

STATE OF MICHIGAN
COURT OF APPEALS

EBENEZER SARFO,

Plaintiff-Appellee,

v

ST. ELIZABETH HOSPITAL, a foreign
corporation,

Defendant-Appellant,

and

McLAREN REGIONAL MEDICAL CENTER,

Defendant,

and

PAUL LAZAR,

Defendant.

UNPUBLISHED

July 19, 2002

No. 230992

Genesee Circuit Court

LC No. 00-67255-CL

Before: Kelly, P.J. and Murphy and Murray, JJ.

PER CURIAM.

Defendant St. Elizabeth Hospital (St. Elizabeth) appeals by leave granted from an order of the trial court denying its motion to quash service of process for lack of in personam jurisdiction. We affirm.

I. Basic Facts and Procedural History

Defendant St. Elizabeth is a nonprofit hospital incorporated under the laws of Illinois and conducts business in Illinois. In June of 1999, Michael Friedman, MD, Program Director, Family Practice Residency at St. Elizabeth, phoned the American Academy of Family Physicians (AAFP) in Kansas City, Missouri for purposes of advertising an available residency position on AAFP's telephone hotline.

For approximately four weeks, the listing was posted on the AAFP's telephone hotline. The advertisement was for a second year resident and the contact person was an individual listed at defendant St. Elizabeth's street address and telephone number in Illinois. Those interested in the position could not contact the hospital through the hotline nor could an interested candidate

leave any information with the AAFP hotline for personnel from St. Elizabeth to retrieve. Rather, those interested in obtaining the position were instructed to send their credentials (CV) and references to Friedman at St. Elizabeth.

Plaintiff was employed as a first year resident with defendant McLaren Regional Medical Center in the Family Practice Residency Program. At all pertinent times, plaintiff was a resident of the State of Michigan. In June of 1999, plaintiff contacted St. Elizabeth regarding the available resident position. In late June, 1999, as a result of that initial phone call, plaintiff traveled to Chicago, Illinois to meet with Friedman, the Director of the Family Practice Residency Program for an in-person interview. Defendant maintains that it did not conduct any meetings or interviews with plaintiff in Michigan.

Plaintiff has a somewhat different recollection of the interviewing process. Plaintiff submits that after defendant requested that plaintiff send his resume, letters of recommendation and academic records, plaintiff participated in a telephone interview with Friedman. Additionally, plaintiff submits further that Dr. Stabile, a family practice physician at St. Elizabeth also contacted plaintiff in Michigan for purposes of conducting a telephone interview. Additionally, in June of 1999, defendant's residency coordinator sent plaintiff an application for purposes of obtaining a medical license in Illinois.

In July of 1999, after plaintiff met with Friedman, Friedman offered plaintiff the position. Friedman signed the employment contract in Illinois and sent it to plaintiff in Michigan. The contract governed plaintiff's employment in Illinois as a resident physician. *Id.* Plaintiff signed the contract and returned it to Illinois. Upon signing and accepting the terms in defendant's contract for employment, defendant sent plaintiff a lab coat, a work schedule, keys and a parking pass.

However, in August of 1999, after speaking with defendant Paul Lazar, supervisor of defendant McLaren Family Practice Residency Program, Friedman learned that plaintiff did not successfully complete the requirements to be eligible for a second year residency in the Family Practice Program. Consequently, in September of 1999, agents for defendant St. Elizabeth sent plaintiff a letter advising that defendant could not offer him a contract for the residency position with defendant hospital because plaintiff did not meet the academic criteria for the position.

As a result of St. Elizabeth personnel's decision to rescind the contract, plaintiff filed suit against defendant St. Elizabeth alleging breach of contract¹. Defendant St. Elizabeth filed a limited appearance for purposes of challenging the trial court's in personam jurisdiction. To that end, defendant St. Elizabeth filed a Motion to Quash Service of Process for Lack of Personal Jurisdiction in accord with MCR 2.116(C)(1). Finding that the contacts that defendant St. Elizabeth had via telephone calls and mail to "persuade plaintiff" to enter into a contract for

¹ Plaintiff also filed suit against defendant McLaren Hospital and Paul Lazar. In a six count Complaint, plaintiff sought damages for tortious interference with contractual relations, injurious falsehood, and slander arising out of defendant Lazar's conversation with Friedman wherein he advised Friedman that plaintiff did not have the requisite academic criteria for the second year residency position at defendant St. Elizabeth Hospital. However, these claims are not at issue in the instant appeal.

employment in Illinois were sufficient to constitute the "transaction of any business" within the state for purposes of Michigan's long arm statute. Additionally, the trial court found that because of defendant's contacts with plaintiff, a Michigan resident, requiring defendant to appear before a Michigan tribunal did not offend due process. Accordingly, the trial court denied defendant St. Elizabeth motion to quash service of process for lack of in personam jurisdiction. Defendant appeals from the trial court's ruling by leave granted.

II. Standard of Review

This Court reviews jurisdictional rulings de novo. *Vargas v Hong Jin Crown Corp*, 247 Mich App 278, 282, 636 NW2d 291 (2001). When considering a motion brought pursuant to MCR 2.116(C)(1), this Court considers the documentary evidence submitted by the parties in a light most favorable to the non-moving party. *Oberlies v Searchmont Resort, Inc*, 246 Mich App 424, 427; 633 NW2d 408 (2001):

The plaintiff bears the burden of establishing jurisdiction over the defendant, . . . but need only make a prima facie showing of jurisdiction to defeat a motion for summary disposition. The affidavits, together with any other documentary evidence submitted by the parties, must be considered by the court. All factual disputes for the purpose of deciding the motion are resolved in the plaintiff's (nonmovant's) favor. *Vargas, supra* at 282 (quoting *Jeffrey v Rapid American Corp*, 448 Mich 178, 184; 529 NW2d 644 (1995)).

III. Michigan's Long-Arm Statute

A. MCL 600.715

When examining whether the state of Michigan may exercise limited personal jurisdiction over a nonresident defendant, this Court engages in a two-step inquiry. First, this Court must determine whether the provisions of Michigan's long-arm statute, MCL 600.715, authorizes jurisdiction and second, whether exercising jurisdiction would comport with the mandates of the Due Process Clause of the Fourteenth Amendment. *Aaronson v Lindsay & Hauer Intern Ltd*, 235 Mich App 259, 262; 597 NW2d 227 (1999).

For purposes of assessing the propriety of finding limited personal jurisdiction, defendant submits that its principle place of business is in Illinois, it provides health care services to Illinois residents, it does not conduct any business in Michigan, it does not sell or transport products to Michigan, it receives no revenue in Michigan, owns no property in Michigan, and pays no taxes in Michigan. Further, defendant's corporate agent, the Prentice-Hall Corporation System, Inc., received the Summons and Complaint in Chicago, Illinois. Beyond its contact with plaintiff for purposes of negotiating an employment contract, the performance of which would occur in Illinois, defendant has had no other contacts with the State of Michigan. Defendant submits that these facts, even considered in the light most favorable to the plaintiff are insufficient to confer personal jurisdiction.

However, Michigan's long-arm statute was intended to provide Michigan courts "the full extent of power possible to gain personal jurisdiction over nonresident defendants as is consistent with the principles of due process." *Bonelli v Volkswagen of America, Inc*, 166 Mich

App 483, 509; 421 NW2d 213 (1988). Bearing this in mind, MCL 600.715 provides in relevant part that:

The existence of any of the following relationships between a corporation or its agent and the state shall constitute a sufficient basis of jurisdiction to enable the courts of record of this state to exercise limited personal jurisdiction over such corporation and to enable such courts to render personal judgments against such corporation arising out of the act or acts which create any of the following relationships:

- (1) The transaction of any business within the state.
- (2) The doing or causing any act to be done, or consequences to occur, in the state resulting in an action for tort.

Although defendant's argument focuses mainly upon the notion that to allow Michigan to acquire in personam jurisdiction would be unreasonable thus violative of due process, this panel must first determine whether defendant's activities in Michigan constitute "transacting business" for purposes of Michigan's long arm statute. We find that it does.

As this Court recognized in *Aaronson, supra*, "any" means just what it says. It includes 'each' and 'every' [business transaction]." *Aaronson, Id.* at 264. Respecting this broad construction, the telephone and mail communications that occurred between defendant and plaintiff for purposes of negotiating and eventually consummating an employment contract as well as the act of sending plaintiff a lab coat, keys, a work schedule and a parking pass to enable plaintiff to perform the contract once he arrived in Illinois, were sufficient to satisfy the requirements of MCL 600.715(1). See *Id.* at 263.

B. Minimum Contacts and Due Process

The more difficult inquiry, however, is whether asserting limited personal jurisdiction over defendant is congruent with due process. Fifty-seven years ago, the United States Supreme Court provided the framework within which to determine whether exercising in personam jurisdiction over a nonresident defendant scrupulously honors the mandates imposed by the Due Process Clause of the Fourteenth Amendment; "due process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *Internat'l Shoe Co v Washington*, 326 US 310, 66 S Ct 154; 90 L Ed 2d 95 (1945). (Citation omitted.)

The minimum contacts requirement protects a nonresident defendant's "liberty interest in not being subject to the binding judgments of a forum with which [it] has established no meaningful 'contacts, ties, or relations.'" *Burger King Corp v Rudzewicz*, 471 US 462, 471-472; 105 S Ct 2174; 85 L Ed 2d 528 (1985). (Citation omitted.) Indeed, by requiring that nonresident defendants have ample warning that "a particular activity may subject [them] to the jurisdiction of a foreign sovereign," *Shaffer v Heitner*, 433 US 186, 218; 97 S Ct 2569; 53 L Ed 2d 683

(1977) (Stevens, J., concurring), “the Due Process Clause `gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit.’” *Burger King*, *supra* at 472. (Citation omitted.)

A minimum contacts analysis occurs case-by case and considers the relationship between the defendant, the forum, and the litigation. See *Oberlies*, *supra* at 433-434. Michigan employs a three-prong test to determine whether a nonresident defendant has sufficient minimum contacts such that asserting limited in personam jurisdiction would not offend “traditional notions of fair play and substantial justice.” *Internat’l Shoe*, *supra* at 317:

First, the defendant must have purposefully availed itself of the privilege of conducting activities in Michigan, thus invoking the benefits and protections of this state’s laws. Second, the cause of action must arise from the defendant’s activities in the state. Third, the defendant’s activities must be so substantially connected with Michigan to make the exercise of jurisdiction over the defendant reasonable.” See *Vargas*, *supra* at 284.

We now focus our attention on these three prongs and consider each of them in turn.

(1) Purposeful Availment

To purposely avail oneself of the benefits and protections of a foreign sovereign, the nonresident defendant must “deliberate[ly] undertak[e] to do or cause an act or thing to be done in Michigan or conduct which can be properly regarded as a prime generating cause of the effects resulting in Michigan, something more than a passive availment of Michigan opportunities.” *Jeffrey*, *supra* at 187-188. (Quotation omitted.) Defendant contends that it did not purposefully avail itself of Michigan business opportunities. We do not agree.

Although plaintiff initially contacted defendant regarding the position for a second year resident, plaintiff was merely responding to an advertisement in the method prescribed by defendant when defendant placed the advertisement on AAFP’s telephone hotline. At defendant’s request, plaintiff sent his resume, list of references and academic transcript. In his affidavit, plaintiff submits that he participated in two telephone interviews with two separate individuals from defendant hospital at defendant’s behest before plaintiff traveled to Illinois to submit to an in-person interview. The facts also establish that one of defendant’s agents sent plaintiff the requisite paperwork so that plaintiff could apply for an Illinois medical license. In addition, after the interviewing process, defendant sent an employment contract into the state of Michigan for purposes of consummating a binding contract with one of this state’s residents. Moreover, after both parties executed the contract, defendant sent plaintiff a lab coat, keys, a work schedule and a parking pass.

Indeed, the “quality and nature” of defendant’s contacts with plaintiff in Michigan for purposes of first determining plaintiff’s qualifications and suitability for the second year resident’s position and thereafter to execute the employment contract and provide plaintiff with the requisite hardware to begin fulfilling his contractual obligations at the hospital were hardly “random, fortuitous, or attenuated contacts.” *Hanson v Denckla*, 357 US 235, 253; 78 S Ct

1228; 2 L Ed 2d 1283 (1958); *Jeffrey, supra* at 187. Indeed, defendant's contacts with plaintiff in Michigan for purposes of availing itself of one of Michigan's resident Family Practice physicians to fulfill a position at defendant hospital, deliberately created a "substantial connection" with Michigan such that it "manifestly has availed [itself] of the privileges of conducting business [in Michigan]" thus invoking the benefits and protections of this state's laws such that it is not "presumptively . . . unreasonable to require [defendant] to submit to the burdens of litigation" in a Michigan forum and before a Michigan tribunal. *Burger King, supra* at 475-476. That none of defendant's agents ever traveled to Michigan is inapposite. Defendant actively employed the telephone and mails to negotiate and eventually consummate the employment contract with plaintiff. Accordingly, defendant well-established its "presence" in Michigan. See *Keifer v May*, 46 Mich App 566, 572; 208 NW2d 539 (1973). In accord with the above, this panel should find that defendant purposely availed itself of transacting business within Michigan.

(2) The Cause of Action Must Arise from Defendant's Contact's With the State

The second requirement is that the cause of action arise from the "circumstances creating the jurisdictional relationship between the defendant and the foreign state." *Oberlies, supra* at 435; MCL 600.715. Clearly, the case at bar satisfies this prong.

Plaintiff alleges that defendant St. Elizabeth breached the contract. Plaintiff's cause of action against St. Elizabeth is thus predicated upon the employment contract negotiated and consummated between defendant and plaintiff for the second year resident position at defendant hospital. Accordingly, we find that plaintiff's cause of action as to defendant St. Elizabeth did indeed arise from defendant's contacts with Michigan. *Aaronson, supra* at 267.

(3) Would it be Reasonable for Michigan to Exercise Limited Personal Jurisdiction?

The final inquiry is whether asserting limited in personam jurisdiction would offend "traditional notions of fair play and substantial justice." *Id.* In *Burger King, supra* at 477, the United States Supreme Court opined that in "appropriate cases," courts may evaluate:

the burden on the defendant, the forum State's interest in adjudicating the dispute, the plaintiff's interest in obtaining convenient and effective relief, the interstate judicial system's interest in obtaining the most efficient resolution of controversies, and the shared interest of the several States in furthering fundamental substantive social policies.

The case at bar is an "appropriate case" to evaluate these competing concerns. Although plaintiff knew that the employment contract was to be entirely performed in Illinois, thus giving Illinois an interest in adjudicating the controversy, we nevertheless opine that on balance, the interstate judicial system's interest in securing the most efficient resolution possible mandates that the litigation remain in a Michigan forum for resolution by a Michigan tribunal.

A review of the pleadings reveals that plaintiff's breach of contract action against defendant arises out of a conversation that Friedman had with defendant Lazar which ultimately resulted in Friedman advising plaintiff that he did not have the requisite qualifications for the position causing Friedman to rescind the contract. And, plaintiff's cause of action against

defendant Lazar and defendant McLaren for tortuous interference with contractual relations, slander and injurious falsehood, all arise because of the decision to rescind the employment contract. All of these various claims are factually interrelated and all of the witnesses are located within Michigan save for the requisite representatives from defendant St. Elizabeth who were involved in negotiating and consummating the employment contract with plaintiff. Considering that Friedman made the decision to rescind the contract because of information allegedly provided by Lazar from McLaren in Michigan, it would not be unduly burdensome to require defendant to travel to Michigan and appear before a Michigan tribunal to defend this lawsuit.

Moreover, to require plaintiff to sever his claims against the various defendants and dismiss that portion of plaintiff's complaint against defendant St. Elizabeth for breach of contract and requiring plaintiff to travel to Illinois to file suit would not go a long way toward providing the "efficient resolution of controversies." To be sure, some of the same testimony and documentary evidence required to prove plaintiff's claims against defendants Lazar and McLaren would be required to establish plaintiff's claim for breach of contract against defendant St. Elizabeth. On the facts of this particular case, considering the whole of plaintiff's lawsuit, and appreciating the interdependency of the proofs that will be required at trial, to require defendant to travel to Michigan to defend this lawsuit would not offend "traditional notions of fair play and substantial justice." Accordingly, we affirm the trial court's decision denying defendant's motion to quash service of process for lack of in personam jurisdiction.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ William B. Murphy