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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1123**

Droel, PLLC,
Appellant,

vs.

Turnkey Construction Co. I, LP
d/b/a Turnkey Oil and Gas,
Respondent.

**Filed March 13, 2017
Affirmed
Cleary, Chief Judge**

Hennepin County District Court
File No. 27-CV-16-4405

Tim L. Droel, J. Matthew Berner, Andrew Thomas Hooyman, Shana Marchand, Droel, PLLC, Bloomington, Minnesota (for appellant)

John Rock, Bruce L. Gisi, Rock Hutchinson, PLLP, Minneapolis, Minnesota (for respondent)

Considered and decided by Cleary, Chief Judge; Ross, Judge; and Rodenberg, Judge.

UNPUBLISHED OPINION

CLEARY, Chief Judge

On appeal from the dismissal of its claims, appellant Droel PLLC (Droel) argues that the district court erred by concluding that respondent Turnkey Construction Co. I LP

(Turnkey) lacked sufficient minimum contacts with Minnesota to support the exercise of personal jurisdiction. Because we conclude that Turnkey did not have sufficient minimum contacts with Minnesota to satisfy the constitutional requirements for the exercise of personal jurisdiction, we affirm.

FACTS

Turnkey is a Texas construction company with its principal place of business in Dallas, Texas. Turnkey has no offices in Minnesota and has not conducted business in Minnesota. In or around March 2015, Turnkey retained Droel, a Minnesota-based law firm with an office in Houston, Texas. Droel has attorneys who are licensed and practice law in Texas. Droel's representation of Turnkey included transactional work, as well as litigation stemming from a subcontractor's failure to perform on a construction project in Texas. For that litigation, Droel filed a lawsuit in a Texas state court on behalf of Turnkey. In an affidavit, the vice president of Turnkey explained that the decision to have Droel represent Turnkey in the Texas-based litigation was influenced by Droel's Houston office and Tim L. Droel's license to practice in Texas.

Droel provided legal services to Turnkey from its office in Minnesota. From Minnesota, Droel engaged in more than 100 written, electronic, and telephonic communications with Turnkey. Turnkey did not know where Droel received its telephone calls or e-mails. Turnkey never traveled to Minnesota while it retained Droel. However, a Droel attorney traveled to Dallas to meet with Turnkey at one of Turnkey's offices. While represented by Droel, Turnkey sent payments to Droel in Minnesota pursuant to Droel's request.

In February 2016, Turnkey terminated its relationship with Droel because Turnkey believed that Droel overbilled for its legal services. In April 2016, Droel filed a complaint in the Fourth Judicial District of Minnesota, alleging that Turnkey wrongfully refused to pay its invoices and claiming breach of contract, account stated, promissory estoppel, and unjust enrichment. Turnkey filed a motion to dismiss for lack of personal jurisdiction pursuant to Minn. R. Civ. P. 12.02(b). In July 2016, the district court granted Turnkey's motion to dismiss for lack of personal jurisdiction. Droel now appeals.

D E C I S I O N

Whether personal jurisdiction exists is a question of law that appellate courts review de novo. *Juelich v. Yamazaki Mazak Optonics Corp.*, 682 N.W.2d 565, 569 (Minn. 2004). A Minnesota court may exercise personal jurisdiction over a nonresident only if jurisdiction is (1) allowed by the Minnesota long-arm statute, and (2) does not violate the due-process requirement that the nonresident have certain minimum contacts with Minnesota. *Domtar, Inc. v. Niagara Fire Ins. Co.*, 533 N.W.2d 25, 29 (Minn. 1995). “Once jurisdiction has been challenged by the defendant, the burden is on the plaintiff to prove that sufficient contacts exist with the forum state.” *Juelich*, 682 N.W.2d at 569-70. At the pretrial stage, a plaintiff need only make a prima facie showing of jurisdiction, and the complaint and supporting evidence will be taken as true. *Hardrives, Inc. v. City of LaCrosse*, 307 Minn. 290, 293, 240 N.W.2d 814, 816 (1976). But “if a motion to dismiss is supported by affidavits, the non-moving party cannot rely on general statements in . . . [its] pleading,” and allegations contained in its complaint cannot be used to sustain its burden of proof. *Sausser v. Republic Mortg. Inv'rs*, 269 N.W.2d 758, 761 (Minn. 1978).

The Minnesota long-arm statute, Minn. Stat. § 543.19 (2016), permits courts to assert personal jurisdiction over defendants to the extent that federal constitutional due-process requirements allow. *Domtar*, 533 N.W.2d at 29. “If the personal jurisdiction requirements of the federal constitution are met, the requirements of the long-arm statute will necessarily be met also.” *Valspar Corp. v. Lukken Color Corp.*, 495 N.W.2d 408, 411 (Minn. 1992). For this reason, Minnesota courts may simply apply the federal case law when analyzing most personal jurisdiction questions. *Id.*

Under federal case law, due process requires that a nonresident have certain minimum contacts with the forum state so that maintaining a suit in that state does not offend traditional notions of fair play and substantial justice. *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S. Ct. 154, 158 (1945). “[I]t is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.” *Hanson v. Denckla*, 357 U.S. 235, 253, 78 S. Ct. 1228, 1240 (1958). “In essence, ‘the defendant’s conduct and connection with the forum State [must be] such that he should reasonably anticipate being haled into court there.’” *Mountaire Feeds, Inc. v. Agro Impex, S.A.*, 677 F.2d 651, 655 (8th Cir. 1982) (alteration in original) (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297, 100 S. Ct. 550, 567 (1980)).

To determine whether the exercise of personal jurisdiction over a nonresident comports with due process, Minnesota courts evaluate: “(1) the quantity of contacts with the forum state; (2) the nature and quality of those contacts; (3) the connection of the cause of action with these contacts; (4) the interest of the state providing a forum; and (5) the

convenience of the parties.” *Juelich*, 682 N.W.2d at 570. The first three factors are primary and determine whether minimum contacts exist. *Id.*; *Volkman v. Hanover Invs., Inc.*, 843 N.W.2d 789, 795 (Minn. App. 2014). The last two factors deserve less consideration and determine whether the exercise of jurisdiction is reasonable according to traditional notions of fair play and substantial justice. *Juelich*, 682 N.W.2d at 570; *Volkman*, 843 N.W.2d at 795. Even if the defendant has purposefully engaged in forum activities, the concept of fair play and substantial justice may defeat the reasonableness of jurisdiction. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 477-78, 105 S. Ct. 2174, 2185 (1985).

1. Quantity of Contacts with Minnesota

Droel argues that personal jurisdiction is proper because of the number of communications and payments that Droel received from Turnkey in Minnesota. From Minnesota, Droel engaged in more than 100 written, electronic, and telephonic communications with Turnkey. Turnkey also sent payments to Droel in Minnesota at Droel’s request. Although it has been established that Turnkey has had numerous contacts with Droel, it has not been established that Turnkey has made sufficient contacts with the state of Minnesota.

2. Nature and Quality of Contacts

Droel argues that the nature and quality of the contacts, which occurred because of the attorney-client relationship between Droel and Turnkey, justifies the exercise of jurisdiction over Turnkey. In support of this argument, Droel cites our unpublished decision in *Dady & Garner, P.A. v. Platinum Shield Ass’n*, No. A04-1305, 2005 WL 646654, at *1, *5 (Minn. App. Mar. 22, 2005) (concluding that the district court could

exercise jurisdiction over nonresident defendants that had been represented by the plaintiff, a Minnesota law firm). Droel argues that *Dady* is nearly identical to the case at hand, because in both cases nonresident clients retained a Minnesota law firm and engaged in over 100 contacts with the firm in Minnesota, including telephone calls, e-mails, and the sending of payments. *See Dady*, 2005 WL 646654, at *1, *3-4. Relying on our conclusion that jurisdiction was proper in *Dady*, Droel urges us to find that jurisdiction is constitutional here.

Unpublished opinions are not precedential, but may be persuasive. Minn. Stat. § 480A.08, subd. 3(c) (2016); *Sarber v. Comm’r of Pub. Safety*, 819 N.W.2d 465, 469 n.3 (Minn. App. 2012). Although there are some similarities between *Dady* and the present case, important factual differences remain. In *Dady*, a law firm organized under Minnesota law with Minnesota offices represented out-of-state clients. *Dady*, 2005 WL 646654, at *1. Before the firm was retained, it informed the then potential clients that it would coordinate litigation from its offices in Minneapolis. *Id.* The firm sent a retainer agreement from its Minneapolis offices, and the clients executed and returned the agreement to the firm’s address in Minneapolis. *Id.* Because direct evidence showed that the clients knew that the firm’s attorneys were licensed in Minnesota and would perform the majority of the work in Minnesota, we concluded that the Hennepin County District Court could exercise personal jurisdiction over the clients. *Id.* at *1, *4-5.

Here, Turnkey, a Texas construction company, was represented by Droel, a law firm with offices in both Texas and Minnesota. There is no evidence that the parties executed a retainer agreement, and Droel failed to provide any direct evidence that would show that

Turnkey knew that the legal work was performed in Minnesota. Rather, Droel asks us to infer from Tim L. Droel's affidavit that Turnkey was aware that the performance occurred in Minnesota. In his affidavit, Tim L. Droel stated that he traveled from Minnesota to Dallas in 2015 to meet with Turnkey's representatives. At the meeting, "Turnkey's representatives . . . expressed their great satisfaction with the Law Firm's services rendered in Minnesota." This statement does not declare that Turnkey knew that Droel performed its legal work in Minnesota. The sentence establishes only that Turnkey was satisfied with Droel's legal work and that this work was performed in Minnesota. The record does not show, here or elsewhere, that Turnkey knew that Droel performed its work in Minnesota. For this reason, we are not persuaded to follow our unpublished opinion in *Dady*.

Turnkey argues that the nature-and-quality-of-the-contacts factor weighs against the exercise of personal jurisdiction. "Merely entering into a contract with a forum resident does not provide the requisite contacts between a [nonresident] defendant and the forum state." *Mountaire Feeds*, 677 F.2d at 655 (alteration in original) (quotation omitted); see *Walker Mgmt., Inc. v. FHC Enters., Inc.*, 446 N.W.2d 913, 913, 915-16 (Minn. App. 1989) (holding that Minnesota lacked jurisdiction over an Illinois corporation despite the fact that it had a contractual relationship with a Minnesota corporation for over a year), *review denied* (Minn. Dec. 15, 1989). Similarly, a plaintiff's unilateral performance within the forum state cannot alone supply the minimum contacts between the forum state and a nonresident defendant. *Mountaire Feeds*, 677 F.2d at 654-55.

Turnkey's only contacts with Minnesota have been through its communications with and payments to Droel. It has not established offices in, conducted business in, or

even traveled to Minnesota. Turnkey has merely paid Droel in Minnesota and engaged in written, electronic, and telephonic communications with Droel while Droel was in Minnesota. “It is a defendant’s contacts with the forum state that are of interest in determining if in personam jurisdiction exists, not its contacts with a resident.” *Id.* at 655 (quotation omitted).

Turnkey asserts that the sending of payments to Minnesota is insufficient to confer jurisdiction. In support of this argument, Turnkey cites *Fourth Nw. Nat’l Bank of Minneapolis v. Hilson Indus., Inc.*, in which the Minnesota Supreme Court was asked to determine whether a Minnesota state court could constitutionally exercise personal jurisdiction over a nonresident defendant because of promissory notes that the defendant made payable to a Minnesota corporation. 264 Minn. 110, 111-12, 117-18, 117 N.W.2d 732, 732-33, 736 (1962). The notes were executed and delivered in Ohio, but were made payable to the Minnesota corporation at its Minnesota office. *Id.* at 111-12, 117 N.W.2d at 732-33. The supreme court held that a Minnesota state court’s exercise of jurisdiction over the nonresident defendant would violate due process and explained that fixing the place of payment in Minnesota was not the kind of commercial benefit to the defendant that must be balanced by a capitulation to amenability to suit in Minnesota. *Id.* at 118, 120, 117 N.W.2d at 736, 738. Here, Turnkey sent payments to Minnesota pursuant to Droel’s request. Because it appears that Turnkey sent the payments to Minnesota only to accommodate Droel, we cannot say that such payments render Turnkey amenable to suit in Minnesota state courts.

Turnkey additionally argues that its communications with Droel are insufficient to justify the exercise of jurisdiction. The Eighth Circuit has stated that “interstate communications alone are not sufficient to confer jurisdiction.” *Bell Paper Box, Inc. v. Trans W. Polymers, Inc.*, 53 F.3d 920, 923 (8th Cir. 1995); *accord Mountaire Feeds*, 677 F.2d at 656 (“[T]he use of arteries of interstate mail, telephone, railway and banking facilities is insufficient, standing alone, to satisfy due process.” (quotation omitted)). Similarly, this court has concluded that contacts that occur primarily through the mail, by telephone, and by the forwarding of funds are insufficient to support personal jurisdiction. *Walker Mgmt.*, 446 N.W.2d at 915. However, Minnesota courts must consider electronic communications under the traditional minimum-contacts analysis, which asks whether the defendant purposefully availed himself of the forum state and whether he reasonably anticipated being haled into court there. *Riley v. MoneyMutual, LLC*, 884 N.W.2d 321, 331-32 (Minn. 2016) (quotations omitted). In this consideration, courts must determine whether the evidence indicates that the defendant was aware of the plaintiff’s location or had reason to believe that the e-mail would be received in a particular jurisdiction. *Id.* at 332. Here, Turnkey did not know where Droel received its e-mail and telephone communications.

Although Droel’s website shows that Droel has a Minnesota office and Minnesota-licensed attorneys, Turnkey sought Droel’s legal services because of its Texas office and Texas-licensed attorneys. While representing Turnkey, Droel worked exclusively on Texas transactional and Texas litigation matters. There is no evidence that Turnkey benefited from Droel’s presence in Minnesota.

Here, Turnkey's payments to and communications with Droel are not of such a nature and quality as to justify the exercise of personal jurisdiction. This factor weighs against the exercise of personal jurisdiction.

3. Connection of the Cause of Action with These Contacts

Courts distinguish between specific and general jurisdiction when examining the connection of the cause of action with the contacts. *See, e.g., Marshall v. Inn on Madeline Island*, 610 N.W.2d 670, 676 (Minn. App. 2000) (concluding that an inn's Minnesota advertisements did not create specific jurisdiction because there was no connection between the cause of action and those contacts). General jurisdiction allows a state's courts to exercise jurisdiction over a defendant for any purpose, whereas specific jurisdiction allows a state's courts to exercise jurisdiction over a defendant only if the case is related to his contacts in the forum. *Valspar*, 495 N.W.2d at 411. Here, Droel's claims against Turnkey do not relate to Turnkey's contacts with Minnesota. Although both the claims and contacts arose from the attorney-client relationship established between the parties, as noted, the relationship developed because of both parties' interaction in Texas.

4. Interest of the State Providing a Forum

Minnesota has an interest in providing a forum for its residents who have allegedly been wronged. *Volkman*, 843 N.W.2d at 797 (quotation omitted). However, the state's interest in providing a forum is a secondary factor and deserves less consideration than the first three factors. *Id.* at 795. "[T]his interest is not a contact and cannot establish personal jurisdiction." *Id.* at 797 (quotation omitted). Here, Minnesota's interest in providing a forum does not favor the exercise of jurisdiction. Although Droel is based in Minnesota,

it also has an office in Texas with attorneys licensed in Texas. While representing Turnkey, Droel worked on matters that arose from events that occurred in Texas. Because Texas has at least as great an interest in providing a forum to resolve this dispute, this factor is, at most, neutral on the question of the exercise of personal jurisdiction.

5. Convenience of the Parties

The convenience factor is also of secondary importance. *Volkman*, 843 N.W.2d at 795. “Generally, a strong presumption exists in favor of a plaintiff’s choice of forum.” *Id.* at 797. The Supreme Court of Minnesota has “stated that whenever minimum contacts are present[,] jurisdiction should be exercised unless the court finds that Minnesota jurisdiction is improper on *forum non conveniens* grounds.” *Dent-Air, Inc. v. Beech Mountain Air Serv., Inc.*, 332 N.W.2d 904, 909 (Minn. 1983). It is hard to imagine that the key witnesses in a dispute involving the quality of legal work performed for a Texas client over a Texas dispute will be conveniently tried in Minnesota.

Considering all five factors together, Turnkey did not have sufficient minimum contacts with Minnesota to satisfy the constitutional requirements for the exercise of personal jurisdiction. Although Turnkey had over 100 contacts with Minnesota, these contacts resulted solely from its relationship with Droel, which happened to be based in Minnesota. There is no evidence that Turnkey sought Droel’s representation because of its Minnesota location or in any way benefited from Droel’s presence in Minnesota. We cannot say, based upon this record, that Turnkey purposefully availed itself of the protections of Minnesota laws by retaining Droel. For this reason, constitutional due-

process requirements do not allow Minnesota state courts to exercise jurisdiction over Turnkey.

Affirmed.