

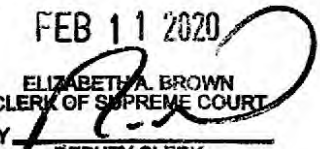
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BERNSTEIN & POISSON,
INDIVIDUALLY,
Appellant,
vs.
PERRY C. WANDER, INDIVIDUALLY;
AND LAW OFFICES OF PERRY C.
WANDER, INDIVIDUALLY,
Respondents.

No. 77344-COA

FILED

FEB 11 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Bernstein & Poisson appeals from a district court order dismissing respondents in a civil action. Eighth Judicial District Court, Clark County; Mark R. Denton, Judge.

Appellant Bernstein & Poisson (Bernstein) represented an individual in obtaining a settlement following a motor vehicle collision in Nevada. After a settlement offer was obtained, but before the release was signed, the former client allegedly moved from Nevada to California, fired Bernstein, and retained a California attorney, respondents Perry Wander and the Law Offices of Perry C. Wander (collectively referred to as Wander) to represent him. After Wander was unable to secure a better offer, he began negotiating with Bernstein regarding the amount of attorney fees owed to Bernstein under his retainer agreement entered into with the former client. Specifically, Wander asserted that Bernstein was entitled to an hourly fee based on quantum meruit principles, while Bernstein asserted he was entitled to his contingency fee of 33 percent pursuant to the retainer agreement. Bernstein then initiated the underlying action, suing Wander

and the former client¹ for breach of contract, civil conspiracy, and unjust enrichment, amongst other claims. Wander then moved to quash service of the summons, arguing that the district court did not have personal jurisdiction over him. The district court granted the motion and dismissed Wander, and this appeal followed.

On appeal, Wander failed to file a timely answering brief. Bernstein subsequently filed a motion for confession of error and, in his opposition, Wander sought an extension of time to file an answering brief. Before transferring the matter to this court, the Nevada Supreme Court denied Wander's request for an extension of time and concluded that Bernstein's motion would be determined in the disposition of the appeal. In his brief, Bernstein challenges the district court's order, asserting that the court had specific personal jurisdiction over Wander and that the district court failed to evaluate specific personal jurisdiction in granting Wander's motion. We grant Bernstein's request to treat Wander's failure to file an answering brief as a confession of error and conclude, on that basis, that Bernstein made a prima facie showing of specific personal jurisdiction.

In Nevada, to obtain jurisdiction over a non-resident defendant, a plaintiff must demonstrate either general personal jurisdiction or specific personal jurisdiction.² *Arbella Mut. Ins. Co. v. Eighth Judicial Dist. Court*, 122 Nev. 509, 512, 134 P.3d 710, 712 (2006). Additionally, "[w]hen, as here, the litigation is in the pleading or motion stage, the plaintiff need only make

¹We note that while the former client was named in the suit below, at the time the instant appeal was taken, he had not yet appeared in that action and is not part of this appeal.

²Bernstein does not dispute that the district court did not have general personal jurisdiction over Wander.

a prima facie showing of personal jurisdiction.” *Tricarichi v. Coop. Rabobank, U.A.*, 135 Nev. 87, 90, 440 P.3d 645, 649 (2019) (internal quotation marks omitted). And “[t]he court may consider evidence presented through affidavits and must accept properly supported proffers as true and resolve factual disputes in the plaintiff’s favor.” *Id.* at 91, 440 P.3d at 649.

Specific personal jurisdiction exists where

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

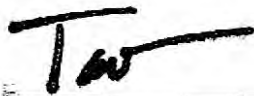
Arbella, 122 Nev. at 513, 134 P.3d at 712-13 (quoting *Trump v. Eighth Judicial Dist. Court*, 109 Nev. 687, 699-700, 857 P.2d 740, 748 (1993)). In addition to determining whether the defendant purposefully directed his conduct towards Nevada and whether the cause of action arose from that contact or activities in connection with Nevada, the court must also consider whether exercising personal jurisdiction over the defendant is reasonable. *Id.* at 513, 134 P.3d at 713.

As noted above, Wander failed to file a timely answering brief addressing Bernstein’s arguments. Appellate courts “may, in [their] discretion, treat the failure of a respondent to file his brief as a confession of error, and reverse the judgment without consideration of the merits of the appeal.” *Rhode Island v. Prins*, 96 Nev. 565, 566, 613 P.2d 408, 409 (1980); *see also* NRAP 31(d). We do so here, and thus, conclude that Bernstein demonstrated a prima facie showing of specific personal jurisdiction. But, this is only the first part of the analysis in determining

whether specific personal jurisdiction over Wander is proper. Therefore, we reverse the district court's dismissal on jurisdictional grounds and remand this matter for further proceedings consistent with this order and the procedure outlined in *Trump*, 109 Nev. at 693-94, 857 P.2d at 744-45. Specifically, on remand, because Bernstein has made a prima facie showing of personal jurisdiction before trial, he now must prove personal jurisdiction by a preponderance of the evidence at trial, where disputed jurisdictional facts are not drawn in the plaintiff's favor. *Id.* at 693, 857 P.2d at 744. Alternatively, the district court may conduct a full evidentiary hearing, if appropriate, to resolve personal jurisdiction prior to trial, and Bernstein must demonstrate personal jurisdiction by a preponderance of the evidence at the evidentiary hearing, rather than waiting until trial. *Id.* at 693-94, 693 n.2, 857 P.2d at 744-45, 744 n.2.

It is so ORDERED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Mark R. Denton, District Judge
Bernstein & Poisson
Perry C. Wander
Eighth District Court Clerk