STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0153

Jeffrey A. Peterson,
Respondent,

vs.

Dennis J. Harward,
Appellant.

Filed January 6, 2009
Affirmed
Ross, Judge

Hennepin County District Court
File No. 27-CV-07-15138

Daniel J. Boivin, Meshbesher & Spence, Ltd., 1616 Park Avenue, Minneapolis, MN 55404 and

Craig D. Johnson (pro hac vice), Craig D. Johnson & Associates, P.C., 8 Garden Center, Broomfield, CO 80020 (for appellant)

J. Scott Andresen, Mark R. Bradford, Bassford Remele, 33 South Sixth Street, Suite 3800, Minneapolis, MN 55402 (for respondent)

Considered and decided by Ross, Presiding Judge; Connolly, Judge; and Johnson, Judge.

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

ROSS, Judge

This appeal requires us to decide whether Dennis Harward, who promised to repay Jeffrey Peterson $50,000, may avoid defending Peterson's Hennepin County lawsuit for Harward's failure to keep that promise. Harward contends that he lacks sufficient contacts with the State of Minnesota to establish the district court's personal jurisdiction to hale him from his Colorado residence. But he cannot contradict that he telephoned Peterson in Minnesota, discussing the underlying loan; that he electronically mailed Peterson in Minnesota regarding the loan; that he sent a facsimile to Peterson in Minnesota, conveying the promissory note to memorialize his duty to repay the loan; and that as a result of these communications, Peterson sent $50,000 from his Minnesota financial institution to Harward. The district court denied Harward's motion to dismiss for lack of personal jurisdiction. Because Harward had sufficient contacts with Minnesota and the exercise of jurisdiction satisfies traditional notions of fair play and substantial justice, we affirm.

FACTS

Jeffrey Peterson and Dennis Harward often communicated interstate primarily because they worked together from different states for Innoprise Software Company. Peterson worked from his home office in Minnesota as a salesman, while Harward worked in Oregon and Colorado as the company's chief executive officer. According to Peterson, he and Harward had a close working relationship and were also personal friends. Harward routinely contacted Peterson to discuss business, but Harward allegedly

also discussed personal matters, including his personal financial situation. Harward often contacted Peterson at his Minnesota home office by telephone, electronic mail, and facsimile communications originating from outside the state.

The parties' interstate communication included their agreement to the terms of the unpaid loan that underlies this appeal. The parties negotiated the loan during a brief period in April 2005. Harward sent an e-mail to Peterson on April 17, 2005, seeking a personal loan of $50,000. Peterson opened the e-mail using his computer in Minnesota. Harward explained that he needed the loan to "show the cash in [his] account until the middle of May" to close on a house he was purchasing in Colorado. Meanwhile, Harward also telephoned Peterson several times at his home in Minnesota to discuss the loan, giving Peterson assurances that he would make the loan "worth [Peterson's] while" and representing that Peterson had "nothing to worry about." Harward prepared a promissory note and sent a signed copy of it to Peterson's home by facsimile on April 18. The terms of the note required Harward to repay $50,000 with interest within 90 days. In his present effort to avoid personal jurisdiction in Minnesota, Harward points out that the promissory note also includes a choice-of-law provision designating Oregon law as controlling. On April 19, Peterson lent Harward the $50,000. Harward received the $50,000 in Oregon by wire transfer from Peterson in Minnesota.

But Harward did not repay the loan. After more than two years, Harward had made no payments, and Peterson filed a complaint in Hennepin County District Court to enforce the promissory note. Harward filed a motion to dismiss, asserting that the district court lacked personal jurisdiction over him under Minnesota Statutes section 543.19.

Peterson opposed Harward's motion to dismiss and sought summary judgment. The district court heard the parties' motions on October 2, 2007. Eight days after the hearing, Harward's attorney sent a letter to the district court requesting permission to be allowed to respond in a "supplemental memorandum brief." He argued that because he was not served with Peterson's brief opposing Harward's motion to dismiss before the October 2 hearing, he could not effectively respond to Peterson's arguments.

The district court denied Harward's motion and granted Peterson's. It noted that Harward's local counsel had been served with Peterson's brief opposing the motion to dismiss and that "with all due respect to the lawyers, [the conflict is] not a novel or complicated legal issue." The district court explained that the matter "has been well briefed and argued [and] . . . [t]here is no reason to believe that saying or writing anything additional would lead to a different conclusion." Harward appeals the district court's denial of his motion to dismiss for lack of personal jurisdiction.

D E C I S I O N

I

Harward challenges the district court's determination that a Minnesota district court may exercise personal jurisdiction over him. Whether personal jurisdiction exists is a question of law that we review de novo. *Marshall v. Inn on Madeline Island*, 610 N.W.2d 670, 673 (Minn. App. 2000). When a defendant challenges personal jurisdiction, the plaintiff has the burden 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). On appeal, we assume that the facts alleged to support personal jurisdiction are true, and, in

doubtful cases, we resolve them in favor of retaining personal jurisdiction. *Nw. Airlines, Inc. v. Friday*, 617 N.W.2d 590, 592 (Minn. App. 2000). Harward argues that he did not have sufficient contacts with Minnesota because he is not a Minnesota resident, because he was never physically present in Minnesota, and because the few contacts he made to Minnesota were by telephone, facsimile and e-mail. The argument is unavailing.

Minnesota's long-arm statute authorizes the state to reach as far as the federal Constitution allows in the exercise of personal jurisdiction. It provides that Minnesota courts may exercise personal jurisdiction over a nonresident if that defendant transacts business or commits any act causing injury in Minnesota, except when Minnesota has no substantial interest in providing a forum or the burden placed on the defendant by being brought under the state's jurisdiction would be unfair and unjust. Minn. Stat. § 543.19 subd. 1 (2008). The long-arm statute and the federal Due Process Clause are co-extensive, so "if the personal jurisdiction requirements of the federal constitution are met, the requirements of the long-arm statute will necessarily be met also. Thus . . . Minnesota courts may simply apply the federal case law" to determine whether personal jurisdiction exists. *Marshall*, 610 N.W.2d at 673 (quotation omitted).

Federal caselaw provides that a defendant must have "minimum contacts" with a forum state so that maintaining jurisdiction there does not offend "traditional notions of fair play and substantial justice." *Id.* at 674, citing *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S. Ct. 154, 158 (1945). To have minimum contacts, the defendant must have purposefully availed himself of the privilege of conducting activities within the jurisdiction. *Hanson v. Denckla*, 357 U.S. 235, 253, 78 S. Ct. 1228, 1240 (1958); *V.H. v.*

Estate of Birnbaum, 543 N.W.2d 649, 656 (Minn. 1996). The nonresident must be able to reasonably anticipate being haled into court within the state. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297, 100 S. Ct. 559, 567 (1980); *V.H.*, 543 N.W.2d at 656–57.

There are two types of personal jurisdiction: specific jurisdiction and general jurisdiction. *Domtar, Inc. v. Niagara Fire Ins. Co.*, 533 N.W.2d 25, 30 (Minn. 1995), citing *Helicopteros Nacionales de Colombia v. Hall*, 466 U.S. 408, 414 n.8, 104 S. Ct. 1868, 1872 n.8 (1984). General jurisdiction can apply when a nonresident defendant's contacts with the forum state are "continuous and systematic." *Domtar*, 533 N.W.2d at 30 (quotation omitted). The distinction between the two types does not impact our review of this case. The consequence of general jurisdiction is that the forum state may assert jurisdiction over the defendant even for causes of action unrelated to the defendant's contacts with the state. *Id.* In contrast, specific jurisdiction reaches causes of action in which "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." *Id.* "Specific jurisdiction can arise from a single contact with the forum if the cause of action arose out of that contact." *Marshall*, 610 N.W.2d at 674. Harward contends that the district court has neither general nor specific jurisdiction to decide this dispute. He is incorrect.

"Minnesota courts use a five-factor test to determine whether the exercise of personal jurisdiction is proper" regardless of whether specific or general personal jurisdiction is asserted. *See id.* (applying the five-factor test and concluding that

Minnesota court lacked specific jurisdiction because no connection existed between defendant's contacts and plaintiff's cause of action; but concluding that the nature, quality, and quantity of defendant's contacts established general jurisdiction). The test requires this court to assess five factors: (1) the quantity of contacts between the nonresident defendant and the forum state; (2) the nature and quality of the contacts; (3) the source and connection of the cause of action with the contacts; (4) the state's interest in providing a forum; and (5) the convenience of the parties. *Id*.

The Minnesota Supreme Court recently observed that the first three "primary factors" of this test are used to assess whether the requisite minimum contacts exist, and that the last two "secondary factors" determine whether the exercise of jurisdiction is reasonable according to traditional notions of fair play and substantial justice. *Juelich*, 682 N.W.2d at 570. This test is "another way of asking whether the defendant has established enough contacts . . . to justify being sued here and whether those contacts were established on purpose in order to conduct business in this state." *Real Props., Inc. v. Mission Ins. Co.*, 427 N.W.2d 665, 668 (Minn. 1988). We apply this test to Harward's challenge and conclude that the district court may assert specific personal jurisdiction over him.

The Primary Factors Establish Minimum Contacts

Addressing the quantity of contacts, we emphasize again that a single, isolated transaction may be sufficient to confer personal jurisdiction on a nonresident defendant if the cause of action arose out of that contact. *Marquette Nat'l Bank v. Norris*, 270 N.W.2d 290, 295 (Minn. 1978). Harward contacted Peterson several times by telephone

regarding the loan. In one e-mail Harward asked Peterson for a personal loan of $50,000 and stated that he would repay the money. Harward signed a promissory note and faxed it to Peterson's residence in Minnesota. As a result of the e-mail and telephone negotiations and the facsimile transmission of the signed promissory note, Peterson lent Harward $50,000, evidenced by a wire transfer receipt. The note specifies that Harward was to repay the $50,000 within 90 days. But Harward has not repaid any of the money, and Peterson seeks to compel him to do so by this suit. The contacts from Harward to Peterson in Minnesota, though few in number, argue for the exercise of personal jurisdiction because Peterson's cause of action concerns them directly.

Regarding the nature and quality of contacts, this court looks to whether the defending party purposefully availed himself of the benefits and protections of Minnesota. *Juelich*, 682 N.W.2d at 574. Harward argues that he never acted to invoke the protection and benefits of Minnesota law because he was never physically present in Minnesota, his contacts with Peterson were merely electronic, and the "dearth of contacts [were] with Peterson, not Minnesota." But Minnesota courts have found jurisdiction when a nonresident defendant never physically entered the state and made only limited contacts by mail and telephone.

One example is *Marquette*, which the district court relied upon. In *Marquette*, nonresident defendants contacted a Minnesota bank and induced the bank to enter a detrimental transaction in which the defendants guaranteed a loan that the bank made. 270 N.W.2d at 296–97. The transaction was arranged entirely by mail and telephone and the nonresident defendants never set foot in Minnesota. *Id*. at 293. The supreme court

concluded that Minnesota could exercise personal jurisdiction over the nonresidents because the cause of action arose directly out of the defendants' contact with the state. *Id*. at 297. That the nonresident defendants "were never physically present in the state in the course of their transaction, which was accomplished entirely by telephone and mail, [was] clearly of no significant consequence." *Id*. at 295.

We are not persuaded by Harward's attempt to distinguish *Marquette*. He argues that it was critical to *Marquette*'s finding of jurisdiction that the Minnesota bank held stock as collateral within Minnesota. Harward contends that because he gave Peterson no collateral to be kept in Minnesota, the district court erred by relying on *Marquette*. But the crucial jurisdictional factor in *Marquette* was not the existence of collateral, it was that the nonresident "purposefully solicited contacts with a Minnesota resident [and] initiated or induced the transaction out of which the cause of action [arose]." 270 N.W.2d at 296; *see also Dent-Air, Inc. v. Beech Mountain Air Serv.*, 332 N.W.2d 904, 908 (Minn. 1983) (distinguishing *Marquette* and concluding that the essential factor in *Marquette* was the defendants' aggressive soliciting of a lease). Harward contacted Peterson, a Minnesota resident, and solicited the loan. And Harward's failure to repay that loan is the substance of Peterson's cause of action. Harward's physical absence does not prevent a Minnesota district court from asserting personal jurisdiction over him.

Harward attempts to analogize this case to Minnesota cases in which telephone and mail contacts were held insufficient to confer personal jurisdiction. *See, e.g., S.B. Schmidt Paper Co. v. A to Z Paper Co.*, 452 N.W.2d 485 (Minn. App. 1990) (finding no personal jurisdiction where the only contact was through telephone inquiries and orders

and sending payments to Minnesota); *Walker Mgmt. v. FHC Enters.*, 446 N.W.2d 913 (Minn. App. 1989) (finding telephone contacts insufficient to establish personal jurisdiction because the formation of the agreement between the parties occurred outside Minnesota and all the services were to be performed in Illinois), *review denied* (Minn. Dec. 15, 1989); *Dent-Air, Inc.*, 332 N.W.2d at 908 (Minn. 1983) (finding no personal jurisdiction when a nonresident made only a telephone inquiry and the Minnesota plaintiff had initiated and pursued the contract). Harward unpersuasively argues that the determinative factor in finding no personal jurisdiction in these cases was that the contacts were by telephone and mail. Actually, the determinative factors in those cases were whether the nonresident defendants purposefully availed themselves of Minnesota's jurisdiction by initiating or soliciting transactions with a resident plaintiff. That contacts were made only by telephone or mail was incidental to the holdings that personal jurisdiction did not exist. We see no analogy between this appeal and those cases.

A defendant "purposefully avails" himself of the protections of the laws of a state when the defendant "deliberately engages in significant activities in a state or creates continuing obligations between [himself] and residents of the state." *Marshall*, 610 N.W.2d at 675–76. Harward deliberately solicited Peterson, a Minnesota resident, for the loan. He signed a promissory note that created a continuing obligation between him and Peterson. The nature and quality of Harward's contacts with Minnesota support the exercise of personal jurisdiction.

We have already alluded to the third factor regarding whether the requisite minimum contacts exist: the connection between the cause of action and the contacts of

the nonresident defendant. *Juelich*, 682 N.W.2d at 570. Again, there is a direct connection between Peterson's cause of action and Harward's contacts with Peterson in Minnesota. Harward's interstate contact with Peterson led directly to Peterson wiring Harward the $50,000 that Harward failed to repay and that constitutes the basis for Peterson's cause of action. This third factor therefore also weighs in favor of finding personal jurisdiction.

Secondary Factors

The last two factors also support the district court's decision. They evaluate whether the exercise of jurisdiction is reasonable according to traditional notions of fair play and substantial justice. *Juelich*, 682 N.W.2d at 570. Minnesota has an interest in providing a forum for its residents who have allegedly been wronged. *Marshall*, 610 N.W.2d at 676. And although convenience of the parties must be considered, it "is rarely dispositive." *Marquette*, 270 N.W.2d at 295.

Peterson is a Minnesota resident wronged by Harward's failure to repay money sent from Minnesota. Harward argues that Minnesota has no interest in enforcing a promissory note that is between two private persons and governed by Oregon law. Harward's argument misses the mark; Minnesota has an interest in providing a forum for one of its injured residents independent of any interest the state might have in the development or application of the underlying law. It is likely that litigating in Minnesota is inconvenient for Harward, but the other factors substantially outweigh this concern.

Harward argues that the promissory note's choice-of-law provision favoring Oregon law tips the five-factor minimum contacts test in his favor because the

"contractual choice of both parties selecting Oregon law to control the promissory note . . . goes directly to the issues of the source and connection of the contacts with the cause of action and whether Minnesota has a substantial interest in providing a forum for this litigation." The argument overstates the significance of the choice-of-law provision and ignores the clear implication of its text.

The promissory note provides that it "is governed by the laws of the State of Oregon, without giving effect to any conflict-of-law principle of any jurisdiction." Choice-of-law provisions select the game rules, not the playing field. They are frequently included in contracts so that regardless of where the litigation occurs, there is hopefully some clarity about which state's law will govern. This choice-of-law provision similarly does not regard jurisdiction because it provides only that Oregon substantive law controls, not that Oregon must be the venue of a suit arising from the agreement. The choice-of-law provision therefore has no bearing on the minimum contacts analysis. Equally injurious to Harward's argument, the terms of the choice-of-law provision affirmatively defeat Harward's contention that the note expresses any agreement to Oregon's exclusive jurisdiction. It calls on Oregon's law while implicitly contemplating a suit in a *different* jurisdiction: ". . . without giving effect to any conflict-of-law principle *of any jurisdiction*." The provision establishes that the parties recognized that litigation may occur in a jurisdiction outside Oregon.

In sum, the five-factor test shows that Harward's contacts with Minnesota support the exercise of specific personal jurisdiction.

II

Harward contends that the district court abused its discretion by denying his post-hearing request to submit a "supplemental brief" on the issue of personal jurisdiction. The district court concluded that "it is the Court's responsibility to read the cases and make the best judgments it can. There is no reason to believe that saying or writing anything additional would lead to a different conclusion." The district court proceeded to thoroughly analyze the issue of personal jurisdiction. A district court has "considerable discretion in . . . furthering what it has identified as interests of judicial administration and economy." *Rice Park Props. v. Robins, Kaplan, Miller & Ciresi*, 532 N.W.2d 556, 556 (Minn. 1995). Harward has cited no rule or other legal authority requiring the district court to entertain additional briefing. And there was no prejudice; even on appeal, he points us to no legal or factual bases that he would have included in another brief to the district court to cast doubt on the logic of the district court's decision. We conclude that it was not an abuse of discretion for the district court to deny Harward's request to submit a supplemental brief.

Affirmed.