

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0051**

Jennifer A. Hindermann, as executrix
of the Estate of David K. Hindermann
and as beneficiary of the
Revocable Living Trust of David K. Hindermann
dated October 3, 2012,
Appellant,

vs.

Judith Dimich, et al.,
Defendants,

Mark Hindermann,
Respondent.

**Filed September 3, 2024
Affirmed
Reilly, Judge***

Itasca County District Court
File No. 31-CV-23-1579

Ken D. Schueler, John T. Giesen, Dunlap & Seeger, P.A., Rochester, Minnesota (for appellant)

Matthew E. Anderson, Anderson Law Group, St. Paul, Minnesota; and

Jonathan P. Baker, Baker Law Office, Walker, Minnesota (for respondent)

Considered and decided by Larkin, Presiding Judge; Bratvold, Judge; and
Reilly, Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

REILLY, Judge

Appellant challenges the district court's grant of respondent's motion to dismiss for lack of personal jurisdiction, arguing that the district court erred by concluding that Minnesota's exercise of specific personal jurisdiction over respondent would violate due process. We affirm.

FACTS

This case arises from a dispute over real property located in Minnesota, and which was once owned by decedent David K. Hindermann ("the property"). Appellant Jennifer A. Hindermann and respondent Mark Hindermann are the decedent's children.¹ Jennifer argues that the district court erred by granting Mark's motion to dismiss her complaint alleging Mark financially exploited the decedent, breached his fiduciary duty to the decedent, and unjustly enriched himself by orchestrating the sale of the property, for lack of personal jurisdiction. The facts below reflect the factual allegations in Jennifer's complaint, taken as true. *See Riley v. MoneyMutual, LLC*, 884 N.W.2d 321, 326 (Minn. 2016) (noting that appellate courts accept factual allegations in a complaint and any supporting affidavits as true in reviewing a motion to dismiss for lack of personal jurisdiction).

In 2012, the decedent was diagnosed with Parkinson's disease. That same year, the decedent created a revocable living trust intending that Mark and Jennifer would be

¹ Because the parties share the same last name, we refer to them by their first names.

co-beneficiaries. The decedent conveyed the property to the trust, and provided that if the trust still owned the property at the decedent's death, the property be passed to Mark and Jennifer in kind. The trust instrument also provided that if the decedent sold the property before his death, Jennifer and Mark would share the proceeds equally. The decedent authorized Mark to act on his behalf pursuant to a power of attorney.

The decedent, Mark, and Jennifer all live or lived in New Jersey. Both the trust instrument and power of attorney provide that the documents are to be governed by New Jersey law. And both documents were signed by the decedent and notarized by a New Jersey notary.

After his diagnosis, the decedent's health deteriorated and he could not live at home. The decedent required care at a skilled nursing facility and suffered from dementia and hallucinations.

In August 2018, Mark arranged for the decedent, as trustee, to sell the property to family members Thomas and Judith Dimich. The decedent did not have capacity to make this decision. When Jennifer learned of the impending sale of the property, she informed the Dimiches' agent of the decedent's incapacity to execute the sale documents. The Dimiches proceeded with the sale. The decedent and the Dimiches executed a purchase agreement to convey the property in exchange for \$455,000, a sum less than fair market value. The purchase agreement included a license to be executed concurrently with the conveyance of the property. The parties do not dispute that the conveyance granted Jennifer and Mark each a one-week license to use the property every summer for ten years.

In October, Jennifer commenced an action in New Jersey to declare the decedent incapacitated and to obtain permanent guardianship of the decedent. Later, the decedent and the Dimiches closed the sale of the property and the decedent executed and delivered a trustee's deed to the property. The trustee's deed was signed by the decedent and notarized in New Jersey. Proceeds were sent to the decedent in care of Mark, who deposited the proceeds in a different trust than the one that previously held the property and of which Mark is the sole beneficiary.

A New Jersey court ordered a psychological assessment of the decedent. The February 2019 report from this assessment reflects the medical provider's conclusions that the decedent lacked capacity to make important decisions, was at risk of being misled or influenced in his decision-making, and suffered from "significant chronic functional impairment." In September, the New Jersey court adjudicated the decedent incapacitated based on Mark's stipulation. The decedent died on December 9, 2019.

After the decedent died, litigation over his estate occurred in New Jersey. In March 2020, the New Jersey court found that at least some of Mark's actions as the decedent's power of attorney were not motivated by the decedent's wellbeing. In September 2021, Jennifer became the executrix of the decedent's estate.

On June 27, 2023, Jennifer filed a complaint in Minnesota, in her capacity as executrix of the decedent's estate and as a beneficiary of the trust, against Mark, the Dimiches, and the Dimiches' entity—The Point on Deer Lake LLC—to void the conveyance of the property to the Dimiches and for damages. The complaint includes five claims: (1) quiet title; (2) ejectment; (3) financial exploitation of a vulnerable adult

pursuant to Minn. Stat. § 626.557, subd. 20 (2022); (4) breach of fiduciary duty; and (5) unjust enrichment.

Mark moved to dismiss the complaint for lack of personal jurisdiction pursuant to Minn. R. Civ. P. 12.02(b). The district court granted the motion, dismissed each claim against Mark with prejudice, and entered judgment.

Jennifer appeals.

DECISION

Jennifer argues that the district court erred by granting Mark's motion to dismiss for lack of personal jurisdiction. Personal jurisdiction refers to the court's ability to exercise control over the parties to litigation. *Leroy v. Great W. United Corp.*, 443 U.S. 173, 180 (1979).

"Whether personal jurisdiction exists is a question of law, which [appellate courts] review de novo." *Bandemer v. Ford Motor Co.*, 931 N.W.2d 744, 749 (Minn. 2019) (quotation omitted). In determining whether the plaintiff has made a prima facie showing of personal jurisdiction, we accept the factual allegations in the complaint and any supporting affidavits as true. *Rilley*, 884 N.W.2d at 326. In close cases, we "resolve any doubt in favor of retaining jurisdiction." *Bandemer*, 931 N.W.2d at 749.

The personal jurisdiction of Minnesota courts over nonresident defendants is governed by Minnesota's long-arm statute, Minn. Stat. § 543.19 (2022), which "extend[s] the personal jurisdiction of Minnesota courts as far as the Due Process Clause of the federal constitution allows." *Valspar Corp. v. Lukken Color Corp.*, 495 N.W.2d 408, 410 (Minn. 1992); *see also Bandemer*, 931 N.W.2d at 749 (stating that the personal jurisdiction

requirement limits the state's ability "to exercise its coercive power by asserting jurisdiction over non-resident defendants"); U.S. Const. amend. XIV, § 1. Thus, Minnesota courts have personal jurisdiction over a nonresident defendant only if the defendant has "minimum contacts" with Minnesota and Minnesota's maintenance of the action "does not offend 'traditional notions of fair play and substantial justice.'" *Walden v. Fiore*, 571 U.S. 277, 283 (2014) (quoting *Int'l Shoe Co. v. Wash., Off. of Unemployment Comp. & Placement*, 326 U.S. 310, 316 (1945)).

The parties agree that only specific personal jurisdiction is at issue. See *Domtar, Inc. v. Niagara Fire Ins. Co.*, 533 N.W.2d 25, 30 (Minn. 1995) (describing the two types of personal jurisdiction: general and specific). A state has specific personal jurisdiction over a defendant if "the defendant's contacts with the forum state are limited, yet connected with the plaintiff's claim such that the claim arises out of or relates to the defendant's contacts with the [state]." *Id.* at 30. We focus on "the relationship among the defendant, the forum, and the litigation" and consider whether the defendant's "suit-related conduct" creates "a substantial connection" to Minnesota. *Walden*, 571 U.S. at 283-84 (quotations omitted). And in so doing, we "look to the defendant's contacts with the forum State itself and not [a nonresident] defendant's random, fortuitous, or attenuated contacts with persons affiliated with the State or persons who reside there." *Bandemer*, 931 N.W.2d at 750 (quotations omitted).

Minnesota courts consider five factors when evaluating whether an exercise of personal jurisdiction is constitutional: "(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 in providing a forum; and (5) the convenience of the parties.” *Id.* at 749 (quotations omitted). The first three factors address the “key inquiry” of whether the nonresident defendant has “minimum contacts” with the forum state, and the last two factors focus on “traditional notions of fair play and substantial justice.” *Rilley*, 884 N.W.2d at 328 (quotation omitted). “The first three factors are the primary factors, with the last two deserving lesser consideration.” *Dent-Air, Inc. v. Beech Mountain Air Serv., Inc.*, 332 N.W.2d 904, 907 (Minn. 1983). We address each factor in turn.²

Quantity of Contacts

Jennifer primarily argues that the purchase agreement and subsequent conveyance of the property creates a sufficient connection between Mark and Minnesota to satisfy the due-process requirement. Jennifer also points to approximately 20 phone calls between Mark and a Minnesota real estate attorney, other conversations with Minnesota real estate professionals, and Mark’s annual one-week license to use the property.

Jennifer asserts that Mark “invoked the protections and benefits of Minnesota law in the purchase agreement to secure the sale” of the property. While a contract between a Minnesota resident owner and a nonresident buyer for a Minnesota property could be a contact for purposes of our personal-jurisdiction analysis, no such contract exists between Mark and the Dimiches. *See, e.g., Volkman v. Hanover Invs., Inc.*, 843 N.W.2d 789, 796

² To the extent that the district court bifurcated Jennifer’s claims into those alleging fraud and those related only to the property, this is unnecessary to the underlying personal-jurisdiction analysis.

(Minn. App. 2014). Mark was not a party to the purchase agreement or conveyance of the property from the trust to the Dimiches. The purchase agreement reflects only the signatures of the decedent, as trustee, and the Dimiches, and the trustee's deed for the conveyance is signed by the decedent, as trustee, only. The purchase agreement does not name Mark as an intermediary or agent and does not create ongoing obligations between Mark and the Dimiches excepting an annual one-week license for Mark's use of the property for ten years. *Cf. Marshall v. Inn on Madeline Island*, 610 N.W.2d 670, 675-76 (Minn. App. 2000) ("When a defendant deliberately engages in significant activities in a state or creates continuing obligations between itself and residents of the state, the defendant purposefully avails itself of the protections of the law, as required to support the exercise of personal jurisdiction under the Due Process Clause." (quotation omitted)).

Jennifer argues that through Mark's alleged undue influence exacted upon the decedent in executing the purchase agreement and deed, he steps into the decedent's role as a party to the contract. Even accepting as true that Mark caused the decedent to execute the purchase agreement and deed, we are aware of no authority to support Jennifer's implied assertion that the decedent's apparent contacts with Minnesota should be imputed to Mark. Thus, Jennifer has not met her burden to establish that we should impute the decedent's contacts onto Mark for purposes of our specific-personal-jurisdiction analysis. *See Waters v. Fiebelkorn*, 13 N.W.2d 461, 464-65 (Minn. 1944) ("[O]n appeal error is never presumed. It must be made to appear affirmatively before there can be reversal. . . . [and] the burden of showing error rests upon the one who relies upon it."); *Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971) ("An

assignment of error based on mere assertion and not supported by any argument or authorities in appellant's brief is waived and will not be considered on appeal unless prejudicial error is obvious on mere inspection.").

Without considering the purchase agreement and conveyance, the remaining quantity of Mark's contacts with Minnesota are limited to Mark's annual one-week license to use the property for ten years and phone calls to Minnesota professionals. Given this record, we are unconvinced that Mark has the requisite quantity of contacts with Minnesota to alone satisfy the due-process requirement.

Nature and Quality of Contacts

Given that Mark's contacts are minimal, "the nature and quality of the contacts with a state are dispositive." *Trident Enters. Int'l, Inc. v. Kemp & George, Inc.*, 502 N.W.2d 411, 415 (Minn. App. 1993). Minimum contacts required for specific personal jurisdiction "may exist when an out-of-state defendant purposefully directs activities at the forum state, and the litigation arises out of or relates to those activities." *Rilley*, 884 N.W.2d at 327-28 (quotations omitted).

Considering Mark's license to use the property and phone calls to Minnesota professionals, the nature and quality of Mark's contacts with Minnesota are insufficient to meet the due-process requirement. First, the license to use the property is a contact arising after the conveyance and therefore does not support personal jurisdiction for this action. *Husky Const., Inc. v. Gestion G. Thibault, Inc.*, 983 N.W.2d 101, 111 (Minn. App. 2022) ("[I]n examining the sufficiency of contacts with the forum state to determine the exercise of specific personal jurisdiction over a nonresident defendant, we generally focus on those

contacts leading up to and surrounding the accrual of the cause of action.”), *rev. denied* (Minn. Mar. 14, 2023). Second, Mark’s phone calls to Minnesota professionals are contacts with Minnesota residents, and not purposefully directed at residents of the state at large. *See Scullin Steel Co. v. Nat’l Ry. Utilization Corp.*, 676 F.2d 309, 313-14 (8th Cir. 1982) (stating that “[i]t is a defendant’s contacts with the forum state that are of interest in determining if [personal] jurisdiction exists, not its contacts with a resident” and noting that “the use of interstate facilities (telephone, the mail) . . . [is a] secondary or ancillary factor[] and cannot alone provide the minimum contacts required by due process” (quotations omitted)). Thus, the nature and quality of Mark’s contacts with Minnesota does not satisfy the due-process requirement.

Connection of the Cause of Action

Specific personal jurisdiction may exist when a nonresident defendant “purposefully directed his activities at residents of the forum” and the action “arise[s] out of or relate[s] to those activities.” *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985) (quotations omitted). Where, as here, the party seeking imposition of jurisdiction on a nonresident defendant does so based on specific personal jurisdiction, “[s]ubstantial contacts with the forum do not compensate for a lack of connection ‘between the forum and the specific claims at issue.’” *Bandemer*, 931 N.W.2d at 750 (quoting *Bristol-Myers Squibb Co. v. Superior. Ct. of Cal.*, 582 U.S. 255, 265 (2017)). In analyzing this third factor, we consider “the relationship between the defendant, the forum, and the litigation.” *Walden*, 571 U.S. at 283-84 (quotations omitted).

This case involves the conveyance of Minnesota property where a nonresident plaintiff claims that a nonresident defendant caused a nonresident decedent to convey the property. Though the property that was conveyed is in Minnesota, the alleged injuries arise from Mark's actions to influence and exploit the decedent, none of which are alleged to have occurred in Minnesota. Because the crux of the claims against Mark are not connected to Minnesota, this factor does not satisfy the due-process requirement.

In sum, the quantity, nature, and quality of Mark's contacts with Minnesota, and the connection of those contacts to the underlying cause of action, do not establish the requisite minimum contacts with Minnesota as the forum state necessary to satisfy the due-process requirement. Therefore, we conclude that the district court did not abuse its discretion in concluding that it lacked personal jurisdiction over Mark on these grounds alone. But in the interest of completeness, we next consider the final two personal-jurisdiction factors which focus on "traditional notions of fair play and substantial justice." *Rilley*, 884 N.W.2d at 328 (quotation omitted).

Minnesota's Interest in Providing a Forum

Jennifer next argues that Minnesota has an interest in providing a forum for her claims against Mark. This is a secondary factor in the personal-jurisdiction analysis. *Dent-Air*, 322 N.W.2d at 907; *Now Foods Corp. v. Madison Equip. Co.*, 386 N.W.2d 363, 368 (Minn. App. 1986) (stating that "Minnesota's interest in providing a forum, standing alone, is insufficient"), *rev. granted* (Minn. July 6, 1986) *and ord. granting rev. vacated* (Nov. 17, 1986). The injured parties—Jennifer as beneficiary, and the decedent—resided in New Jersey at the time of the alleged injury. Thus, an injury to a Minnesota resident is

not at issue here. *See Dent-Air*, 332 N.W.2d at 908 (recognizing Minnesota has an “interest in providing a forum for its residents who have allegedly been wronged”); *C.H. Robinson Worldwide, Inc. v. FLS Transp., Inc.*, 772 N.W.2d 528, 538 (Minn. App. 2009) (reasoning that when a case involves an alleged injury to a Minnesota resident, both the resident and Minnesota have an interest in resolving the dispute here), *rev. denied* (Minn. Nov. 24, 2009). Even so, we recognize that Minnesota may have an interest in providing a forum for a dispute over Minnesota real property. *See State v. HavenBrook Homes, LLC*, 996 N.W.2d 12, 29-30 (Minn. App. 2023) (noting Minnesota’s interest in providing a forum where the defendant “became involved in the operations of Minnesota rental properties”), *rev. denied* (Minn. Jan. 16, 2024). But Minnesota’s interest in providing a forum for Jennifer’s quiet title and ejectment claims is not defeated by dismissing Mark from this case, as Jennifer’s claims against the Dimiches were not dismissed for lack of personal jurisdiction. And whatever interest Minnesota may have in providing a forum, it does not override the first three factors and does not support personal jurisdiction of Jennifer’s claims against Mark.

Convenience of the Parties

The parties’ convenience, like Minnesota’s interest in providing a forum, is a secondary factor in the personal-jurisdiction analysis. *Dent-Air*, 332 N.W.2d at 907. Jennifer contends that Minnesota is the “most convenient forum” because it is the “situs of the land” and where the Dimiches reside. Mark contends that Minnesota is an inconvenient forum because the witnesses needed to prove Jennifer’s claims that Mark improperly caused the conveyance of the property are in New Jersey and both parties presently live in

New Jersey. With either decision we risk inconveniencing one party and conclude that this is a neutral factor in the personal-jurisdiction analysis. *See Juelich v. Yamazaki Mazak Optonics Corp.*, 682 N.W.2d 565, 575-76 (Minn. 2004).

In sum, neither Minnesota's interest in providing a forum nor the convenience of the parties weigh strongly in favor of Minnesota exercising jurisdiction based on "traditional notions of fair play and substantial justice." *Rilley*, 884 N.W.2d at 328 (quotation omitted).

Affirmed.