STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0219

Health Care Service Corporation, et al.,
Respondents,

vs.

Albertsons Companies, LLC, et al.,
Appellants,

SuperValu, Inc.,
Defendant.

Filed September 6, 2022
Affirmed
Wheelock, Judge

Dakota County District Court
File No. 19HA-CV-21-213

Vincent J. Moccio, Bennerotte & Associates, P.A., Eagan, Minnesota; and

Kelly Hibbert (pro hac vice), Crowell & Moring LLP, Washington, District of Columbia (for respondents)

David M. Aafedt, Christianna L. Finnern, Olga Tymouch, Winthrop & Weinstine, P.A., Minneapolis, Minnesota; and

William L. Roberts (pro hac vice), Ropes & Gray LLP, Boston, Massachusetts (for appellants)

Considered and decided by Wheelock, Presiding Judge; Reyes, Judge; and Klaphake, Judge.[*]

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

WHEELOCK, Judge

Appellant-defendants appeal from the district court's order denying their motion to dismiss, for lack of personal jurisdiction, respondent-plaintiffs' complaint alleging that appellants fraudulently overcharged respondents for prescription drugs via reimbursement claims processed in Minnesota. We affirm.

FACTS

Respondents Health Care Service Corporation, BCBSM Inc., and HMO Minnesota are insurers that offer, administer, and underwrite health plans for their insureds. Health Care Service Corporation has its principal place of business in Illinois, while the other two respondents have their principal places of business in Minnesota. Appellants Albertsons and Safeway are grocery-store and pharmacy companies. Neither appellant is incorporated or headquartered in Minnesota.

In January 2021, respondents brought this civil action against appellants, alleging that appellants overcharged respondents for prescription drugs they sold and dispensed to respondents' insureds. Respondents allege that appellants were required to report the drugs' "usual and customary price," which is "the cash price charged to a member of the general public paying for a prescription drug without using health plan benefits." Respondents would then reimburse appellants in an amount based on either a negotiated price or the usual and customary price.

According to respondents, appellants reported inflated usual and customary prices, causing respondents to pay hundreds of millions of dollars more than they should have on

tens of millions of claims. Based on the alleged overpayment, respondents asserted claims for fraud, fraudulent nondisclosure, negligent misrepresentation, unjust enrichment, and violation of the Minnesota Prevention of Consumer Fraud Act, Minn. Stat. § 325F.69, subd. 1 (2020), and the Minnesota Uniform Deceptive Trade Practices Act, Minn. Stat. § 325D.44 (2020).

In their complaint, respondents allege that the basis for specific personal jurisdiction over appellants is appellants transacting business within Minnesota and committing acts in Minnesota that caused the claimed damages. Respondents allege that all of appellants' reimbursement claims were processed by Prime Therapeutics LLC (Prime), a pharmacy benefit manager headquartered in Eagan, Minnesota.

Appellants moved to dismiss the complaint for, among other reasons not contested on appeal, lack of personal jurisdiction. Appellants argued that they lacked sufficient minimum contacts with Minnesota for the district court to exercise personal jurisdiction over them. In support of their motion to dismiss, appellants submitted an affidavit as well as the pharmacy participation agreements between them and Prime. Appellants argued that the affidavit from the vice president of Albertsons' pharmacy services undermined the allegations in the complaint and that the pharmacy participation agreements established that there is no evidence showing that Prime actually processed the claims in Minnesota.

The district court denied appellants' motion to dismiss, determining that it could exercise personal jurisdiction over appellants. The district court emphasized Minnesota's liberal pleading standard and highlighted a recent case from the U.S. District Court for the District of Minnesota with "a very similar procedural challenge" and "remarkably similar

causes of action" in which the federal court concluded that it could exercise personal jurisdiction over the defendants. *See Blue Cross & Blue Shield of N.C. v. Rite Aid Corp.*, 519 F. Supp. 3d 522 (D. Minn. 2021). The district court reasoned that the allegations in the complaint giving rise to respondents' claims are based on appellants "having had some, or all, of the alleged fraudulent or otherwise actionable activity with Prime as the intermediary." The district court also explained that "[w]hile it may be murky now as to how many of the over 60 million reimbursement requests are attributable to each [appellant] or how many give rise to the fraud claimed by [respondents], there is enough to establish at this pleading stage that they [meet the minimum-contacts test]." In addition to determining it could exercise specific personal jurisdiction, the district court also determined that "the sheer scale of [appellants'] transactions all taking place here in Minnesota . . . satisfies the general jurisdiction requirements."

This appeal follows.

DECISION

Appellants challenge the district court's order denying their motion to dismiss for lack of personal jurisdiction. Whether personal jurisdiction exists is a question of law, which we review de novo. *Juelich v. Yamazaki Mazak Optonics Corp.*, 682 N.W.2d 565, 569 (Minn. 2004). We conclude that respondents have shown that a prima facie case of specific personal jurisdiction over appellants exists.[1]

[1] Respondents argue for the first time on appeal that Safeway consented to jurisdiction when it registered an agent for service of process in Minnesota. Not only is their argument forfeited, *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988), but we need not address it

The Due Process Clause of the Fourteenth Amendment to the United States Constitution limits a state's ability to exercise jurisdiction over nonresident defendants. *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1024 (2021); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980). In accordance with this principle, Minnesota's long-arm statute lists the circumstances in which Minnesota courts may exercise personal jurisdiction over nonresident individuals. Minn. Stat. § 543.19, subd. 1 (2020). The Minnesota Supreme Court has interpreted the state's long-arm statute as extending personal jurisdiction to the full extent allowed by the Due Process Clause. *Valspar Corp. v. Lukken Color Corp.*, 495 N.W.2d 408, 411 (Minn. 1992). Minnesota courts may therefore apply federal caselaw when analyzing most questions of personal jurisdiction. *Id.* Due process allows Minnesota to exercise personal jurisdiction over a nonresident defendant when the nonresident "has sufficient 'minimum contacts' with the forum state so that maintaining jurisdiction does not offend 'traditional notions of fair play and substantial justice.'" *Viking Eng'g & Dev., Inc. v. R.S.B. Enters.*, 608 N.W.2d 166, 169 (Minn. App. 2000) (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)), *rev. denied* (Minn. May 23, 2000).

There are two kinds of personal jurisdiction: general and specific. *Ford*, 141 S. Ct. at 1024; *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014). General personal jurisdiction exists when a nonresident defendant's contacts with the forum state are so substantial and of such a continuous and systematic nature that the state may assert jurisdiction over the

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because we have already determined that a prima facie case of specific personal jurisdiction over appellants exists.

defendant even for causes of action unrelated to the defendant's contacts with the forum state. *Helicopteros Nacionales de Colombia v. Hall*, 466 U.S. 408, 415-16 (1984). Specific personal jurisdiction exists when the defendant's contacts with the forum state are limited yet connected with the plaintiff's claim such that the claim arises out of or relates to the defendant's contacts with the forum. *See Ford*, 141 S. Ct. at 1024-25; *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985). We address only whether specific personal jurisdiction exists in this case.[2]

Minnesota courts apply a five-factor test to determine whether the exercise of specific personal jurisdiction over a nonresident defendant is consistent 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 to determine whether plaintiff has made a prima facie showing of sufficient Minnesota-related contacts). The 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. The first three factors are primary factors, and the last two are secondary factors. *Marquette Nat'l Bank of Minneapolis v. Norris*, 270 N.W.2d 290, 295 (Minn. 1978).

Once a defendant challenges the exercise of personal jurisdiction, the plaintiff has the burden to prove that the defendant has sufficient contacts with the forum state. *Id.* at

[2] Because we conclude that respondents have shown that a prima facie case of specific personal jurisdiction over appellants exists, we do not address whether respondents have shown that a prima facie case of general personal jurisdiction over appellants also exists.

569-70. In determining whether the plaintiff has met its burden to show personal jurisdiction, the district court takes "all the factual allegations in the complaint and supporting affidavits as true." *Rilley v. MoneyMutual, LLC*, 884 N.W.2d 321, 326 (Minn. 2016). But if the defendant denies allegations in the complaint about their contacts with the forum state, the plaintiff "cannot rely on general statements for a prima facie showing of personal jurisdiction"; instead, the plaintiff must allege specific evidence. *Id.* at 334; *see also Hoff v. Kempton*, 317 N.W.2d 361, 363 n.2 (Minn. 1982) ("[I]f a motion to dismiss is supported by affidavits, the nonmoving party cannot rely on general statements in his pleading . . . ." (quotation omitted)). "[I]n doubtful cases, doubts should be resolved in favor of retention of jurisdiction." *Hardrives*, 240 N.W.2d at 818.

Appellants first contend that because their purported denial of respondents' allegations is supported by the affidavit and the pharmacy participation agreements, respondents were required to and failed to allege specific evidence showing personal jurisdiction. *See Hoff*, 317 N.W.2d at 363 n.2. We are not persuaded by appellants' contention.

The documents that appellants submitted do not actually refute respondents' allegations regarding personal jurisdiction. And raising questions about the allegations in the complaint is not the same as denying those same allegations. In the affidavit, the vice president averred that he is "not aware of any of Prime's claims-processing pursuant to that contract, or other performance by Prime as alleged in this litigation, occurring in Minnesota." He also attested that appellants do not own or operate any grocery stores or pharmacies in Minnesota, nor do they have any offices in Minnesota. The pharmacy

participation agreements provide that appellants will submit all claims "electronically on-line to Prime . . . for adjudication of such claims." Appellants argue that these documents show that there is no evidence establishing *where* Prime adjudicated the claims because an inference cannot be drawn that Prime's headquarters location is where Prime processed the claims.

But whether the vice president knew where Prime processed its claims does not decide the issue. Nor was it improper for the district court to infer that, without any contrary allegations, all claims submitted to Prime would be processed at Prime's location in Minnesota. Any doubts of where the claims were processed should be resolved in favor of retaining jurisdiction at this point in the litigation. *Hardrives*, 240 N.W.2d at 818. Moreover, appellants' motion to dismiss included the following in its statement of facts: "At all relevant times, [respondents] used Prime to adjudicate claims for them, including all claims originating at [appellants'] stores," citing to specific paragraphs in respondents' complaint, and they did not dispute that Prime is a Minnesota-based company. Appellants' reliance on the affidavit and the pharmacy participation agreements to shift the burden to respondents to allege specific evidence is misplaced and fails to convince us that respondents did not meet their burden to show a prima facie case of specific personal jurisdiction on that basis.

Accordingly, we now look to the complaint, accepting its allegations as true, and consider the five personal-jurisdiction factors.

A. Quantity of Contacts

No threshold number of contacts is necessary to exercise personal jurisdiction over an out-of-state party; indeed, even a "single, isolated transaction between a nonresident defendant and a resident plaintiff can be a sufficient contact to justify exercising personal jurisdiction." *Marquette Nat'l Bank*, 270 N.W.2d at 295 (citing *McGee v. Int'l Life Ins. Co.*, 355 U.S. 220 (1957)). Respondents allege that appellants submitted over 23 million reimbursement claims to Prime, prompting respondents to overpay by hundreds of millions of dollars. We conclude that the quantity of appellants' relevant contacts strongly favors the exercise of jurisdiction.

B. Nature and Quality of Contacts

Appellants argue that they directed no conduct toward Minnesota. This factor considers whether appellants "purposefully availed" themselves of the benefits and protections of the forum state. *Dent-Air, Inc. v. Beech Mountain Air Serv., Inc.*, 332 N.W.2d 904, 907 (Minn. 1983). Personal jurisdiction exists when an out-of-state defendant "purposefully directs" activities at the forum state. *Rilley*, 884 N.W.2d at 327-28 (quotation omitted). Out-of-state defendants direct activities at the forum state when they "purposefully 'reach[ ] out beyond' their State and into another by, for example, entering a contractual relationship that 'envisioned continuing and wide-reaching contacts' in the forum State." *Walden v. Fiore*, 571 U.S. 277, 285 (2014) (quoting *Burger King*, 471 U.S. at 479-80).

Appellants argue that their contractual relationship with Prime does not mean that they purposefully availed themselves of the benefits and protections of Minnesota, because

respondents unilaterally decided that Prime would be the pharmacy benefit manager, and jurisdiction must be based on *appellants*' contacts with the forum state. *See, e.g.*, *Mountaire Feeds, Inc. v. Agro Impex, S.A.*, 677 F.2d 651, 655 (8th Cir. 1982) ("Merely entering into a contract with a forum resident does not provide the requisite contacts between a [nonresident] defendant and the forum state." (alteration in original) (quotation omitted)). But appellants entered into a contract with respondents that expressly named Prime as the intermediary. And they also entered into individual pharmacy participation agreements that governed their relationship with Prime, thereby creating "continuing obligations" between themselves and Prime. *Marshall v. Inn on Madeline Island*, 610 N.W.2d 670, 675-76 (Minn. App. 2000) ("When a defendant deliberately engages in significant activities in a state or creates continuing obligations between itself and residents of the state, the defendant purposefully avails itself of the protections of the law, as required to support the exercise of personal jurisdiction under the Due Process Clause." (quotation omitted)). Appellants are alleged to have engaged in significant activities in Minnesota—all of respondents' claims that appellants committed fraud related to the usual and customary prices for prescription drugs were based on appellants submitting over 23 million reimbursement claims to Prime at its Minnesota headquarters, causing hundreds of millions of dollars in overpayments. Because appellants' contacts with Prime were "continuing and wide-reaching," the nature and quality of appellants' contacts with Prime and Minnesota is significant and purposefully directed at Minnesota. *Walden*, 571 U.S. at 285.

Appellants also argue that the fact that Prime performs services in Minnesota for appellants cannot confer personal jurisdiction over them. Generally, someone who sells services or goods to a Minnesota resident may reasonably expect to be "haled into court" in Minnesota to defend an action by a Minnesota resident. *Walker Mgmt., Inc. v. FHC Enters.*, 446 N.W.2d 913, 915 (Minn. App. 1989), *rev. denied* (Minn. Dec. 15, 1989). But a nonresident who purchases services from a Minnesota resident that are worked on in Minnesota, but provided outside Minnesota, may not share that expectation. *See id.* (stating that there is a distinction between purchasers of services from Minnesota residents and sellers of services to Minnesota residents).

The paramount consideration, however, when evaluating the nature and quality of appellants' contacts with Minnesota is whether they purposefully availed themselves of Minnesota law. *Dent-Air, Inc.*, 332 N.W.2d at 907 ("In reviewing the nature and quality of the contacts, we are attempting to ascertain whether the nonresidents purposefully availed themselves of the benefits and protections of Minnesota law." (quotation omitted)). And here, it is particularly persuasive that appellants entered into contracts with Prime and submitted tens of millions of claims over the last decade in furtherance of the underlying alleged fraudulent scheme. The sheer number of alleged fraudulent transactions and the length of time over which those transactions took place distinguish this case from the cases on which appellants rely. *Cf. Walker Mgmt.*, 446 N.W.2d at 916 (holding that Minnesota lacked jurisdiction over an Illinois corporation even though it had a contractual relationship with a Minnesota corporation for over a year); *Schaefer v. Archdiocese of St. Paul & Minneapolis*, No. A15-1700, 2016 WL 6076608, at *5 (Minn. App. Oct. 17, 2016) (holding

that Minnesota lacked jurisdiction over a California nonprofit corporation because the plaintiff alleged only one contact between the nonprofit corporation and Minnesota while the nonprofit corporation investigated a complaint made about the plaintiff).[3] On this record, we are satisfied that respondents have made a prima facie showing that appellants could reasonably expect to be haled into court in Minnesota based on their relationship with Prime. We therefore conclude that the nature and quality of appellants' contacts with Minnesota favor its exercising personal jurisdiction over appellants.

C. Connection Between Cause of Action and Contacts

Appellants argue that this factor favors them because Prime is a third party, and thus the connection between the causes of action and their contacts is too remote. In support of their position, appellants cite *Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773 (2017). There, the Supreme Court held that California courts lacked personal jurisdiction over the claims of individual plaintiffs who alleged personal injuries caused by a pharmaceutical drug manufactured by Bristol-Myers Squibb. *Bristol-Myers Squibb*, 137 S. Ct. at 1777. None of the plaintiffs resided in California; they "were not prescribed [the drug] in California, did not purchase [the drug] in California, did not ingest [the drug] in California, and were not injured by [the drug] in California." *Id.* at 1781; *but see Ford*, 141 S. Ct. at 1032 (holding that specific jurisdiction existed when company extensively promoted, sold, and serviced defective products in forum state despite product involved in dispute not being manufactured, sold, or serviced there). Therefore, "a connection between

[3] We consider nonprecedential opinions only for their persuasive value and not as binding precedent. *Dynamic Air, Inc. v. Bloch*, 502 N.W.2d 796, 800 (Minn. App. 1993).

the forum and the specific claims at issue" was "missing." *Id.* But here, there is a connection between Minnesota and respondents' claims. Respondents allege that appellants directed millions of fraudulent reimbursement claims to Prime in Minnesota over the course of a decade. They allege that these Minnesota-directed fraudulent claims caused their injuries. Because the causes of action arise directly out of the alleged fraudulent transactions, this factor favors exercising personal jurisdiction.

As pleaded, appellants' contacts with Minnesota were numerous, they were purposeful and targeted, and they are integral to the causes of action. Thus, the three primary factors of the five-factor test each weigh in favor of a conclusion that personal jurisdiction here is consistent with due process. We conclude that respondents have made a prima facie showing of sufficient minimum contacts to support the exercise of personal jurisdiction over appellants.

D. Minnesota's Interest in Providing a Forum

The fourth factor is Minnesota's interest in providing a forum, which is a secondary factor. When a case involves an alleged injury to a Minnesota resident, both the resident and Minnesota have an interest in resolving the dispute in Minnesota courts. *C.H. Robinson Worldwide, Inc. v. FLS Transp., Inc.*, 772 N.W.2d 528, 538 (Minn. App. 2009), *rev. denied* (Minn. Nov. 24, 2009). Appellants argue that Minnesota's interest in providing a forum is minimal when, as here, the dispute has minimal connection to the state. We disagree. This case involves substantial alleged fraud committed against Minnesota companies that was perpetrated through a Minnesota-based company. This factor favors exercising personal jurisdiction over appellants.

E. Convenience of the Parties

The convenience of the parties, like Minnesota's interest in providing a forum, is also a secondary factor. *Dent-Air, Inc.*, 332 N.W.2d at 907. There is a strong presumption in favor of the plaintiff's choice of forum. *Bergquist v. Medtronic, Inc.*, 379 N.W.2d 508, 511 (Minn. 1986). Courts recognize that "[w]hen minimum contacts have been established, often the interests of the plaintiff and the forum in the exercise of jurisdiction will justify even the serious burdens placed on the alien defendant." *Asahi Metal Indus. Co. v. Super. Ct.*, 480 U.S. 102, 114 (1987); *see also Multi-Tech Sys., Inc. v. VocalTec Commc'ns, Inc.*, 122 F. Supp. 2d 1046, 1052 (D. Minn. 2000) ("[D]efeats of otherwise constitutional personal jurisdiction are limited to the rare situation in which the plaintiff's interest and the state's interest in adjudicating the dispute in the forum are so attenuated that they are clearly outweighed by the burden of subjecting the defendant to litigation within the forum." (emphasis omitted) (quotation omitted)). California and Idaho are not so far away that requiring appellants to travel to Minnesota makes jurisdiction unreasonable or unduly burdensome, especially when we acknowledge that appellants are two large national corporations with retail locations across the country. *See Volkman v. Hanover Invs., Inc.*, 843 N.W.2d 789, 797 (Minn. App. 2014) (noting that requiring the defendant to travel from Maryland to Minnesota did not make jurisdiction unreasonable). This case does not present the rare situation in which appellants' convenience clearly outweighs respondents' interest in adjudicating the dispute in Minnesota, and, in any event, appellants do not argue that Minnesota is an inconvenient forum.

We conclude that the final two factors support the exercise of jurisdiction under the five-factor test because exercising jurisdiction here does not offend traditional notions of fair play and substantial justice. *See Juelich*, 682 N.W.2d at 570. Respondents have made a prima facie showing that Minnesota courts have specific personal jurisdiction over appellants under the five-factor test.[4] The district court therefore did not err by denying appellants' motion to dismiss for lack of personal jurisdiction.[5]

Affirmed.

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[4] Appellants argue that *Calder v. Jones*, 465 U.S. 789 (1984), is essential to the jurisdictional analysis and deprives Minnesota courts of jurisdiction. The *Calder* effects test is an alternative route to establish personal jurisdiction over a defendant in intentional tort cases. *See IMO Indus., Inc. v. Kiekert AG*, 155 F.3d 254, 265-66 (3d Cir. 1998). But because we conclude that a prima facie case of specific personal jurisdiction over appellants exists based on the five-factor test, we need not apply the *Calder* effects test here.

[5] Appellants argue that the district court should not have relied on *Rite Aid* because, in doing so, the district court overlooked a key difference in this case—the lack of extrinsic evidence "weighed heavily" on *Rite Aid*'s holding. 519 F. Supp. 3d at 537 n.4. We observe first that appellants' argument about extrinsic evidence is largely the same argument they made earlier about the district court applying the incorrect evidentiary burden. They argue that because they introduced the affidavit and pharmacy participation agreements, respondents needed to allege specific evidence to meet their burden and that under this heightened burden, the district court could not rely on the general statements in the pleadings that the court in *Rite Aid* found sufficient. *Cf. id.* at 538 ("If Rite Aid persists in raising the defense, then Plaintiffs eventually will have to prove personal jurisdiction 'by a preponderance of the evidence' at an evidentiary hearing or trial." (quoting *Epps v. Stewart Info. Servs. Corp.*, 327 F.3d 642, 647 (8th Cir. 2003))). But as we explained above, the affidavit and agreements did not undermine respondents' assertion that personal jurisdiction existed, and respondents alleged specific facts supporting a prima facie showing that the exercise of specific personal jurisdiction over appellants was appropriate. We therefore conclude that the district court did not err in relying on *Rite Aid*.