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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1415**

Snap Fitness, Inc.,
Respondent,

vs.

Garrett Marshall,
Defendant,

Xponential Fitness, LLC,
Appellant.

**Filed April 27, 2020
Reversed
Segal, Judge**

Carver County District Court
File No. 10-CV-19-343

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(for appellant)

Considered and decided by Cochran, Presiding Judge; Ross, Judge; and Segal,
Judge.

UNPUBLISHED OPINION

SEGAL, Judge

Appellant, an out-of-state business, challenges the district court's denial of its motion to dismiss respondent's complaint for lack of personal jurisdiction and improper service of process. Because we conclude that the evidence in the record is not sufficient to support a finding of personal jurisdiction over appellant, we reverse.

FACTS

Respondent Snap Fitness, Inc. is a Delaware corporation with its headquarters based in Minnesota. Snap is a parent company and owns multiple fitness brands and franchises that operate throughout the United States and globally.

Garrett Marshall began working for Snap in 2011 as a product sales representative. He held a variety of positions in Snap's fitness on demand division during his employment. That division sells touchscreen kiosks to business customers, such as fitness clubs, schools and hotels. The kiosks provide access to virtual fitness classes on demand. In 2014, Marshall signed a non-qualified stock-option award agreement that included noncompete, nonsolicitation and confidentiality provisions (noncompete agreement). Three years later, in 2017, Marshall was promoted to the position of chief executive officer of the fitness on demand division. Throughout his employment with Snap, Marshall was a Minnesota resident.

Appellant Xponential Fitness, LLC is also a Delaware corporation with its principle place of business in California. Xponential owns a portfolio of fitness studio subsidiary corporations. The subsidiaries sell franchises to individual owners who open and operate

the branded fitness studios across the country. Xponential has subsidiaries with fitness studio franchises that operate in Minnesota. Those subsidiaries are registered to do business in Minnesota. Xponential is not so registered.

In the spring of 2019, Xponential hired Marshall to be head of consumer streaming. In support of its motion to dismiss for lack of personal jurisdiction and insufficient service of process, Xponential provided an affidavit (Xponential affidavit) stating that it had engaged a California-based recruiting company to place Marshall. The affidavit further provided that Xponential interviewed Marshall at its Irvine, California office, and none of Xponential's employees traveled to Minnesota to recruit, interview, or discuss the terms of Marshall's employment. No additional evidence is contained in the record about the recruitment or hiring process.

On April 1, 2019, Marshall informed Snap that he was resigning to work for Xponential in California. Snap's chief operations officer requested Marshall provide him with a copy of the job description for his new position. Following a review of the job description, Snap placed Marshall on leave and advised him that his employment by Xponential would violate his noncompete agreement.

Two weeks before Marshall started his employment with Xponential, Snap served Marshall with a complaint and a motion for a temporary injunction seeking to prevent his employment with Xponential. Marshall, nevertheless, began his employment with Xponential as scheduled on April 29. On May 1, Snap served and filed an amended complaint that sought to add Xponential as a party, claiming tortious interference with Marshall's noncompete agreement with Snap. The district court denied Snap's motion for

a temporary injunction to restrain Marshall from working for Xponential.¹ Xponential then moved to dismiss Snap's first amended complaint for lack of personal jurisdiction and insufficient service of process.

In support of its motion, Xponential submitted an affidavit asserting that Xponential does not have, nor has it ever had, any offices, facilities, bank accounts, telephone listings, mailing addresses, agents or employees, nor designated an agent for service of process in Minnesota. The affidavit further states that Xponential has never owned or rented any real property, paid taxes, or solicited or directed any advertisements in Minnesota.

Snap submitted an affidavit from one of its attorneys in opposition to Xponential's motion to dismiss (Snap affidavit). The Snap affidavit asserts that four Xponential subsidiaries—Club Pilates, CycleBar, Stretch Lab and Pure Barre—operate in Minnesota and includes various screenshots from webpages as exhibits. Two of the exhibits are job postings for StretchLab Minnesota and StretchLab Plymouth. Xponential's name appears at the top of the screenshots for both job postings and is included in the weblink address for one of them. Another exhibit is a webpage for an invite to a webinar, titled "Studio Ownership 101," that states it will provide information on the basics of franchising with Pure Barre. The LinkedIn profiles for the two instructors identified in the webinar posting are also included as exhibits. The first profile is for the chief international development officer for Xponential, identifying his geographic location as Irvine, California. The second LinkedIn profile is for an individual with areas of expertise listed as "Project

¹ The district court's ruling on the temporary injunction motion is not at issue on this appeal.

Management/Real Estate Services.” The only company identified on the posting is Club Pilates along with the individual’s geographic location of “Orange County, California Area.” The Snap affidavit, however, includes a link to Xponential’s real estate webpage that identifies the person in the second LinkedIn profile as the person responsible for a multi-state geographic region that includes Minnesota. Finally, the affidavit includes a screenshot from the Apple App Store that lists Xponential as the seller of the IOS app for its Pure Barre subsidiary.

Following a hearing, the district court issued an order denying Xponential’s motion to dismiss. The district court reasoned:

Xponential staff maintain significant involvement with its brands in Minnesota. Those Minnesota contacts imply Xponential routinely participates in training, marketing and real estate site selection for its affiliates. To the extent Marshall will be supporting those affiliates in his new role with Xponential, Xponential’s contacts with Minnesota are directly related to this proceeding.

The court went on to hold that, although there is not a forum selection clause in the noncompete agreement, Minnesota is a proper forum for disputes arising out of that agreement and that Xponential should have reasonably anticipated being hailed into court in Minnesota. The district court found sufficient minimum contacts to support specific personal jurisdiction and, thus, it did not analyze whether or not Minnesota had general personal jurisdiction over Xponential.² This appeal follows.

² The district court also held that service of process through the Minnesota Secretary of State was proper under Minn. Stat. § 5.25, subd. 4 (2018), which provides that foreign corporations may be served through the secretary of state if they commit a tort in Minnesota. Appellant has asserted improper service of process as one of the issues on this

DECISION

“Whether personal jurisdiction exists is a question of law, which we review de novo.” *Rilley v. MoneyMutual, LLC*, 884 N.W.2d 321, 326 (Minn. 2016) (quotation omitted). When a defendant challenges personal jurisdiction, “the burden is on the plaintiff to prove that sufficient contacts exist with the forum state.” *Juelich v. Yamazaki Mazak Optonics Corp.*, 682 N.W.2d 565, 569-70 (Minn. 2004). “When reviewing a motion to dismiss for lack of personal jurisdiction, [appellate courts] determine whether, taking all the factual allegations in the complaint and supporting affidavits as true, the plaintiff has made a prima facie showing of personal jurisdiction.” *Rilley*, 884 N.W.2d at 326.

The Minnesota long-arm statute sets out the scope of authority for the exercise of personal jurisdiction over a nonresident defendant. Minn. Stat. § 543.19 (2018); *Domtar, Inc. v. Niagara Fire Ins. Co.*, 533 N.W.2d 25, 29 (Minn. 1995). The statute has been interpreted as authorizing personal jurisdiction to the full extent permitted by federal due-process requirements. *Valspar Corp. v. Lukken Color Corp.*, 495 N.W.2d 408, 410 (Minn. 1992). Thus, the Minnesota long-arm statute is satisfied if the requirements of federal due process are satisfied. *Domtar, Inc.*, 533 N.W.2d at 29.

For an exercise of personal jurisdiction to comply with due process, the defendant must have purposefully established “minimum contacts” in the forum state. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474, 105 S. Ct. 2174, 2183 (1985). The analysis of the

appeal but, because we conclude that the district court lacked personal jurisdiction over Xponential, we do not reach this issue.

sufficiency of the contacts between the state and the nonresident defendant differs depending on whether the jurisdiction is premised on specific or general personal jurisdiction. *Domtar, Inc.*, 533 N.W.2d at 30. Specific personal jurisdiction exists when the complaint arises out of or is related to the defendant's contacts with the forum state. *Helicopteros Nacionales de Colum., S.A. v. Hall*, 466 U.S. 408, 414, 104 S. Ct. 1868, 1872 (1984). The number and nature of the contacts needed to support specific personal jurisdiction can be more limited, but the suit-related conduct must, nevertheless, "create a substantial connection with the forum [s]tate." *Walden v. Fiore*, 571 U.S. 277, 284, 134 S. Ct. 1115, 1121 (2014). General personal jurisdiction exists when the contacts between the state and the nonresident defendant are so substantial that the defendant can be made to answer claims in the forum state regardless of whether the claims are related to the nature of the defendant's forum state contacts. *Domtar, Inc.*, 533 N.W.2d at 30.

A. The evidence is not sufficient to establish specific personal jurisdiction.

The district court based its personal-jurisdiction ruling on the grounds that "Xponential staff maintain significant involvement with its brands in Minnesota" and that, "[t]o the extent Marshall will be supporting those affiliates in his new role with Xponential, Xponential's contacts with Minnesota are directly related to this proceeding." We disagree. While it is possible that facts could be developed to support the exercise of personal jurisdiction over Xponential, the evidence presented in the record on this appeal fails to demonstrate the "minimum contacts" necessary to satisfy due-process requirements.

Minnesota courts assess five factors to determine whether specific personal jurisdiction exists: “(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.” *Riley*, 884 N.W.2d at 328 (quoting *Juelich*, 682 N.W.2d at 570). The first three factors assess whether a defendant had sufficient minimum contacts with Minnesota and are the “primary factors.” *Hardrives, Inc. v. City of LaCrosse, Wis.*, 240 N.W.2d 814, 817 (Minn. 1976). The remaining two factors determine whether jurisdiction is reasonable under the concepts of fair play and substantial justice. *Juelich*, 682 N.W.2d at 570.

We need look no further than the evidence with regard to the first three factors—the number, nature and quality of the contacts and their connection to the lawsuit—to conclude that Snap has failed in its burden to demonstrate personal jurisdiction. On factors one and two, Snap claims that Xponential has numerous contacts with Minnesota in its own name as well as through its subsidiaries. Specifically, Snap asserts that Xponential has subsidiaries that operate in the state; has its name on franchisee job postings; offered a franchise 101 webinar hosted by Xponential executives; has an employee who supports real-estate development in a multi-state region of the United States that includes Minnesota; offers an app in the Apple IOS store for its Pure Barre subsidiary; and recruited and hired Marshall, a Minnesota resident.

Many of these contacts, however, are attributable not to Xponential but to its subsidiaries and their franchisees. The law is clear that contacts of a subsidiary cannot be used to establish jurisdiction over a parent corporation. *Garber v. Bancamerica-Blair*

Corp., 285 N.W. 723, 727 (Minn. 1939) (“The use of a subsidiary does not subject the parent to jurisdiction of the state, where . . . the separate existence of each is recognized and maintained.”). With no allegation of, or sufficient evidence to justify, piercing the corporate veil, we must assume that the separate existence of Xponential and its subsidiaries has been maintained. Consequently, facts such as Xponential’s ownership of subsidiaries that do business in Minnesota is not relevant to the jurisdiction analysis.

Turning to the other evidence put forward by Snap, such as the webinar and job postings, it falls short in establishing activity purposefully directed at Minnesota by Xponential. See *Bandemer v. Ford Motor Co.*, 931 N.W.2d 744, 750 (Minn. 2019), *cert. granted*, 140 S. Ct. 916 (2020)³; *Griffis v. Luban*, 646 N.W.2d 527, 534-35 (Minn. 2002). For example, the screenshots showing that Xponential’s name appears at the top of two postings for jobs at franchises of a subsidiary do not demonstrate that Xponential was aware of or in any way directed or was otherwise involved in the postings. The fact that Xponential employees were the instructors for a webinar and that apps are available under the Xponential name in the Apple IOS store, likewise fails to show any specific connection to Minnesota. The webinar could have been conducted entirely in California to a national audience and there is no allegation that Minnesotans were its intended target. “[I]t is . . . insufficient to rely on a defendant’s random, fortuitous, or attenuated contacts” to satisfy due-process requirements. *Walden*, 571 U.S. at 286, 134 S. Ct. at 1123 (quotation omitted);

³ While the United States Supreme Court has accepted review of this case, it remains binding precedent on this court unless and until it is reversed by the Supreme Court.

see also Riley, 884 N.W.2d at 334 (stating “a purely national advertising campaign that does not target Minnesota specifically cannot support a finding of personal jurisdiction”).

Snap’s evidence about the Xponential website real-estate page fails for the same reason: the page shows no more than that the company has divided the country into regions with a representative assigned to a multi-state region that includes Minnesota. This, by itself, does not establish any level of “contacts” with Minnesota. For example, there is no evidence that Xponential employees travel and conduct business in the state. In fact, the only direct evidence on this point is Xponential’s affidavit that states “none of Xponential’s employees have ever traveled to Minnesota for Xponential-related business.” While a conclusory statement, it stands unrebutted by Snap.

We next turn to the third factor, whether Xponential’s contacts with Minnesota are connected to the cause of action. *See Bristol-Myers Squibb Co. v. Superior Court of Cal.*, 137 S. Ct. 1773, 1781 (2017) (stating contacts with the forum must form a connection “between the forum and the specific claims at issue”). Snap argues that the contacts relate to this cause of action because Marshall was a Minnesota resident, working for a company with its headquarters located in the state and the job description created by Xponential has him supporting their subsidiary brands, presumably including support in Minnesota. While this is a closer question, we conclude that there is not a sufficient connection between the complaint against Xponential and Xponential’s limited contacts with Minnesota.

Specific personal jurisdiction requires a connection between the cause of action and the contact with the forum state, not merely a person residing there. *Walden*, 571 U.S. at 285, 134 S. Ct. at 1122. At most, the contact via the recruiter targeted Marshall, it did not

target Minnesota. Xponential did not have any additional contacts with Minnesota. No one traveled to Minnesota to interview or hire Marshall. To the contrary, it was Marshall who traveled to California to be interviewed. The hiring of Marshall did not result in Xponential “purposefully availing itself” of Minnesota’s “privileges, benefits, and protections.” *Rilley*, 884 N.W.2d at 327 (quotation omitted). While the hiring of Marshall presumably benefited Xponential at the expense of Snap, the connection with the forum state is, nevertheless, lacking.

Snap relies on this court’s decision in *C.H. Robinson Worldwide, Inc. v. FLS Transp., Inc.*, where FLS, a Canadian corporation, targeted and hired eight of C.H. Robinson’s former employees. 772 N.W.2d 528, 532 (Minn. App. 2009). The noncompete agreements at issue in the case contained choice-of-law and forum-selection clauses designating Minnesota and its federal and state courts. *Id.* at 533. The former employees were alleged to have wrongfully used C.H. Robinson’s “confidential and proprietary information and solicit[ed] [C.H. Robinson]’s customers” on behalf of FLS. *Id.* at 532. Additionally, FLS allegedly instructed former C.H. Robinson employees to induce other employees to breach their contracts and told them that “such obligations can be secretly circumvented, [C.H. Robinson] will never know, and in the event legal action is commenced FLS will support and defend” them. *Id.* at 533 (quotation omitted). This court found sufficient minimum contacts existed because of the choice-of-law and forum-selection clauses, combined with the fact that the defendants explicitly contacted the forum in knowing violation of the noncompete clauses. *Id.* at 537.

The *C.H. Robinson* case is distinguishable on a couple of grounds. First, there is no forum-selection clause in Marshall's noncompete agreement and, while there is a choice-of-law clause, it designates the laws of Delaware, not Minnesota.

Second, in *C.H. Robinson* there was evidence that FLS explicitly directed its employees to target C.H. Robinson employees and to induce them to breach their contracts. *Id.* at 535. No such evidence has been presented here. Xponential hired Marshall, but there is no evidence in the record that it set out to target a company headquartered in Minnesota or that Xponential was aware of the noncomplete agreement at the time of Marshall's employment offer.

We find the Minnesota Supreme Court's decision in *Griffis v. Luban* to be instructive. *Griffis* explores the scope of specific personal jurisdiction in tort cases involving nonresidents. 646 N.W.2d at 530-34. In declining to enforce a defamation judgment of an Alabama court in Minnesota, the court stressed that a "plaintiff must show that the defendant knew that the plaintiff would suffer the brunt of the harm caused by the tortious conduct in the forum, and *point to specific activity indicating that the defendant expressly aimed its tortious conduct at the forum.*" *Id.* at 534 (quotation omitted). The court concluded that the fact the author of the defamatory statements knew the plaintiff was an Alabama resident and that plaintiff's career would be damaged in Alabama as a result of the statements was not enough to demonstrate that the statements were "expressly aimed" at the state of Alabama. *Id.* at 535-36. The supreme court held that the Alabama courts lacked specific personal jurisdiction over the defendant under the Due Process Clause and denied enforcement of the judgment in Minnesota. *Id.* at 536-37.

Similarly here, Xponential knew that Marshall was employed by a company in Minnesota and, arguably, would have been aware that the company might be harmed by losing one of its executives, but the evidence of Xponential's contacts with Minnesota fails to rise to the level of the conduct found to support personal jurisdiction in *C.H. Robinson*. It also fails to establish that Xponential "expressly aimed" its contacts at Minnesota, *Griffis*, 646 N.W.2d at 535, or otherwise "purposefully avail[ed] itself of the privileges, benefits, and protections of" the State of Minnesota when it hired Marshall, *Riley*, 884 N.W.2d at 327 (quotation omitted). We, therefore, conclude that the evidence is not sufficient to establish specific personal jurisdiction over Xponential based on the record in this appeal and reverse the district court's ruling to the contrary.⁴

B. Based on our conclusion that Xponential lacks sufficient contacts to support specific personal jurisdiction, the claim of general jurisdiction must also fail.

Snap claims that Xponential is subject to general personal jurisdiction in Minnesota. The district court did not rule on this issue because it found that Xponential was subject to specific personal jurisdiction. General jurisdiction, "exists when a nonresident defendant's contacts with the forum state are so substantial and are of such a nature that the state may assert jurisdiction over the defendant even for causes of action *unrelated* to the defendant's contacts with the forum state." *Domtar, Inc.*, 533 N.W.2d at 30 (emphasis added).

For an individual, the typical forum for the exercise of general jurisdiction is the individual's state of domicile. *Daimler AG v. Bauman*, 571 U.S. 117, 137, 134 S. Ct. 746,

⁴ Based on our conclusions with regard to the first three factors, it is not necessary for us to reach the final two prongs of the specific personal-jurisdiction analysis.

760 (2014). For a business entity, the key inquiry for general jurisdiction is “whether [the] corporation’s affiliations with the State are so continuous and systematic as to render it essentially at home in the forum State.” *Id.* at 139, 134 S. Ct. at 761 (quotation omitted). General jurisdiction is typically limited to the state or states where a business is incorporated and its principal place of business is located. *Id.* at 137, 134 S. Ct. at 760. The Supreme Court has declined to hold that a corporation may be subject to general jurisdiction in *only* these places; however, it has “made clear that only a limited set of affiliations with a forum will render a defendant amenable to [general] jurisdiction there.” *Id.* at 137, 134 S. Ct. at 760; *see also id.* at 139 n.19, 134 S. Ct. at 761 n.19 (“We do not foreclose the possibility that in an exceptional case, . . . a corporation’s operations in a forum other than its formal place of incorporation or principal place of business may be so substantial and of such a nature as to render the corporation at home in that State.” (citation omitted)).

Snap relies on the same evidence to support its argument for general jurisdiction as its argument supporting specific personal jurisdiction. Based on our conclusion regarding specific personal jurisdiction, we similarly conclude that there is no basis to support the much higher standard required for a finding of general jurisdiction.

C. Snap’s request for a remand to allow limited jurisdictional discovery is not properly before this court.

Snap also argues that, if this court does not find sufficient minimum contacts to establish personal jurisdiction in Minnesota, this court should remand for limited jurisdictional discovery. Snap, however, did not make a motion to the district court

regarding additional discovery. Instead, it included a one-line footnote in its memorandum in opposition to Xponential's motion to dismiss that states "[i]n the alternative, the Court should allow additional discovery as to Xponential's jurisdictional contacts with Minnesota." The district court did not address the issue of discovery. This court may not address an issue unless it is properly raised to and addressed by the district court. See *Thiele v. Stich*, 425 N.W.2d 580, 582-83 (Minn. 1988). Therefore, we decline to consider whether the district court erred by failing to grant jurisdictional discovery. *Nw. Airlines, Inc. v. Friday*, 617 N.W.2d 590, 595 (Minn. App. 2000) (declining to consider argument for jurisdictional discovery raised only in a footnote before the district court, which did not consider or decide it).

Reversed.