

IN THE SUPREME COURT OF THE STATE OF NEVADA

MITCHELL ACRI,  
Appellant,

vs.

KEITH PARROTT, RANDALL L.  
VANDERVEEN, AND RICHARD  
OHVALL, AS INDIVIDUALS; STATE  
OF OREGON WESTERN INTERSTATE  
COMMISSION FOR HIGHER  
EDUCATION, AND WESTERN  
REGIONAL HIGHER EDUCATION  
COMPACT, A FOREIGN  
CORPORATION,  
Respondents.

No. 35043

**FILED**

MAR 28 2002

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richard*  
CHIEF DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART  
AND REMANDING

This is a proper person appeal challenging (1) a July 20, 1999 district court order granting an NRCP 12(b)(2) motion to dismiss in favor of respondents Parrott, Vanderveen, Ohvall and the State of Oregon (hereafter collectively the "Oregon respondents"), and (2) an October 1, 1999 district court order granting an NRCP 56 motion for summary judgment in favor of respondents Western Interstate Commission for Higher Education ("WICHIE") and Western Regional Higher Education Compact ("Compact").<sup>1</sup>

Based upon our preliminary review of the record, we concluded that appellant Acri had raised issues of arguable merit.

---

<sup>1</sup>The clerk of this court shall amend the caption on this court's docket to conform to the caption on this order. Although previously listed in the caption on this court's docket, Richard Johnson has never been a party to this appeal.

Accordingly, we issued an order directing respondents to file responses, which they subsequently did.

We first consider Acri's challenge of the district court order granting summary judgment. It is well established that orders granting summary judgment are reviewed de novo.<sup>2</sup> NRCP 56(c) provides that summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Further, we have previously held that the "non-moving party's documentation must be admissible evidence" and not based "on the gossamer threads of whimsy, speculation and conjecture."<sup>3</sup>

Liberalley construed, Acri's complaint alleges that WICHIE and Compact owed a duty to advise him of possible circumstances under which he might be unable to fulfill the requirements for a degree in pharmacology at Oregon State University. It is axiomatic that in the absence of a duty, a party may not be held liable for an alleged breach of a duty. Here, after a thorough review of the record, we have found no evidence of a relationship between Acri and Compact, or Acri and WICHIE, from which a common law, contractual, or statutory duty of disclosure would arise.<sup>4</sup> The record is also devoid of any evidence of the

---

<sup>2</sup>See Bulbman, Inc. v. Nevada Bell, 108 Nev. 105, 110, 825 P.2d 588, 591 (1992).

<sup>3</sup>Sprague v. Lucky Stores, Inc., 109 Nev. 247, 250, 849 P.2d 320, 322 (1993) (quoting Collins v. Union Fed. Savings & Loan, 99 Nev. 284, 302, 662 P.2d 610, 621 (1983)).

<sup>4</sup>See, e.g., John D. Calamari & Joseph M. Perillo, The Law of Contracts 336 (4th ed. 1998) (stating the general rule that in a bargaining situation there is no duty of disclosure).

existence of a fiduciary relationship or special relationship between (1) Acri and Compact, or (2) Acri and WICHIE.<sup>5</sup> Accordingly, we affirm the district court order that granted summary judgment in favor of Compact and WICHIE.

We now turn our attention to the district court order granting the NRCP 12(b)(2) motion to dismiss filed by the Oregon respondents. The NRCP 12(b)(2) motion challenged the district court's exercise of personal jurisdiction over the three individuals and the State of Oregon. Whether personal jurisdiction may be exercised over a defendant is a question of law that we review on appeal de novo.<sup>6</sup>

As we discussed in Trump v. District Court,<sup>7</sup> personal jurisdiction exists in two forms: (1) specific personal jurisdiction; and (2) general personal jurisdiction. Specific personal jurisdiction over a defendant may be established only where the cause of action arises from the defendant's contacts with the forum.<sup>8</sup> As the district court did not conduct an evidentiary hearing on the NRCP 12(b)(2) motion, we need only review the record to ascertain whether Acri made a prima facie showing of personal jurisdiction over any of the three individuals or the State of Oregon.<sup>9</sup> On the record before us, we conclude that Acri failed to

---

<sup>5</sup>See generally Dow Chemical Co. v. Mahlum, 114 Nev. 1468, 1486, 970 P.2d 98, 110 (1998) (noting that a fiduciary duty gives rise to a duty of disclosure); Mackintosh v. Jack Matthews & Co., 109 Nev. 628, 635, 855 P.2d 549, 554 (1993) (noting that a special relationship between parties to a contract may give rise to a duty of disclosure).

<sup>6</sup>See, e.g., Mink v. AAAA Development LLC, 190 F.3d 333, 335 (5th Cir. 1999).

<sup>7</sup>109 Nev. 687, 698-701, 857 P.2d 740, 748 (1993).

<sup>8</sup>Id. at 699, 857 P.2d at 748.

<sup>9</sup>Id. at 692-93, 857 P.2d at 743-44.

make a prima facie showing that his claims arise from Parrott's, Vanderveen's, Ohvall's, or the State of Oregon's specific contacts with Nevada. Accordingly, we uphold the district court's determination that specific personal jurisdiction does not exist with respect to Parrott, Vanderveen, Ohvall, or the State of Oregon.

General personal jurisdiction over a defendant exists when a defendant's forum activities are so substantial or continuous and systematic that it may be deemed present in the forum.<sup>10</sup> Here, there is no evidence in the record suggesting that Parrott, Vanderveen or Ohvall engaged in substantial or continuous and systematic activities in Nevada within a relevant time period preceding the filing of Acri's complaint. Accordingly, we uphold the district court's determination that general personal jurisdiction does not exist with respect to Parrott, Vanderveen or Ohvall.

As stated in Levinson v. District Court,<sup>11</sup> Nevada has a recognized interest in providing an effective means of redress for its residents. Here, provisionally accepting disputed factual allegations as true,<sup>12</sup> there is some evidence to suggest that the State of Oregon maintained substantial or continuous and systematic activities in Nevada. Hence, we conclude that there was a sufficient prima facie showing of general personal jurisdiction made by Acri to survive the State of Oregon's NRCP 12(b)(2) motion. Accordingly, we vacate that portion of the district court order that granted the State of Oregon's NRCP 12(b)(2) motion, and

---

<sup>10</sup>Id. at 699, 857 P.3d at 748; see also Helicopteros Nacionales de Columbia, S.A. v. Hall, 466 U.S. 408, 415 (1984).


<sup>11</sup>103 Nev. 404, 408, 742 P.2d 1024, 1026 (1987).

<sup>12</sup>See Credit Lyonnais Securities (USA) v. Alcantara, 183 F.3d 151, 153 (2d Cir. 1999).

remand for further proceedings consistent with our resolution of this appeal.

It is so ORDERED.<sup>13</sup>

  
\_\_\_\_\_, J.  
Young

  
\_\_\_\_\_, J.  
Agosti

  
\_\_\_\_\_, J.  
Leavitt

cc: Hon. Stephen L. Huffaker, District Judge  
Thorndal Armstrong Delk Balkenbush & Eisinger/Las Vegas  
Mitchell Acri  
Clark County Clerk

---

<sup>13</sup>We have considered all other arguments raised by Acri in his proper person brief, and have determined them to be without merit. Because we have considered appellant's proper person brief on the merits, we direct the clerk of this court to file the proper person brief received on January 18, 2000.