSURANCE COMPANY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: DIXON, NICKELL, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Day A. Taylor brings this appeal from a September 11, 2014, summary judgment of the Jefferson Circuit Court dismissing Taylor's action against Bristol West Insurance Company (Bristol West) for lack of personal jurisdiction. We affirm.

On August 8, 2010, Taylor, an Indiana resident, was involved in a motor vehicle accident that occurred in Jefferson County, Kentucky. The motorist

at fault settled with Taylor for the \$25,000 motor vehicle liability policy limits. Taylor then sought to recover underinsured motorist (UIM) benefits from her motor vehicle insurance policy issued by Bristol West in Indiana. A dispute arose between the parties concerning Taylor's entitlement to UIM coverage.

Taylor ultimately filed an action in the Jefferson Circuit Court against Bristol West. Taylor sought recovery of UIM benefits under the motor vehicle insurance policy issued by Bristol West. Bristol West answered and specifically averred that Kentucky lacked personal jurisdiction over it. Thereafter, Bristol West filed a motion for summary judgment seeking dismissal of the action. Bristol West maintained that it was a foreign corporation, Taylor was an Indiana resident, the policy of motor vehicle insurance was issued to Taylor in Indiana, and the insured vehicles were principally garaged in Indiana. Bristol West argued that Kentucky did not have personal jurisdiction under its long-arm statute (Kentucky Revised Statutes (KRS) 454.210(2)) and that the action must be dismissed. The only nexus to Kentucky between the parties was that the accident occurred in Kentucky.

By summary judgment entered September 11, 2014, the circuit court held that Kentucky did not have personal jurisdiction over Bristol West. The court stated:

Day A. Taylor, was an Indiana resident at the time of this accident. She had a contract for insurance in Indiana for a vehicle principally garaged in Indiana. Kentucky defers to Indiana law for the interpretation of Indiana insurance contracts. The contract claim against Bristol

West does not arise from any conduct by the Defendant, Bristol West Insurance Company, within the Commonwealth of Kentucky. There exist insufficient contacts with Kentucky for jurisdiction over this contract dispute against a foreign Defendant for a contract action arising in Indiana. The location of the motor vehicle accident of August 8, 2010[,] in Kentucky is incidental to a contract claim over the scope of damages. The negligence claim against the Kentucky driver, Morgan Jerrell, has settled leaving Kentucky with no great interest in adjudicating this claim.

Order of Summary Judgment, p.1. Consequently, the circuit court dismissed Taylor's action. This appeal follows.

Taylor contends that the circuit court erred by dismissing her action due to lack of personal jurisdiction over Bristol West. Taylor argues that Kentucky may validly exercise personal jurisdiction under the long-arm statute over Bristol West. Specifically, Taylor relies upon KRS 454.210(2)(a)7 for extending personal jurisdiction to Bristol West. And, Taylor also maintains:

Bristol West was issued a Certificate of Authority to transact insurance business in Kentucky as confirmed by the Department of Insurance records. This subjects Bristol West to the provisions of the Kentucky Insurance Code generally, including KRS 304.3-070 *et seq.* The Kentucky Insurance Code identifies requirements for out-of-state insurers to obtain a Certificate of Authority in Kentucky, including maintenance of minimum reserves and regulations by the Kentucky Department of Insurance. Upon issuance of a Certificate of Authority, Bristol West deems the Secretary of State as its attorney to receive a service of process for any suit filed against them in this state. See KRS 304.3-230(7). . . .

. . . .

By transacting business in Kentucky and agreeing to incorporate KMVRA [Kentucky Motor Vehicle Reparations Act] coverage in every policy no matter where issued – including the Taylor policy – Bristol West contracted to insure a “risk” within Kentucky as contemplated by KRS 454.210(2)(a)(7). Moreover, the present UIM claim clearly “arises from” the very same policy. . . .

Bristol West is subject to jurisdiction in Kentucky pursuant to KRS 454.210(5) because the Kentucky Insurance Code deems the Secretary of State to be Bristol West’s agent for any suit filed in Kentucky. KRS 304.3-230(7). Likewise, Bristol West is a foreign corporation registered in Kentucky and therefore subject to KRS Chapter 14A and KRS Chapter 271B. KRS 271B.5-010 requires that any corporation registered in Kentucky, whether foreign or domestic, continually maintain a registered office and a registered agent in Kentucky that comply with KRS 14A.4-010. . . .

. . . .

Finally, KRS 14A.9-050(2) states: “A foreign entity [inclusive of a foreign corporation] with a valid certificate of authority shall have the same but no greater rights and shall have the same but no greater privileges as, and except as otherwise provided by this chapter ***shall be subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, a domestic entity of a like character.***” (Emphasis added).

If Bristol West is to be treated as any domestic corporation, and Bristol West in fact does business in Kentucky, and has an agent and office in Kentucky, it is unclear how Bristol West escapes jurisdiction. . . .

Taylor’s Brief at 10-12 (citations omitted).

Summary judgment is proper where there exists no material issue of fact and movant is entitled to judgment as a matter of law. *Steelvest, Inc. v. Scansteel*

Service Center, Inc., 807 S.W.2d 476 (Ky. 1991). Resolution of this appeal is dependent upon an issue of law – whether Kentucky may properly exercise personal jurisdiction over Bristol West in this proceeding. *See Auto Owners Insurance Company v. Consumers Insurance USA, Inc.*, 323 S.W.3d 781 (Ky. App. 2010).

Kentucky’s long-arm statute is codified in KRS 454.210 and provides:

(1) As used in this section, “person” includes an individual, his executor, administrator, or other personal representative, or a corporation, partnership, association, or any other legal or commercial entity, who is a nonresident of this Commonwealth.

(2) (a) A court may exercise personal jurisdiction over a person who acts directly or by an agent, as to a claim arising from the person's:

1. Transacting any business in this Commonwealth;
2. Contracting to supply services or goods in this Commonwealth;
3. Causing tortious injury by an act or omission in this Commonwealth;
4. Causing tortious injury in this Commonwealth by an act or omission outside this Commonwealth if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this Commonwealth, provided that the tortious injury occurring in this Commonwealth arises out of the doing or soliciting of business or a persistent course of conduct or derivation of substantial revenue within the Commonwealth;

5. Causing injury in this Commonwealth to any person by breach of warranty expressly or impliedly made in the sale of goods outside this Commonwealth when the seller knew such person would use, consume, or be affected by, the goods in this Commonwealth, if he also regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this Commonwealth;
6. Having an interest in, using, or possessing real property in this Commonwealth, providing the claim arises from the interest in, use of, or possession of the real property, provided, however, that such in personam jurisdiction shall not be imposed on a nonresident who did not himself voluntarily institute the relationship, and did not knowingly perform, or fail to perform, the act or acts upon which jurisdiction is predicated;
7. Contracting to insure any person, property, or risk located within this Commonwealth at the time of contracting;
8. Committing sexual intercourse in this state which intercourse causes the birth of a child when:
 - a. The father or mother or both are domiciled in this state;
 - b. There is a repeated pattern of intercourse between the father and mother in this state; or
 - c. Said intercourse is a tort or a crime in this state; or
9. Making a telephone solicitation, as defined in [KRS 367.46951](#), into the Commonwealth.
 - (b) When jurisdiction over a person is based solely upon this section, only a claim arising from acts

enumerated in this section may be asserted against him.

In 2011, our Supreme Court rendered *Caesars Riverboat Casino, LLC v. Beach*, 336 S.W.3d 51 (Ky. 2011). In that case, the Supreme Court held that Kentucky may only exercise personal jurisdiction over a nonresident defendant if the defendant's conduct comes within the purview of our long-arm statute (KRS 454.210). The Supreme Court set forth a two-step analysis for determining personal jurisdiction over a nonresident defendant:

First, review must proceed under KRS 454.210 to determine if the cause of action arises from conduct or activity of the defendant that fits into one of the statute's enumerated categories. If not, then *in personam* jurisdiction may not be exercised. When that initial step results in a determination that the statute is applicable, a second step of analysis must be taken to determine if exercising personal jurisdiction over the non-resident defendant offends his federal due process rights. . . .

Caesars Riverboat Casino, 336 S.W.3d at 57. Under the first step, the Supreme Court emphasized that the nonresident defendant's conduct must fall into one of the categories set forth in KRS 424.210(2)(a) and that such conduct must have arisen from or have a "direct nexus" to "the wrongful acts alleged in the complaint." *Id.* at 59. Stated differently, the Supreme Court explained:

[E]ven though the statute identifies nine particular instances of conduct upon which personal jurisdiction over a nonresident may be predicated, the first sentence of subsection 2(a) imposes a critical limitation on the statute's operation: the cause of action must "aris[e] from" the identified conduct. That point is reinforced by its inclusion in subsection 2(b), limiting the joinder of any ancillary claim to those also "aris[e] from" acts

contained within the enumerated section of the statute. Thus, personal jurisdiction cannot be exercised over a non-resident defendant simply because it has engaged in conduct or activity that fits within one or more subsections of KRS 454.210(2)(a). The plaintiff must also show that his claim is one that arises from the conduct or activities described in the subsection.

Caesars Riverboat Casino, 336 S.W.3d at 55.

In this case, it is uncontroverted that Taylor entered into and purchased the motor vehicle insurance from Bristol West in Indiana. Also, it is equally clear that Taylor is domiciled in Indiana, Bristol West is a foreign corporation, and the motor vehicles specifically covered under the motor vehicle insurance policy are principally garaged in Indiana. While the motor vehicle accident occurred in Kentucky, all tort claims related to the accident have been settled. This case looks exclusively to an insurance contract dispute between Bristol West and its insured, Taylor.

Taylor asserts that Kentucky may exercise personal jurisdiction over Bristol West under KRS 454.210(2)(a)7. However, the facts are clear that Bristol West did not contract to insure property or risk “located within this Commonwealth at the time of the contracting.” Neither the property nor the risk were located in Kentucky, and the contract of insurance was entered into in Indiana. Thus, KRS 454.210(2)(a)7 does not confer personal jurisdiction over Bristol West.

Additionally, KRS 454.210(2)(a)1 is, likewise, inapplicable. Thereunder, personal jurisdiction may be exercised over a nondomiciled defendant who transacts business in Kentucky. Taylor maintains that Bristol West is authorized to

sell insurance in Kentucky, transacts business in this Commonwealth, and may be served through the Kentucky Secretary of State. As made clear in *Caesars Riverboat Casino*, 336 S.W.3d 51, it is not enough that Bristol West transacts business in this Commonwealth. Rather, such business must have a direct nexus to the wrongful acts alleged in Taylor's complaint. See *Caesars Riverboat Casino*, 336 S.W.3d 51. In this case, no such direct nexus exists, as the substance of this case sounds in contract law, which is procedurally controlling. *Kentucky Farm Bureau Mut. Ins. Co. v. Ryan*, 177 S.W.3d 797 (Ky. 2005). Consequently, Kentucky does not possess personal jurisdiction over Bristol West under KRS 454.201(2)(a)1.

We view any remaining contentions of error as moot or without merit.¹

Accordingly, we hold that the circuit court properly entered summary judgment dismissing Taylor's complaint for lack of personal jurisdiction over Bristol West.

For the foregoing reasons, the summary judgment of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEFS AND ORAL ARGUMENT
FOR APPELLANT:

Jason Ellis
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BRIEF AND ORAL ARGUMENT
FOR APPELLEE:

Evan B. Jones
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¹ Taylor also complains that summary judgment was premature and additional discovery was necessary. However, the necessary facts to determine personal jurisdiction are undisputed.

