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Summary of Dogra v. Liles, 129 Nev. Adv. Op. 100

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CIVIL PROCEDURE: PERSONAL JURISDICTION

Summary

The Court determined three issues: (1) whether a nonresident defendant is subject to personal jurisdiction in Nevada when the sole basis asserted is her adult child's unilateral act of driving the defendant's vehicle in Nevada; (2) whether a defendant's filing of a motion to consolidate in a Nevada court waived her right to object to the court's exercise of personal jurisdiction over her; and (3) whether an interpleader action filed by a defendant's car insurance company subjects its insured to personal jurisdiction in Nevada.

Disposition

A nonresident defendant is not subject to personal jurisdiction in Nevada when the sole basis asserted is her adult child's unilateral act of driving the defendant's vehicle in Nevada. In addition, when a consolidated motion does not implicate the parties' substantive legal rights, a defendant's filing of a motion does not amount to a request for affirmative relief sufficient to constitute a waiver of the right to object to the Court's exercise of personal Jurisdiction. Finally, an interpleader action can subject a defendant to jurisdiction in Nevada Courts when her adult child's unilateral act of driving in Nevada is the basis asserted and the defendant's insurance company was acting as her agent in filing the action.

Factual and Procedural History

Jane Liles, a California resident, purchased a Scion car in California for her daughter Susan. Jane made all payments on the car, registered it in her name, and placed it on her insurance. Jane named Susan as the primary driver. Susan drove the Scion to Nevada, where she lost control of the vehicle and swerved in front of another car, causing the second car to crash into the median and land on the Dogras' car.

After the accident, Jane's insurance company filed an interpleader action in Nevada to leave the injured parties to settle their respective rights to any insurance payments. Thereafter, the Dogras and other plaintiffs separately sued Susan and Jane for negligence and negligent entrustment. In the Dogras' action, Jane moved under NRCP 12(b)(2) to dismiss the complaint due to lack of personal jurisdiction. The Dogras opposed Jane's motion.

After hearing the parties' arguments, the district court granted Jane's motion to dismiss. Jane and Susan then moved to consolidate all lawsuits stemming from the accident. The district court granted the consolidation motion and concluded that the motion did not subject Jane to Nevada's jurisdiction.

Subsequently, Susan and Jane were deposed. Susan and Jane testified that Jane did not prohibit Susan from driving the Scion to Nevada. Jane also testified that she did not remember whether she knew about Susan's trip to Las Vegas before the accident. After obtaining Susan's transcript, the Dogras filed a motion for reconsideration. The Dogras claimed that Susan's deposition testimony constituted new evidence proving that Jane was subject to Nevada's

¹ By Jeff Scarborough.

jurisdiction because Jane placed no restrictions on Susan's use of the Scion. The district court denied the Dogras' motion. The Dogras appealed.

Discussion

On appeal, the Dogras contend that the district court erred in determining it lacked personal jurisdiction over Jane. They asserted three theories to support their position: (1) Jane has sufficient minimum contacts with Nevada because she let Susan use her car in this state; (2) Jane sought affirmative relief in Nevada courts by filing the motion to consolidate, which subjects her to suit here; and (3) Jane acquiesced to the jurisdiction of Nevada courts when she filed an interpleader action through her insurer.

Minimum contacts

Nevada may only exercise personal jurisdiction over a nonresident defendant when doing so does not offend due process.² Due process is based on whether the defendant's "contacts" with Nevada are sufficient that the defendant could reasonably anticipate being haled into court with those contacts.³ When the defendant does not acquiescence to a forum state's jurisdiction, personal jurisdiction occurs in two forms: general and specific. Here, only specific jurisdiction was asserted. Nevada may only exercise specific jurisdiction over a nonresident defendant if the defendant either "purposefully avails" herself of the protections of Nevada's laws or "purposefully directs" her conduct towards Nevada, and the claim arises from that purposeful conduct.⁴ The "mere unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State."⁵

Here, Jane did not purposefully avail herself of Nevada's laws or purposefully direct conduct toward Nevada. In car accident cases, Courts have found that nonresident defendants are only subject to a forum's jurisdiction when the defendant actually knows her car is being operated in the forum state, or if the defendant specifically authorized the use of the car in the forum state.⁶ Here, Nevada does not have specific jurisdiction over Jane because Jane did not specifically authorize Susan to drive to Nevada and did not loan the vehicle to Susan knowing she would use it in Nevada. Jane's no-restriction policy on when and where Susan could drive does not subject Jane to specific personal jurisdiction in Nevada because it would be unreasonable and offend due process. Specifically, to allow Nevada to exercise personal jurisdiction over Jane on these facts would undermine the degree of predictability the Due Process Clause provides to the legal system, which "allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit."⁷

² Trump v. Eighth Jud. Dist. Court, 109 Nev. 687, 698, 857 P.2d 740, 747 (1993).

³ See *id.* at 699, 857 P.2d at 748.

⁴ See *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980).

⁵ *Id.* at 298 (internal quotation marks and citations omitted).

⁶ *Tavoularis v. Womer*, 462 A.2d 110, 114 (N.H. 1983).

⁷ *World-Wide Volkswagen*, 444 U.S. at 297.

Affirmative relief

The Court assumes, without deciding, that “a party cannot simultaneously seek affirmative relief from a court and object to that court’s exercise of jurisdiction.”⁸ A litigant seeks affirmative relief when she alleges wrongful conduct and seeks damages or relief, or when she defends against an action. Here, however, Jane’s consolidation did none of these things. The motion was merely a case management tool to promote efficiency in resolving the various cases, including the Dogras’ action arising from the accident. None of the parties’ substantive rights were implicated by the motion.

Further, *Dow Chemical Co. v. Calderon*,⁹ cited by the dissent, is not persuasive on this point. That case involved a declaratory judgment action brought by Dow Chemical against more than a thousand Nicaraguan citizens. The Ninth Circuit held that “personal jurisdiction exists where a defendant also independently seeks *affirmative* relief in a separate action before the same court concerning the same transaction or occurrence.”¹⁰ To arrive at this ruling, the court “assume[d] without deciding” that it would follow the holdings in two out-of-circuit decisions, *General Contracting & Trading Co. v. Interpole, Inc.*,¹¹ and *International Transactions Ltd. v. Embotelladora Agral Regionmontana S.A. de C.V.*¹² However, *Interpole* and *Embotelladora* are distinguishable from the instant case because in both of those cases, the relevant conduct was performed by the *plaintiffs*. Here, Jane is a defendant, not a *plaintiff*. Furthermore, *Dow Chemical* does not conclusively adopt the holdings in those cases. Thus, *Dow Chemical* does not provide persuasive authority relevant to this case.

Interpleader

In *Cf. Tweet v. Webster*,¹³ the plaintiff alleged Nevada had personal jurisdiction over a nonresident defendant because the defendant’s insurance company negotiated a settlement agreement on defendant’s behalf in Nevada. The court listed three factors to determine whether an agency relationship existed arising from the insurance company’s actions that subjected the defendant to Nevada’s jurisdiction: (1) whether the insurer had complete control over settling the claims against the defendant; (2) whether the defendant could “control the method, means or place of settlement negotiations”; and (3) whether the insurer could act in a dual capacity, “the principal purpose of which [was] to protect its own contingent liability under the contract.”¹⁴

Here, the district court did not use the *Tweet* factors to resolve the issue of whether Jane had an agency relationship with her insurance company. Accordingly, the case is remanded to the district court to address this issue under the analytical framework of an agency theory.

⁸ S.E.C. v. Ross, 504 F.3d 1130, 1148 (9th Cir. 2007).

⁹ 422 F.3d 827 (9th Cir. 2005)

¹⁰ *Id.* at 834.

¹¹ 940 F.2d 20 (1st Cir. 1991).

¹² 277 F. Supp. 2d 654 (N.D. Tex. 2002).

¹³ 596 F. Supp. 130, 133 (D. Nev. 1984).

¹⁴ *Id.*

Conclusion

The defendant is not subject to personal jurisdiction in Nevada by virtue of her daughter's unilateral use of the vehicle in Nevada and the accident arising from her use, or because she moved to consolidate the several cases stemming from the accident. However, the defendant might be subject to jurisdiction in Nevada based on her insurance company's filing of the related interpleader action in Nevada. The district court's order granting Jane's motion to dismiss is reversed, and the interpleader issue is remanded to the district court for consideration.¹⁶

¹⁶ Judge Gibbons with Judge Cherry, and Judge Saitta concur that this case should be remanded regarding the interpleader action. However, Judge Gibbons, Judge Cherry, and Judge Saitta disagree with the majority's conclusion that Nevada lacked personal jurisdiction over Jane as a defendant.