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In re Tr. Of Burgauer, 138 Nev. Adv. Op. 79 (Dec. 15, 2022)

Eva Guevara-Gutierrez

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CIVIL PROCEDURE: NEVADA WILL HAVE SPECIFIC PERSONAL JURISDICTION
OVER A NONRESIDENT TRUSTEE IF THEY HAVE SUFFICIENT CONTACTS WITH
NEVADA

Summary

For the District Court of Nevada to have specific personal jurisdiction over a nonresident trustee, they must meet the *Calder* effects test to show that the defendant purposefully directed his actions towards Nevada.² Mere actions towards a plaintiff living in Nevada will not amount to sufficient contacts in Nevada. Margaret must show Steven expressly aimed his actions at Nevada. Margaret failed to bring prima facie evidence of the effects in Nevada. Therefore, Nevada does not have specific personal jurisdiction over Steven.

Background

Paul Burgauer created an estate in 1987 which included a marital trust naming his son Steven Burgauer as the trustee and Margaret as the beneficiary. Years later, Steven and Margaret's relationship fell, so Margaret moved to Las Vegas to live with her son James. When Steven felt concerned about the trust, he paid Margaret's bills for other expenses directly, on a case-by-case basis, instead of distributing the funds directly to Margaret. In March 2017, Margaret's attorney sent Steven's attorney a Revocation of Power of Attorney form, which Steven had disagreed with. Margaret specifically requested the net income of the trust be distributed, and all written disclosures made to her. While this issue was ongoing, Nevada Elder Protective Services received a report of elder abuse by James.

In March 2018, Margaret filed a petition with the district court to assume jurisdiction over the trust, remove Steven as the trustee, and appoint another trustee. She argued that the district court had jurisdiction under NRS 164.010 because she was a beneficiary living in Nevada. The district court denied Steven's motion to dismiss for specific personal jurisdiction under NRS 164.010(2)(e). Margaret argued that the effects test under *Calder* proved Nevada had specific personal jurisdiction over the trust.³ She claims Steven breached his fiduciary duty as a trustee, sent defamatory emails to those in Nevada, and interfered with private contact between her and James. But prior to the appeal, the district court did not assess the effects test to determine whether it had personal jurisdiction. In a later motion, the district court concluded that Steven met the effects test because he had committed several intentional torts against Margaret in Nevada. When Steven appealed the motion granting the petition to distribute the trust property, the court of appeals concluded that the district court lacked specific personal jurisdiction over Steven.

Discussion

The district court lacked specific personal jurisdiction over Steven

Although NRS 164.010(5)(b) is the usual standard for personal jurisdiction over a nonresident trustee, due process requires that the nonresident have sufficient minimum contacts

¹ By Eva Guevara-Gutierrez.

² *Calder v. Jones*, 465 U.S. 783, 788 (1984).

³ *Id.*

with the forum state.⁴ To satisfy the minimum contacts element, courts apply the *Catholic Diocese* three-part test. For the district court to exercise specific personal jurisdiction over a nonresident, the nonresident must direct his actions to the forum state, the cause of action arises out of the nonresidents' conduct, and the exercise of the jurisdiction must not offend the traditional notions of fair play.⁵ The parties dispute whether Steven purposefully availed himself from Nevada or whether he purposefully directed his conduct to Nevada.

The effects test is applicable here to determine specific personal jurisdiction over a nonresident trustee because the underlying trust administration claims sound in intentional tort

To determine if the nonresident purposefully availed himself from the forum state courts apply the effects test to intentional tort cases.⁶ The courts specifically look to the defendant's purposeful direction. Here, the effects test applies because Steven committed an intentional tort by breaching his fiduciary duty as a trustee.

Steven did not purposefully direct his activities toward Nevada

Steven's contacts with Nevada are insufficient to establish specific personal jurisdiction. The effects test requires the defendant to commit an intentional act, expressly aimed at the forum state, and caused harm to the defendant that they know is likely to be suffered in the forum state.⁷ The court will reject arguments that simply link the plaintiff and the defendant together because one is affiliated with the state. Instead, the court looks at whether the defendant's conduct connects them to the forum state in a meaningful way.

Margaret relies on evidence that does not amount to Steven having sufficient contacts with Nevada. The defamatory letter in question is from a Florida resident sent to a Michigan resident and does not touch Nevada in a meaningful way. The report Margaret claims Steven falsely reported does not include the name of the person who filed the report. Another email Margaret claims as defamatory is unclear as to the author and whether any Nevada residents received it. Thus, the emails and letters fail to prove sufficient contacts in Nevada.

Margaret's argument that the injuries caused by Steven were felt in Nevada fails. Under *Walden*, "mere injury to a forum resident is not a sufficient connection to the forum."⁸ The forum state is only relevant when the defendant has sufficient contacts with the forum state. Although Margaret felt injured when Steven stopped directly giving her the money in Nevada, Steven did not direct his action towards the forum state, nor did it occur in Nevada.

Conclusion

A nonresident trustee meets the minimum contacts analysis for personal jurisdiction under the effects test if the defendant purposefully directs his conduct toward the forum state. Since Margaret is unable to bring prima facie evidence that Steven directed his actions toward Nevada, the effects test is not met. Therefore, the district court erred in concluding it had specific personal jurisdiction.

⁴ *Walden v. Fiore*, 571 U.S. 277, 283–84 (2014).

⁵ *Catholic Diocese of Green Bay, Inc. v. John Doe* 119, 131 Nev. 246, 249, 349 P.3d 518, 520 (2015).

⁶ *Eighteen Seventy, LP v. Jayson*, 32 F.4th 956, 967 (10th Cir. 2022)

⁷ *Tricarichi v. Cooperative Rabobank, U.A.*, 135 Nev. 87, 91 (2019)

⁸ *Walden*, 571 U.S. at 290.