STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1196

Michelle Young, et al.,
Respondents,

vs.

Kenneth Maciora,
Appellant.

Filed February 24, 2020
Reversed
Connolly, Judge

Dakota County District Court
File No. 19HA-CV-18-3792

Gregory A. Abbott, Minneapolis, Minnesota (for respondents)

Kenneth Maciora, East Islip, New York (pro se appellant)

Considered and decided by Bratvold, Presiding Judge; Worke, Judge; and Connolly, Judge.

S Y L L A B U S

A nonresident party's service of process on a Minnesota resident in a prior lawsuit, standing alone, does not establish sufficient minimum contacts under the Fourteenth Amendment's Due Process Clause to warrant a Minnesota court's exercise of personal jurisdiction over that nonresident party in a separate and later lawsuit.

O P I N I O N

CONNOLLY, Judge

Appellant challenges the district court's denial of his motion to dismiss for lack of personal jurisdiction, arguing that he lacks minimum contacts with Minnesota. We reverse.

FACTS

In August 2018, respondents Michelle Young and Jerad Finck sued appellant Kenneth Maciora in Minnesota state court. Their complaint alleged (1) malicious prosecution, (2) abuse of process, (3) civil conspiracy, (4) invasion of privacy, and (5) defamation. Young lives in Dakota County, Minnesota.[1] Appellant lives in Suffolk County, New York. He owns no Minnesota property and conducts no business here.

Respondents hold shares in MyECheck, Inc. (MEC), a Wyoming corporation with its principal place of business in California. Two former MEC managers, one of whom served on MEC's board of directors, unsuccessfully sought to hire appellant's company to complete work for MEC. MEC later terminated both managers in 2015. Appellant then transacted with them to buy many MEC shares at a sharply reduced price. This led to extensive litigation between appellant, MEC, and MEC's agents.

From February 2017 until July 2018, appellant posted information about Young on an online message board at InvestorsHub.com (iHub), which had a specific forum where users discussed MEC. Young never posted on the message board, but she saw appellant's

[1] Finck resides in Washington state. This case involves a Minnesota court's exercise of personal jurisdiction over appellant. Thus, we do not consider the allegations about appellant's contacts with Finck because they do not concern Minnesota.

posts about her. Several of appellant's posts included pictures of Young. One post included a picture partially showing Young's late sister. Another post stated "right Burnsville," an apparent threat to disclose Young's personal information.

Eventually, appellant disclosed Young's personal information on the iHub message board, including information about her prior marriage, addresses, and occupations, as well as information about her personal life.[2] Appellant also encouraged other iHub users to contact Young.

Besides posting about Young online, appellant had both direct and indirect communications with her. He twice called the business where Young's husband worked and once spoke with her husband, who refused to answer any of appellant's questions. Appellant also sent Young two unsolicited private Facebook messages asking her to contact him and one unsolicited email to her personal email address.

Appellant also sued both respondents in New York state court, which dismissed the suit for lack of personal jurisdiction. Young was served in Minnesota with the summons and complaint for the New York suit.

In February 2019, appellant moved to dismiss respondents' Minnesota lawsuit against him for lack of personal jurisdiction. After briefing and oral argument, the district court denied the motion. This appeal follows.

[2] The record does not reveal the exact number of posts.

ISSUE

Did the district court err in denying appellant's motion to dismiss for lack of personal jurisdiction?

ANALYSIS

Appellant argues that the district court erred in finding that Minnesota could exercise personal jurisdiction over him. A party may immediately appeal the denial of a motion to dismiss for lack of personal jurisdiction. *Janssen v. Best & Flanagan, LLP*, 704 N.W.2d 759, 763 (Minn. 2005). Whether personal jurisdiction exists presents a legal question that we review de novo. *Rilley v. MoneyMutual, LLC*, 884 N.W.2d 321, 326 (Minn. 2016).

"Personal jurisdiction" refers to a "court's power to exercise control over the parties" in a case. *Leroy v. Great W. United Corp.*, 443 U.S. 173, 180, 99 S. Ct. 2710, 2715 (1979). The district court considered whether Minnesota could exercise specific personal jurisdiction over appellant. Specific personal jurisdiction exists when a plaintiff's suit arises from or relates to the defendant's forum contacts. *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 n.8, 104 S. Ct. 1868, 1872 n.8 (1984).

When a defendant challenges personal jurisdiction, the plaintiff must prove that the defendant has sufficient contacts with the forum state. *Juelich v. Yamazaki Mazak Optonics Corp.*, 682 N.W.2d 565, 569-70 (Minn. 2004). In our review, we accept as true all allegations in the complaint and any supporting affidavits. *Rilley*, 884 N.W.2d at 326. But when a defendant supports his motion to dismiss with an affidavit, the plaintiff must

allege specific evidence showing personal jurisdiction beyond general statements in the pleadings. *Id.* at 334-35.

There are constraints on a state court's ability to exercise personal jurisdiction over nonresidents. For instance, the Fourteenth Amendment's Due Process Clause restricts a state court's ability to exercise personal jurisdiction over a defendant. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291, 100 S. Ct. 559, 564 (1980).

Minnesota law has this same limitation. Under the long-arm statute, a Minnesota court cannot exercise personal jurisdiction over a nonresident individual unless that person:

> (1) owns, uses, or possesses any real or personal property situated in this state; or
> (2) transacts any business within the state; or
> (3) commits any act in Minnesota causing injury or property damage; or
> (4) commits any act outside of Minnesota causing injury or property damage in Minnesota, subject to the following exceptions when no jurisdiction shall be found:
>
> (i) Minnesota has no substantial interest in providing a forum; or
>
> (ii) the burden placed on the defendant by being brought under the state's jurisdiction would violate fairness and substantial justice.

Minn. Stat. § 543.19, subd. 1 (2018). The long-arm statute does not confer personal jurisdiction whenever a nonresident commits a tort in Minnesota. *Kopperud v. Agers*, 312 N.W.2d 443, 445 (Minn. 1981).

To resolve questions of personal jurisdiction, we may use federal caselaw because Minnesota's long-arm statute matches the Fourteenth Amendment's extension of personal jurisdiction. *Valspar Corp. v. Lukken Color Corp.*, 495 N.W.2d 408, 410-11 (Minn. 1992). Due process is satisfied if a nonresident had sufficient "minimum contacts" with the forum

state, and maintaining the suit does not "offend traditional notions of fair play and substantial justice." *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S. Ct. 154, 158 (1945) (quotation omitted). Our specific jurisdiction inquiry focuses on the relationship among the defendant, the forum, and the litigation. *Walden v. Fiore*, 571 U.S. 277, 283-84, 134 S. Ct. 1115, 1121 (2014). "For a [s]tate to exercise jurisdiction consistent with due process, the defendant's suit-related conduct must create a substantial connection with the forum [s]tate." *Id.* at 284, 134 S. Ct. at 1121.

Minimum contacts exist when a defendant "purposefully avails" himself of a forum's privileges, benefits, and protections, "such that the defendant should reasonably anticipate being haled into court there." *Rilley*, 884 N.W.2d at 327 (quotation omitted). A defendant need not have a physical presence in the forum to warrant the exercise of personal jurisdiction. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476, 105 S. Ct. 2174, 2184 (1985). But the defendant must have contacts with the forum state, not simply with a person residing there. *Walden*, 571 U.S. at 285-86, 134 S. Ct. at 1122-23.

Normally, Minnesota courts use a five-factor test to determine whether personal jurisdiction exists. *See Rilley*, 884 N.W.2d at 328. These factors are "(1) the quantity of contacts with the forum state; (2) the nature and quality of those contacts; (3) the connection of the cause of action with these contacts; (4) the interest of the state providing a forum; and (5) the convenience of the parties." *Id.* (quotation omitted). Factors one through three relate to the existence of minimum contacts, while factors four and five consider the reasonableness of exercising jurisdiction. *Juelich*, 682 N.W.2d at 570.

But because this case involves intentional torts, the *Calder* effects test also guides our analysis. *Calder v. Jones*, 465 U.S. 783, 104 S. Ct. 1482 (1984).[3] This three-prong test requires the plaintiff to show that: (1) the defendant committed an intentional tort; (2) the forum represents the focus of the plaintiff's injury based on the harm felt from the tort; and (3) the defendant targeted his conduct at the forum, making it the focus of his tortious activity. *Griffis v. Luban*, 646 N.W.2d 527, 534 (Minn. 2002). A forum may properly exercise personal jurisdiction over a nonresident tortfeasor if the defendant's intentional conduct establishes the requisite contacts with that forum. *Walden*, 571 U.S. at 286, 134 S. Ct. at 1123.

With these principles in mind we turn to the alleged contacts here. First, we consider appellant's email, phone, and online contacts. Second, we analyze appellant's service of Young in Minnesota for his New York suit. We then consider these actions collectively.

[3] No published Minnesota case has discussed the interplay between the effects test and our traditional five-factor test. The district court used the five-factor test to conclude that a Minnesota court could exercise personal jurisdiction over appellant. But none of appellant's contacts with or about Young show that he "purposefully availed" himself of Minnesota law. *See Rilley*, 884 N.W.2d at 327. In fact, appellant has not engaged in significant activities with Minnesota or formed continuing obligations between himself and any Minnesota resident. *See Burger King*, 471 U.S. at 476, 105 S. Ct. at 2184.

Still, a plaintiff can use the effects test to show a defendant's forum contacts. The Supreme Court's decision in *Walden* implies that the effects test constitutes another inquiry when reviewing a defendant's minimum contacts in intentional-tort cases. 571 U.S. at 286-88, 134 S. Ct. at 1123-24; *see also Dakota Indus., Inc. v. Dakota Sportswear, Inc.*, 946 F.2d 1384, 1391 (8th Cir. 1991) (declining to abandon the traditional five-factor personal jurisdiction test, but recognizing that *Calder* imposes additional considerations in intentional-tort cases).

I. Online Posts, Facebook Messages, Email, and Phone Calls

Appellant made many posts about Young on the iHub message board over a 17-month period. These posts revealed Young's personal information and were allegedly defamatory and harassing. Appellant also sent two unsolicited messages to Young on Facebook and one unwanted email to Young. Finally, appellant made two calls to the Minnesota business where Young's husband worked. We address these in turn.

A. iHub posts

To begin, we evaluate appellant's online posts. The supreme court's decision in *Griffis* aids this analysis. In that case, Luban, a Minnesota resident, sought to vacate an Alabama court's default judgment against her for lack of personal jurisdiction. 646 N.W.2d at 530-31. Luban made posts over several months on an online public forum criticizing the qualifications of Griffis, an Alabama teacher and consultant. *Id.* at 530. The supreme court concluded that Luban had not "expressly aimed" her tortious conduct at Alabama, but instead aimed it at Griffis, an Alabama resident. *Id.* at 535. In that regard, the court observed that no evidence suggested that anyone in Alabama other than Griffis had read the allegedly defamatory posts. *Id.* at 535-36.

Like *Griffis,* we conclude here that appellant did not expressly aim his conduct at Minnesota. Respondents allege that appellant made many harassing posts on the iHub message board for MEC. Some posts disclosed Young's private information. In one post, appellant referred to his dismissed New York suit against Young and encouraged others to contact her for the details.

Yet respondents do not allege, and the record does not establish, that any Minnesota resident except Young saw these posts. No record evidence suggests that any iHub user besides appellant contacted Young. The iHub message board where appellant posted was dedicated to discussing MEC. Nothing in the record beyond Young's ownership of MEC shares connects MEC to Minnesota.

The iHub message board also had no explicit ties to Minnesota. The site does not transact business with Minnesota residents. And mentioning Young's Minnesota address in some posts does not make Minnesota the focal point of appellant's tortious conduct. *See Johnson v. Arden*, 614 F.3d 785, 796-97 (8th Cir. 2010) (holding that Colorado internet user's allegedly defamatory online posts mentioning Missouri were insufficient for personal jurisdiction in Missouri).

Although appellant certainly knew Young lived in Minnesota, this alone cannot sustain the exercise of personal jurisdiction. *See Griffis*, 646 N.W.2d at 536 ("The mere fact that Luban knew that Griffis resided and worked in Alabama is not sufficient to extend personal jurisdiction over Luban in Alabama, because that knowledge does not demonstrate targeting of Alabama as the focal point of the allegedly defamatory statements."). Nor is it enough that appellant could foresee that these posts would injure Young in Minnesota. *See id.* at 536-37; *Walden*, 571 U.S. at 290, 134 S. Ct. at 1125 ("The proper question is not where the plaintiff experienced a particular injury or effect but whether the defendant's conduct connects him to the forum in a meaningful way.").

Based on the above analysis, we cannot say that appellant expressly aimed the allegedly harassing posts at Minnesota under the third prong of the effects test. Instead,

appellant's posts represent a targeting of Young, a Minnesota resident.[4] This does not connect appellant to Minnesota in a meaningful way.

B. Facebook messages and email

Second, respondents allege that appellant sent Young two Facebook messages and one email. Appellant argues that these do not represent contacts because they were not tortious. Because this case involves intentional torts, we again use the effects test to analyze these electronic contacts.

In the affidavit supporting his motion to dismiss, appellant stated that his Facebook messages to Young simply asked her to contact him. Respondents did not refute this. And respondents do not allege that these Facebook messages or email represent appellant's tortious activity.[5] None of the electronic messages mentioned Minnesota. These facts

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[4] A recent federal case, *Vangheluwe v. Got News, LLC*, considered whether online posts revealing personal information established minimum contacts. 365 F. Supp. 3d 850 (E.D. Mich. 2019). That case involved similar "doxing" conduct, where an internet user publicly disclosed an individual's personal information. *Id.* at 859. Applying the effects test, the federal court determined that a California internet user's doxing of a Michigan resident subjected the California defendant to personal jurisdiction in Michigan. *Id.* at 860-61. This case retains only persuasive value. *See Mahowald v. Minn. Gas Co.*, 344 N.W.2d 856, 861 (Minn. 1984) (stating that decisions from other jurisdictions are not binding on Minnesota courts). The plaintiffs in *Vangheluwe* alleged that the online posts involved "a doxing campaign specifically targeted at Michigan citizens, with a call to action in Michigan with the goal of inciting violence against and endangering them in Michigan." 365 F. Supp. 3d at 859. The online posts caused the police to warn the plaintiffs to leave their home. *Id.* at 860. And they allegedly caused fear to one plaintiff's business clients. *Id.* No similar allegations appear in the record here.

[5] Federal courts lack unity on which contacts matter under the effects test. Certain courts consider only contacts that the plaintiff alleges to be intentional and tortious, while others examine all relevant intentional acts. *See Dudnikov v. Chalk & Vermilion Fine Arts, Inc.*, 514 F.3d 1063, 1072-73 (10th Cir. 2008) (describing this conflict). We need not, and do not, reach this issue. Even reviewing all alleged contacts, we find that they do not meet the effects test.

show that appellant did not expressly aim his conduct at Minnesota under the effects test. *See Griffis*, 646 N.W.2d at 534 ("[T]o satisfy the third prong, the plaintiff must show that the defendant knew that the plaintiff would suffer the brunt of the harm caused by the tortious conduct in the forum, and *point to specific activity indicating that the defendant expressly aimed its tortious conduct at the forum*." (quotation omitted)).

Even under our traditional five-factor test, these two Facebook messages and one email do not support the exercise of personal jurisdiction. When assessing email communications, Minnesota courts use a traditional minimum-contacts analysis. *Rilley*, 884 N.W.2d at 331-32. The three total contacts here differ from the thousands of emails to Minnesota residents that supported personal jurisdiction in *Rilley*. *See id.* at 332-33. These contacts did not seek to engage in a business relationship with Young. Appellant merely asked Young to contact him. As a result, these communications cannot establish minimum contacts.

C. Phone calls

Respondents also allege that appellant made two phone calls to a business where Young's husband worked. Generally, making phone calls to a forum, without more, cannot sustain the exercise of personal jurisdiction. *Mountaire Feeds, Inc. v. Agro Impex, S.A.*, 677 F.2d 651, 656 (8th Cir. 1982); *Walker Mgmt., Inc. v. FHC Enters.*, 446 N.W.2d 913, 915 (Minn. App. 1989), *review denied* (Minn. Dec. 15, 1989).

Appellant spoke with Young's husband once. This contact was not with Young, and her husband is not a party to this action. And respondents do not allege that this phone call constitutes appellant's tortious conduct. These phone calls appear aimed at a specific

resident, not at Minnesota as a forum. Under either the effects test or the traditional minimum-contacts analysis, we conclude that these phone calls, while allegedly harassing, do not constitute sufficient minimum contacts with Minnesota.

II. Service of Process

Even if the posts, three electronic messages, and two phone calls do not warrant the exercise of jurisdiction, respondents urge affirmance. They highlight that appellant served Young with the summons and complaint in Minnesota for appellant's prior New York lawsuit against her. In essence, respondents ask us to hold that service of a summons and complaint by a nonresident in a foreign lawsuit on a Minnesota resident constitutes a sufficient contact to hale that nonresident into a Minnesota court in a separate lawsuit. When Minnesota caselaw is undefined, its courts look to decisions from other jurisdictions. *Lorix v. Crompton Corp.*, 736 N.W.2d 619, 629 (Minn. 2007). We do so here.

Our research reveals a split of authority on this issue. Some courts have concluded that causing service on a resident does not subject an individual to personal jurisdiction in the resident's home state. *See, e.g.*, *Allred v. Moore & Peterson*, 117 F.3d 278, 286-87 (5th Cir. 1997); *Wallace v. Herron*, 778 F.2d 391, 395 (7th Cir. 1985); *see also Miner v. Rubin & Fiorella, LLC*, 242 F. Supp. 2d 1043, 1047 (D. Utah 2003); *Midwest Mfg., Inc. v. Ausland*, 273 P.3d 804, 811 (Kan. Ct. App. 2012). But other courts have reached the opposite conclusion. *See, e.g.*, *Vishay Intertechnology, Inc. v. Delta Int'l Corp.*, 696 F.2d 1062, 1067 (4th Cir. 1982); *MHA Fin. Corp. v. Varenko Inv. Ltd.*, 583 F. Supp. 2d 173, 181 (D. Mass. 2008).

We find the reasoning in *Allred* and *Wallace* persuasive. Like this case, both *Allred* and *Wallace* involved malicious prosecution and abuse-of-process claims. *Allred*, 117 F.3d at 280; *Wallace*, 778 F.2d at 392. They both addressed personal jurisdiction based on forum contacts from a prior lawsuit filed in another state. *Allred*, 117 F.3d at 285-87; *Wallace*, 778 F.2d at 394-95. Both cases also framed their analysis around the *Calder* effects test. *Allred*, 117 F.3d at 286-87; *Wallace*, 778 F.2d at 394-95. And both cases hold that the act of serving process or documents on a forum resident in an earlier suit did not support personal jurisdiction in that resident's forum. *Allred*, 117 F.3d at 286-87; *Wallace*, 778 F.2d at 395-96.

This analysis from *Allred* and *Wallace* applies here. Appellant caused Young to be served in Minnesota with the summons and complaint for his New York suit. Young is that suit's only link to Minnesota. And serving Young required her to respond in New York, not Minnesota. Accepting respondents' argument would significantly undercut our traditional due-process protection for out-of-state defendants.

Respondents seek to frame this service issue as one of transacting business in Minnesota. They contend that "[i]t is undisputed that on or about May 9, 2017, [a]ppellant transacted business in Minnesota by hiring a process server and then having documents served upon [r]espondent Young at her father's residence in Burnsville . . . ." But this contention lacks record support. In their complaint, respondents alleged only that appellant effectuated service of the summons and complaint. Indeed, we do not know who served

Young.[6] No other mention of service of process on Young in Minnesota appears in the record.

The act of serving process on a Minnesota resident for a suit in another state, without more, creates no meaningful connection with Minnesota. Instead, appellant completed a required part of litigation. *See* N.Y. C.P.L.R. § 308 (describing New York's requirement for personal service on an individual). For these reasons, we conclude that this service, standing alone, does not establish sufficient minimum contacts with Minnesota.

III. Collective Contacts

Finally, we consider appellant's contacts together. *See Rilley*, 884 N.W.2d at 337. In short, we hold that these actions do not represent express targeting of Minnesota. *Cf. Griffis*, 646 N.W.2d at 534. Instead, appellant targeted Young, a Minnesota resident. But this cannot sustain personal jurisdiction under the Supreme Court's analysis in *Walden*. 571 U.S. at 285, 134 S. Ct. at 1122.

A review of *Calder*'s facts supports this conclusion. That case involved the *National Enquirer's* publication of an allegedly libelous article about California actress Shirley Jones. 465 U.S. at 785, 104 S. Ct. at 1484-85. The story's author and an *Enquirer* editor, both Florida residents, argued that California lacked jurisdiction over them. *Id.* at 786, 104 S. Ct. at 1485. The Supreme Court held that California had personal jurisdiction over the Florida defendants. *Id.* at 789, 104 S. Ct. at 1486-87. To support this holding, the Supreme Court explained that California represented the focal point of the article and the

[6] Young did not submit an affidavit to clarify or explain the exact nature or number of times appellant served her.

harm that Jones suffered. *Id.*, 104 S. Ct. at 1486. The *Calder* court observed that the article used California sources and that the *Enquirer* had a weekly circulation of 600,000 in California. *Id.* at 785, 104 S. Ct. at 1484-85.

In contrast, appellant's contacts lack a meaningful connection with Minnesota. This case falls well short of the widespread publication in *Calder*. To be sure, appellant directed his activities at a Minnesota resident. Yet his contacts with and about Young do not support the exercise of jurisdiction in Minnesota. As noted above, appellant's actions were not "expressly aimed" at Minnesota. *See Griffis*, 646 N.W.2d at 534.[7] His actions, taken collectively, do not permit a Minnesota court to exercise personal jurisdiction over him consistent with due process.

D E C I S I O N

Because appellant lacks sufficient minimum contacts with Minnesota, we reverse the district court's denial of his motion to dismiss for lack of personal jurisdiction.

Reversed.

[7] Since appellant lacks minimum contacts with Minnesota under either the effects test or our traditional five-factor test, we do not consider the remaining personal jurisdiction factors. *See KSTP-FM, LLC v. Specialized Commc'ns, Inc.*, 602 N.W.2d 919, 925-26 (Minn. App. 1999) (declining to consider remaining factors when the defendant lacked minimum contacts with Minnesota).