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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS**

A24-0266

A24-0478

Lexie Peterson, as trustee for the heirs and next-of-kin
of Emmanuel O. Ulubiyo, deceased,
Respondent,

vs.

Riverview Healthcare Association, dba RiverView Health,
Respondent,

Alicia A. Frankwitz, D.O.,
Respondent,

Sanford Clinic North, et al.,
Appellants (A24-0478),

Heeraimangalore Manjunath, M.D.,
Appellant (A24-0266).

**Filed December 9, 2024
Affirmed; motion denied
Ede, Judge**

Polk County District Court
File No. 60-CV-23-1233

Colin F. Peterson, Kathleen Flynn Peterson, Ciresi Conlin LLP, Minneapolis, Minnesota
(for respondent Lexie Peterson)

Julia J. Nierengarten, Rodger A. Hagen, Besse H. McDonald, Meagher & Geer, P.L.L.P.,
Minneapolis, Minnesota; and

Tracy Vigness Kolb (pro hac vice), Meagher & Geer, P.L.L.P., Bismarck, North Dakota
(for appellants Sanford Clinic North, et al., and Heeraimangalore Manjunath, M.D.)

Considered and decided by Schmidt, Presiding Judge; Segal, Chief Judge; and Ede, Judge.

NONPRECEDENTIAL OPINION

EDE, Judge

This interlocutory appeal concerns a challenge by appellant defendants to a district court’s denial of their motions to dismiss, which were based on claims that the court lacked personal jurisdiction and that respondent plaintiff had failed to timely serve medical-expert disclosures per North Dakota law. Appellants also move to strike portions of the respondent brief. Because we conclude that the district court did not err in determining that it has specific personal jurisdiction and that Minnesota law applies, we affirm. And because we do not rely on the challenged portions of the respondent brief, we deny appellants’ motion to strike as moot.

FACTS

After Emmanuel O. Ulubiyo passed away, respondent-plaintiff Lexie Peterson, as trustee for Ulubiyo’s heirs and next-of-kin, sued on his behalf. Peterson’s complaint alleged negligent nondisclosure and medical malpractice by respondent-defendants Riverview Healthcare Association (RiverView Health), Alicia A. Frankwitz, D.O.,¹ and appellant-defendants Sanford Clinic North, Puneet Sharma, M.D., and Heeraimangalore Manjunath, M.D. The following factual summary is based on the allegations set forth in the complaint, taken as true and viewed in the light most favorable to Peterson.

¹ Although they are listed as respondents in the case caption, RiverView Health and Dr. Frankwitz did not participate in this appeal.

Underlying Facts

Peterson is Ulubiyo's surviving spouse and the mother of his three surviving children. She resides in Polk County, Minnesota. In 2021, Ulubiyo was 38 years old. On August 30, 2021, Ulubiyo went to the emergency department at RiverView Health in Crookston, a Minnesota city that is close to the North Dakota border. Ulubiyo reported that, in the four days prior to his emergency-department visit, he had begun to feel chest pain beneath his sternum while at rest and that the constant pain worsened with activity. The medical facility admitted Ulubiyo and noted that his "acuity level" was "urgent." Upon examination, medical staff found that Ulubiyo had elevated blood pressure and respiratory rate. Dr. Frankwitz—who worked at the facility as an internal medicine physician—ordered an electrocardiogram (EKG), a chest x-ray, and laboratory testing. Some of the results of these tests were abnormal.

Through Sanford Health's "One Call" system (One Call),² Dr. Frankwitz consulted by telephone with Dr. Manjunath (a cardiologist) and Dr. Sharma (an interventional cardiologist). Dr. Manjunath and Dr. Sharma worked for Sanford Clinic North in Fargo, North Dakota. Both physicians "were initially concerned that . . . Ulubiyo [might have been] experiencing a type of heart attack called a[n] ST elevation myocardial infarction (STEMI)." But after reviewing the results of certain laboratory testing that Dr. Frankwitz

² In their answer to the complaint, Sanford Clinic North and Dr. Sharma described One Call as "a service [that] Sanford Medical Center Fargo offers to Sanford and non-Sanford facilities," which operates as "a resource for providers and facilities to consult with medical specialists on cases where a specialist's assessment or transferring the patient is warranted."

had ordered, Dr. Manjunath and Dr. Sharma determined that Ulubiyo was not experiencing a STEMI. All three doctors “concluded that it would be appropriate for . . . Ulubiyo to follow up as an outpatient ‘in the near future’ to have a cardiac echocardiogram and possibly a stress test to evaluate his chest pain.” The emergency department discharged Ulubiyo less than two hours after admitting him on August 31 and advised that he should complete the recommended follow-up testing “within the month of September at the latest.”

Following discharge, a Sanford cardiologist interpreted Ulubiyo’s EKG results and found, among other things, that his “ST elevation in V2, V3 [was] borderline for STEMI.” But no one from Riverview or Sanford communicated the cardiologist’s findings to Ulubiyo or Peterson. On September 1, 2021, Ulubiyo experienced shortness of breath and cardiac arrest. Efforts to save Ulubiyo’s life—including cardiopulmonary resuscitation, intubation, and transportation by ambulance to the emergency department of RiverView Health—did not succeed. An autopsy was performed the day after Ulubiyo died. A pathologist determined that Ulubiyo’s cause of death was “acute lymphocytic myocarditis involving conduction system.”

Lawsuit and Motions to Dismiss

The district court appointed Peterson to serve as trustee for Ulubiyo’s heirs and next-of-kin. In August 2023, Peterson filed a summons and complaint in Polk County. In count I of the complaint—“Negligent Nondisclosure”—Peterson alleges that Ulubiyo would have requested a prompt cardiac evaluation if he had been informed of the risks associated with the discharge plan and that it is more likely than not that he would have survived if he had

promptly received such an evaluation. In count II of the complaint—“Medical Malpractice”—Peterson alleges that appellants “failed to exercise the degree of skill and care normally possessed and exercised by healthcare providers under the same or similar circumstances,” that appellants “were in other ways negligent in providing [Ulubiyo] care and treatment,” and that appellants’ “negligence was a substantial contributing cause to . . . Ulubiyo’s death.”

Dr. Manjunath moved to be dismissed from the lawsuit. Citing Minnesota Rule of Civil Procedure 12.02(b), Dr. Manjunath contended that the district court lacks general personal jurisdiction over him because “he does not have continuous and systemic contacts with Minnesota.” And Dr. Manjunath asserted that the district court does not have specific personal jurisdiction over him because he did not direct his conduct at Minnesota and because his contacts with Minnesota were too superficial and attenuated for him to reasonably anticipate being subject to a lawsuit in this forum.

Sanford Clinic North and Dr. Sharma likewise moved to dismiss the complaint under North Dakota law and under Minnesota General Rule of Practice 115. They asserted that, although the lawsuit was filed in Minnesota, Dr. Sharma “was only minimally involved in this matter from his office in North Dakota, where he practices medicine and where he expects to be subject to North Dakota’s laws.” In particular, Sanford Clinic North and Dr. Sharma cited North Dakota law requiring that “[a]ny action for injury or death alleging professional negligence by a physician, nurse, [or] hospital . . . be dismissed without prejudice on motion unless the plaintiff serves” the defendant with an affidavit “containing an admissible expert opinion to support a prima facie case of professional

negligence within three months of the commencement of the action.” N.D. Cent. Code § 28-01-46 (2024). Because Peterson did not comply with the North Dakota medical-expert disclosure requirements, Sanford Clinic North and Dr. Sharma moved the district court to dismiss the complaint.

Order Denying Motions to Dismiss and Appeal

Following hearings on both motions, the district court filed an order and memorandum denying them.

Regarding Dr. Manjunath’s motion to dismiss for lack of personal jurisdiction, the district court analyzed whether Peterson had made a prima facie showing that Dr. Manjunath had sufficient contacts with Minnesota, such that maintaining jurisdiction here would not violate traditional notions of fair play and justice. The district court decided that Dr. Manjunath was not subject to the court’s general personal jurisdiction. But after addressing the five personal-jurisdiction factors discussed in *Bandemer v. Ford Motor Co.*, 931 N.W.2d 744, 749 (Minn. 2019), the district court determined that it had specific personal jurisdiction over Dr. Manjunath.

As for Sanford Clinic North and Dr. Sharma’s motion to dismiss the complaint under North Dakota law, the district court determined that the issue was “a question of substantive law, and not procedural.” The district court analyzed the five choice-influencing factors set forth in *Jepson v. Gen. Cas. Co. of Wis.*, 513 N.W.2d 467, 470 (Minn. 1994), and decided that Minnesota law applied.

Dr. Manjunath filed a notice of appeal with this court (A24-0266).³ After the district court granted a motion by Sanford Clinic North and Dr. Sharma to amend its order and to enter partial judgment under Minnesota Rule of Civil Procedure 54.02, those parties also appealed (A24-0478).⁴ We consolidated the appeals.

DECISION

While Dr. Manjunath appeals the district court’s denial of his motion to dismiss for lack of personal jurisdiction, Sanford Clinic North and Dr. Sharma challenge the denial of their motion to dismiss the complaint under North Dakota law. As explained below, we discern no error in the district court’s decision to deny both motions to dismiss, and we deny appellants’ motion to strike portions of Peterson’s brief as moot.

I. The district court did not err in denying Dr. Manjunath’s motion to dismiss for lack of personal jurisdiction.

Dr. Manjunath maintains that the district court erred when it denied his Minnesota Rule of Civil Procedure 12.02(b) motion to dismiss, asserting that Minnesota courts lack

³ “Orders denying motions to dismiss are, generally, *not* appealable.” *Stone v. Invitation Homes, Inc.*, 986 N.W.2d 237, 246 (Minn. App. 2023), *aff’d*, 4 N.W.3d 489 (Minn. 2024). But an order denying a motion to dismiss for lack of personal jurisdiction is immediately appealable as a matter of right under Minnesota Rule of Civil Appellate Procedure 103.03(j) and *Hunt v. Nev. State Bank*, 172 N.W.2d 292, 300 (Minn. 1969). *See Stone*, 986 N.W.2d at 246 (citing *Hunt*, 172 N.W.2d at 300, for the proposition that, “when a motion to dismiss for lack of personal jurisdiction is denied, that determination is immediately appealable”).

⁴ We ordered that Sanford Clinic North and Dr. Sharma file an informal memorandum addressing whether the district court acted within its discretion in certifying the partial judgment for immediate appeal and, if not, whether we should dismiss their appeal as taken from a nonappealable partial judgment. After the relevant parties submitted informal memoranda, we issued a special-term order accepting appellate jurisdiction.

general and specific personal jurisdiction over him. Peterson responds that “Dr. Manjunath’s direct participation—for compensation—in the medical decision-making that affected . . . Ulubiyo’s care in Minnesota is sufficient for the district court to exercise specific personal jurisdiction.” We conclude that Peterson is correct.

“Whether personal jurisdiction exists is a question of law, which [appellate courts] review de novo.” *Bandemer*, 931 N.W.2d at 749 (quotation omitted). “When reviewing a motion to dismiss for lack of personal jurisdiction, [the appellate court] accept[s] all of the factual allegations in the complaint and supporting affidavits as true. In a close case, [appellate courts] resolve any doubt in favor of retaining jurisdiction.” *Id.* (citation omitted). “[A]nd [appellate courts] view the facts [alleged in the complaint] in the light most favorable to the plaintiff.” *State by Ellison v. HavenBrook Homes, LLC*, 996 N.W.2d 12, 22 (Minn. App. 2023), *rev. denied* (Minn. Jan. 16, 2024).

“Personal jurisdiction refers to a court’s power to exercise control over the parties in a case.” *Young v. Maciora*, 940 N.W.2d 509, 514 (Minn. App. 2020) (quotation omitted), *rev. denied* (Minn. May 19, 2020). “The requirement that a court have personal jurisdiction flows from the Due Process Clause of the Fourteenth Amendment to the United States Constitution.” *Husky Constr., Inc. v. Gestion G. Thibault, Inc.*, 983 N.W.2d 101, 107 (Minn. App. 2022) (quotation omitted), *rev. denied* (Minn. Mar. 14, 2023). “The Due Process Clause . . . limits the ability of a state to exercise its coercive power by asserting jurisdiction over non-resident defendants.” *Bandemer*, 931 N.W.2d at 749. “Due process is satisfied if a nonresident had sufficient ‘minimum contacts’ with the forum state, and maintaining the suit does not ‘offend traditional notions of fair play and substantial

justice.” *Young*, 940 N.W.2d at 515 (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)). “Minnesota’s long-arm statute prevents personal jurisdiction over a nonresident defendant if it would ‘violate fairness and substantial justice.’” *Bandemer*, 931 N.W.2d at 749 (quoting Minn. Stat. § 543.19, subd. 1(4)(ii) (2018)). “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 v. Yamazaki Mazak Optonics Corp.*, 682 N.W.2d 565, 569–70 (Minn. 2004).

There are two types of personal jurisdiction: general personal jurisdiction and specific personal jurisdiction. *Domtar, Inc. v. Niagara Fire Ins. Co.*, 533 N.W.2d 25, 30 (Minn. 1995). “General personal jurisdiction relates to contacts unrelated to the litigation including domicile or continuous and systemic contacts with the forum state.” *Husky Constr., Inc.*, 983 N.W.2d at 107 (quotation omitted). Specific personal jurisdiction focuses on “the relationship among the defendant, the forum, and the litigation, and the defendant’s suit-related conduct must create a substantial connection with the forum state such that the litigation results from alleged harms that arise out of or relate to the defendant’s contacts with the forum.” *Rilley v. MoneyMutual, LLC*, 884 N.W.2d 321, 327 (Minn. 2016) (quotations and citation omitted). A Minnesota district court may exercise jurisdiction over a defendant if either general personal jurisdiction or specific personal jurisdiction is satisfied. *See Domtar, Inc.*, 533 N.W.2d at 30.

Minnesota courts consider five factors when determining whether exercising specific personal jurisdiction is consonant with federal due process: “(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.” *Bandemer*, 931 N.W.2d at 749 (quotation omitted). “The first three factors determine whether [a defendant] has sufficient ‘minimum contacts’ with Minnesota, and the last two factors determine whether jurisdiction is otherwise ‘reasonable’ under concepts of ‘fair play and substantial justice.’” *Id.* (quoting *Juelich*, 682 N.W.2d at 570).

Below, we analyze the five personal-jurisdiction factors by addressing: (A) whether sufficient minimum contact exists with Minnesota given the contact’s (1) quantity, (2) nature and quality, and (3) connection with the cause of action; and (B) whether jurisdiction is otherwise reasonable under concepts of fair play and substantial justice given (1) Minnesota’s interest and (2) the convenience of the parties.

A. Dr. Manjunath has sufficient minimum contact with Minnesota.

1. Quantity

Dr. Manjunath argues that his “contact with Minnesota was negligible” because “[h]e received one call through One Call, assigned to him as an on-call cardiologist.” According to Peterson, however, “[t]he problem with this argument is that it seeks to elevate the quantity of contacts above the quality of those contacts, when the law says to do just the opposite.”

“Specific personal jurisdiction exists when 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 forum.” *Domtar, Inc.*, 533 N.W.2d at 30. “The lack of direct contacts . . . does not necessarily preclude a state from exercising

personal jurisdiction over a nonresident defendant.” *Bergherr v. Sommer*, 523 N.W.2d 17, 20 (Minn. App. 1994), *rev. granted* (Minn. Dec. 20, 1994) *and appeal dismissed* (Minn. Jan. 25, 1995). “A single contact with the forum can be sufficient if the cause of action arises out of that contact.” *Domtar, Inc.*, 533 N.W.2d at 31.

While we are mindful that Dr. Manjunath’s minimum contact with Minnesota is limited, we nevertheless conclude that it is sufficient for the exercise of specific personal jurisdiction based on the contact’s nature and quality, as well as its connection with the cause of action.

2. Nature and Quality

Dr. Manjunath contends that one phone call was not “of such significant quality and nature as to have given [him] ‘fair warning’ that his activities may subject him to Minnesota’s laws.” In response, Peterson asserts that Dr. Manjunath’s argument “ignores the reality of the purpose, content, and effect of his involvement in this claim.” Peterson argues that Dr. Manjunath “specifically knew that his professional responsibilities would, from time to time, require him to interpret the results of diagnostic cardiac tests performed in Minnesota on . . . Minnesota patients.”

“When the quantity of contacts is minimal, the nature and quality become dispositive.” *State v. Hartling*, 360 N.W.2d 439, 441 (Minn. App. 1985). “In assessing the quality of contacts, [an appellate court] looks to whether the party purposefully availed itself of the benefits and protections of Minnesota.” *Juelich*, 682 N.W.2d at 574. “[T]he defendant is deemed to have fair warning [of being sued in the forum state] if it has purposefully directed its activities at residents of the forum and if the plaintiff’s alleged

injuries arise out of or relate to those activities.” *Real Props., Inc. v. Mission Ins. Co.*, 427 N.W.2d 665, 668 (Minn. 1988) (quotations and citations omitted).

Accepting the facts alleged in the complaint as true, we conclude that the nature and quality of Dr. Manjunath’s contact with Minnesota as it relates to this matter are robust. Dr. Frankwitz consulted remotely by telephone with Dr. Manjunath and Dr. Sharma. Both physicians “were initially concerned that . . . Ulubiyo [might have been] experiencing a type of heart attack called a[n] ST elevation myocardial infarction (STEMI).” After reviewing certain laboratory testing results, however, Dr. Manjunath and Dr. Sharma decided that Ulubiyo was not experiencing a STEMI. Advising Ulubiyo that additional tests should be completed “within the month of September at the latest,” all three doctors “concluded that it would be appropriate for . . . Ulubiyo to follow up as an outpatient ‘in the near future’ to have a cardiac echocardiogram and possibly a stress test to evaluate his chest pain.” Thus, all three doctors contributed to the decision to discharge Ulubiyo without further immediate testing, and it was this decision that allegedly resulted in Ulubiyo’s death.

Our conclusion that the nature and quality of contacts favor Minnesota exercising personal jurisdiction is consistent with concessions by Dr. Manjunath that are set forth in the memorandum supporting his motion to dismiss. Dr. Manjunath admitted that he is licensed to practice in Minnesota and that his position at Sanford Clinic North includes interpreting EKG results from other clinics, “some of which are locations in Minnesota, when doctors in those clinics are seeking a cardiology consultation.” He acknowledged that his involvement in the lawsuit is due to One Call and that Dr. Frankwitz contacted him

through that system on August 30, 2021. And Dr. Manjunath explained that, after reviewing Ulubiyo's EKG results, he determined that consultation from an interventional cardiologist was warranted and that it was his decision to engage Dr. Sharma for further analysis.

These concessions underscore that Dr. Manjunath had fair warning of being sued in Minnesota because he purposely directed his activities at Ulubiyo—a Minnesota resident being treated at a Minnesota facility by a Minnesota physician—when he interpreted the EKG results. And accepting the facts alleged in the complaint as true, it was this decision-making that led to Ulubiyo's death. We therefore conclude that the nature and quality of Dr. Manjunath's minimum contact with Minnesota is sufficient for the exercise of specific personal jurisdiction.

3. Connection with Cause of Action

Dr. Manjunath insists that he “did nothing to create a ‘substantial connection’ with Minnesota,” despite his knowledge “that One Call was available to Minnesota physicians” because “he had no reason to know that a particular physician was calling from Minnesota and he had no option to refuse a call from a Minnesota physician.” He maintains that his only link with Minnesota “is that phone call he did not even initiate.” Peterson argues that the content of the phone call placed to Dr. Manjunath “involved the practice of medicine and medical decision-making” and that “[d]eciding which specialists should be involved in a patient's care is, of course, a central element of caring for a patient in a hospital.”

As alleged in the complaint, Dr. Manjunath participated in the decision to discharge Ulubiyo from RiverView Health in Minnesota. Moreover, no one communicated the EKG

results to Ulubiyo or Peterson. These facts are alleged to be factors that contributed to Ulubiyo's death. Thus, we conclude that the connection of the cause of action to Dr. Manjunath's minimum contact with Minnesota supports the exercise of specific personal jurisdiction.

B. The exercise of specific personal jurisdiction is otherwise reasonable under concepts of fair play and substantial justice.

1. Minnesota's Interest

Neither Dr. Manjunath nor Peterson have presented appellate argument about Minnesota's interest in providing a forum. "A party's failure to brief and argue an issue on appeal results in forfeiture of that issue" *Jundt v. Jundt*, 12 N.W.3d 201, 204 (Minn. App. 2024). Even if the parties had not forfeited argument on this issue, we would conclude that Minnesota has a sufficient interest in providing a forum for this lawsuit.

Minnesota has a significant interest in exercising personal jurisdiction in tort matters between Minnesota residents and parties doing business in Minnesota. *See Bandemer*, 931 N.W.2d at 755 ("Minnesota has a strong interest in adjudicating this dispute regarding an accident involving a Minnesota county vehicle that occurred on a Minnesota road, between a Minnesota resident as plaintiff[,] . . . a corporation that does business regularly in Minnesota[,] and two Minnesota residents as defendants."). And, as discussed above, "Minnesota places great value in compensating tort victims . . . [and] also places an interest in permitting its citizens access to its courts." *Schumacher v. Schumacher*, 676 N.W.2d 685, 691 (Minn. App. 2004) (quotation omitted).

Before his death, Ulubiyo was a Minnesota resident seeking treatment at a Minnesota facility from a Minnesota physician. In the memorandum supporting his motion to dismiss, Dr. Manjunath admitted that his position at Sanford Clinic North includes interpreting EKG results from other clinics, “some of which are locations in Minnesota, when doctors in those clinics are seeking a cardiology consultation.” These facts and concessions, as well as the allegations set forth in the complaint, establish that Ulubiyo is a Minnesota tort victim. Thus, Minnesota has a significant interest in providing a forum for Peterson’s medical-malpractice claim. We therefore conclude that the district court did not err in deciding that the interests of the forum state favor Minnesota exercising specific personal jurisdiction.

2. Convenience of Parties

Because no party has addressed convenience as to the exercise of personal jurisdiction, this issue is likewise forfeited. *See Jundt*, 12 N.W.3d at 204. But absent such forfeiture, we would nonetheless conclude that the district court did not err in determining that Minnesota is likely the most convenient forum for the parties and that this factor favors the exercise of personal jurisdiction. This is because (1) Peterson resides in Minnesota, (2) Dr. Frankwitz is a Minnesota physician, (3) Ulubiyo received treatment at RiverView Health, a Minnesota medical facility, and (4) Ulubiyo’s death occurred in Minnesota.

In sum, based on our de novo review of the five personal-jurisdiction factors, we conclude that Dr. Manjunath has sufficient minimum contact with Minnesota and that the district court’s exercise of specific personal jurisdiction over Dr. Manjunath is otherwise reasonable under concepts of fair play and substantial justice. We therefore discern no error

in the district court's denial of Dr. Manjunath's motion to dismiss based on lack of personal jurisdiction.⁵

II. The district court did not err in denying Sanford Clinic North and Dr. Sharma's motion to dismiss under North Dakota law.

Sanford Clinic North and Dr. Sharma assert that the district court erred by denying their motion to dismiss because Peterson failed to comply with North Dakota Century Code 28-01-46, which requires expert disclosures from plaintiffs bringing medical-malpractice suits. Contending that a choice-of-law analysis favors applying North Dakota law, Sanford Clinic North and Dr. Sharma maintain that Dr. Sharma did not have a reasonable expectation that Minnesota law would govern a medical-malpractice claim against him and that North Dakota has a greater interest in applying its law to such claims when they are "brought against North Dakota physicians practicing in North Dakota under their North Dakota medical licenses." Peterson counters that Minnesota's expert-disclosure requirements apply "because Minnesota has the most significant contacts with the underlying facts of the claim and Minnesota has a significant interest in protecting its tort victims."

"A district court's resolution of a choice-of-law issue is a question of law, which this court reviews de novo." *Kolberg-Pioneer, Inc. v. Belgrade Steel Tank Co.*, 823 N.W.2d

⁵ Because a Minnesota district court may exercise jurisdiction over a defendant if either general personal jurisdiction or specific personal jurisdiction is satisfied, *see Domtar, Inc.*, 533 N.W.2d at 30, and because we conclude that the district court did not err in determining that it has specific personal jurisdiction over Dr. Manjunath, we decline to address Dr. Manjunath's additional argument that the court also lacked general personal jurisdiction over him.

669, 672 (Minn. App. 2012), *rev. denied* (Minn. Jan. 15, 2013). Exercising de novo review of the district court’s decision to apply Minnesota law and to deny Sanford Clinic North and Dr. Sharma’s motion to dismiss under North Dakota law, we conclude that the district court did not err.

A. A conflict of law exists between Minnesota and North Dakota, and either state’s law may be constitutionally applied.

As preliminary matters, we must determine whether a conflict of law exists between Minnesota and North Dakota, and whether either state’s law may be constitutionally applied.

“Before a choice-of-law analysis can be applied, a court must determine that a conflict exists between the laws of two forums.” *Nodak Mut. Ins. Co. v. Am. Fam. Mut. Ins. Co.*, 604 N.W.2d 91, 93–94 (Minn. 2000) (footnotes omitted). “A conflict of law exists if choosing the law of one state over the law of another state would be outcome determinative.” *Schumacher*, 676 N.W.2d at 689 (quotation omitted).

“To establish a prima facie case of medical malpractice [in Minnesota], a plaintiff must prove, on the basis of expert medical testimony,” three elements: “(1) the standard of care recognized by the medical community as applicable to the . . . defendant’s conduct[;] (2) that the defendant in fact departed from that standard[;] and (3) that the defendant’s departure from the standard was a direct cause of the patient’s injuries.” *Dickhoff ex rel. Dickhoff v. Green*, 836 N.W.2d 321, 329 (Minn. 2013) (quotation omitted). And in a tort action that “alleg[es] malpractice, error, [or] mistake . . . against a health care provider which includes a cause of action as to which expert testimony is necessary to establish a

prima facie case,” Minnesota law requires that the plaintiff serve—with the summons and complaint—an affidavit of expert review and an affidavit identifying the experts to be called at trial within 180 days of the commencement of discovery. *See* Minn. Stat. § 145.682, subds. 2–4 (2022). The affidavit of expert review “must be by the plaintiff’s attorney” and must state that the plaintiff’s attorney reviewed the facts “with an expert whose qualifications provide a reasonable expectation that the expert’s opinions could be admissible at trial and that, in the opinion of this expert, one or more defendants deviated from the applicable standard of care and by that action caused injury to the plaintiff.” *Id.*, subd. 3(1).

Although North Dakota has a similar law, its statute provides that “[a]ny action for injury or death alleging professional negligence by a physician, nurse, [or] hospital . . . must be dismissed without prejudice on motion unless the plaintiff serves” the defendant with an affidavit “containing an admissible expert opinion to support a prima facie case of professional negligence within three months of the commencement of the action.” N.D. Cent. Code § 28-01-46.

On June 27, 2023, Peterson served Dr. Sharma with an affidavit of expert review, along with the summons and complaint, as required by Minnesota law. Service of the summons on that date commenced this civil action against Dr. Sharma. *See* Minn. R. Civ. P. 3.01(a) (“A civil action is commenced against each defendant . . . when the summons is served upon that defendant . . .”). The three-month deadline to serve Dr. Sharma with an affidavit containing an admissible expert opinion to support a prima facie case of professional negligence under North Dakota law expired on September 28, 2023, without

service of such an affidavit by Peterson. *See* N.D. Cent. Code § 28-01-46. Thus, while application of North Dakota law would extinguish Peterson’s claim, Peterson’s claim survives under Minnesota law.⁶ We therefore conclude that a conflict of law exists.⁷

We consider next whether the law of either state can be constitutionally applied. *See Jepson*, 513 N.W.2d at 469. “For a State’s substantive law to be selected in a constitutionally permissible manner, that State must have a significant contact or significant aggregation of contacts, creating state interests, such that choice of its law is neither arbitrary nor fundamentally unfair.” *Id.* (quotation omitted).

Sanford Clinic North and Dr. Sharma argue that either state’s law can be constitutionally applied here. Based on our independent analysis, we agree. Both Minnesota and North Dakota have a significant aggregation of contacts creating state interests in this matter, such that applying either state’s law would be neither arbitrary nor fundamentally unfair. *Id.* Ulubiyo was a Minnesota resident seeking treatment from a

⁶ Although the record reflects that Peterson has yet to serve an affidavit identifying the experts to be called at trial, as required by Minnesota Statutes section 145.682 (2022), appellants concede that “[t]he parties stipulated to staying discovery, including the expert-disclosure requirements under Minn. Stat. § 145.682, pending the outcome of this appeal.” As a result, we need not consider any issue as to Peterson’s compliance with section 145.682.

⁷ “Traditionally, when a conflict-of-law issue arises, a court must decide whether the question involves substantive or procedural law by applying the law of Minnesota.” *Schumacher*, 676 N.W.2d at 690. Here, the district court determined that the expert-affidavit issue was “a question of substantive law, and not procedural” and neither party disputes that determination on appeal. Because our conclusion that Minnesota law applies is unaffected by this issue, we assume without deciding that the district court correctly determined that Minnesota’s and North Dakota’s expert-affidavit requirements are substantive laws.

Minnesota physician at a Minnesota medical facility. And Ulubiyo's EKG results were interpreted by two North Dakota physicians working at a medical facility in North Dakota. Thus, we conclude that either state's law may be constitutionally applied.

B. Minnesota law applies to this medical-malpractice action.

Having concluded that there is a conflict of law between Minnesota and North Dakota and that either state's law may be constitutionally applied, we now consider the five choice-influencing factors. *See Jepson*, 513 N.W.2d at 470. "They are: (1) predictability of result; (2) maintenance of interstate and international order; (3) simplification of the judicial task; (4) advancement of the forum's governmental interest; and (5) application of the better rule of law." *Id.*

1. Predictability of result favors applying Minnesota law.

Sanford Clinic North and Dr. Sharma argue that "[t]he reason this first consideration is relevant here is because the tort of which Dr. Sharma stands accused occurred in Crookston, Minnesota, when Dr. Sharma was in Fargo, North Dakota." Because "nothing about the facts as Dr. Sharma knew them should have led him to believe that such a suit could stand against him in Minnesota," Sanford Clinic North and Dr. Sharma maintain that this factor favors applying North Dakota law. Peterson responds that Sanford Clinic North and Dr. Sharma's analysis of this factor focuses only on Dr. Sharma's reasonable expectations. According to Peterson, "[w]hen medical malpractice is committed in Minnesota and a Minnesota patient dies as a result, the decedent's family should reasonably expect that their access to justice and compensation will be protected by Minnesota law." We agree with Peterson.

“The first factor, predictability of result, primarily embodies the ideal that litigation arising from a given set of facts should be decided the same regardless of where the litigation occurs, so that neither party will benefit from forum shopping.” *Kolberg-Pioneer, Inc.*, 823 N.W.2d at 673 (quotation omitted). Courts should consider “whether the choice of law was predictable before the time of the transaction,” not “whether that choice was predictable after the transaction or event.” *Id.* (quotations omitted). Predictability of result is less important in tort actions of an “unplanned nature.” *Jepson*, 513 N.W.2d at 470.

The district court did not make an explicit determination on this factor. Based on our careful review of the facts alleged in the complaint, we conclude that this factor supports applying Minnesota law. Although Dr. Sharma provided his consultation from North Dakota, he interpreted EKG results for Dr. Frankwitz, who was treating Ulubiyo—a Minnesota patient—at RiverView Health in Crookston—a Minnesota medical facility. Thus, it was predictable that Minnesota law would apply to any claim for medical malpractice brought by Ulubiyo (or on his behalf) that related to the treatment he received at RiverView Health in Crookston. We therefore conclude that predictability of result favors applying Minnesota law.

2. Maintenance of interstate and international order favors applying Minnesota law.

Sanford Clinic North and Dr. Sharma contend that “[t]his is not a circumstance where applying Minnesota’s law clearly takes precedence over North Dakota’s public-policy interests in governing lawsuits against physicians practicing in North Dakota” and that “this factor is neutral.” Peterson argues that “[t]he facts of this case are

overwhelmingly and inextricably connected to Minnesota.” Peterson has the better argument.

In *Gate City Fed. Sav. & Loan Ass’n v. O’Connor*, 410 N.W.2d 448, 451 (Minn. App. 1987), *rev. denied* (Minn. Oct. 21, 1987), we explained that the concept of maintaining interstate and international order “requires that the state whose laws are ultimately applied have sufficient contacts with the facts in issue.” Our more recent jurisprudence, however, holds that this factor is “primarily concerned with whether the application of Minnesota law would manifest disrespect for [North Dakota’s] sovereignty or impede the interstate movement of people and goods.” *Kolberg-Pioneer, Inc.*, 823 N.W.2d at 674 (quoting *Jepson*, 513 N.W.2d at 471). And “[e]vidence of forum shopping or evidence that application of one state’s law would promote forum shopping, would be an attempt to evade, and would indicate disrespect for, [North Dakota] law.” *Schumacher*, 676 N.W.2d at 690–91.

Relying on *In re Baycol Prods. Litig.*, 218 F.R.D. 197, 207 (D. Minn. 2003), the district court determined that this factor favors application of Minnesota law because Minnesota had “the most significant contacts with the facts relevant to the litigation.” Our de novo review has revealed no evidence of forum-shopping, and we conclude that the facts in the record support the district court’s determination that Minnesota has the most significant contacts with the allegations underlying this litigation. At the time of his death, Ulubiyo was a Minnesota resident seeking treatment at a Minnesota facility from a Minnesota physician. Other than Dr. Manjunath and Dr. Sharma’s location at the time of their consultation via One Call, North Dakota has no contacts with the facts at issue. Thus,

we conclude that the district court did not err in deciding that maintenance of interstate and international order favors applying Minnesota law.

3. Simplification of the judicial task is neutral.

Because the parties have presented no appellate argument about simplification of the judicial task, they have forfeited this issue. *See Jundt*, 12 N.W.3d at 204. Even if they had not, we would conclude that simplification of the judicial task is neutral.

The district court did not make an express finding about this issue in the memorandum accompanying its order. “This factor is not particularly relevant where the competing laws are straightforward and the law of either state could be applied without difficulty.” *Schumacher*, 676 N.W.2d at 691 (quotation omitted). Because either law could be applied without difficulty to Peterson’s medical-malpractice action, we would conclude that this factor is neutral.

4. Advancement of the forum’s governmental interest favors applying Minnesota law.

Sanford Clinic North and Dr. Sharma assert that this factor favors applying North Dakota law because “North Dakota has an interest in applying its law that governs medical-malpractice tort claims brought against North Dakota physicians practicing in North Dakota under their North Dakota medical licenses.” More specifically, Sanford Clinic North and Dr. Sharma maintain that “North Dakota public policy outweighs Minnesota’s governmental interest where a North Dakota doctor is sued for a brief consultation he did from North Dakota.” Peterson counters that Minnesota’s expert-disclosure requirements fully protect North Dakota’s “purported interest in this matter” because “Minnesota’s

expert disclosure requirements provide a screening mechanism to eliminate frivolous malpractice suits earlier than North Dakota's requirements." Peterson's argument has merit.

"The fourth factor is concerned with which choice of law most advances a significant interest of the forum." *Nodak Mut. Ins. Co.*, 604 N.W.2d at 95 (quotation omitted). "This factor is designed to ensure that Minnesota courts do not have to apply rules of law that are 'inconsistent with Minnesota's concept of fairness and equity.'" *Schumacher*, 676 N.W.2d at 691 (quoting *Medtronic, Inc. v. Advanced Bionics Corp.*, 630 N.W.2d 438, 455 (Minn. App. 2001)). "In considering which law will advance the governmental interest of Minnesota, the court is to consider the public policy of both . . . forums." *Danielson v. Nat'l Supply Co.*, 670 N.W.2d 1, 8 (Minn. App. 2003), *rev. denied* (Minn. Dec. 16, 2003).

The district court determined that this factor supports the application of Minnesota law, reasoning that "Minnesota's interests include protecting its citizens, compensation for an injured plaintiff, and interest of medical care provided to its citizens." And despite North Dakota's interests in handling claims of medical malpractice against North Dakota physicians located in North Dakota, the district court ruled that such interests did "not outweigh the significant interests of Minnesota in safety and care for its citizens."

We conclude that, although the governmental interests North Dakota law seeks to advance—protecting medical providers from frivolous lawsuits—are also advanced by Minnesota law, Minnesota favors tort victims by allowing them a longer time to submit formal expert opinions. "Minnesota places great value in compensating tort victims."

Jepson, 513 N.W.2d at 472. “Minnesota also places an interest in permitting its citizens access to its courts.” *Schumacher*, 676 N.W.2d at 691 (quotation omitted). Applying North Dakota law would not merely result in Peterson’s complaint being dismissed without prejudice. Instead, as Sanford Clinic North and Dr. Sharma note in their brief, Peterson’s claim would ultimately be barred with prejudice under North Dakota law because “[t]he three-month requirement to provide an admissible expert opinion affidavit operates within the confines of a two-year statute of limitations for medical malpractice claims.” *Ortega v. Bismarck*, 927 N.W.2d 872, 876 (N.D. 2019) (quotation omitted). Thus, applying North Dakota law would run contrary to Minnesota’s interest in compensating tort victims and would contravene Minnesota’s interest in permitting its citizens access to its courts.

While we acknowledge that regulating medical-malpractice claims against North Dakota physicians located in North Dakota is a valid governmental interest, Sanford Clinic North and Dr. Sharma fail to articulate how that interest exceeds Minnesota’s interests in compensating tort victims and permitting citizens access to its courts. Because Ulubiyo was a Minnesota resident who sought treatment from a Minnesota medical facility before he died—and given that another Minnesota resident (Peterson) now seeks access to a Minnesota court for compensation of tort claims based on Ulubiyo’s death—we conclude that the district court did not err in determining that advancement of Minnesota’s governmental interests favors applying Minnesota law.

5. We decline to address application of the better rule of law.

The parties have forfeited this issue because they have not advanced any argument about application of the better rule of law. *See Jundt*, 12 N.W.3d at 204. But in any event, we do not need to analyze this factor.

“The final choice influencing factor to consider is whether, in an objective sense, North Dakota or Minnesota has the better rule of law.” *Jepson*, 513 N.W.2d at 472. “The better rule of law is the rule that made good socio-economic sense for the time when the court speaks.” *Danielson*, 670 N.W.2d at 9 (quotation omitted). In *Nodak Mut. Ins. Co.*, the Minnesota Supreme Court observed that it had not “placed any emphasis on this factor in nearly 20 years.” 604 N.W.2d at 96. “This factor should be addressed when the other factors are not conclusive as to which state’s law should be applied.” *Danielson*, 670 N.W.2d at 9. Considering the conclusive nature of our analysis of the first, second, and fourth choice-influencing factors, we need not address the fifth factor. *Id.*

In short, because the first, second, and fourth choice-influencing factors favor applying Minnesota law, the district court did not err in denying Sanford Clinic North and Dr. Sharma’s motion to dismiss the complaint under North Dakota Century Code 28-01-46.

III. Appellants’ motion to strike is moot.

Finally, appellants move to strike portions of Peterson’s brief that “rely[] extensively on a document that is not part of the record.” Appellants contend that multiple pages of Peterson’s brief cite medical records that are not in the district court record that is before us on appeal. Peterson counters that the medical record appellants seek to strike “is uncontroverted[] and should be considered by this [c]ourt.”

The record on appeal consists of “[t]he documents filed in the [district] court, the exhibits, and the transcript of the proceedings[.]” Minn. R. Civ. App. P. 110.01. “An appellate court may not base its decision on matters outside the record on appeal, and may not consider matters not produced and received in evidence below.” *Thiele v. Stich*, 425 N.W.2d 580, 582–83 (Minn. 1988).

Our review of the personal-jurisdiction challenge requires that we accept the facts alleged in the complaint and supporting affidavits as true. *See Bandemer*, 931 N.W.2d at 749. For that reason, the challenged information does not affect our analysis and we have not considered it. Thus, we deny appellants’ motion to strike portions of Peterson’s brief as moot. *See Drewitz v. Motorwerks, Inc.*, 728 N.W.2d 231, 233 n.2 (Minn. 2007) (denying motion to strike as moot because the supreme court did not rely on the challenged material).

Affirmed; motion denied.