

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-1752
Summary Calendar

WINSTON LEE, Individually and on
behalf of the Estate of Alyson Lee,

Plaintiff-Appellant,

versus

RON ALLEN, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court for the
Northern District of Texas
(4:87-CV-97-A)

(August 2, 1994)

Before GARWOOD, SMITH and DeMOSS, Circuit Judges.*

GARWOOD, Circuit Judge:

Plaintiff-appellant Winston Lee (Lee) filed suit against Delta Airlines (Delta) and defendants-appellees Ron Allen (Allen), C. A. Smith (Smith), Harry Alger (Alger), and James Kater (Kater) (collectively, the individual defendants). After granting summary

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

judgment for Delta, the district court granted the individual defendants' motion to dismiss for lack of personal jurisdiction. Thereafter, Lee filed a motion to reconsider in which he requested that, rather than dismissing his suit, the district court transfer the case to Georgia. The district court denied the motion. We affirm.

Facts and Proceedings Below

On August 2, 1985, Delta Flight 191 crashed while attempting to land at Dallas/Fort Worth Airport. Alyson Lee, one of the flight attendants on Flight 191, was killed in the fire which followed the crash. Appellant Lee is the surviving spouse of Alyson Lee. On February 9, 1987, Lee filed suit against Delta in the United States District Court for the Northern District of Texas, alleging negligence in connection with the death of his wife. On July 31, 1987, three days before the expiration of the statute of limitations, Lee filed an amended complaint naming as additional defendants Allen, Smith, Alger, and Kater, all of whom were Georgia-based executives of Delta.

The district court subsequently granted summary judgment in favor of Delta based on its conclusion that the Florida Workers' Compensation Act provided the exclusive remedy for Lee's claims against Delta. At the same time, the district court severed the suit against Delta into a separate action. Thereafter, Lee filed, and then voluntarily dismissed, an appeal against Delta.

On December 18, 1987, the individual defendants filed a motion to dismiss for lack of personal jurisdiction. On April 25, 1988, the district court denied the motion. Instead, the court dismissed

without prejudice Lee's claims against the individual defendants for Lee's failure to comply with Local Rule 3.1(h).¹ On appeal to this Court, we concluded that because the statute of limitations had run, the court's dismissal amounted to a dismissal with prejudice for failure to prosecute. So construed, we remanded the case to the district court to determine if such a severe sanction was warranted.

After remand, the individual defendants filed a motion to reconsider their motion to dismiss for lack of personal jurisdiction, and on June 7, 1992, the district court granted the motion and dismissed Lee's complaint. On June 22, 1992, Lee filed a motion for reconsideration, arguing that the district court should reinstate his claims because it had personal jurisdiction over the individual defendants, or, in the alternative, that the case should be transferred to the United States District Court for the Northern District of Georgia pursuant to 28 U.S.C. § 1404. The district court denied the motion. Lee now brings this appeal.

Discussion

On appeal, Lee contends that the district court erred in two respects. First, he argues that the district court had personal jurisdiction over the individual defendants based on their out-of-state conduct which had foreseeable consequences inside of Texas. Second, Lee contends that even if personal jurisdiction was

¹ Rule 3.1(h) of the Local Rules for the United States District Court for the Northern District of Texas allows a court to dismiss a case without notice and without prejudice if a plaintiff fails to move for a default judgment within ninety days after a defendant is in default.

lacking, the district court abused its discretion in failing to transfer the action to the Northern District of Georgia.

I. *In Personam* Jurisdiction

The individual defendants are executives of Delta who live and work in Georgia. It is undisputed that none of the individual defendants knew Alyson Lee, had any particular responsibilities as to Flight 191, or had any other contacts with Texas.² Lee does not allege that any of the acts that the individual defendants were alleged to have committed occurred in the state of Texas. Nor does he allege anything they did or failed to do in relation to Flight 191. The sole basis for Lee's contention that the district court had personal jurisdiction is his assertion that because the individual defendants in Georgia "were grossly negligent in failing to provide the decedent, Alyson Lee, with a reasonably safe place

² In support of their motion to dismiss, each individual defendant filed an affidavit in which he averred that he is a citizen and resident of the state of Georgia, that he is or was an officer or employee of Delta, and that his duties had been substantially performed by him in Georgia. Further, each defendant made a statement substantially identical to the following:

"In the course of my duties with Delta, I never met nor spoke with Mrs. Alyson Lee that I can recall and I did not employ her or supervise her. I have not ever had any direct supervisory responsibility for flight attendants employed by Delta.

Neither on August 2, 1985, nor prior to that date was I ever involved in any decision or action with regard specifically to Delta flight 191 to Dallas nor with respect to Mrs. Alyson Lee being a flight attendant on that flight."

Lee did not provide the district court with any evidence contradicting the individual defendants' affidavits or otherwise tending to establish jurisdiction.

to work," without any statement whatever of the nature of the negligence or of the resulting unsafeness, they should have foreseen the consequences of their actions which resulted in Texas.

A district court's determination that personal jurisdiction can be exercised over a nonresident defendant is a question of law, reviewable *de novo* where the facts are not disputed. *Bullion v. Gillespie*, 895 F.2d 213, 216 (5th Cir. 1990). However, where the alleged facts are disputed, "the party who seeks to invoke the jurisdiction of the district court bears the burden of establishing contacts by the nonresident defendant sufficient to invoke the jurisdiction of the court." *WNS, Inc. v. Farrow*, 884 F.2d 200, 203 (5th Cir. 1989) (citation omitted). The party with such a burden need only present facts sufficient to constitute a *prima facie* case of personal jurisdiction. *Id.*

In a federal diversity suit, a court may exercise personal jurisdiction over a nonresident defendant "if: (1) the state's long-arm statute applies, as interpreted by the state's courts; and (2) if due process is satisfied under the fourteenth amendment to the United States Constitution." *Cycles, Ltd. v. W.J. Digby, Inc.*, 889 F.2d 612, 616 (5th Cir. 1989) (citation omitted). The district court's personal jurisdiction turns upon the reach of the Texas long-arm statute,³ which has been interpreted by Texas courts as extending to the limits of due process.⁴ Hence, a nonresident's

³ See Tex. Civ. Prac. & Rem. Code Ann. §§ 17.041-17.045 (Vernon 1986).

⁴ See *Bullion v. Gillespie*, 895 F.2d 213, 216 (5th Cir. 1990); *Kawasaki Steel Corp. v. Middleton*, 699 S.W.2d 199, 200 (Tex. 1985); *Hall v. Helicopteros Nacionales de Colombia, S.A.*, 638

amenability to suit under the Texas long-arm statute hinges on whether jurisdiction comports with due process. *Interfirst Bank Clifton v. Fernandez*, 844 F.2d 279, 282 (5th Cir.), *modified on other grounds*, 853 F.2d 292 (1988).

Due process requires federal courts seeking to exercise personal jurisdiction over nonresident defendants to conclude (1) that the defendant has purposefully established "minimum contacts" with the forum state and, (2) that exercising jurisdiction over the nonresident would not offend "'traditional notions of fair play and substantial justice.'" See *Asahi Metal Indus. Co. v. Superior Court*, 107 S.Ct. 1026, 1028-29 (1987) (quoting *International Shoe Co. v. Washington*, 66 S.Ct. 154, 158 (1945)); *Burger King Corp. v. Rudzewicz*, 105 S.Ct. 2174, 2184 (1985).

Minimum contacts with a forum state may arise incident to a federal court's "general" or "specific" jurisdiction over a nonresident defendant. See *Fernandez*, 844 F.2d at 283. "General jurisdiction" is personal jurisdiction based on a defendant's contacts with the forum that are unrelated to the controversy. *Helicopteros Nacionales de Colombia v. Hall*, 104 S.Ct. 1868, 1872 (1984). To exercise general jurisdiction, the court must determine whether the nonresident defendant maintains "continuous and systematic" contacts with the forum state sufficient to support a reasonable exercise of jurisdiction. See *Fernandez*, 844 F.2d at 283; see also *Stuart v. Spademan*, 772 F.2d 1185, 1191 (5th Cir.

S.W.2d 870, 872 (Tex. 1982), *rev'd on other grounds*, 104 S.Ct. 1868 (1984).

1985) (citing *Keeton v. Hustler Magazine, Inc.*, 104 S.Ct. 1473, 1480-81 (1984)). Clearly, the facts of this case do not present such a general jurisdictional claim against the individual defendants. Their amenability to suit, if warranted at all, turns upon specific jurisdictional contacts and their relationship to the alleged tort in Texas.

"Specific jurisdiction" is personal jurisdiction based on contacts with the forum that are related to the particular controversy. *Helicopteros Nacionales*, 104 S.Ct. at 1872. Even a single purposeful contact may in a proper case be sufficient to meet the requirement of minimum contacts when the cause of action arises from the contact. *Micromedia v. Automated Broadcast Controls*, 799 F.2d 230, 234 (5th Cir. 1984). But to exercise specific jurisdiction, the court must examine the relationship among the defendant, the forum, and the litigation to determine whether maintaining the suit offends traditional notions of fair play and substantial justice. *Holt Oil & Gas Corp. v. Harvey*, 801 F.2d 773, 777 (5th Cir. 1986) (citing *Shaffer v. Heitner*, 97 S.Ct. 2569, 2579 (1977)), *cert. denied*, 107 S.Ct. 1892 (1987).

Specific jurisdiction "may arise without the nonresident defendant's ever stepping foot upon the forum state's soil or may arise incident to the commission of a single act directed at the forum." *Bullion*, 895 F.2d at 216 (footnote and citation omitted). However, jurisdiction over the employees of a corporation may not be predicated on jurisdiction over the corporation itself, but must be based on their *individual* contacts with the forum state. 4 Wright & Miller, FEDERAL PRACTICE AND PROCEDURE, § 1069, p. 69 (1987);

Ten Mile Indus. Park v. Western Plains Serv. Corp., 810 F.2d 1518, 1527 (8th Cir. 1987); *Wegerer v. First Commodity Corp. of Boston*, 744 F.2d 719, 727 (10th Cir. 1984); *Escude Cruz v. Ortho Pharmaceutical Corp.*, 619 F.2d 902, 906 (1st Cir. 1980); *Forsythe v. Overmyer*, 576 F.2d 779, 783-84 (9th Cir.), cert. denied, 99 S.Ct. 188 (1978); accord *Calder v. Jones*, 104 S.Ct. 1482, 1487 (1984) (holding that forum-state contacts of writer and editor for newspaper with national distribution "are not to be judged according to their employer's activities there"). An appropriate inquiry is whether a defendant purposefully availed himself of the privilege of conducting activities in-state, thereby invoking the benefits and protections of the forum state's laws. *Burger King*, 105 S.Ct. at 2183-84 (quoting *Hanson v. Denckla*, 357 U.S. 235, 253, 78 S.Ct. 1228, 1239 (1958)).

In the case *sub judice*, Lee argues that we should find the individual defendants amenable to suit in Texas because they were negligent in failing to provide Alyson Lee with a reasonably safe place to work, which resulted in her wrongful death in Texas. Lee does not allege that the individual defendants had any connection whatsoever to the state of Texas. He does not provide any evidence about the nature of the *individual* defendants' activities in Georgia other than to conclusorily assert that they were *somehow* negligent in failing to provide a safe place to work and that *Delta* regularly and frequently flew into Texas. Lee provides no basis for concluding that the *individual defendants* not *Delta* had purposefully availed themselves of the privilege of conducting activities in-state or had taken any action directed at the state

of Texas. See *Southmark Corp. v. Life Investors, Inc.*, 851 F.2d 763, 772 (5th Cir. 1988); *Wilson v. Belin*, 20 F.3d 644, 649 (5th Cir. 1994). Thus, we hold that Lee's wholly vague and general allegations are not enough to satisfy his burden of establishing contacts by the nonresident defendants sufficient to invoke the jurisdiction of the district court.

II. Transfer

Lee argues, in the alternative, that even if the district court properly found personal jurisdiction lacking, the court abused its discretion in failing to transfer the action to the Northern District of Georgia. The decision to dismiss a case rather than transfer it is within the sound discretion of the district court, and we may reverse only for a "clear abuse of discretion." *Piper Aircraft Co. v. Reyno*, 102 S.Ct. 252, 266 (1981); *Hapaniewski v. City of Chicago Heights*, 883 F.2d 576, 578 (7th Cir. 1989), *cert. denied*, 110 S.Ct. 1116 (1990). The relevant provision for such a transfer is 28 U.S.C. § 1404(a), which states: "For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." Thus, we may reverse only if we conclude that the interests of justice clearly require transfer. We cannot come to such a conclusion.

Lee added the individual defendants in his second amended complaint filed three days before the expiration of the statute of limitations. He filed the case in Texas knowing that the individual defendants did not reside or work in that state, and he

must have known that personal jurisdiction was questionable at best. The individual defendants filed their first motion to dismiss in 1987. The action was dismissed on other grounds, appealed to this Court, and remanded. In 1993, the individual defendants filed their motion to reconsider the question of personal jurisdiction, to which Lee responded. At no time prior to the court's second dismissal did Lee suggest that his claims against the individual defendants be transferred. Not until six years after filing this action, and after it had been dismissed for lack of personal jurisdiction, did Lee make his request for transfer as an alternative to his primary request that the court reconsider the jurisdictional decision. Clearly, justice does not require transfer in this instance. We conclude that the district court did not abuse its discretion in dismissing rather than transferring the case.

Conclusion

For the reasons stated above, Lee's arguments are rejected and the district court's dismissal of his claims is hereby

AFFIRMED.