

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID MORRIS ENTERPRISES, INC.,
AN ARKANSAS CORPORATION, D/B/A
DAVID MORRIS AVIATION; DAVID
MORRIS, AN INDIVIDUAL; AERO-
TECH, AN ARKANSAS BUSINESS;
AND FRANK HERNANDEZ, AN
INDIVIDUAL,

Petitioners,

vs.

THE SECOND JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
WASHOE, AND THE HONORABLE
PETER I. BREEN, DISTRICT JUDGE,

Respondents,

and

GEORGE F. RITTER AND JO ANNE
SNYDER RITTER, HUSBAND AND
WIFE; AND SH REAL ESTATE AND
INVESTMENTS, LLC, A NEVADA
LIMITED LIABILITY COMPANY,
Real Parties in Interest.

No. 42406

FILED

JUL 11 2005

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

ORDER GRANTING PETITION FOR WRIT OF PROHIBITION

This original petition for a writ of prohibition challenges the district court's order denying petitioners' motion to dismiss for lack of jurisdiction.

Petitioners David Morris, David Morris Enterprises, d/b/a David Morris Aviation, Frank Hernandez and Aero-Tech argue that the district court erred in exercising specific personal jurisdiction over them as to a complaint filed by real parties in interest George F. Ritter, Jo Anne Snyder Ritter and SH Real Estate and Investments, LLC. After reviewing

the petition, as well as the answer by the real parties in interest, we conclude that our intervention by way of extraordinary relief is warranted.

Extraordinary writs may only be issued where there is “no ‘plain, speedy, and adequate remedy at law.’”¹ Pursuant to NRS 34.320, a writ of prohibition “arrests the proceedings of any tribunal, corporation, board or person exercising judicial functions, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board or person.” A writ of prohibition “does not serve to correct errors; rather, its purpose is to prevent courts from transcending the limits of their jurisdiction in the exercise of judicial power.”² This court has held that “[a] writ of prohibition is the appropriate remedy where a district court exceeded its jurisdiction in refusing to quash service based on lack of personal jurisdiction.”³ When reviewing a district court’s determination that personal jurisdiction may be properly exercised, and where the facts are not in dispute, this court conducts a de novo review.⁴

Pursuant to Nevada’s long arm statute, NRS 14.065(1), a court may exercise jurisdiction over a party to a civil action on any basis not inconsistent with the State or Federal Constitution. To satisfy the Due Process Clause of the Fourteenth Amendment, a defendant must have

¹See Harvey L. Lerer, Inc. v. District Court, 111 Nev. 1165, 1168, 901 P.2d 643, 645 (1995) (quoting NRS 34.330, and citing State ex rel. Dep’t Transp. v. Thompson, 99 Nev. 358, 662 P.2d 1138 (1983)).

²Mineral County v. State, Dep’t of Conserv., 117 Nev. 235, 243, 20 P.3d 800, 805 (2001).

³Baker v. Dist. Ct., 116 Nev. 527, 531, 999 P.2d 1020, 1023 (2000).

⁴Id.

“minimum contacts”⁵ with the forum state such that jurisdiction would not offend “traditional notions of fair play and substantial justice.”⁶ General personal jurisdiction is appropriate when a defendant’s contacts with the forum state are so “substantial and continuous” that the defendant is said to be present in the state.⁷ If general personal jurisdiction is established, the forum court can exercise jurisdiction over the defendant, whether or not the cause of action arose from the defendant’s contacts with the forum.⁸ Here, the district court did not find general personal jurisdiction over the petitioners; thus, it is not in dispute.

However, Morris and Hernandez argue that the exercise of specific personal jurisdiction over them is unfair and unreasonable, since all critical contacts took place in Arkansas. The petitioners dispute the district court’s findings of specific personal jurisdiction based on an advertisement, phone calls, faxes, and payment tendered through a Nevada financial institution by the Ritters. Specific personal jurisdiction gives the court power over a nonresident defendant if the claims arise out of the particular activities of the defendant while in the forum state. To

⁵Id. at 531-32, 999 P.2d 1020, 1023 (quoting Mizner v. Mizner, 84 Nev. 268, 270, 439 P.2d 679, 689 (1968) (quoting Internat. Shoe Co. v. Washington, 326 U.S. 310, 316 (1945))).

⁶Id. at 532, 999 P.2d at 1023 (quoting Mizner, 84 Nev. at 270, 439 P.2d at 680) (additional citations omitted).

⁷Munley v. District Court, 104 Nev. 492, 496, 761 P.2d 414, 416 (1998) (quoting Laxalt v. McClatchy, 622 F. Supp. 737, 742 (D. Nev. 1985)).

⁸Budget Rent-A-Car v. District Court, 108 Nev. 483, 485, 835 P.2d 17, 19 (1992) (citing Perkins v. Benguet Mining Co., 342 U.S. 437, 446-47 (1952)).

exercise specific personal jurisdiction over an out-of-state defendant, the following criteria must be met:

The defendant must purposefully avail himself of the privilege of acting in the forum state or of causing important consequences in that state. The cause of action must arise from the consequences in the forum state of the defendant's activities, and those activities, or the consequences thereof, must have a substantial enough connection with the forum state to make the exercise of jurisdiction over the defendant reasonable.⁹

Morris

The Ritters argue that Morris directed his activities towards the citizens of Nevada by placing his advertisement to sell a Cessna airplane in a national trade publication. Morris counters that the placement of the ad in a national trade publication was intended to reach as large an audience of interested buyers as possible and that the ad was not specific to Nevada residents. "Advertising to the nation in general is not consistent with the specific targeting activity required to find that the defendant purposefully availed itself of the Nevada forum."¹⁰ Morris did not direct his activities specifically toward Nevada, nor did he invoke the benefits of Nevada's protection under the law.

⁹Trump v. District Court, 109 Nev. 687, 700, 857 P.2d 740, 748-49 (1993) (quoting Jarstad v. National Farmers Union, 92 Nev. 380, 387, 552 P.2d 49, 53 (1976)).

¹⁰Abraham v. Agusta, S.P.A., 968 F. Supp. 1403, 1411 (D. Nev. 1997).

In Munley v. District Court, this court held that a ski resort's promotional activities toward Nevada residents were insufficient to establish personal jurisdiction when the injured plaintiff failed to demonstrate that a cause of action against the resort arose from its promotional activities in Nevada.¹¹ Likewise, the Ritters' cause of action did not arise from the advertisement, which merely served as an invitation to offer. The Ritters failed to demonstrate how Morris' advertisement was connected to their breach of contract claims.

The housing and viewing of the plane, the agreement to purchase, the finalization of the terms and purchase price, the tender of payment and final delivery all took place in Arkansas. Payment from a forum's bank does not create a "substantial connection" with the forum.¹² Here, payment tendered by a Nevada lending institution does not support the exercise of specific jurisdiction over Morris. The fact that the check was drawn from a Nevada financial institution merely indicates that the Ritters preferred to obtain a loan from a Nevada institution, and does not link Morris to Nevada. Morris did not secure the loan or enter into a business transaction with the Nevada financial institution, thereby linking him to the state; the Ritters did.

"When a cause of action does not arise out of a nonresident defendant's acts in the forum, the assertion of jurisdiction would be unreasonable."¹³ As previously illustrated, Morris did not specifically

¹¹104 Nev. at 496, 761 P.2d at 416.

¹²Sher v. Johnson, 911 F.2d 1357, 1362 (9th Cir. 1990) (quoting Burger King Corp. v. Rudzewicz, 471 U.S. 462, 475 (1985)).

¹³Munley, 104 Nev. at 495, 761 P.2d at 415-16.

direct his activities toward Nevada or Nevada's consumers, and all contacts between the Ritters and Morris occurred in Arkansas. It would be unfair to exercise jurisdiction over Morris when he did not intend to purposefully avail himself of the protections of Nevada law, nor could he "reasonably anticipate being haled into [a Nevada] court."¹⁴

Hernandez

Hernandez, an Arkansas resident, agreed to conduct an annual inspection on the Cessna 340 airplane and received a payment from Morris upon completion. While Hernandez and the Ritters later communicated through phone calls and faxes, all face-to-face contacts between the parties occurred in Arkansas. Ordinarily, "use of the mails, telephone, or other international communications simply [does] not qualify as purposeful activity invoking the benefits and protection of the [forum] state."¹⁵ Hernandez did not purposefully direct his activities toward Nevada, but rather conducted a single transaction in Arkansas with Nevada citizens.

Hernandez did not solicit the Ritters' business; rather, the Ritters sought out Hernandez in Arkansas. It was in Arkansas that the inspection, verification, and survey took place. There was no activity in Nevada in which Hernandez sought to participate. Hernandez received a payment for \$100 from the Ritters for the verification of survey on the

¹⁴Trump, 109 Nev. at 699, 857 P.2d at 748 (citing World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980)).

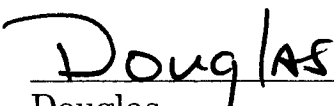
¹⁵Thos. P. Gonzalez Corp. v. Consejo Nacional, Etc., 614 F.2d 1247, 1254 (9th Cir. 1980).

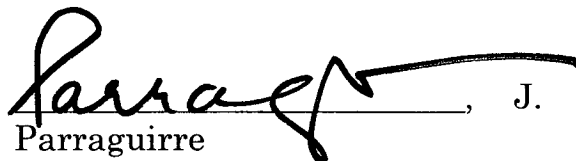
Cessna. As with Morris, payment tendered to Hernandez by the Ritters was simply indicative of the Ritters' preference to secure a loan from a Nevada lending institution; there was no link between Hernandez and the Nevada lending institution. All of Hernandez's services for the Ritters, as well as payment for those services, occurred in Arkansas. Thus the claim against Hernandez also did not arise out of any forum-related activities.

The Ritters' claims against Hernandez arose out of Hernandez's activities in Arkansas, not Nevada. All communication between the Ritters and Hernandez was about an inspection that took place in Arkansas. As with Morris, it would be unfair and unreasonable to exercise jurisdiction over Hernandez. Therefore, we conclude the district court erred when it found personal jurisdiction over Morris and Hernandez. Accordingly, we grant the petition and direct the clerk of this court to issue a writ of prohibition preventing the district court from exercising jurisdiction over petitioners in district court case no. CV0304265.

It is so ORDERED.


_____, J.
Maupin


_____, J.
Douglas


_____, J.
Parraguirre

cc: Hon. Peter I. Breen, District Judge
Marshall Hill Cassas & de Lipkau
Mark H. Gunderson, Ltd.
Washoe District Court Clerk