

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

CHARLES A. KOSS

Plaintiff,

-vs-

TAMMY M. IRVIN, ET AL.

Defendants.

IN THE COMMON PLEAS COURT  
FOURTEENTH JUDICIAL CIRCUIT  
CASE NO: 2021CP0701523

**ORDER DISMISSING CASE AGAINST  
TAMMY IRVIN**

**RECEIVED**

**Nov 23 2022**

**SC Court of Appeals**

On August 23, 2021, Charles A. Koss filed a pro se complaint the aforementioned lawsuit against Tammy M. Irvin and Emily Cocord with the causes of action for defamation. The Plaintiff, Mr. Koss and Ms. Irvin were married and divorced and Ms. Cocord is the daughter of Ms. Irvin. After the divorce was resolved Mr. Koss filed this lawsuit claiming that the Defendants made derogatory remarks about Mr. Koss that he violated criminal laws and would lose his license to practice law in California.

On December 28, 2021, the Plaintiff filed a Motion to Compel answers to discovery in the aforementioned matter.

On November 16, 2021, Tammy Irvin, the only party served at the time, filed a Motion to Dismiss or in the alternative a Motion for a More Definite Statement. On January 4, 2022 at 10:00 am the Court held a hearing on the Motion to Dismiss and Motion for a more definite statement. In support of her Motion to Dismiss, Tammy Irvin filed an affidavit in which she stated that she did not make the statements which Mr. Koss alleged and, in the alternative, asked for the Plaintiff to amend his complaint to describe the exact statements which he believed were defamatory so the Defendant could determine if the allegations were sufficient to establish jurisdiction in South Carolina. After the divorce began, she immediately moved to Alaska once the divorce between

Mr. Koss and Ms. Irving was initiated. At the hearing the Court asked counsel and the Plaintiff to meet and confer to try to reach a resolution and allowed the Defendants to refile the Motion to Dismiss, or the Plaintiff could amend his complaint to accommodate the Defendant's concerns.

Counsel for the Defendant and the Plaintiff confirmed that after the hearing they met and conferred by having lunch together to discuss the pending issues and the case itself. After they meet and conferred, Mr. Koss refused to amend his complaint and believed that the allegations were sufficient in the complaint to establish jurisdiction.

On February 2, 2022, the Defendants filed a renewed Motion to Dismiss, or in the Alternative Motion for a More Definite Statement and Motion to Strike.

On June 2, 2022, the Court scheduled a hearing on the Motion to Compel, but did not set a hearing on the renewed Motion to Dismiss. At this hearing the Court ordered the Defendants to answer the discovery requests, even with the pending Motion to Dismiss. The Defendants complied with this Order, but filed a Motion for Reconsideration on June 30, 2022 since the Court had not established that it had jurisdiction and the Defendants did not want their production of discovery responses to be deemed to establish jurisdiction.

On June 2, 2022, the Court held a hearing on the Motion for Reconsideration and filed its Order on July 19, 2022, the Court denied the Motion for Reconsideration, but also explained that “[t]he jurisdictional claims made by the Defendant are not waived by complying with the Court’s previously Order compelling Discovery”.

On July 18, 2022, the Honorable Judge R. Ferrell Cothran, Jr. heard the Renewed Motion to Dismiss the Motion for a More Definite Statement and Motion to Strike. At the hearing, the Defendants relied on the Affidavit of Tammy Irvin in which she explained that she believed that the entire reason for this lawsuit was to misuse the court system to maintain power and control

over her as explained by the article entitled “How Domestic Abusers Weaponize the Courts”. In addition, Ms. Irvin explained that she was married to Mr. Koss in June of 2018, and that the marriage began to break down in 2019. In November 2019, the couple began to see a marriage counselor. She also explained that her daughter Emily Cocard was living in an apartment at the marital house and Mr. Koss decided to kick her out of the apartment with only Twenty Four (24) hours notice. Ms. Irvin explained that when the apartment was vacated naked photos of Ms. Cocard were found and Mr. Koss began to distribute the photos, first to Ms. Cocard via a text message and then during the divorce proceedings Mr. Koss admitted to disturbing the naked photos of Ms. Cocard to various third parties.

Ms. Irvin explained that she moved to another gated community in South Carolina and in early 2020 she left for Alaska, never to return to South Carolina as a resident. In addition, Ms. Irvin explained that she did not commit a tort against Mr. Koss in South Carolina, nor did the allegations in the complaint ever state with any particularity that the events occurred in South Carolina. In addition, Ms. Irvin explained that to defend these claims in South Carolina she would have significant travel costs and difficulty in the defense of the claims due to the distance of travel from Alaska to South Carolina. She also denied in her affidavit that any tortious statements were ever made against Mr. Koss.

The Plaintiff did not submit any competing affidavits, but did file a Motion in Opposition to the Irvin Affidavit and Motion in Opposition to the Motion to Dismiss. At the hearing, the Defendants’ counsel argued that the burden of proof to establish long arm jurisdiction was on the Plaintiff to prove that the events occurred in South Carolina giving rise to jurisdiction in South Carolina. The Defendant further argued that the Plaintiff did not provide any indication in his complaint as to the statements, nor did he provide any specific allegations of statements made in,

or to persons in South Carolina. In addition, the Plaintiff did not provide any affidavits in response, nor even after the meet and confer did he amend his complaint to provide specific allegations that the events occurred, or were placed in South Carolina. In response, the Plaintiff responded orally at the hearing that he was certain that statements were made to persons in South Carolina, but he did not want to bother the neighbors and sought to simply depose Ms. Irvin as to the statement which he thought she made to these persons. The Court notes that Mr. Koss' damages in his complaint allege that he lost business in California as an attorney since he is not licensed in South Carolina. The Plaintiff also argued that he wished to perform jurisdictional discovery, but the Court notes that he already received discovery as a result of the Motion to Compel.

The Court also notes that at the hearing Mr. Koss does not deny that he did distribute the nude photographs of Ms. Concord and a review of the Complaint reveals that he even included a copy as the sole exhibit to the complaint in this action. A review of the complaint does not reveal any persons to whom the statements were made, the location of the persons to whom the statements were made, or the dates of the alleged statements.

In addition, although the Court relies solely on affidavits at motion hearings, the Court notes that Mr. Koss stated in open court that he did not have knowledge of the statements which he claimed were made to neighbors. Instead, Mr. Koss stated that instead of bothering the persons to whom he believed the statements were made he would simply depose the Defendants and they would admit to whom they made the alleged statements and he would establish jurisdiction. The Defendants attorney explained that the Defendants should not be forced to defend a lawsuit in South Carolina because maybe possibly something was said in, or to someone in South Carolina without any evidence and he explained that to establish jurisdiction the burden was on Mr. Koss to show that South Carolina has jurisdiction.

"It is well-settled that the party seeking to invoke personal jurisdiction over a non-resident defendant via our long-arm statute bears the burden of proving the existence of personal jurisdiction." *Id.* "At the pretrial stage, the burden of proving personal jurisdiction over a nonresident is met by a prima facie showing of jurisdiction either in the complaint or in affidavits." *Id.* at 328, 594 S.E.2d at 882. "When a motion to dismiss attacks the allegations of the complaint on the issue of jurisdiction, the court is not confined to the allegations of the complaint but may resort to affidavits or other evidence to determine jurisdiction." *Sullivan v. Hawker Beechcraft Corp.*, 397 S.C. 143, 150, 723 S.E.2d 835, 839 (Ct. App. 2012) (quoting *Coggeshall v. Reprod. Endocrine Assocs. of Charlotte*, 376 S.C. 12, 16, 655 S.E.2d 476, 478 (2007)). *Hidria, USA, Inc. v. Delo, d.d.*, 415 S.C. 533, 539, 783 S.E.2d 839, 842 (Ct. App. 2016)

After a review of the entire file, consideration of all arguments made by the Plaintiff, the Court finds that the Plaintiff has not shown a prima facie showing of jurisdiction and therefore the action must be dismissed against Ms. Irvin. Since Ms. Cocord lives in the State of South Carolina, the case against her may move forward.

SO ORDERED,



Beaufort Common Pleas

**Case Caption:** Charles A Koss VS Tammy M Irvin , defendant, et al

**Case Number:** 2021CP0701523

**Type:** Order/Dismissal

So Ordered

s/ R. Ferrell Cothran, Jr., 2144