

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAYFE ROBERT ANTHONY, M.D.; NORMAN
FAWSON, M.D.; MCKAY CHRISTIAN,
M.D.; KERRY STRATFORD, M.D.;
HOWARD CHAMBERLAIN, M.D.; CLARK
STAHOLI, M.D.; KIRK WATKINS, M.D.;
D/B/A/ ST. GEORGE CLINIC; AND
NANCY R. DAVIS, CFNP,

No. 36418

Petitioners,

vs.

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

Respondents

and

DARRELL D. WILLIAMS AS
ADMINISTRATOR OF THE ESTATE OF
SANDY R. WILLIAMS; DARRELL D.
WILLIAMS; AND TYSON KAM PROBERT,

Real Parties in Interest.

FILED

JUN 12 2001

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

ORDER GRANTING PETITION FOR WRIT OF PROHIBITION

This is an original petition for writ of prohibition, or in the alternative, writ of mandamus, challenging the district court's order denying petitioners' motion to quash for lack of personal jurisdiction.

In this instance, petitioners contend that the State of Nevada lacks proper jurisdiction due to an insufficiency of contacts between the St. George Medical Clinic and this state. We agree. The criteria for establishing personal jurisdiction over a non-resident defendant include: (1) satisfying the requirements of Nevada's long-arm statute, NRS 14.065; and (2) not offending traditional notions of due process by exercising

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jurisdiction over the defendant.¹ However, "[b]ecause Nevada's long-arm statute 'has been construed to extend to the outer reaches of due process, the two inquiries . . . may be collapsed into'" a singular due process analysis.²

The Due Process Clause of the 14th Amendment requires there to be a sufficiency of minimum contacts between the defendant and Nevada.³ These contacts should rise to a level whereby the suit does not offend notions of fair play and substantial justice, but also that the defendant "should reasonably anticipate being haled into" Nevada courts.⁴ Thus, above all else, "the exercise of jurisdiction must be reasonable."⁵

This court has separated the personal jurisdictional analysis into two separate inquiries: general personal jurisdiction and specific personal jurisdiction.⁶ First, "[g]eneral jurisdiction occurs where a defendant is held to answer in a forum for causes of action unrelated to the defendant's forum activities."⁷ Under this analysis, jurisdiction may only be found when "the level of contact

¹See Firouzabadi v. District Court, 110 Nev. 1348, 1352, 885 P.2d 616, 619 (1994) (citing Trump v District Court, 109 Nev. 687 698, 857 P.2d 740 747 (1993)).

²Id. (quoting Trump, 109 Nev. at 698, 857 P.2d at 747).

³See Firouzabadi, 110 Nev. at 1352, 885 P.2d at 619 (citing International Shoe Co., v. Washington, 326 U.S. 310, 316 (1945)).

⁴Id. (citations omitted).

⁵Judas Priest v. District Court, 104 Nev. 424, 426, 760 P.2d 137, 138 (1988).

⁶See Baker v. District Court, 116 Nev. ___, ___, 999 P.2d 1020, 1023 (2000).

⁷Trump, 109 Nev. at 699, 857 P.2d at 748 (citing Budget Rent-A-Car v. District Court, 108 Nev. 483, 485, 835 P.2d 17, 19 (1992)).

between the defendant and the forum state is high."⁸ Thus, general personal jurisdiction is only appropriate when the contacts between the defendant and Nevada are so "substantial," "continuous and systematic" that the defendant may be deemed to be present in the state.⁹

Here, we conclude that the exercise of general personal jurisdiction over the Clinic, its physicians, and nurse Davis, would offend due process. Foremost, the physicians and Davis are not residents of Nevada. The deceased, Mrs. Sandy Williams, was not treated in Nevada. The Clinic is not located, licensed, or incorporated in Nevada. Although two physicians and Davis held active Nevada licenses at one time, this court has held that professional licensure within the state "does not necessarily implicate substantial, continuous, or systematic contact" for purposes of general jurisdiction.¹⁰ Neither the Clinic's level of contact with Nevada is high nor have the practitioners availed themselves of the benefits and privileges of Nevada's laws.

"Absent general jurisdiction, specific personal jurisdiction over a defendant may be established only where the cause of action arises from the defendant's contacts with

⁸Id. (citations omitted).

⁹Id. (quoting *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 415 (1984)).

¹⁰Baker, 116 Nev. at ___, 999 P.2d at 1023. For the same reason, we deny real parties in interest's May 10, 2001, emergency motion to dismiss or alternatively supplement the record based on the assertion that Dr. Anthony had re-activated his Nevada medical license. Accordingly, we also deny real parties in interest's motion to file a reply to petitioners' opposition to the May 10, 2001, motion. Accordingly, the clerk of this court shall return, unfiled, the proposed reply received on May 29, 2001. Finally, we also deny real parties in interest's June 1, 2001, motion to provide additional information.

the forum."¹¹ This court has held that specific personal jurisdiction over a defendant will only be effected when: (1) the defendant purposefully establishes contact with the forum state and affirmatively directs its conduct towards it; and (2) the cause of action arises from such purposeful contact with the forum.¹² Moreover, "the cause of action must have a specific and direct relationship or be intimately related to the forum contacts" in such a way that the contact cannot be deemed to be random, fortuitous or attenuated.¹³

In this instance, we conclude that the factors cited by the district court in its jurisdictional determination were insufficient to confer specific personal jurisdiction over petitioners in Nevada. Particularly, we note that the district court failed to consider the unique jurisdictional rules designed for medical malpractice claims against non-forum physicians.¹⁴ Based on public policy concerns, these special rules have evolved to ensure that personal jurisdiction is asserted over a physician only in instances in which the practitioner has purposefully availed himself of the privileges of conducting activities within the patient's state.¹⁵

The purpose of these rules is readily evident: public policy dictates that physicians should not be apprehensive of treating non-resident patients in need of

¹¹Trump, 109 Nev. at 699, 857 P.2d at 749 (citing Budget Rent-A-Car, 108 Nev. at 486, 835 P.2d at 20; Price and Sons v. District Court, 108 Nev. 387, 390, 831 P.2d 600, 602 (1992)).

¹²See Trump, 109 Nev. at 699-700, 857 P.2d at 748.

¹³Munley v. District Court, 104 Nev. 492, 495-96, 761 P.2d 414, 416 (1988) (citing Burger King v. Rudzewicz, 471 U.S. 462, 479-80 (1985)).

¹⁴See Kennedy v. Freeman, 919 F.2d 126, 129 (10th Cir. 1990).

¹⁵See id.

medical care for fear that the travel plans of those patients could subject the physicians to suit in distant forums. To the contrary, we conclude that in personal service professions - like the medical profession - the jurisdictional focus should be aimed at the place in which the services were rendered; not the place in which the injury transpired.¹⁶

To rule otherwise, would be to make the tortious rendition of medical services a "portable tort" that would undoubtedly have a chilling effect on the treatment of non-resident patients.¹⁷ Consequently, it is clear that "[t]he traveling public would be ill served were the treatment of local doctors confined to so much aspirin as would get the patient into the next state."¹⁸

We conclude that it is irrelevant to our jurisdictional analysis whether the final outcome - Mrs. Williams's death - occurred in Nevada, or whether the syringe was given to Mr. Williams by Dr. Anthony to be taken into Nevada. Rather, our jurisdictional determination should be based in accord with where services in this instance were rendered.

All imperative jurisdictional factors in this instance point to Utah as being the proper forum for jurisdiction rather than Nevada. The Clinic's practice is localized to the St. George area; Mrs. Williams's surgery took place in Utah; any negligent acts by the Clinic would have been committed in Utah; and any post-operative treatment was conducted by the Clinic in Utah. Although medicine was given

¹⁶See Wright v. Yackley, 459 F.2d 287, 289 (9th Cir. 1972).

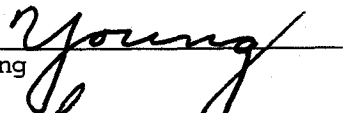
¹⁷See id. at 289-90.


¹⁸Id. at 290.

to Mr. Williams to be taken from St. George, across Arizona, and into Nevada, it is clear that the Clinic's personnel did not perform any services within Nevada's borders.

Further, we must note that additional factors found by the district court to support jurisdiction - professional licensure and advertisement within the state - also fail to provide a basis for jurisdiction. Specifically, this court has held that professional licensure in Nevada fails to confer personal jurisdiction.¹⁹ Moreover, the Ninth Circuit Court of Appeals has held that advertisement by medical practitioners in a bordering state may serve as indicia of jurisdiction, but does not, in and of itself, confer jurisdiction.²⁰

Therefore, based on the foregoing, we conclude that neither the Clinic, nor its practitioners, should be subject to the jurisdiction of our state merely because Mrs. Williams unilaterally carried the consequences of her treatment into Nevada. Accordingly, we grant the petition and direct the clerk of this court to issue a writ of prohibition restraining the district court from exercising jurisdiction over petitioners in this matter.



Young J.


Leavitt J.

cc: Hon. Allan R. Earl, District Judge
Kummer Kaempfer Bonner & Renshaw
Earley Savage
John Peter Lee Ltd.
Clark County Clerk

¹⁹See Baker, 116 Nev. ___, 999 P.2d 1020.

²⁰See Cabbage v. Merchant, 744 F.2d 665 (9th Cir. 1984).

BECKER, J., concurring in part and dissenting in part:

I agree with the majority's analysis of the law and the conclusion that respondents have failed to demonstrate sufficient facts for the exercise of personal jurisdiction over the defendants and that the district court erred in simply denying the motion to quash. However, at the time of the oral argument in front of the district court, respondents indicated that if the district court were inclined to grant the motion, respondents would like additional time to conduct discovery on the issue of the physicians' license status in Nevada. Although they did not mention the need to conduct discovery on whether or not the physicians and/or the Clinic have purposely availed themselves of the privileges of conducting activities in Nevada within the guidelines set forth in Cabbage v. Merchant,¹ I conclude their request was sufficient to preserve this issue. I would therefore grant the petition and order the district court to vacate its order denying the motion to quash with instructions to permit respondents additional time to conduct such discovery as to the physicians and the Clinic and for further proceedings consistent with this order. I agree that there is no basis for asserting personal jurisdiction over Nurse Davis and that the petition should be granted as to her.

Becker
Becker

J.

¹744 F.2d 665 (9th Cir. 1984).