NO. COA13-240
NORTH CAROLINA COURT OF APPEALS

Filed: 5 November 2013

ARLENE Q. QUACKENBUSH,
Plaintiff

v. Wake County
No. 12 CVS 5743

ELEANOR J. STEELMAN,
Defendant

Appeal by Plaintiff from order entered 4 October 2012 by Judge Paul C. Ridgeway in Wake County Superior Court. Heard in the Court of Appeals 14 August 2013.

Hopper Law Firm, by Kevin P. Hopper, for Plaintiff.

Gailor Hunt Jenkins Davis & Taylor, P.L.L.C., by Jamie H. Davis and Carrie B. Tortora, for Defendant.

DILLON, Judge.

Arlene Q. Quackenbush (Plaintiff) brought this action against her husband's former paramour, Eleanor J. Steelman (Defendant), asserting claims for alienation of affection and criminal conversation. The trial court granted Defendant's motion to dismiss Plaintiff's claims for lack of personal

jurisdiction over Defendant. For the following reasons, we affirm.

I. Factual Background

In her complaint, Plaintiff set forth allegations concerning the relationship between her husband and Defendant, tracing events that transpired across three different states, including North Carolina, as follows:

New Jersey

Plaintiff and Defendant are citizens and residents of New Jersey. In April 2008, Plaintiff and her husband, Robert T. Quackenbush, attended Defendant's husband's funeral, where they met Defendant for the first time. At the time of the funeral, Defendant invited Mr. Quackenbush, a "long time" friend of Defendant's late husband, to stop by her home to pick up some of her husband's belongings that might have "sentimental value" to him.

In October 2009, Defendant learned that Mr. Quackenbush was planning to attend Bike Week in Daytona Beach, Florida, and "convinced" Mr. Quackenbush to meet her there to "show [her] around Bike Week." She "played upon the emotions of Mr. Quackenbush by telling him that her [late husband] had always

promised to take her to Bike Week[.]" Mr. Quackenbush agreed to show Defendant around Bike Week.

Florida

Mr. Quackenbush traveled by car to Florida to attend Bike Week, while Defendant traveled by airplane. While in Florida, Defendant pretended to be Mr. Quackenbush's wife and "entic[ed] him to have sex with her." Defendant continued to pursue Mr. Quackenbush for the remainder of Bike Week. Defendant also invited Mr. Quackenbush to stay with her in Florida for an additional week, but Mr. Quackenbush declined; he agreed, however, to let Defendant accompany him on his return drive to New Jersey.

North Carolina

During the return trip, Defendant and Mr. Quackenbush stopped for dinner in Dunn, North Carolina. At dinner, "Defendant became adamant about Mr. Quackenbush leaving his wife [(Plaintiff)] and demanded that [he] stop taking [her] phone calls." According to Plaintiff's complaint, this was "the first time" that Defendant asked Mr. Quackenbush to leave Plaintiff. Defendant and Mr. Quackenbush stayed the night at a Comfort Inn in Dunn, where they engaged in sexual intercourse both that night and the following morning. Defendant again asked Mr.

Quackenbush to leave Plaintiff; she also told Mr. Quackenbush that she loved him and that she "needed him to buy her a computer as soon as they returned to New Jersey so she could begin house hunting."

New Jersey

When they arrived back in New Jersey, Mr. Quackenbush moved in with Defendant. Mr. Quackenbush also bought Defendant gifts, including a computer. Defendant called Plaintiff and told her "to leave Mr. Quackenbush alone" because he "belonged [to] her now." In addition, Defendant "convinced" Mr. Quackenbush to file a complaint for divorce from Plaintiff, "to put the marital home owned by both the Plaintiff and Mr. Quackenbush up for sale to get seed money to move to Florida, and attempted to get him to sell his business and retire with her in Florida." Despite Defendant's efforts, however, Mr. Quackenbush eventually dismissed his complaint for divorce and has since reconciled with Plaintiff.

II. Procedural History

On 20 April 2012, Plaintiff filed a complaint in Wake County Superior Court, asserting claims against Defendant for alienation of affection and criminal conversation under North Carolina law. On 5 July 2012, Defendant filed a Rule 12(b)(2)

motion to dismiss Plaintiff's claims for lack of personal jurisdiction. On 25 September 2012, Plaintiff filed a sworn affidavit from Mr. Quackenbush in opposition to Defendant's motion to dismiss, essentially restating the allegations set forth in Plaintiff's complaint. The matter came on for hearing in Wake County Superior Court on 2 October 2012. By order entered 4 October 2012, the trial court granted Defendant's motion to dismiss, concluding that the court's exercise of personal jurisdiction over Defendant would violate Defendant's due process rights. From this order, Plaintiff appeals.

III. Analysis

Plaintiff contends that the trial court erred in dismissing her complaint for lack of personal jurisdiction over Defendant. We disagree.

A. Standard of Review

Where a trial court enters an order dismissing an action for lack of personal jurisdiction, our standard of review is as follows:

> When reviewing an order deciding a motion to dismiss for lack of personal jurisdiction, we determine whether the findings of fact of the trial court are supported by competent evidence; if so, we must affirm the trial court's decision. Findings of fact are not, however, required in the absence of a request by the parties. When . . . the

> court does not make findings of fact, it will be presumed that the judge, upon proper evidence, found facts sufficient to support his judgment. We must then review the record to determine whether there is competent evidence to support the trial court's "presumed findings."

Dailey v. Popma, 191 N.C. App. 64, 68, 662 S.E.2d 12, 15-16 (2008) (quotation marks and citations omitted).

Here, the trial court did not include any findings of fact in its order, and the parties do not contend that they requested findings of fact. The record reveals that the only evidence presented to the trial court consisted of Plaintiff's complaint and Mr. Quackenbush's affidavit. We must, accordingly, determine whether this evidence supports the "presumed findings" made by the trial court in reaching its decision to dismiss Plaintiff's claims. *See Banc of Am. Sec. LLC v. Evergreen Int'l Aviation, Inc.*, 169 N.C. App. 690, 693, 611 S.E.2d 179, 182 (2005).

B. Personal Jurisdiction

"Whether the courts of this State may exercise personal jurisdiction over a nonresident defendant involves a two-prong analysis: '(1) Does a statutory basis for personal jurisdiction exist, and (2) If so, does the exercise of this jurisdiction violate constitutional due process?' The assertion of personal

jurisdiction over a defendant comports with due process if defendant is found to have sufficient minimum contacts with the forum state to confer jurisdiction." *Golds v. Cent. Express, Inc.*, 142 N.C. App. 664, 665-66, 544 S.E.2d 23, 25 (2001) (citations omitted).

Here, the trial court dismissed Plaintiff's complaint based on the second prong of the jurisdictional analysis alone, concluding that Defendant lacked sufficient minimum contacts with North Carolina to confer jurisdiction on due process grounds. Because we believe that the trial court's determination with respect to the second prong of the jurisdictional analysis was supported by the evidence presented, we affirm the court's order on this basis and decline to express any opinion with respect to whether the first prong of the test – i.e., whether North Carolina's long-arm statute provided for personal jurisdiction over Defendant – was satisfied.

It is well-established that in order to comport with the requirements of due process, there must exist "certain minimum contacts [between the non-resident defendant and the forum state] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)

(quotation marks and citation omitted) (alteration in original). The "relationship between the defendant and the forum must be 'such that he should reasonably anticipate being haled into court there.' " *Id.* (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980)).

"The United States Supreme Court has recognized two bases for finding sufficient minimum contacts: specific jurisdiction and general jurisdiction. Specific jurisdiction exists when the controversy arises out of the defendant's contacts with the forum state" whereas "[g]eneral jurisdiction may be asserted over a defendant even if the cause of action is unrelated to defendant's activities in the forum as long as there are sufficient 'continuous and systematic' contacts between defendant and the forum state." *Lab. Corp. of Am. Holdings v. Caccuro*, 212 N.C. App. 564, 569, 712 S.E.2d 696, 701, *appeal dismissed, review denied,* 365 N.C. 367, 719 S.E.2d 623 (2011) (citations and quotation marks omitted). Because Plaintiff's claims arise out of Defendant's contacts with this State, specific jurisdiction is at issue here. *Tom Togs, Inc. v. Ben Elias Indus. Corp.*, 318 N.C. 361, 366, 348 S.E.2d 782, 786 (1986). "Our focus should therefore be upon the relationship among the defendant, this State, and the cause of action." *Id.*

The following factors are relevant in determining whether minimum contacts exist: "(1) the quantity of the contacts, (2) the nature and quality of the contacts, (3) the source and connection of the cause of action to the contacts, (4) the interest of the forum state, and (5) the convenience to the parties." *Replacements, Ltd. v. MidweSterling*, 133 N.C. App. 139, 143, 515 S.E.2d 46, 49 (1999) (quotation marks and citations omitted). "No single factor controls; rather, all factors 'must be weighed in light of fundamental fairness and the circumstances of the case.'" *Corbin Russwin, Inc. v. Alexander's Hardware, Inc.*, 147 N.C. App. 722, 725, 556 S.E.2d 592, 595 (2001) (citation omitted).

With respect to the first factor, Plaintiff alleges that Defendant's contacts with North Carolina consist of a single visit lasting approximately eighteen hours when Defendant and Mr. Quackenbush stopped for the night in Dunn as they were driving from Florida to New Jersey. Based on a "presumed finding" by the trial court supported by this allegation, we believe that the "quantity of the contacts" factor militates against a finding of jurisdiction over Defendant.

With respect to the second and third factors, regarding the quality of Defendant's contacts and the source and connection of

the causes of action to the contacts, Plaintiff's complaint alleges that some of the conduct pertaining to her claims occurred the night that Defendant and Mr. Quackenbush stayed in Dunn. We believe that the totality of Plaintiff's allegations, which describes events that occurred over the course of more than six months, detracts from the relative significance of the eighteen hours that Defendant and Mr. Quackenbush spent in Dunn. *See Bell v. Mozley*, __ N.C. App. at __, 716 S.E.2d 868, 874 (2011) (holding that the trial court erred in denying the defendant's Rule 12(b)(2) motion to dismiss the plaintiff's alienation of affection and criminal conversation claims where "a vast majority of the actions alleged in the plaintiff's complaint occurred in the State of South Carolina" and "all witness affidavits obtained . . . were from individuals living within 50 miles of the parties in the State of South Carolina").

Moreover, with respect to Plaintiff's alienation of affection claim[1], Plaintiff's complaint alleges that Defendant

[1] In order to recover for the tort of alienation of affection, the claimant must prove that "(1) plaintiff and [his or her spouse] were happily married and a genuine love and affection existed between them; (2) the love and affection [between them] was alienated and destroyed; and (3) the wrongful and malicious acts of defendant produced the alienation of affections." *Chappell v. Redding*, 67 N.C. App. 397, 399, 313 S.E.2d 239, 241

first seduced and engaged Mr. Quackenbush in sexual intercourse during Bike Week in Florida, and, further, that Defendant persuaded Mr. Quackenbush to let her accompany him on the return trip to New Jersey. These allegations support a "presumed finding" by the trial court that Mr. Quackenbush's affections towards Plaintiff had already been alienated – or at least were in the process of begin alienated – before Defendant and Mr. Quackenbush arrived in North Carolina. *See Chappell*, 67 N.C. App. at 399, 313 S.E.2d at 241.

We recognize that Defendant's contacts with this State bear a richer quality with respect to Plaintiff's claim for criminal conversation, as recovery for this tort may be predicated upon a mere single act of sexual intercourse between a spouse and paramour. *Jones v. Skelley*, 195 N.C. App. 500, 511, 673 S.E.2d 385, 392 (2009). The evidence in this case indicate that Defendant and Mr. Quackenbush engaged in sexual intercourse twice in North Carolina. However, even assuming that the quality factor weighs in favor of conferring jurisdiction, this factor alone is not dispositive. *Corbin Russwin, Inc.*, 147 N.C. App. at 725, 556 S.E.2d at 595.

(1984).

Regarding the fourth and fifth factors, concerning the interest of the forum state and the convenience of the parties, Plaintiff, Defendant, and Mr. Quackenbush are all residents of the State of New Jersey, with no connection to North Carolina aside from the approximately eighteen-hour period during which Defendant and Mr. Quackenbush spent the night in Dunn. While we recognize that North Carolina has an interest in "providing a forum for actions based on torts that occur in North Carolina," *Eluhu v. Rosenhaus*, 159 N.C. App. 355, 360, 583 S.E.2d 707, 711 (2003), the evidence here, as discussed *supra*, reveals that the parties bear only a tenuous connection to North Carolina. *See id.* ("[A]lthough North Carolina does have an interest in providing a forum for actions based on torts that occur in North Carolina, the evidence presented to the trial court showed that neither plaintiff nor defendant is a resident of North Carolina and that almost all of the contact between defendant and Ms. Eluhu occurred in Tennessee. Given that the tort of alienation of affection has been abolished in both California and Tennessee, but not North Carolina, and that it is a transitory tort, to which courts must apply the substantive law of the state in which the tort occurred, plaintiff's decision to sue defendant in North Carolina smacks of forum shopping. Lastly,

defending against a suit in North Carolina would clearly be inconvenient for defendant, who resides in California, and plaintiff, as a resident of Tennessee, has no claim on the State of North Carolina to provide a forum for the settlement of his general disputes.") (citations omitted). Further, there is no indication based on the evidence presented that the convenience of the parties would be served by trying this matter five hundred miles from their respective homes in New Jersey.

Upon considering the relevant factors as applied in this case, we believe that the "presumed findings" of the trial court, as supported by the competent evidence of record, support the trial court's conclusion that "Defendant's due process rights would be violated by [our court's] exercise of personal jurisdiction over [her] in this matter[.]" Accordingly, we affirm the trial court's order granting Defendant's motion to dismiss.

AFFIRMED.

Judges BRYANT and STEPHENS concur.

Report per Rule 30(e).