IN THE SUPREME COURT OF THE STATE OF NEVADA

RIO RANCHO LANDOWNERS ASSOCIATION, INC., JAMES D. OWNBY, INDIVIDUALLY AND AS AN OFFICER OF RIO RANCHO LANDOWNERS ASSOCIATION, INC., RENO INVESTMENTS, INC.,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK, AND THE HONORABLE STEPHEN L. HUFFAKER, DISTRICT JUDGE,

Respondents,

and

WORLD WIDE INVESTMENTS, INC., A NEVADA CORPORATION,

Real Party in Interest.

No. 36370

FILED

JAN 29 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER DENYING IN PART AND GRANTING IN PART PETITION FOR WRIT OF PROHIBITION

This is an original petition for a writ of mandamus or prohibition challenging a district court order denying petitioners' motion to quash service of process in a libel action. Petitioners are residents of New Mexico and Florida who sent allegedly libelous material to Nevada residents. We deny the petition as to Rio Rancho Landowners Association and James Ownby and grant it as to Reno Investments, Inc.

FACTUAL SUMMARY

The real party in interest, World Wide Investments, Inc. ("World Wide"), is a d/b/a of World Wide Investment Publishing Company, Inc., a Nevada Corporation. In the underlying action, World Wide is suing the petitioners, Rio Rancho Landowners Association ("Rio Rancho"), its chief executive officer, James Ownby, and its parent corporation, Reno Investments, Inc. ("Reno") (collectively "petitioners")

01-01862

for libel and interference with contractual relations. Rio Rancho is a New Mexico corporation. Reno is a Florida corporation. Ownby is a Florida resident.

Rio Rancho offers services to New Mexico landowners. For an annual fee, members receive a quarterly newsletter. Ownby authors the newsletter, which reports land sales and development issues in the Rio Rancho area. Additionally, on the first of the year, Rio Rancho sends all non-member landowners another version of the newsletter. The newsletter includes the same information as the member newsletter, but it also encourages the landowner to join Rio Rancho. Rio Rancho has members nationwide, including Nevada. The newsletters are regularly sent to 24,984 members and non-members, with 715 sent to Nevadans.

World Wide produces and maintains websites that advertise real estate for sale. World Wide contacted Rio Rancho landowners and offered its services. Apparently, several of Rio Rancho's members living in New Mexico, South Carolina, Ohio, and Washington complained about World Wide's contacts and business practices. Rio Rancho sent members a questionnaire about World Wide's contacts. After evaluating the questionnaires, Rio Rancho forwarded them to the attorney general of New Mexico. Rio Rancho also mentioned the situation in the winter 1999 newsletter, and included a larger section in the non-member version. Both newsletters described Rio Rancho's actions with respect to World Wide's contacts with landowners, and advised that the landowners investigate World Wide before enrolling with them.

PROCEDURAL SUMMARY

World Wide filed suit in Nevada alleging that both the member and non-member versions of the winter 1999 newsletter contained libelous statements and that the

petitioners intentionally interfered with contractual relations. The petitioners removed the case to federal district court based on diversity jurisdiction. The federal district court remanded the case to state court because the action did not meet the amount in controversy requirement. The petitioners made a special appearance in state court contesting personal jurisdiction. The district court denied petitioners' motion to quash service of summons for lack of personal jurisdiction without making any findings of fact. Petitioners filed this petition for a writ of mandamus, or in the alternative, prohibition, contending that the district court erred in denying their motion to quash service of process because World Wide did not make a prima facie showing of either general or personal jurisdiction. As we have previously acknowledged that a petition for writ of prohibition is the appropriate vehicle to challenge the district court's refusal to quash service of process, we construe this petition as seeking solely a writ of prohibition.[1]

DISCUSSION

When a party challenges personal jurisdiction, the plaintiff has the burden of producing evidence that establishes a prima facie showing of jurisdiction.[2] Although factual disputes are resolved in favor of the plaintiff, "the plaintiff must introduce some evidence and may not simply rely on the allegations of the complaint to establish personal jurisdiction."[3] This court performs "a de novo review of the

[1]See, e.g. Judas Priest v. District Court, 104 Nev. 424, 425, 760 P.2d 137, 138 (1998).

[2]See Trump v. District Court, 109 Nev. 687, 692, 857 P.2d 740, 743 (1993).

[3]Id. at 693, 857 P.2d at 744 (citations omitted).

evidence presented to the district court" when evaluating whether it is proper to exercise personal jurisdiction.[4]

In order for a Nevada court to exercise personal jurisdiction over a party, it must be consistent with our long-arm statute and with the Due Process Clause of the United States Constitution.[5] Nevada's long-arm statute states: "A court of this state may exercise jurisdiction over a party to a civil action on any basis not inconsistent with the constitution of this state or the Constitution of the United States."[6] Thus, personal jurisdiction need only satisfy due process to be proper.

The Due Process Clause requires that a defendant must have "certain minimum contacts with [the forum state] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'"[7] "The defendant must have sufficient contacts with the forum such that he or she could reasonably anticipate being haled into court there."[8] Still, "'[i]t is the quality of these contacts, . . . and not the quantity, that confers personal

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[4]Hospital Corp. of America v. Dist. Court, 112 Nev. 1159, 1160, 924 P.2d 725, 725 (1996) (citing Boit v. Gar-Tec Products, Inc., 967 F.2d 671, 678-79 (1st Cir. 1992)).

[5]Trump, 109 Nev. at 698, 857 P.2d at 747.

[6]NRS 14.065.

[7]Internat. Shoe Co. v. Washington, 326 U.S. 310, 316 (1945) (citation omitted); see Emeterio v. Clint Hurt and Assocs., 114 Nev. 1031, 967 P.2d 432 (1998).

[8]Trump, 109 Nev. at 699, 857 P.2d at 748.

jurisdiction.'"[9] Personal jurisdiction may be general or specific.[10]

General jurisdiction

Under Nevada law, it is proper to assert general personal jurisdiction "where the defendant's activities in the forum state are so substantial or continuous and systematic that it may be deemed present in the forum and hence subject to suit over claims unrelated to its activities there."[11]

Petitioners contend that it is not proper to assert general jurisdiction because their activities are not continuous and systematic. According to petitioners, the only contacts that they have with Nevada are the newsletters that they send to Nevada residents.

In this case, petitioners are not Nevada residents, nor do they do business in Nevada. The only contact petitioners have with Nevada is the yearly newsletter sent to 715 Nevada residents. We conclude that this is not "so substantial and systematic [such] that [petitioners] may be deemed present in the forum."[12] Accordingly, we conclude that Nevada courts have no general jurisdiction over the petitioners in this case.

Specific jurisdiction

This court has held that specific jurisdiction "'may be established only where the cause of action arises from the

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[9]Id. at 700, 857 P.2d at 749 (quoting Brainerd v. Governors of the University of Alberta, 873 F.2d 1257, 1259 (9th Cir. 1989)).

[10]Firouzabadi v. District Court, 110 Nev. 1348, 1352, 885 P.2d 616, 619 (1994) (citing Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 415-16 (1984)).

[11]Id.

[12]Id.

defendant's contacts with the forum.'"[13] Stated another way, the state may properly assert specific personal jurisdiction if:

> (1) the defendant purposefully avails himself of the privilege of serving the market in the forum or of enjoying the protection of the laws of the forum, or where the defendant purposefully establishes contacts with the forum state and affirmatively directs conduct toward the forum state, and (2) the cause of action arises from that purposeful contact with the forum or conduct targeting the forum.[14]

Regardless of whether the jurisdiction is general or specific, it must be reasonable.[15]

The United States Supreme Court dealt with a similar issue in Keeton v. Hustler Magazine, Incorporated.[16] In Keeton, a non-resident plaintiff filed a libel suit against a non-resident defendant based on an article published therein. The Court held "[r]espondent's regular circulation of magazines in the forum State is sufficient to support an assertion of jurisdiction in a libel action based on the contents of the magazine."[17] Personal jurisdiction over the magazine was proper even though its distribution in that particular state was relatively small compared to its national market.[18] The defendant's continuous and deliberate exploitation of the market made it reasonable that the

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[13]Id. at 1352-53, 885 P.2d at 619 (quoting Budget Rent-A-Car v. District Court, 108 Nev. 483, 485, 835 P.2d 17, 19 (1992)).

[14]Trump, 109 Nev. at 699-700, 857 P.2d at 748.

[15]Id.

[16]465 U.S. 770 (1984).

[17]Id. at 773-74.

[18]Id.

defendant could anticipate being haled into court based on the magazine's contents.[19]

In this case, Rio Rancho regularly distributes its newsletters, written by Ownby, to 715 Nevada residents. It is unimportant that a small proportion of those newsletters are sent to Nevada residents, because it is the quality not the quantity of contacts that is important.[20] The offending statements that are the root of this action were allegedly contained in the newsletters sent to Nevada residents. Therefore, like Keeton, the cause of action arises out of contacts with Nevada. Accordingly, we conclude that World Wide has met their prima facie burden of proof substantiating that the cause of action arose out of Rio Rancho's contacts with Nevada.

Ownby contends that it is improper to assert jurisdiction over him merely because he is an employee of Rio Rancho. It is true that the proper exercise of jurisdiction over a corporation does not necessarily confer jurisdiction over an employee; each defendant's contacts must be assessed separately.[21] It does not follow, however, that an employee is protected from suit in a foreign jurisdiction simply because he or she was acting in an official capacity.[22]

Ownby is more than a mere employee of Rio Rancho, and his contact with Nevada is not incidental. Ownby knows that Rio Rancho's newsletters are sent to landowners across the country - including Nevada. Further, Ownby authored and signed the allegedly libelous newsletter. Therefore, we

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[19]Id.

[20]See Trump, 109 Nev. 687, 857 P.2d 740.

[21]See Keeton, 465 U.S. 770.

[22]Calder v. Jones, 465 U.S. 783, 790 (1984).

conclude that Ownby, like Rio Rancho, purposefully directed his activities toward Nevada and this cause of action arose from his contacts.

Reno contends that Rio Rancho's contacts may not be imputed to it simply because Rio Rancho is a wholly owned subsidiary. We agree.

Under Nevada law, courts may not exercise specific jurisdiction over a parent corporation because of the contacts of its subsidiary when the parent "exercises no more control over its subsidiaries than is appropriate for the sole shareholder of a corporation."[23]

World Wide has not presented any evidence that Rio Rancho and Reno have failed to maintain separate and distinct corporate entities or that Reno exercises more control over Rio Rancho than is appropriate for the sole shareholder of a corporation. In fact, the only evidence of a relationship between Rio Rancho and Reno is the caption on the bottom of the newsletters that states that Rio Rancho is a subsidiary of Reno. Accordingly, we conclude that World Wide has failed to meet its burden to present evidence of a prima facie case that it is proper to exercise personal jurisdiction over Reno.

Although petitioners cite the specific personal jurisdiction test from Emeterio and Firouzabadi, they argue that a different test should apply because World Wide makes a libel claim. Petitioners argue that this court should apply the effects test of Calder and Core-Vent Corp. v. Nobel

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[23]MGM Grand, Inc. v. District Court, 107 Nev. 65, 68-69, 807 P.2d 201, 203 (1991); see Hargrave v. Fibreboard Corp., 710 F.2d 1154, 1160 (5th Cir. 1983) (determining "that so long as a parent and subsidiary maintain separate and distinct corporate entities, the presence of one in a forum state may not be attributed to the other").

Industries AB,[24] to determine personal jurisdiction for a tort claim. According to petitioners, "the libel must not only (1) target a (2) known forum but (3) must cause harm the majority of which must be felt in the forum and must be known to the defendant that any harm will likely be suffered in the forum." Petitioners argue that Calder requires that the alleged libel must target a known forum, and the majority of the harm must be felt in that forum. The petitioners argue that, because they did not know that World Wide was a Nevada corporation, they did not intentionally target Nevada.[25]

Calder was decided the same day and by the same author as Keeton, which expressly rejected the majority of harm argument.[26] Thus, it is incorrect to say that Calder requires a majority of the harm analysis. Further, we conclude that petitioners misread Calder by arguing that, in order to exercise specific jurisdiction over a non-resident defendant in a libel case, the libel must target a known forum.

In Calder, the plaintiff, a well-known California celebrity, sued a reporter and the president/editor of the magazine, alleging that an article written about her was libelous. The defendants argued that they were not responsible for the article's circulation in the forum state, and that they were ordinary employees with no economic stake in the sales in the forum. They argued that they therefore had no contacts such that the state could assert personal

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[24]11 F.3d 1482 (9th Cir. 1993).

[25]Petitioners also state that even if they had attempted to find World Wide's residence, it would not have been possible because World Wide operates under an unregistered d/b/a.

[26]See Keeton, 465 U.S. at 775-76.

jurisdiction.[27] The Court disagreed holding that personal jurisdiction was proper because the defendants' conduct targeted a known California resident, even though the defendants had no contact with the forum. At no time did the Court in Calder create the test petitioners' purport.[28]

Petitioners also contend that this action did not arise out of their contacts with Nevada because World Wide did not show that "it was only injured because of [Rio Rancho's] contact with this forum." Petitioners contend that World Wide did not allege that the newsletters sent to Nevada residents injured World Wide and, thus, failed to prove its prima facie case. We disagree.

According to World Wide, the cause of action arises out of Rio Rancho's purposeful contact because it intentionally sent the allegedly libelous newsletter to 715 potential customers in Nevada. As a result, World Wide contends that its business was injured. Because factual disputes are resolved in favor of the plaintiff, we conclude that World Wide has met its burden to present a prima facie case that this cause of action arose out of petitioners' contact with Nevada.

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[27]Calder, 465 U.S. at 789.

[28]Petitioners also cite Core-Vent Corp. v. Nobel Industries AB, 11 F.3d 1482 (9th Cir. 1993), to convince this court to apply their "known target" test. Core-Vent involved a libel claim against Swedish doctors. Although the principal opinion recited the test to which petitioners refer, the majority disagreed.

The majority actually agreed that "Calder stands for the proposition that purposeful availment is satisfied even by a defendant 'whose only "contact" with the forum state is the "purposeful direction" of a foreign act having effect in the forum state.'" Core-Vent, 11 F.3d at 1492 (quoting Haisten v. Grass Valley Medical Reimbursement Fund, 784 F.2d 1392, 1397 (9th Cir. 1986)). Accordingly, "the fact that the author and editor knew the brunt of the harm from their article would be suffered in California was a factor that weighed in favor of purposeful direction, but it was not a prerequisite." Id.

Finally, petitioners contend that it is unreasonable for a Nevada court to assert personal jurisdiction over them. We disagree.

Due process requires that the exercise of personal jurisdiction must be reasonable. This court has held that "'where a defendant who purposely has directed his activities at forum residents seeks to defeat jurisdiction, he must present a compelling case that the presence of some other considerations would render jurisdiction unreasonable.'"[29] According to Emeterio, five factors should be considered when determining reasonableness:

> (1) "the burden on the defendant" of defending an action in the foreign forum, (2) "the forum state's interest in adjudicating the dispute," (3) "the plaintiff's interest in obtaining convenient and effective relief," (4) "the interstate judicial system's interest in obtaining the most efficient resolution of controversies," and (5) the "shared interest of the several States in furthering fundamental substantive social policies." [30]

The petitioners' main contention is that the burden on them to defend this case in Nevada will be great because many of their witnesses - who are necessary to prove their defense of truth - are residents of other states, New Mexico in particular. We acknowledge that the burden on the petitioners of defending an action in Nevada is great. The petitioners will have to travel from New Mexico and Florida to litigate in Nevada. In addition, their witnesses will have to travel from other states. Nevertheless, when balanced with

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[29]Levinson v. District Court, 103 Nev. 404, 408, 742 P.2d 1024, 1026 (1987) (quoting Burger King v. Rudzewicz, 471 U.S. 462, 477 (1985)).

[30]Emeterio, 114 Nev. at 1036-37 (quoting World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 292 (1980); Asahi Metal Industry Co. v. Superior Court, 480 U.S. 102, 113 (1987)).

the other factors, we conclude that it is reasonable for Nevada to assert personal jurisdiction.

First, Nevada has an interest in providing a forum for its resident, World Wide.[31] World Wide is incorporated, headquartered, and does a majority of its business in Nevada. Nevada also has an interest in "safeguarding its populace from falsehoods."[32] Second, World Wide obviously prefers to litigate in Nevada since it is headquartered in Las Vegas. Indeed, it chose Nevada as the situs of litigation. Third, Nevada has an "interest in cooperating with other States, through the 'single publication rule,' to provide a forum for efficiently litigating all issues and damages claims arising out of a libel in a unitary proceeding."[33] As stated in Keeton, "[t]here is no unfairness in calling [the publisher] to answer for the contents of [its] publication wherever a substantial number of copies are regularly sold and distributed."[34] Consequently, we conclude that it is reasonable to require that Rio Rancho and Ownby defend their suit in Nevada.

To summarize, we conclude that World Wide has made a prima facie showing that the district court's exercise of personal jurisdiction over Rio Rancho and Ownby is proper because World Wide's cause of action for libel arises out of their purposeful activities in Nevada. We further conclude that this exercise of jurisdiction is reasonable under the circumstances of this case.

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[31]See Emeterio.

[32]Keeton, 465 U.S. at 777.

[33]Id.

[34]Id. at 781.

Accordingly, we deny the petition for a writ of prohibition as to Rio Rancho and Ownby. We grant the petition as to Reno and direct the clerk of this court to issue a writ of prohibition restraining the district court from conducting any further proceedings with respect to Reno.

It is so ORDERED.

_____, J.
Shearing

_____, J.
Agosti

_____, J.
Leavitt

cc: Hon. Stephen L. Huffaker, District Judge
Rawlings Olson Cannon Gormley & Desruisseaux
Patrick T. Nohrden
Clark County Clerk