STATE OF MINNESOTA
IN COURT OF APPEALS
A19-2030

Michael A. Zimmer,
Appellant,

vs.

Michael T. Schulenberg, M.D., et al.,
Defendants,

Howard Kornfeld, M.D., et al.,
Respondents.

Filed September 28, 2020
Affirmed
Ross, Judge

Carver County District Court
File No. 10-CV-18-830

John C. Goetz, Jennifer E. Olson, Matthew J. Barber, Schwebel Goetz & Sieben, P.A., Minneapolis, Minnesota (for appellant)

Kenneth H. Bayliss, Steven R. Schwegman, Laura A. Moehrle, Quinlivan & Hughes, P.A., St. Cloud, Minnesota (for respondents)

Considered and decided by Ross, Presiding Judge; Bjorkman, Judge; and Bryan, Judge.

U N P U B L I S H E D O P I N I O N

ROSS, Judge

Following the death of the musician Prince, the trustee for his next of kin brought a wrongful-death action against a physician and healthcare clinic, both located in California,

alleging that they failed to provide adequate medical advice that would have prevented Prince's death. These defendants moved to dismiss for lack of personal jurisdiction, and the district court granted the motion. Because the defendants' alleged contacts with Minnesota are insufficient to establish specific personal jurisdiction over them, we affirm.

FACTS

This case arose out of the death of musician Prince Rogers Nelson. Prince passed away at his home in Carver County, Minnesota, in April 2016, due to an accidental overdose of opioid drugs. Appellant Michael Zimmer was appointed trustee of Prince's next of kin, and he sued healthcare providers for their allegedly negligent failure to take reasonable steps to prevent Prince's overdose. These healthcare providers are not parties to this appeal. Zimmer amended his complaint to add respondents Dr. Howard Kornfeld and the doctor's healthcare clinic, Recovery Without Walls. According to the complaint, Dr. Kornfeld practices in California and specializes in addiction treatment, including the treatment of opioid addiction. The complaint alleges that Prince's agents contacted the Kornfeld defendants by telephone in California to seek advice for emergency addiction treatment for Prince. It also asserts that these defendants departed from the proper standard of medical care by failing to advise Prince's agents that Prince should be immediately admitted to a treatment facility. And it alleges that the defendants sent Dr. Kornfeld's son, Andrew Kornfeld, to Minnesota with medicine to treat Prince, but that he was unqualified and not licensed to administer the medicine and was also tardy, arriving in Minnesota at about the time of Prince's death.

The Kornfeld defendants moved to dismiss for lack of personal jurisdiction. Zimmer argued that the district court had specific personal jurisdiction because the Kornfeld defendants engaged in Minnesota-directed conduct that formed the basis for the wrongful-death action. The district court granted the motion to dismiss. Zimmer appeals.

D E C I S I O N

Zimmer challenges the district court's order granting the Kornfeld defendants' motion to dismiss under Minnesota Rule of Civil Procedure 12.02(b) for lack of personal jurisdiction. Whether personal jurisdiction exists is a legal question that we review de novo. *Juelich v. Yamazaki Mazak Optonics Corp.*, 682 N.W.2d 565, 569 (Minn. 2004). After a defendant challenges the existence of personal jurisdiction, the plaintiff has the burden to show that the court's exercise of jurisdiction is proper. *Id.* at 569–70. We review the jurisdictional decision assuming that all factual allegations in the complaint are true. *Rilley v. MoneyMutual, LLC*, 884 N.W.2d 321, 326 (Minn. 2016).

The Fourteenth Amendment's Due Process Clause limits Minnesota's ability to exercise jurisdiction over nonresidents, like the Kornfeld defendants. *See World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291, 100 S. Ct. 559, 564 (1980). Minnesota's long-arm statute identifies the circumstances allowing Minnesota courts to exercise personal jurisdiction. Minn. Stat. § 543.19, subd. 1 (2018). Among other things, it authorizes personal jurisdiction when a defendant's acts committed outside Minnesota cause injury in Minnesota, but it provides that jurisdiction cannot extend to situations in which "the burden placed on the defendant by being brought under the state's jurisdiction would violate fairness and substantial justice." *Id.*, subd. 1(4)(ii). The statute therefore

extends personal jurisdiction to the full extent allowed under the Due Process Clause. *Valspar Corp. v. Lukken Color Corp.*, 495 N.W.2d 408, 411 (Minn. 1992). And we may rely on federal caselaw to discern those limits. *Id.*

Zimmer argues that personal jurisdiction exists based on specific contacts, or, as shorthand, specific jurisdiction. Specific jurisdiction exists when a defendant has "purposefully directed his activities at residents of the forum" and the alleged injuries giving rise to the litigation "arise out of or relate to those activities." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472, 105 S. Ct. 2174, 2182 (1985) (quotations omitted). This requires a relationship between the defendant, the forum, and the litigation. *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414, 104 S. Ct. 1868, 1872 (1984).

Minnesota courts consider five factors when assessing whether the exercise of personal jurisdiction over a defendant comports with due process. *Juelich*, 682 N.W.2d at 570; *see also Hardrives, Inc. v. City of LaCrosse*, 240 N.W.2d 814, 817 (Minn. 1976) (first adopting the five-factor test in Minnesota). Those five 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." *Juelich*, 682 N.W.2d at 570. Although Minnesota courts have applied all five factors when analyzing claims of specific jurisdiction, *see, e.g.*, *Rilley*, 884 N.W.2d at 328, because specific-jurisdiction cases typically involve relatively few contacts and rest on the degree to which the lawsuit derives from those contacts, the second and third factors are the most relevant. *See, e.g.*, *Marquette Nat'l Bank of Minneapolis v. Norris*, 270 N.W.2d 290, 295 (Minn. 1978) (recognizing that,

when the defendants' contacts with the state consisted of a single transaction, the forum-interest, litigation-convenience, and quantity-of-contacts factors were not decisive and the nature-and-quality factor was dispositive). We will focus our analysis on the nature and quality of the Kornfeld defendants' contacts as well as the connection between those contacts and the cause of action.

Accepting as true the complaint's allegations, the Kornfeld defendants had two relevant contacts with Minnesota. The first is the telephone contact initiated by Prince's agents, who called the defendants seeking advice about emergency treatment for Prince. During the phone conversations, the defendants failed to say that Prince should be admitted to a treatment facility immediately. The second is Andrew Kornfeld's flight to Minnesota. The Kornfeld defendants sent him to Minnesota to administer medicine to Prince, but he arrived in Minnesota too late, at about the time that Prince died. We address each contact, beginning with the latter.

Andrew Kornfeld's airplane travel to Minnesota does not establish minimum contacts because the travel was not sufficiently related to the cause of action.

Zimmer maintains that Andrew Kornfeld's travel to Minnesota supports specific jurisdiction because the alleged malpractice occurred by the defendants "sending [their] unqualified agent into Minnesota to provide medication to a known Minnesota resident." The Kornfeld defendants accurately note that the complaint does not allege that Andrew is the defendants' agent. But taking the allegations in the complaint as true and drawing inferences in their favor, we will assume for the purposes of this opinion that Andrew was acting as the defendants' agent when he flew to Minnesota.

Even with this agency assumption, we conclude that Andrew's flight does not establish specific personal jurisdiction because the contact is immaterial to the wrongful-death action. To establish sufficient minimum contacts, "it is the defendant's *conduct* that must form the necessary connection with the forum [s]tate." *Walden v. Fiore*, 571 U.S. 277, 285, 134 S. Ct. 1115, 1122 (2014) (emphasis added). By arriving in Minnesota at about the time that Prince passed away and having no interaction with Prince or his agents, Andrew engaged in no conduct in Minnesota related to the allegedly death-causing negligence of the Kornfeld defendants. The complaint does assert that Andrew was medically unqualified to treat Prince and that he was not licensed to administer medication, but the complaint demonstrates that he never treated Prince or administered medication. This *lack* of allegedly improper contact is not contact at all, let alone the kind of meaningful contact that establishes jurisdiction. The untimely nature of Andrew's arrival in Minnesota likewise cannot establish personal jurisdiction. Zimmer's implied logic to the contrary suggests that a sufficient specific-jurisdictional contact occurred when Andrew arrived too late to administer the medication that he was prohibited by law from administering. Zimmer cites no case corroborating this notion, and we reject it as legally and logically unsupported. Zimmer's insistence that Andrew "would have likely continued to treat Prince in Minnesota" if Prince had not passed away is also unavailing because the necessary minimum contacts must relate to the defendants' actual conduct in the forum state, not their possible conduct in some hypothetical scenario.

Because Andrew's flight to Minnesota has no nexus to the alleged negligence in the wrongful-death action, the contact does not provide a basis for specific personal jurisdiction. We turn to the telephone discussion.

The phone discussion between the Kornfeld defendants and Prince's agents does not establish specific personal jurisdiction because the Kornfeld defendants did not make or solicit the contact.

The telephone communication between the Kornfeld defendants and Prince's agents also does not establish specific personal jurisdiction. Zimmer correctly observes that the Kornfeld defendants need not have been physically present in Minnesota during the discussion for specific jurisdiction to exist. *See Marquette*, 270 N.W.2d at 295 ("The fact that the nonresident appellants were never physically present in the state in the course of their transaction, which was accomplished entirely by telephone and mail, is clearly of no significant consequence."). And he also correctly observes that there is some connection between the telephone contact and the cause of action. According to the complaint, it was during the telephone discussion that the Kornfeld defendants both developed and failed to meet their alleged duty to advise Prince's agents that Prince should be admitted promptly to a treatment facility. The complaint alleges that this omission fell below the standard of acceptable medical practice, implying that the defendants' allegedly deficient advice during the telephone discussion caused Prince's death. This connectedness factor supports Zimmer's position, but for the following reasons, it is not sufficient.

Personal jurisdiction depends on *the defendants*' conduct and connection with the forum state, and the conduct must be such that they "should reasonably anticipate being haled into court there." *Kreisler Mfg. Corp. v. Homstad Goldsmith, Inc.*, 322 N.W.2d 567,

571 (Minn. 1982) (emphasis omitted) (quoting *World-Wide Volkswagen*, 444 U.S. at 297, 100 S. Ct. at 567). And "[t]he unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum [s]tate." *Hanson v. Denckla*, 357 U.S. 235, 253, 78 S. Ct. 1228, 1239–40 (1958). The complaint demonstrates that it was Prince's agents who unilaterally initiated the telephone contact with the Kornfeld defendants, and the communication was limited to a single occurrence. The complaint alleges vaguely that the Kornfeld defendants provided medical services for addiction "to patients throughout the U.S.," but it does not allege that the defendants advertised or sought patients in Minnesota. The Kornfeld defendants did not reach into Minnesota; Prince's agents reached out to them from Minnesota. This was the only relevant contact, and it does not support personal jurisdiction because it is not of a nature that would cause the Kornfeld defendants to reasonably expect to be brought to court in Minnesota.

Cases from other jurisdictions have similarly declined to recognize specific jurisdiction in the context of medical-malpractice lawsuits brought against out-of-state physicians who had only a single communication with someone in the forum state. In *Wright v. Yackley*, for example, the Ninth Circuit held that Idaho lacked personal jurisdiction over a South Dakota physician who provided a patient with copies of her original prescriptions after the patient moved to Idaho so that she could have the prescriptions refilled there. 459 F.2d 287, 288, 291 (9th Cir. 1972). The *Wright* court reasoned that the act of sending copies of the prescriptions to Idaho did not show that the physician was directing his activities at Idaho because the patient's residence in Idaho was "irrelevant and incidental" to the treatment that the physician had provided in South

Dakota. *Id.* at 289–90. Similarly in *Harris v. Omelon*, the District of Columbia Court of Appeals held that the District of Columbia did not have jurisdiction over a Virginia physician when the physician's only contact with the District of Columbia was a single phone call to a pharmacy to fill a prescription. 985 A.2d 1103, 1104, 1106 (D.C. 2009). Like the physicians in *Wright* and *Harris*, the Kornfeld defendants' contact with the forum state was a single communication separate from any actual medical treatment.

We recognize that if a defendant engages by telephone in communication that constitutes an intentional tort, such as fraud, then that type of active conduct might establish specific jurisdiction. *See Calder v. Jones*, 465 U.S. 783, 789–90, 104 S. Ct. 1482, 1487 (1984) (holding that the court had personal jurisdiction over out-of-state defendants who committed "intentional, and allegedly tortious, actions" aimed at the forum state when the defendants knew that the injury would be felt in that state); *see also Oriental Trading Co. v. Firetti*, 236 F.3d 938, 943 (8th Cir. 2001) (holding that minimum contacts were sufficient to exercise jurisdiction over out-of-state defendants who engaged in fraudulent communications by phone and facsimile despite the defendants not being present in the forum state). But the Kornfeld defendants' alleged *non*-conduct differs in nature from the active conduct in those cases. They neither initiated the communication nor misadvised Prince's agents or intentionally or even negligently provided inaccurate advice. Applying the rudimentary principles of due process, we do not believe it is fundamentally fair for the state to exercise its power to summon California defendants to court in Minnesota based on contact that the plaintiff unilaterally initiated and that rests on the defendants' *not* giving advice. A plaintiff cannot manufacture personal jurisdiction in this way.

We add for clarity that we are not suggesting anything about the merits of the case. If the allegations are true, the Kornfeld defendants may have entered into at least some sort of preliminary physician-patient relationship with Prince. And Minnesota law does not require the existence of a physician-patient relationship to maintain a medical-malpractice action. *Warren v. Dinter*, 926 N.W.2d 370, 375 (Minn. 2019). So the phone conversations between Prince's agents and the Kornfeld defendants are relevant to the cause of action even if a physician-patient relationship had not yet been created. Our limited focus here is not on the nature of the relationship between Prince and the Kornfeld defendants, but on the nature of the defendants' contact with Minnesota. We hold only that the contact was not of the nature and quality to establish specific personal jurisdiction. The district court correctly dismissed the complaint with respect to the Kornfeld defendants.

Zimmer has not sought jurisdictional discovery.

At the close of his brief, Zimmer offers an alternative afterthought, saying, "At the very least, Kornfeld should answer jurisdictional discovery to determine its Minnesota contacts." District courts generally allow requested jurisdictional discovery before ruling on a motion to dismiss for lack of personal jurisdiction. *Behm v. John Nuveen & Co., Inc.*, 555 N.W.2d 301, 305 (Minn. App. 1996). Zimmer seems to imply that the district court abused its discretion by deciding the jurisdictional issue without first requiring the Kornfeld defendants to answer discovery, but he does so without outlining any procedural abnormality or developing the statement into an actual legal argument. And he then "asks this [c]ourt to remand to the lower court with instructions that Kornfeld answer jurisdictional discovery." The Kornfeld defendants did not respond to the bare request.

Given Zimmer's failure to develop a legally and logically supported argument, neither do we. *See Brodsky v. Brodsky*, 733 N.W.2d 471, 479 (Minn. App. 2007) (recognizing that inadequately briefed arguments are forfeited).

Affirmed.