

1 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

2 Opinion Number: _____

3 Filing Date: **June 19, 2018**

4 **NO. A-1-CA-35910**

5 **GABRIEL ARTURO RASCON**
6 **RODRIGUEZ, RAYITO DEL CARMEN**
7 **GUTIERREZ DE RASCON; JAVIER**
8 **ORTIZ TARANGO, deceased; LEE**
9 **HUNT, representative of the estate of**
10 **JAVIER ORTIZ TARANGO; BERTA**
11 **EBILA RAMIREZ; LORENZA SUSANA**
12 **ORTIZ; MARITZA BERENICE ORTIZ**
13 **RAMIREZ; CARMEN TARANGO CASTRO;**
14 **CRISTIAN ANTONIO ROMERO GARCIA,**
15 **deceased; LEE HUNT, representative of the**
16 **estate of CRISTIAN ANTONIO ROMERO**
17 **GARCIA; ROBERTO ROMERO and**
18 **HILDA TELLEZ, next friend of C.D.R.,**
19 **a minor, and C.D.R., a minor; ROBERTO**
20 **ROMERO, individually; LAURO CRUZ,**
21 **deceased; LEE HUNT, representative of**
22 **the estate of LAURO CRUZ; ORALIA NAJERA;**
23 **MARIA CONCEPTION CRUZ NAJERA,**
24 **individually and as next friend of L.M.A.C.,**
25 **a minor; CARLOS CRUZ; OLGALIDIA CRUZ;**
26 **EUFEMIO CRUZ; MIGUEL CRUZ; PERLA**
27 **ALEJANDRA CRUZ; MAYRA PAMELA CRUZ;**
28 **MARIA ESTHER CRUZ; AGUSTINA CRUZ;**
29 **JAVIER ACOSTA RAMIREZ; BERENICE**
30 **ACOSTA; JOSE JAVIER ACOSTA; JAVIER**
31 **ACOSTA; ADRIAN RAMOS, individually and**
32 **as next friend of R.A.R.R., a minor, A.R.R.,**
33 **a minor, Y.A.R.R., a minor, and A.R.R., a minor;**

1 **YADIRA RUVALCABA DE RAMOS; LUIS**
2 **CANSECO VAZQUEZ, individually and as**
3 **next friend of G.C., a minor, and S.A.C., a minor;**
4 **GUADALUPE LOPEZ; JULIA CANSECO;**
5 **LUIS CANSECO; LUIS RAUL ORTEGA**
6 **GABALDON; JESUS ALEJANDRO JIMENEZ**
7 **ORTEGA; and ERNESTO VARGAS LOPEZ,**

8 **Plaintiffs-Appellees,**

9 **v.**

10 **FORD MOTOR COMPANY, and COOPER**
11 **TIRE AND RUBBER COMPANY,**

12 **Defendants-Appellants,**

13 **and**

14 **FERNANDO GAYTAN BUSTOS,**

15 **Defendant-Appellee,**

16 **and**

17 **FERNANDO GAYTAN BUSTOS,**

18 **Cross-Plaintiff/Appellee,**

19 **v.**

20 **FORD MOTOR COMPANY and COOPER**
21 **TIRE AND RUBBER COMPANY,**

22 **Cross-Defendants/Appellants.**

23 **APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY**

24 **Francis J. Mathew, District Judge**

1 Jaramillo Touchet LLC
2 David J. Jaramillo
3 Albuquerque, NM

4 Touchet Law Firm, PC
5 Maria E. Touchet
6 Albuquerque, NM

7 The Edwards Law Firm
8 John B. Gsanger
9 Gary Scott Marshall
10 Corpus Christi, TX

11 for Appellees Gabriel Rascon Rodriguez, et al.

12 Rodey, Dickason, Sloan, Akin & Robb, P.A.
13 Jeffrey M. Croasdell
14 Todd E. Rinner
15 Albuquerque, NM

16 Hogan Lovells US LLP
17 Sean Marotta
18 Washington, D.C.

19 for Appellant Ford Motor Company

20 Brownstein Hyatt Farber Schreck, LLP
21 Eric R. Burris
22 Albuquerque, NM

23 Norton Rose Fulbright US LLP
24 Troy L. Vancil
25 San Antonio, TX

26 for Appellant Cooper Tire and Rubber Company

1 Law Offices of James B. Ragan
2 James B. Ragan
3 Corpus Christi, TX
4 for Appellee Fernando Gaytan Bustos

1 **OPINION**

2 **FRENCH, Judge.**

3 {1} Plaintiffs sued Ford Motor Company and Cooper Tire and Rubber Company
4 (collectively, Defendants) for injuries sustained when their vehicle rolled over while
5 they were traveling through New Mexico. Defendants each filed motions to dismiss
6 for lack of personal jurisdiction, which the district court denied. We granted
7 Defendants’ applications for interlocutory appeal and consolidated both appeals.
8 Concluding that New Mexico has specific personal jurisdiction over Defendants, we
9 affirm the district court.

10 **BACKGROUND**

11 {2} In August 2012, Plaintiffs, all Mexican nationals, were passengers in a 1993
12 Ford E-350 Super Club Wagon that was en route to Colorado from Mexico. While
13 traveling on U.S. Highway 54 in Guadalupe County, New Mexico, “the tread peeled
14 off the right rear tire on the vehicle.” The vehicle left the road and rolled three times.
15 Two of the occupants, Javier Ortiz Tarango and Cristian Antonio Romero, were
16 fatally ejected from the vehicle, while occupant Lauro Cruz was rendered
17 quadriplegic and eventually died from his injuries. Occupants Gabriel Arturo Rascon
18 Rodriguez, Javier Acosta Ramirez, Adrian Ramos, Luis Canseco, Luis Raul Ortega

1 Gabaldon, Jesus Alejandro Jimenez Ortega, and Ernesto Vargas Lopez all sustained
2 injuries as a result of the crash.

3 {3} In August 2015, Plaintiffs filed a wrongful death and personal injury complaint
4 against Defendants as well as against Fernando Gaytan Bustos who installed the tire
5 on the van in 2012. Shortly after the complaint was filed, Defendants moved to
6 dismiss for lack of personal jurisdiction. They argued that because the van and tire
7 were not purchased in New Mexico, New Mexico had no personal jurisdiction over
8 them. In particular, Ford argued that the Ford E-350 was not designed in New
9 Mexico, was manufactured in Ohio, was sold first by an independent dealer located
10 in Kentucky, and “was not serviced by any Ford independent dealer located in the
11 State of New Mexico[.]” Moreover, at the time of the accident, the van was licensed
12 in Mexico, and was being driven by a citizen of Mexico. Cooper argued that the tire
13 was not designed in New Mexico and was manufactured in Cooper’s Texarkana,
14 Arkansas plant. In addition, the tire was purchased in Oklahoma, and installed on the
15 van by Fernando Gaytan Bustos in Mexico.

16 {4} In response, Plaintiffs provided evidence of Defendants’ New Mexico contacts,
17 which we summarize in the following paragraphs. Ford has fourteen official Ford
18 dealerships in New Mexico. Ford also engages in marketing targeted at New Mexico
19 consumers, including Ford sponsorship of New Mexico events such as the 2013

1 professional bull riding championship. Ford maintains an interactive website that
2 allows New Mexico consumers to obtain a quote for a Ford vehicle, search inventory
3 of Ford vehicles in stock in New Mexico, apply for credit to purchase vehicles in
4 New Mexico, configure a Ford vehicle, and obtain a purchase price. Ford has “in-
5 forum advertising and defense and indemnity contracts with its dealerships,” and Ford
6 has been a frequent party in New Mexico litigation.

7 {5} Cooper has sixty-two official Cooper tire dealers in New Mexico, and Cooper
8 personnel travel to Cooper tire dealers “to assess the in-field performance of its
9 tires[.]” Cooper maintains a website with an interactive tire service bulletin page
10 providing information to New Mexico consumers about services available through
11 Cooper dealers. Cooper’s advertising targets New Mexico consumers, including via
12 sponsorship of professional bull riding events in Albuquerque, New Mexico. Cooper
13 has appeared as a litigant in New Mexico courts.

14 {6} After a hearing on Defendants’ motions to dismiss for lack of personal
15 jurisdiction, the district court entered an order denying the motions but noted that the
16 decision “involves a controlling question of law as to which there is substantial
17 ground for difference of opinion and an immediate appeal from this order may
18 materially advance the ultimate termination of the litigation.” Defendants timely filed
19 applications for interlocutory appeal, which we now consider.

1 **DISCUSSION**

2 **Standard of Review**

3 {7} “The determination whether a district court has personal jurisdiction over a
4 nonresident defendant is a question of law that we review de novo.” *Sproul v. Rob &*
5 *Charlies, Inc.*, 2013-NMCA-072, ¶ 6, 304 P.3d 18. “Plaintiffs have the burden of
6 making a prima facie showing of personal jurisdiction.” *Zavala v. El Paso Cty. Hosp.*
7 *Dist.*, 2007-NMCA-149, ¶ 13, 143 N.M. 36, 172 P.3d 173. When a party contests the
8 exercise of personal jurisdiction, the party asserting jurisdiction may not rely on its
9 pleadings but must come forward with affidavits or other evidence supporting
10 jurisdiction. *Gallegos v. Frezza*, 2015-NMCA-101, ¶ 9, 357 P.3d 408. Because the
11 district court based its ruling on the parties’ pleadings, attachments, and non-
12 evidentiary hearings, this Court applies “a standard of review mirroring that of our
13 standard governing appeals from summary judgment.” *Sproul*, 2013-NMCA-072, ¶ 6.
14 This Court will “construe the pleadings and affidavits in the light most favorable to
15 the complainant” who needs only to “make a prima facie showing that personal
16 jurisdiction exists.” *Id.* (internal quotation marks and citation omitted). Dismissal is
17 proper in this case only if all facts Plaintiffs allege collectively fail to make a prima
18 facie case of jurisdiction over Defendants based on the statements in the pleadings.

1 **Analysis**

2 {8} ____ When determining personal jurisdiction over nonresident defendants, we apply
3 a two-step analysis. *Id.* ¶ 7. First, we determine whether personal jurisdiction satisfies
4 the “requirements of New Mexico’s long-arm statute.” *Id.* If it does, we then turn to
5 whether Defendants had sufficient minimum contacts to subject them to suit in New
6 Mexico. *See id.* The parties do not dispute that the requirements of the long-arm
7 statute are satisfied, and we thus turn to the second step in our analysis.

8 {9} *Sproul* is dispositive of the analysis here. In *Sproul*, we held that New Mexico
9 courts could exercise jurisdiction over a Chinese corporation defendant who
10 manufactured bicycle parts when the defendant placed allegedly defective products
11 on the market with the intention that they be distributed and sold throughout the
12 United States, including in New Mexico. *Id.* ¶¶ 2-3, 45. In determining whether the
13 defendant had established sufficient contacts to allow the court to exercise specific
14 jurisdiction in that products liability case, we looked at whether the defendant had
15 placed products into the stream of commerce with the expectation that their products
16 would be purchased and used in the forum state. *Id.* ¶ 20. This inquiry required some
17 activity on the part of the defendant to directly or indirectly serve the market in the
18 forum state. *Id.* In other words, to satisfy due process there had to be “some act
19 purposefully directed at the forum state[,]” such that the defendant reasonably

1 anticipated being brought into a New Mexico court. *Id.* ¶ 25. The claims at issue did
2 not need to be causally related to the defendant’s contacts in the forum; they needed
3 only “lie in the wake” of the defendant’s activities in the forum state. *Id.* ¶ 17
4 (alteration, internal quotation marks, and citation omitted).

5 {10} Applying *Sproul* to the facts of this case, we conclude that Defendants have
6 minimum contacts sufficient for specific jurisdiction in New Mexico. We explain.
7 Plaintiffs have alleged that Defendants regularly sell their products in New Mexico,
8 advertise in New Mexico, and service their products in New Mexico. Defendants
9 produce New Mexico-targeted advertising, and place their products into the stream
10 of commerce with the intention of selling, maintaining, and repairing them in New
11 Mexico. Defendants have been litigants in New Mexico courts. Defendants have
12 engaged in efforts to directly serve the New Mexico market and have sold and
13 advertised allegedly defective products in New Mexico. These facts provide the
14 requisite activity on the part of Defendants to satisfy due process. We are not
15 persuaded by Defendants’ assertion that specific jurisdiction cannot exist because the
16 vehicle and tire involved in the accident were not purchased in New Mexico,
17 particularly given that the accident occurred in New Mexico, Defendants engaged in
18 targeted marketing and sales activities in the state of New Mexico, and they placed

1 their products into the stream of commerce with the intention that they be sold in New
2 Mexico.

3 {11} Our conclusion is consistent with other prior cases in which we have held that
4 specific jurisdiction existed over defendants. For example, in *Cronin v. Sierra*
5 *Medical Center*, 2000-NMCA-082, ¶ 22, 129 N.M. 521, 10 P.3d 845, we held that
6 minimum contacts sufficient for specific jurisdiction over a Texas hospital existed
7 when the hospital placed advertisements in New Mexico telephone directories,
8 produced television commercials that could be viewed in New Mexico, and
9 performed health care services for New Mexico customers. In *Roberts v. Piper*
10 *Aircraft Corp.*, 1983-NMCA-110, ¶¶ 20-24, 100 N.M. 363, 670 P.2d 974, we held
11 that the district court could exercise specific personal jurisdiction over an Oklahoma
12 company that serviced a plane in Oklahoma that was shipped from Texas and that was
13 involved in an accident in New Mexico. The defendant company in *Roberts* also
14 advertised in trade journals that circulated in New Mexico and performed repair work
15 for New Mexico customers even though the plane involved in the specific cause of
16 action was not serviced in New Mexico. *Id.* ¶¶ 20-21, 24. We hold that Plaintiffs have
17 met their burden of establishing that Defendants had sufficient minimum contacts to
18 subject them to suit in New Mexico.

1 {12} Defendants rely heavily on *Fabara v. GoFit, LLC*, 308 F.R.D. 380 (D.N.M.
2 2015), in support of their argument that personal jurisdiction does not exist in this
3 case. That decision, however, is distinguishable from the instant matter and further,
4 is not precedential. In *Fabara*, the plaintiff sued a manufacturer of an exercise ball
5 that exploded and injured the plaintiff. *Id.* at 385. After a lengthy discussion on the
6 distinction between general and personal jurisdiction, the Federal District Court of
7 New Mexico, in a memorandum opinion, ultimately concluded that defendant GoFit’s
8 contacts with New Mexico did not trigger *general* personal jurisdiction. *Id.* at 394,
9 406. Although the plaintiff had relied heavily on *Sproul* to justify why New Mexico
10 had general personal jurisdiction over the defendant, the court correctly pointed out
11 that “[t]he analysis on which [the plaintiff] relies falls under the heading of ‘Specific
12 Jurisdiction,’ ” and not general jurisdiction as was pertinent in that case. *Fabara*, 308
13 F.R.D. at 405. Just as the *Fabara* plaintiff misread *Sproul*, so too Defendants misread
14 *Fabara* here. The question is not whether the district court has general personal
15 jurisdiction over Defendants but whether it has specific jurisdiction and we have
16 concluded that it does.

17 {13} Once minimum contacts are established, the burden shifts to the defendant to
18 prove that the exercise of jurisdiction would be unfair. *Moore v. Graves*, 1982-
19 NMCA-170, ¶ 14, 99 N.M. 129, 654 P.2d 582. Defendants presented no evidence

1 about unfairness in the district court, and did not raise it on appeal, so we do not
2 consider it.

3 **CONCLUSION**

4 {14} We affirm.

5 {15} **IT IS SO ORDERED.**

6
7

STEPHEN G. FRENCH, Judge

8 **WE CONCUR:**

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LINDA M. VANZI, Chief Judge

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M. MONICA ZAMORA, Judge