

IN THE SUPREME COURT OF THE STATE OF NEVADA

DANIEL SIMS, D.D.S., INDIVIDUALLY,
Appellant,

vs.

SPRINGBROOK NORTHWEST, INC.,
AN OREGON CORPORATION;
VALERIE TSOHANTARIDIS, M.ED.,
LMHC; GREGORY E. SKIPPER, M.D.;
ALYSA HILTON, NP; AND ANNE E.
LINTON, M.D.,
Respondents.

No. 38209

FILED

APR 08 2003

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

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order granting a motion to dismiss for lack of personal jurisdiction. Daniel Sims is a pediatric oral surgeon. Springbrook is a chemical dependency treatment center located in Newberg, Oregon. Sims filed suit in Nevada district court against Springbrook and others, alleging a fraudulent scheme to extort money from professionals by collaborating and conspiring with state licensing boards to revoke the license of professionals unless the professionals pay large sums of money to Springbrook for unneeded treatment for purported drug or alcohol problems. Sims also alleged that Springbrook committed three torts: misrepresentation, conversion, and libel. Sims argues that because Springbrook targeted marketing efforts toward Nevada's professional licensing boards, these contacts with the forum are sufficient to establish personal jurisdiction. We agree.

This court reviews personal jurisdiction determinations de novo.¹ There are two different methods a trial court can utilize once a defendant has challenged personal jurisdiction.² One method involves a full evidentiary hearing prior to trial.³ In this scenario, the plaintiff must prove personal jurisdiction by a preponderance of the evidence.⁴ The other, more frequently utilized method initially requires only a prima facie showing of personal jurisdiction.⁵ With the latter method, the plaintiff must prove personal jurisdiction by a preponderance of the evidence at trial.⁶ This latter method is the one utilized in this case.

To establish a prima facie showing of personal jurisdiction, the plaintiff has the burden to produce some evidence of all essential facts and cannot merely rely on allegations in the complaint.⁷ “In determining whether a prima facie showing has been made, the district court is not acting as a fact finder. It accepts properly supported proffers of evidence

¹See Baker v. Dist. Ct., 116 Nev. 527, 531, 999 P.2d 1020, 1023 (2000).

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

³See id. at 693, 857 P.2d at 745.

⁴Id. (citations omitted).

⁵Id. at 692, 857 P.2d at 743.

⁶Id. at 693, 857 P.2d at 744.

⁷Id. at 692-93, 857 P.2d at 743-44 (citations omitted).

by a plaintiff as true.”⁸ Any factual disputes are resolved in the plaintiff’s favor.⁹

“To obtain jurisdiction over a non-resident defendant, a plaintiff must show: (1) that the requirements of the state’s long-arm statute have been satisfied, and (2) that due process is not offended by the exercise of jurisdiction.”¹⁰ Nevada’s long-arm statute provides, “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.”¹¹ Since we have previously stated that Nevada’s long-arm statute extends “to the outer reaches of due process,” the two-step personal jurisdiction analysis collapses into one, a due process analysis.¹²

Due process requires “minimum contacts” by the defendant with the forum state “such that the maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’”¹³ The defendant’s contacts with the forum should be sufficient for the defendant

⁸Id. at 693, 857 P.2d at 744 (quoting Boit v. Gar-Tec Products, Inc., 697 F.2d 671, 675 (1st Cir. 1992)) (emphasis in original).

⁹Levinson v. District Court, 103 Nev. 404, 407, 742 P.2d 1024, 1026 (1987).

¹⁰Trump, 109 Nev. at 698, 857 P.2d at 747 (citations omitted).

¹¹NRS 14.065(1).

¹²Trump, 109 Nev. at 698, 857 P.2d at 747 (citing Certain-Teed Prods. v. District Court, 87 Nev. 18, 23, 479 P.2d 781, 784 (1971)).

¹³International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945) (quoting Milliken v. Meyer, 311 U.S. 457, 463 (1940)).

to “reasonably anticipate being haled into court there.”¹⁴ “[A]dditionally, the exercise of jurisdiction must be reasonable.”¹⁵

This court has divided personal jurisdiction into two types, general and specific.¹⁶ “General personal jurisdiction exists 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.”¹⁷ When there are not sufficient contacts for general jurisdiction, “specific personal jurisdiction ‘may be established only where the cause of action arises from the defendant’s contacts with the forum.’”¹⁸

In this case, Sims contends that Springbrook is subject to specific personal jurisdiction. Therefore, Sims must show that Springbrook, (1) purposefully established contacts with Nevada, and (2) that the cause of action arose out of those contacts.¹⁹

¹⁴Emeterio v. Clint Hurt and Assoc., 114 Nev. 1031, 1035, 967 P.2d 432, 435 (1998) (quoting World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980)).

¹⁵Judas Priest v. District Court, 104 Nev. 424, 426, 760 P.2d 137, 138 (1988) (citations omitted).

¹⁶See Trump, 109 Nev. at 699, 857 P.2d at 748.

¹⁷Firouzabadi v. District Court, 110 Nev. 1348, 1352, 885 P.2d 616, 619 (1994) (citations omitted).

¹⁸Id. at 1352-53, 885 P.2d at 619 (quoting Budget Rent-A-Car, 108 Nev. 483, 485, 835 P.2d 17, 19 (1992)).

¹⁹See Trump, 109 Nev. at 700, 857 P.2d at 748 (citing Budget Rent-A-Car at 487, 835 P.2d at 20 (citations omitted)).

In Judas Priest v. District Court, we concluded that a band's licensing agreement for distribution and sales of albums in the forum and the performance of two concerts in Nevada were sufficient for personal jurisdiction.²⁰ In Firouzabadi v. District Court, an entity "purposefully availed" itself of the forum by coming to a trade show in Nevada to market its goods and solicit business, even though that contact was not necessarily aimed solely at Nevada residents.²¹ Even a single contact with the forum state can be enough for personal jurisdiction if the cause of action arises from that contact.²² "[I]t is the cumulative significance of all the activities conducted in the jurisdiction rather than the isolated effect of any single activity that is determinative."²³

Here, since Springbrook purposefully sought referrals from Nevada professional organizations through attendance at trade shows in Nevada, through direct mailings, through advertisements, and through direct contact with professional organizations, we conclude there was sufficient contact with the forum to support personal jurisdiction.

²⁰104 Nev. at 426, 760 P.2d at 138-39.

²¹110 Nev. at 1355, 885 P.2d at 621.

²²See Mirage Casino-Hotel v. Caram, 762 F. Supp. 286, 288 (D. Nev. 1991).

²³Trump, 109 Nev. at 700, 857 P.2d at 749 (quoting Abbott v. Harrah, 90 Nev. 321, 324, 526 P.2d 75, 76 (1974)).

Springbrook argues that Sim's cause of action did not arise from its marketing efforts. Springbrook claims its contacts are similar to those in Munley v. District Court, where we concluded that a ski resort's alleged negligence did not arise from the resort's advertising and promotional activities.²⁴ Unlike Munley, however, where the alleged tort of negligence was obviously not an integral part of the ski resort's marketing scheme, Sims is claiming a conspiracy between Springbrook and the very professional organizations that Springbrook targeted with its marketing efforts. Further, these professional organizations are the organizations that required Sims to submit to an assessment by Springbrook in order to avoid forfeiting his professional license. Therefore, Sims' causes of action arose from Springbrook's purposeful contacts with Nevada.

"Whether general or specific, the exercise of personal jurisdiction must also be reasonable."²⁵ Factors used to determine whether personal jurisdiction is reasonable are:

- (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

²⁴104 Nev. 492, 494-95, 761 P.2d 414, 415 (1988).

²⁵Emeterio, 114 Nev. at 1036, 967 P.2d at 436 (citing Trump, 109 Nev. at 703, 857 P.2d at 750).

interest of the several States in furthering fundamental substantive social policies.”²⁶

For the first factor, there is evidence that Springbrook has repeatedly sent representatives into Nevada for marketing purposes. Thus, although it will be somewhat of a burden for Springbrook’s representatives to travel to Nevada to defend this case, the burden is not excessive under the circumstances.

Next, as we have previously stated, “Nevada has a recognized interest in providing an effective means of redress for its residents.”²⁷ Here, Sims is a Nevada resident. Further, since this case involves the licensing of one of Nevada’s practitioners, Nevada has an interest in adjudicating the dispute.

Next, Sims’ interest in obtaining convenient and effective relief is also great. Sims lives in Nevada. The majority of the other defendants in this case reside in Nevada. Also, all of the consequences of the alleged conspiracy occurred in Nevada. To deny personal jurisdiction regarding Springbrook would require Sims to pursue a second suit in Oregon. This fact also affects the fourth factor, “the judicial system’s interest in obtaining the most efficient resolution of controversies,” because requiring two suits would not be an efficient resolution.

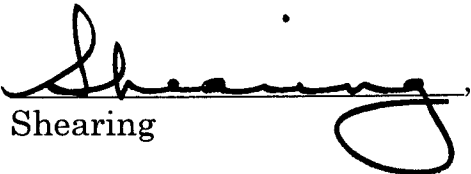
Finally, social policy would be subverted if another forum were to adjudicate a case involving the licensure of a Nevada professional.


²⁶Id. at 1036-37, 967 P.2d at 436 (quoting World-Wide Volkswagen, 444 U.S. 286, 292; Asahi Metal Industry Co. v. Superior Court, 480 U.S. 102, 113 (1987)).

²⁷Levinson, 103 Nev. at 408, 742 P.2d at 1026.

We conclude that Springbrook purposefully availed itself of the Nevada forum by targeting its marketing efforts at the state's professional boards. As a direct result of that marketing effort, professionals with substance abuse problems, including Sims, were referred to Springbrook for assessment and treatment. The conspiracy and torts allegedly committed by Springbrook and others arose from Springbrook's marketing efforts and Sims' subsequent referral to Springbrook. Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.


_____, J.
Shearing


_____, J.
Leavitt


_____, J.
Becker

cc: Hon. Stewart L. Bell, District Judge
Hamilton D. Moore
Hoffman, Hart & Wagner
Pearson, Patton, Shea, Foley & Kurtz
Clark County Clerk