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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A09-657**

Kathryn L. Jensen, as trustee for the next-of-kin  
of Stephen D. Jensen, deceased,  
Appellant,

vs.

Modern Aero, Inc., et al.,  
Defendants,

Straight Flight, Inc.,  
Respondent.

**Filed January 12, 2010  
Affirmed  
Halbrooks, Judge**

Hennepin County District Court  
File No. 27-CV-08-6061

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Considered and decided by Klaphake, Presiding Judge; Halbrooks, Judge; and Ross, Judge.

## **UNPUBLISHED OPINION**

**HALBROOKS**, Judge

Appellant challenges the district court's dismissal of her claims against respondent based on lack of personal jurisdiction and alleges that respondent had sufficient contacts with Minnesota to satisfy due-process requirements. Because we conclude that the district court did not err, we affirm.

## **FACTS**

In July 2003, Minnesota resident Stephen Jensen aborted a takeoff attempt from Centennial Airport in Colorado in his Piper Malibu aircraft. Jensen's aircraft experienced a hard landing and sustained significant damage to one of the wings. Because of its proximity to and business relationship with the airport, respondent Straight Flight, Inc. was called in to clear the debris from the accident and to relocate Jensen's aircraft for temporary storage. Jensen went to respondent's facility to inspect the damage to his aircraft. He then contracted with respondent to perform repairs, paint the aircraft, and conduct an annual inspection of his plane. Respondent released the repaired aircraft to Jensen in April 2004.

In July 2005, Jensen was killed when his airplane crashed near Grand Rapids, Minnesota. Appellant Kathryn L. Jensen, trustee for Jensen's next-of-kin, sued several entities, claiming that the crash was caused by a power loss attributable to defects in the plane's exhaust and turbocharger systems. Appellant alleged that respondent (1) failed to

properly inspect, maintain, and repair those systems; (2) failed to warn Jensen of the unsafe condition of the aircraft; and (3) negligently installed an exhaust system that contained parts that were not in compliance with the original equipment manufacturer's specifications. The district court granted respondent's motion to dismiss appellant's claims against respondent, determining that appellant had not set forth a prima facie case of personal jurisdiction over respondent. This appeal follows.

## D E C I S I O N

Whether personal jurisdiction exists is a question of law subject to de novo review. *Juelich v. Yamazaki Mazak Optonics Corp.*, 682 N.W.2d 565, 569 (Minn. 2004). An appellate court must apply the facts as found by the district court unless those factual findings are clearly erroneous. Minn. R. Civ. P. 52.01. When a defendant challenges personal jurisdiction, the burden of proof is on the plaintiff. *Dent-Air, Inc. v. Beech Mountain Air Serv., Inc.*, 332 N.W.2d 904, 907 n.1 (Minn. 1983). A plaintiff need only make a prima facie showing of jurisdiction at the pretrial stage, and the complaint and supporting evidence must be taken as true. *Hardrives, Inc. v. City of LaCrosse*, 307 Minn. 290, 293, 240 N.W.2d 814, 816 (Minn. 1976). In doubtful cases, courts should favor retaining jurisdiction. *Id.* at 296, 240 N.W.2d at 818.

Minnesota's long-arm statute, Minn. Stat. § 543.19 (2008), permits Minnesota courts to assert personal jurisdiction over defendants to the extent permitted by the federal constitutional requirements of due process. *Valspar Corp. v. Lukken Color Corp.*, 495 N.W.2d 408, 410 (Minn. 1992) (interpreting the 1990 version of the statute, which is substantially similar to the current version). To satisfy due process, a plaintiff must

demonstrate that the defendant committed ““some act by which the defendant purposefully avail[ed] itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.”” *Hardrives*, 307 Minn. at 294, 240 N.W.2d at 817 (quoting *Hanson v. Denckla*, 357 U.S. 235, 253, 78 S. Ct. 1228, 1240 (1958)).

In determining whether a defendant has sufficient minimum contacts with Minnesota to satisfy due process, a court considers: (1) the quantity of contacts with Minnesota; (2) the nature and quality of the defendant’s contacts with Minnesota; (3) the connection between the cause of action and the defendant’s contacts; (4) Minnesota’s interest in providing a forum; and (5) the convenience of the parties. *Dent-Air*, 332 N.W.2d at 907. Appellant’s arguments on appeal focus on the district court’s findings on the first three factors. The first three factors determine whether minimum contacts exist and carry the most weight in a personal-jurisdiction determination. *Id.* The minimum-contacts requirement can be satisfied in one of two contexts: general personal jurisdiction or specific personal jurisdiction. *Domtar, Inc. v. Niagara Fire Ins. Co.*, 533 N.W.2d 25, 30 (Minn. 1995).

“General personal jurisdiction exists when a nonresident defendant’s contacts with the forum state are so substantial and are of such a continuous and systematic 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.” *Christian v. Birch*, 763 N.W.2d 50, 59 (Minn. App. 2009) (citing *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 415-16, 104 S. Ct. 1868, 1872-73 (1984)). Specific personal jurisdiction exists

when the defendant's contacts with the forum state, even if limited, are connected with the plaintiff's claim, such that the claim arises out of or relates to the defendant's contacts with the forum. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472, 105 S. Ct. 2174, 2182 (1985). We will examine each of the first three factors in the five-factor test described in *Dent-Air* to determine if personal jurisdiction over respondent, either general or specific, exists in this case.

#### *The Quantity of Respondent's Contacts with Minnesota*

To sustain general personal jurisdiction, the quantity of a defendant's contacts with a forum state should be "numerous and fairly frequent or regular in occurrence." *Hardrives*, 307 Minn. at 295, 240 N.W.2d at 817. Appellant contends that the district court, in determining that the quantity of respondent's contacts with Minnesota do not support general personal jurisdiction, erred by improperly relying on evidence that respondent's business with Minnesota constituted only 0.07% of its total income and that respondent purchased only \$14,848.28 in parts, or 2% of its overall parts purchases, from Minnesota. While the "[p]ercentage of a company's sales in a given state [is] generally irrelevant," the issue of whether a "defendant's activity in the forum state is continuous and systematic" is the critical question. *Lakin v. Prudential Sec., Inc.*, 348 F.3d 704, 709 (8th Cir. 2003) (quotation omitted). But the district court did not consider the percentages of respondent's Minnesota business in isolation. Rather, it also found that respondent did not work in Minnesota, had no agent in Minnesota, had its only facility in Colorado, and maintained, at best, a website through which customers in other states could contact its Colorado facility. The district court further found that respondent had

only “a handful” of Minnesota customers, one of which was based in Texas and only billed in Minnesota. These findings, based on the evidence in the record, support the district court’s conclusion that respondent’s contacts with Minnesota were not sufficiently numerous or frequent.

Appellant also points to the fact that respondent placed 593 phone calls to Minnesota over approximately three and three-quarters years as evidence of respondent’s substantial contacts with Minnesota. But the district court found that these phone calls represented, at best, two percent of appellant’s overall call volume during this period. Moreover, the evidence that appellant cites consists of a listing containing only the date, time, phone number, location, and rate type of the calls. As the district court observed, it could be inferred that respondent called Minnesota numbers “for work relating to aircraft based anywhere in the United States or the world.” Because appellant has not shown that respondent’s activities in Minnesota were substantial with respect to Minnesota or that its activities in Minnesota were “continuous and systematic,” we conclude that the quantity of respondent’s contacts in Minnesota weighs against exercising general personal jurisdiction.

*The Nature and Quality of Respondent’s Contacts with Minnesota*

In reviewing the nature and quality of the contacts, a district court attempts to ascertain whether a defendant purposefully availed itself of the benefits and protections of Minnesota law. *Dent-Air*, 332 N.W.2d at 907. The question is whether the defendant had “fair warning” of being sued in Minnesota. *KSTP-FM, LLC v. Specialized Commc’ns, Inc.*, 602 N.W.2d 919, 924 (Minn. App. 1999).

Appellant first argues that, although respondent may have had limited direct contact with Minnesota, Minnesota has general personal jurisdiction over respondent under a stream-of-commerce theory. The stream-of-commerce theory is intended to create jurisdiction over entities that seek to serve the market of the forum state. *See World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297-98, 100 S. Ct. 559, 567 (1980) (“[I]f the sale of a product . . . is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve directly or indirectly, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States.”). Under the stream-of-commerce theory, a forum state may exercise personal jurisdiction over a corporation that delivers its products or services into the stream of commerce with the expectation that they will be purchased by consumers in the forum state. *Id.*; *see also Bergherr v. Sommer*, 523 N.W.2d 17, 22 (Minn. App. 1994) (applying the stream-of-commerce theory to service providers), *review granted* (Minn. Dec. 20, 1994) *and appeal dismissed* (Minn. Jan. 25, 1995). But “mere awareness” that a product or service will find its way into the forum state does not suffice to create personal jurisdiction under the stream-of-commerce theory. *Asahi Metal Indus. Co. v. Superior Court of Cal., Solano County*, 480 U.S. 102, 112, 107 S. Ct. 1026, 1032 (1987).

The facts of this case do not support an argument that respondent sought to serve the market in Minnesota either directly or indirectly. As noted, respondent had no facilities or agents in Minnesota, did not market or advertise in Minnesota, and did nothing to secure Jensen’s business other than towing Jensen’s aircraft to its location for temporary storage as a consequence of respondent’s agreement with the nearby airport.

Appellant contends that this case is analogous to *Vang v. Whitby Tool & Eng'g Co.*, in which a federal district court ruled that Minnesota had jurisdiction over a foreign manufacturer who sold a single machine to a distributor, knowing that the machine would end up in Minnesota. 484 F. Supp. 2d 966, 971-72 (D. Minn. 2007). But unlike this case, the defendant in *Vang* had “created a long-lasting distribution network to service the entire United States with its products.” *Id.* “A foreign manufacturer that successfully employs one or two distributors to cover the United States intends to reap the benefit of sales in every state where those distributors market.” *Id.* at 971 (quoting *Clune v. Alimak AB*, 233 F.3d 538, 544 (8th Cir. 2000)).

Appellant also relies on *Morris v. SSE, Inc.*, 843 F.2d 489 (11th Cir. 1988), to support her stream-of-commerce theory. In *Morris*, the Eleventh Circuit found that personal jurisdiction existed over the manufacturer of a parachute automatic-activation device that repaired three of its devices and then returned them to the forum state. 843 F.2d at 494-95. But the defendant in *Morris* took the affirmative steps of shipping and receiving items to and from the forum state; whereas respondent received, fixed, and released Jensen’s aircraft in Colorado. *See Gifford v. Thinking Outside, LLC*, 506 F. Supp. 2d 1104, 1112 (N.D. Fla. 2007) (distinguishing *Morris* on the ground that the defendant in *Morris* received and shipped product to and from the forum state, while the defendant in *Gifford* manufactured pallets that incidentally wound up in the forum state). Absent any evidence of respondent’s intent to serve the Minnesota market, we conclude that the stream-of-commerce theory is inapplicable. *See Charlie Fowler Evangelistic Ass’n, Inc. v. Cessna Aircraft Co.*, 911 F.2d 1564, 1566-67 (11th Cir. 1990) (determining



that the defendant “simply repaired an engine part on a single aircraft which was headed out of state” and “it did not place a product into the national stream of commerce” (quotation marks omitted)).

Appellant next argues that respondent’s website, which states that respondent has “worldwide expertise” and posts a toll-free number and an inquiry form for the use of customers outside of Colorado, weighs in favor of general personal jurisdiction. “[T]he nature and quality of a web site . . . is an important factor” in a determination of whether personal jurisdiction exists. *Lakin*, 348 F.3d at 711. In *Lakin*, however, the Eighth Circuit observed that, in most cases, the question of whether a website can create personal jurisdiction is pertinent to the issue of specific personal jurisdiction. *Id.* In determining whether a defendant’s website satisfies the requirements of general personal jurisdiction, the Eighth Circuit first applied the test articulated in *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119, 1124 (W.D. Pa. 1997), but also required contacts with the forum state through the website to be of a substantial quantity. *Id.* at 712. The *Zippo* court created a “sliding scale” to measure the nature and quality of commercial activity on a website in order to determine the likelihood of finding specific personal jurisdiction. 952 F. Supp. at 1124. At one end of the scale is a “passive website.” *Id.* In *Zippo*, the court described a passive website as one that “does little more than make information available to those who are interested in it is not grounds for the exercise [of] personal jurisdiction.” *Id.* The *Zippo* court’s test supports the district court’s conclusion here that respondent’s website was “passive” and “at best . . . a worldwide website which allows customers to contact [respondent’s] sole facility in Colorado.” We agree that appellant’s

website is not sufficiently interactive to meet even the first part of the test in *Lakin*, without reaching whether contacts through the website were of a substantial quantity.

The nature and quality of respondent's contacts with Minnesota do not support personal jurisdiction. Actual knowledge that a defendant delivered goods to the state and subsequent contacts related to those goods do not constitute "fair warning" that the defendant might be subject to suit in Minnesota. *KSTP-FM*, 602 N.W.2d at 925. As stated, respondent maintained a passive website but did not market or advertise in Minnesota, and the record contains no evidence that respondent performed work anywhere other than in Colorado. In addition, the record indicates that Jensen's choice to contract with respondent most likely arose from respondent's proximity to and business relationship with the Colorado airport where Jensen's aircraft sustained damage in 2003. *See Fowler*, 911 F.2d at 1567 (determining that a defendant did not purposefully avail itself of the laws of the forum state when it had "done nothing to encourage [the plaintiff's] business to come to it"). Neither respondent's knowledge that Jensen's plane was bound for Minnesota, nor respondent's other limited contacts with Minnesota, constitute purposeful availment of the benefits and protections of Minnesota law or "fair warning" such that respondent might be sued in Minnesota.

*The Connection between the Cause of Action and Respondent's Contacts with Minnesota*

Finally, appellant argues that Minnesota has specific personal jurisdiction over respondent because respondent performed services on an aircraft that it knew was bound for Minnesota. A state has specific personal jurisdiction over a nonresident defendant when "the defendant's conduct and connection with the forum State are such that he

should reasonably anticipate being haled into court there.” *World-Wide Volkswagen*, 444 U.S. at 297, 100 S. Ct. at 567. “A nonresident’s contacts with the forum state, not with residents of the forum state, determine whether minimal contacts exist.” *KSTP-FM*, 602 N.W.2d at 923. Appellant again relies on respondent’s knowledge that Jensen’s plane would likely fly in Minnesota after it was repaired, as well as respondent’s other business activities in Minnesota. But the record contains no evidence that respondent performed any specific action in Minnesota that gave rise to appellant’s claims. Appellant has failed to show a connection between respondent’s contacts with Minnesota and her claims. Based on our review of the three factors used to assess whether respondent had minimum contacts with the forum state to support personal jurisdiction, we conclude that the district court properly granted respondent’s motion to dismiss based on lack of personal jurisdiction.

**Affirmed.**