

ARKANSAS COURT OF APPEALS

DIVISION II
No. CA12-1046

RANDALL MORRIS

APPELLANT

V.

SHERI CHRISTOPHER

APPELLEE

Opinion Delivered MAY 8, 2013

APPEAL FROM THE GARLAND
COUNTY CIRCUIT COURT
[NO. CV-12-585-1]

HONORABLE JOHN HOMER
WRIGHT, JUDGE

AFFIRMED

KENNETH S. HIXSON, Judge

Randall Morris appeals from an order of the Garland County Circuit Court dismissing his complaint against appellee Sheri Christopher for lack of personal jurisdiction. We affirm.

Appellant Randall Morris, a resident of Garland County, Arkansas, filed an action against Sheri Christopher, a resident of Hawaii, alleging the following causes of action: defamation, false light invasion of privacy, tortious interference with existing business relations, retaliation, and civil conspiracy. Morris also operates a business in Garland County.

Appellant alleged that appellee had directed communications designed to defame him and damage his business. He alleged that the defamatory comments were sent through an email, a private Facebook message to a third party, and posted on a website called MerchantCircle, which he alleged was viewed by thousands of people every day. He alleged



that these communications were about him personally and about his business and that he had sustained damages due to the remarks.

Appellee filed a motion to dismiss for lack of personal jurisdiction, contending that she had never been to Arkansas, that the actions complained of happened outside of Arkansas, and that contacts between the parties had been through electronic means through servers of an unknown location. She attached to her motion to dismiss a brief stating why the court did not have personal jurisdiction over her; an affidavit from her; copies of emails exchanged between the parties; and an affidavit from Timothy Christopher, her husband.

Appellant filed a response to appellee's motion to dismiss, alleging that the court had personal jurisdiction over appellee, and attached an affidavit and a brief in support.

Without a hearing, the court entered an order granting appellee's motion to dismiss and finding that no basis existed for the State of Arkansas to assume jurisdiction over appellee.

Appellant brings this appeal, contending that when appellee purposefully directed communications via the internet about him, she knew those communications would be viewed by people in Arkansas and by those who knew or did business with him. By doing so, he argues, she subjected herself to the personal jurisdiction of Arkansas courts.

I. *Standard of Review*

We treat appellee's motion to dismiss as one for summary judgment. It is well-settled that when a circuit court considers matters outside the pleadings, appellate courts treat a motion to dismiss as one for summary judgment. *Hotfoot Logistics, LLC v. Shipping Point Mktg., Inc.*, 2013 Ark. 130, 426 S.W.3d 448. *See also Twin Springs Grp., Inc. v. Karibuni, Ltd.*,



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2009 Ark. App. 649, 344 S.W.3d 100. In the case at bar, attached to the motion to dismiss and the response to the motion to dismiss were affidavits and copies of emails exchanged between the two parties. Therefore, we can determine that the court looked at documents outside of the pleadings.

Summary judgment should only be granted when it is clear that there are no genuine issues of material fact to be litigated and the moving party is entitled to judgment as a matter of law. *Twin Springs Grp., supra*. In appeals from the granting of summary judgment, all proof submitted must be viewed in the light most favorable to the party resisting the motion, and any doubts and inferences must be resolved against the moving party. *Twin Springs Grp., supra*. The reviewing court decides if the granting of summary judgment was appropriate by determining whether the evidence presented by the moving party in support of the motion left a material question of fact unanswered. *Twin Springs Grp., supra*.

II. Personal Jurisdiction

Arkansas courts have personal jurisdiction over all persons and corporations, and all causes of action or claims for relief, to the maximum extent permitted by the Due Process of Law Clause of the Fourteenth Amendment to the United States Constitution. Ark. Code Ann. § 16-4-101 (Repl. 2010). In *Yanmar Co. v. Slater*, 2012 Ark. 36, at 5–6, 386 S.W.3d 439, 444, our supreme court outlined our requirements of personal jurisdiction as follows:

The seminal case on the issue of personal jurisdiction is *International Shoe Co. v. Washington*, 326 U.S. 310, 66 S.Ct. 154 (1945), wherein the United States Supreme Court first articulated the minimum-contacts test as a way to establish jurisdiction over a defendant not physically present in the state. The touchstone principle announced by the Court in *International Shoe* is that due process requires “certain minimum contacts with [the forum state] such that the maintenance of the suit does not offend



‘traditional notions of fair play and substantial justice.’” [Citations omitted]. The Court in *International Shoe* looked to the nature of the contacts that the non-resident defendant had with the forum state, explaining that attention must be paid to the “quality and nature” of those contacts, and also to whether that defendant through those contacts enjoyed the “benefits and protection” of the laws of the foreign state. [Citations omitted]. The Court further acknowledged that there may be situations in which a nonresident-defendant’s contacts with a forum state may be so substantial and continuous as to justify jurisdiction over that defendant, even though the cause of action is “entirely distinct from those activities.”

In *Twin Springs Group, supra*, we outlined the test for determining whether an Arkansas court can assume personal jurisdiction over a non-resident defendant. We stated:

To satisfy due process, assumption of personal jurisdiction over a nonresident defendant must be based on “minimum contacts” by the nonresident defendant in the forum state so as to not offend “traditional notions of fair play and substantial justice.” [Citations omitted]. The contacts between the nonresident defendant and the forum state must be such that a defendant would have a reasonable anticipation that he or she would be haled into court in that state. [Citations omitted]. A finding of personal jurisdiction requires that there be some act by which the defendant purposefully avails himself or herself of the privilege of conducting business in the forum state. [Citations omitted]. A single contact can provide the basis for the exercise of jurisdiction over a nonresident defendant if there is a substantial connection between the contact and the forum state. [Citations omitted].

Twin Springs Grp., 2009 Ark. App. 649, at 2–3, 344 S.W.3d at 102–03.

As the supreme court noted in *John Norrell Arms, Inc. v. Higgins*, 332 Ark. 24, 962 S.W.2d 801 (1998), it is essential for a finding of personal jurisdiction that there be some act by which the defendant purposefully avails himself or herself of the privilege of conducting business in the forum state.

A court considers five factors when determining the sufficiency of a defendant’s contacts with the forum state: 1) the nature and quality of the contacts, 2) the quantity of the contacts, 3) the relation of the cause of action to the contacts, 4) the interest of the forum state



in providing a forum for its residents, and 5) the convenience of the parties. *Hauser v. Sims*, 2012 Ark. App. 295, 423 S.W.3d 104. The defendant’s contacts with the forum state must also be sufficient to cause him to reasonably anticipate being haled into court there. *Id.* This “fair warning” requirement is satisfied if the defendant has purposefully directed his activities at residents of the forum state, and the litigation results from alleged injuries that arise out of or relate to those activities. *Id.* It ensures that a defendant will not be haled into a jurisdiction solely as a result of random, fortuitous, or attenuated contacts. *Id.*

III. *The Email and The Facebook Message*

The appellant resided in Arkansas. The appellee resided in Hawaii. The appellee’s family resided in Mississippi. Appellant alleged that appellee (in Hawaii) sent an email to her family (in Mississippi) in which she stated that she would not be visiting them in Mississippi for Christmas because appellant had been on a mission to humiliate her and had bullied her and she did not want her children around him.¹ We cannot say that the exchange of an email between a resident of Hawaii and a resident of Mississippi meets the minimum-contacts test for the State of Arkansas. The email originated in Hawaii and was sent to her family in Mississippi. It contained a statement about appellant and why the appellee would not be returning home for Christmas. Sending an email from a defendant living in Hawaii to residents in Mississippi should not cause a defendant to reasonably believe that she would be haled into court in Arkansas. This “fair-warning” requirement was not met because appellee did not purposefully direct her activities at appellant in Arkansas.

¹The email was forwarded to appellant by Tim Christopher.



We reach the same result when applying the minimum-contacts test to the private message that was sent from appellee’s husband’s Facebook account to a third party in the Czech Republic. Appellant asserts that appellee (in Hawaii) sent a private Facebook message to a friend of his (in the Czech Republic) stating that he was dangerous. The third party (in the Czech Republic) then forwarded the message to appellant (in Arkansas). Appellant attached a copy of the forwarded message as an exhibit to his complaint. The exhibit shows that message came from the account belonging to “Timothy Lee Christopher,” who is appellee’s husband. There is no proof that the message came from appellee. The message concluded by stating if the third party wanted more information, she should contact the person sending the private Facebook message. There was no evidence that any such subsequent contact occurred. A private Facebook message from Hawaii to the Czech Republic does not show minimum contacts with this state.

IV. MerchantCircle

MerchantCircle is a website where individuals may post comments pertaining to various businesses. Appellant asserted in his complaint that appellee posted a defamatory remark on the MerchantCircle website, which stated: “Please beware of the proprietor, however, Randy. We had an extremely negative experience with him. He is extremely scary if he doesn’t agree with your complaints. Delicious cotton candy. Really original and great flavors.” The post was made by someone who identified herself as “soccermom71901” and as living in Hot Springs. Appellant asserts that this court should assume that appellee posted the comment because “[t]he date of the defamatory comment placed on MerchantCircle is



the same date as the first email” sent by appellee from Hawaii to her relatives in Mississippi. In his affidavit, appellant alleged that he “rebuffed [appellee] when she interjected between my private correspondence with Tim (appellee’s husband). And this is the reason that Sheri Christopher took to the reputable and popular www.merchantcircle.com on 5/28/12 to harm me . . . harming me not only in Arkansas, but in all 50 states that I do business in, including Hawaii.” Appellee did not specifically deny posting the comment on the web page. In fact, her affidavit does not mention the post.

Assuming that appellee was the person who posted on MerchantCircle, again we cannot say that this satisfies the minimum-contacts test. Appellant cites three cases from outside our jurisdiction for his proposition that because appellee purposely directed communications via the internet about him and because appellee knew those communications would be viewed by people in Arkansas and those doing business with appellant, she subjected herself to the jurisdiction of Arkansas courts. We do not find those cases binding or persuasive. Further, we cannot say that the appellee in this case, even assuming she did make the post, would reasonably anticipate being haled into court here. Such a solitary posting does not constitute continuous, systematic, or substantial contact under these circumstances.

Viewing the evidence in the light most favorable to appellant—that appellee wrote the email to Mississippi, that she wrote the Facebook message to a third party in the Czech Republic, and that she posted the comment on MerchantCircle—we cannot say that collectively those assertions satisfy the minimum-contacts test establishing personal jurisdiction. The contacts were not continuous, systematic, or substantial. The court’s



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exercise of jurisdiction under these circumstances would offend traditional notions of fair play and substantial justice and would result in the appellee being haled into Arkansas solely as a result of random, fortuitous, or attenuated contacts.

Viewing the contacts either individually or collectively, we cannot say that a genuine issue of material fact existed and that the court erred in granting appellee's motion for summary judgment.

Affirmed.

WYNNE and WOOD, JJ., agree.

Jonathan D. Jones, for appellant.

Taylor Law Partners, LLP, by: *Rick Woods*, for appellee.