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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0063**

Joel Wells, petitioner,
Appellant,

vs.

Jeffrey Michael Fischbach,
Respondent.

**Filed December 10, 2018
Reversed and remanded
Florey, Judge**

Dakota County District Court
File No. 19AV-CV-17-1678

Daniel L. Gerdt, Minneapolis, Minnesota (for appellant)

Melvin R. Welch, Minneapolis, Minnesota (for respondent)

Considered and decided by Florey, Presiding Judge; Ross, Judge; and Reyes, Judge.

U N P U B L I S H E D O P I N I O N

FLOREY, Judge

The district court dismissed appellant's petition for a harassment restraining order (HRO) for lack of personal jurisdiction over respondent. On appeal, appellant argues both that the district court erred by finding a lack of personal jurisdiction and that respondent waived any objection to personal jurisdiction. Because appellant made a prima facie showing of personal jurisdiction, we reverse and remand for further proceedings.

FACTS

Appellant Joel Wells was indicted on federal charges and in 2009 pleaded guilty to possession of child pornography. Appellant lives in Minnesota. Respondent Jeffrey Michael Fischbach lives in California and is an expert in the field of digital contraband. In 2008, appellant sought respondent's expert services, and respondent was hired by appellant's legal-defense team. Respondent traveled to Minnesota to participate in the legal defense. At some point, a grudge developed between the parties, apparently over the return of respondent's professional fees, which appellant felt were unearned.

Following appellant's release from prison, the parties engaged in back-and-forth litigation. Appellant sued respondent in Minnesota seeking \$15,000 in allegedly unearned fees and the return of property, and respondent travelled to Minnesota in March 2016 to respond to the claim. Respondent sued appellant in Minnesota, but dismissed his own suit in September 2017. Respondent sought a restraining order in California against appellant, but the action was dismissed because respondent failed to prove his case. In Minnesota, appellant sought an HRO against respondent, and it appears that the HRO was granted, but then dismissed in April 2017 pursuant to a settlement agreement reached on March 1, 2017. Both parties claim that the other breached the settlement agreement.

In June 2017, appellant filed a petition for an HRO against respondent, and the present appeal arises from this HRO proceeding. Appellant alleged that respondent made harassing phone calls and emails and made false reports with two police departments, appellant's probation officers, and others. Appellant alleged that respondent stole \$10,000 and destroyed property, and that he suffered post-traumatic-stress disorder as a result of

respondent's harassing behavior. Appellant did not request a hearing, unless his petition was denied.

The district court granted an ex parte HRO. The court found reasonable grounds to believe that respondent harassed appellant. The ex parte HRO was served on respondent in California. In August 2017, respondent, via email, requested an HRO hearing, and asked to appear by phone. A hearing was set for August 31, and the court permitted respondent to appear by phone. At the August 31 hearing, respondent's attorney challenged jurisdiction, and the district court requested that written motions be filed and served on the issue. The matter was continued.

In September 2017, respondent moved to dismiss appellant's HRO for lack of personal jurisdiction, asserting that he had insufficient contacts with Minnesota. Respondent filed an affidavit with his motion. Appellant, in turn, filed motions and affidavits providing some additional clarity for his HRO claims. Appellant affirmed that respondent made "insane claims" about appellant threatening to abduct and harm respondent's children. Appellant also affirmed that respondent made "psychotic allegations" to the Eagan Police Department, appellant's probation officer, and others.

Appellant submitted a prior affidavit from respondent from November 2016. In that affidavit, respondent affirmed that appellant made comments about respondent's children at a prior hearing in March 2016, and respondent affirmed that he contacted Eagan police, spoke with a detective, and was referred to appellant's probation officer, who requested copies of email messages received by respondent from appellant. Respondent also affirmed that, as a result of forwarding appellant's email messages, appellant lost the use

of Internet in his home, was found in violation of release conditions, and was placed on Global Positioning System monitoring.

In December 2017, the district court dismissed with prejudice appellant's HRO petition for lack of personal jurisdiction. The court found that the settlement agreement prohibited appellant from filing for an HRO based upon claims that were mutually dismissed via the settlement agreement. Therefore, the district court determined that the basis for appellant's HRO action needed to occur after March 1, 2017, the date of the agreement. The court concluded that it did not have personal jurisdiction over respondent and therefore dismissal was proper. The court concluded that respondent had "met his burden" of challenging personal jurisdiction, that appellant could not therefore rely on general statements in his pleading to establish jurisdiction, and that respondent's limited contacts with Minnesota showed a lack of personal jurisdiction. This appeal followed.

DECISION

Appellant raises two arguments. First, he asserts that Minnesota's long-arm statute allows for personal jurisdiction over respondent because respondent's directed contacts with Minnesota caused appellant injury and/or property damage. Second, appellant asserts that respondent waived his jurisdictional challenge by invoking the power of the court and by failing to promptly challenge jurisdiction. Because respondent's contacts with Minnesota are sufficient for personal jurisdiction under Minnesota's long-arm statute, we need only address appellant's first argument.

Whether personal jurisdiction exists is a legal question, which we review de novo. *Juelich v. Yamazaki Mazak Optonics Corp.*, 682 N.W.2d 565, 569 (Minn. 2004). When

reviewing a motion to dismiss for lack of personal jurisdiction, appellate courts must determine whether the petitioner has made a prima facie showing of personal jurisdiction. *Riley v. MoneyMutual, LLC*, 884 N.W.2d 321, 326 (Minn. 2016). In determining whether a prima facie showing has been made, the factual allegations in the complaint and supporting affidavits are taken as true. *Id.*; *Hardrives, Inc. v. City of LaCrosse*, 240 N.W.2d 814, 816 (Minn. 1976). Any doubts about jurisdiction are “resolved in favor of retention of jurisdiction.” *Hardrives*, 240 N.W.2d at 818.

Under Minnesota’s long-arm statute, Minn. Stat. § 543.19, subd. 1 (2018):

As to a cause of action arising from any acts enumerated in this subdivision, a court of this state with jurisdiction of the subject matter may exercise personal jurisdiction over any . . . nonresident individual . . . in the same manner as if . . . the individual were a resident of this state. This section applies if, in person or through an agent, the . . . nonresident individual:

- (1) owns, uses, or possesses any real or personal property situated in this state; or
- (2) transacts any business within the state; or
- (3) commits any act in Minnesota causing injury or property damage; or
- (4) commits any act outside Minnesota causing injury or property damage in Minnesota, subject to the following exceptions when no jurisdiction shall be found:
 - (i) Minnesota has no substantial interest in providing a forum; or
 - (ii) the burden placed on the defendant by being brought under the state’s jurisdiction would violate fairness and substantial justice.

The long-arm statute allows Minnesota courts to assert personal jurisdiction over a respondent to the full extent permissible under federal due-process requirements. *Juelich*, 682 N.W.2d at 570. To abide by due-process requirements, a respondent must have certain

minimum contacts with Minnesota, and the exercise of jurisdiction must not offend traditional notions of fair play and substantial justice. *Id.* In Minnesota, five factors are analyzed to determine whether the minimum contact and fair-play requirements are met: “(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.” *Rilley*, 884 N.W.2d at 328 (quotation omitted). The first three factors concern minimum contacts, and the last two concern fair play and substantial justice. *Id.* We first address minimum contacts.

Minimum contacts exist when a respondent purposefully avails himself of the privileges, benefits, and protections of Minnesota to such a degree that he should reasonably anticipate being called into court. *Id.* at 327. The minimum-contacts requirement may be satisfied in the context of general personal jurisdiction or specific personal jurisdiction. *Domtar, Inc. v. Niagara Fire Ins. Co.*, 533 N.W.2d 25, 30 (Minn. 1995). At oral argument, appellant conceded that only specific personal jurisdiction is relevant in this case. Specific personal jurisdiction exists when the respondent’s contacts with Minnesota are limited, but the petitioner’s claim arises out of or relates to those limited contacts. *Id.*

Appellant alleged in his HRO petition that respondent made several harassing phone calls and emails, including false statements to “at least two police departments, United States [p]robation officers, attorneys, court officials and others,” and appellant alleged that this harassment caused harm, including triggering post-traumatic-stress disorder. Appellant submitted an affidavit indicating that respondent made false statements to law

enforcement in Minnesota. In determining whether appellant has made a prima facie showing of jurisdiction, we do not delve into the merits of appellant's claims, but simply accept the factual allegations in appellant's petition and supporting affidavits as true. See *Rilley*, 884 N.W.2d at 326. Under this standard of review, on the limited issue of personal jurisdiction, appellant has made a prima facie showing of minimum contacts.

Specific personal jurisdiction does not require that a respondent actually set foot in Minnesota, and "minimum contacts may exist when an out-of-state [respondent] purposefully directs activities at the forum state, and the litigation arises out of or relates to those activities." *Id.* at 327-28 (quotations omitted). Although respondent's contacts with Minnesota have been limited in quantity, they have largely concerned the ongoing dispute with appellant, and appellant's HRO claim arises directly from respondent's alleged contacts with law enforcement in this forum state. Additionally, respondent has not merely responded to litigation in Minnesota, but has commenced his own litigation here against appellant. Minimum contacts with Minnesota are present and support the exercise of personal jurisdiction.

We next determine whether appellant made a prima facie showing that it is fair and reasonable to exercise jurisdiction over respondent. *Id.* at 328. Accepting, as we must, that respondent contacted law enforcement and appellant's probation agent in Minnesota and made false statements that injured appellant, it is fair and reasonable to find jurisdiction over respondent. Accepting appellant's factual allegations as true, Minnesota has an interest in providing a forum for relief for its citizens injured by slander coming from out of state. It is no doubt an inconvenience for respondent to travel to Minnesota, but the

district court made accommodations in the past, allowing respondent to appear by phone, and the district court indicated that it would allow respondent to appear by interactive television if the matter proceeded to an evidentiary hearing. The exercise of jurisdiction in this case does not offend traditional notions of fair play and substantial justice.

The district court relied on *Hoff v. Kempton*, 317 N.W.2d 361, 363 n.2 (Minn. 1982), in concluding that respondent “met his burden to challenge the personal jurisdiction.” In *Hoff*, the plaintiff utilized an unconstitutional means of establishing quasi-in-rem jurisdiction. *Id.* at 362-63. Despite this, the plaintiff in *Hoff* suggested that his claim should not be dismissed because of the possibility that the defendant had minimum contacts with Minnesota. *Id.* at 363 n.2. But the plaintiff failed to submit “any supporting documents” after the defendant affirmed no contacts with Minnesota. *Id.* This case is distinguishable because appellant alleged actual contacts in his pleading, and he submitted affidavits indicating that respondent contacted law enforcement in Minnesota.

Lastly, the district court, without legal citation, concluded that the parties’ March 1 settlement agreement precluded appellant from seeking an HRO based on claims that occurred prior to that agreement. However, both parties alleged that the settlement agreement was breached by the other party. “It is elementary that a breach of a contract by one party excuses performance by the other.” *Wasser v. W. Land Secs. Co.*, 107 N.W. 160, 162 (Minn. 1906). Given the procedural posture, it was improper for the district court to disregard appellant’s claim of breach and allegations arising prior to March 1, 2017.

Without addressing the merits of the case, and accepting, as we must, appellant’s allegations and supporting evidence as true, appellant has made a prima facie showing that

the district court has personal jurisdiction over respondent. We therefore reverse and remand for further proceedings.

Reversed and remanded.