

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF HORRY )  
 )  
 LYNN DILUCCHIO AND KEVIN )  
 KEMPER, AS CO-ADMINISTRATORS )  
 C.T.A. OF THE ESTATE OF AUGUSTA )  
 KEMPER, )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 GEORGE C. ZITZELBERGER, )  
 )  
 Defendant. )  
 )

IN THE COURT OF COMMON PLEAS  
 FIFTEENTH JUDICIAL CIRCUIT  
 CASE NO. 2024-CP-26-04462

**RECEIVED**  
**Jun 11 2025**  
**SC Court of Appeals**

**ORDER GRANTING DEFENDANT’S MOTION TO DISMISS FOR LACK OF JURISDICTION PURSUANT TO RULE 12(b)(2) SCRPC**

This matter came before me for hearing pursuant to the Motion to Dismiss Pursuant to Rule 12(b)(2), SCRPC filed by Defendant, George C. Zitzelberger, asserting that this Court lacks personal jurisdiction over him. Appearing on behalf of the Defendant, George C. Zitzelberger, was Daniel J. MacDonald, Sr., Esquire. Appearing on behalf of the Plaintiffs was Alexandra Glunt Williams, Esquire.

Based upon the Complaint, the Affidavits filed with the Court, the evidence submitted, and the arguments of counsel, I grant the Defendant’s Motion to Dismiss.

The unverified Complaint avers that the Defendant is a resident of the State of Florida. The Plaintiffs are an out-of-state trust with non-resident trustees/administrators. The Complaint further asserts that jurisdiction is proper because the alleged transfers to avoid creditors were made by Defendant’s wife, Patricia O’Connell a/k/a Patricia O’Connell-Kemper, when Defendant was a resident of Horry County, South Carolina. The Complaint further asserts that the Defendant’s wife’s transfers were made with the intent to avoid a default judgment obtained by the Plaintiffs against the wife in the State of New York. The pleading does not claim that the Defendant made the transfers, only that he received them. In support of their opposition to the Defendant’s Motion, the

Plaintiffs provided some evidence that, prior to the suit, the Defendant did own property in South Carolina and a business in South Carolina, which may have benefitted from the alleged improper transfers. The Plaintiffs also point to a prior ownership of a house, which was sold in part to satisfy the judgment against the Defendant's wife. The sale of the house was closed after the Plaintiffs filed this action. Although, it appears there was an agreement regarding the sale entered into prior to the transaction. Regardless, the property is not a part of this action. It is noted that the Defendant did not own the property sold by agreement in his individual name. He was on the title as Trustee of a Trust.

The Defendant has provided evidence that he is 73-years old, in poor health, and has not resided in South Carolina since December 2022. He currently has no assets, interests, or other contacts within South Carolina. The Defendant asserts that, at the time of the filing of this current action, he lacked the continuous and systematic contact with South Carolina required to establish general jurisdiction over the Defendant, a non-resident.

Rule 12(b)(2), SCRCP, permits the Court to dismiss a non-resident defendant for lack of personal jurisdiction. "The party invoking personal jurisdiction over a non-resident bears the burden of proving the existence of jurisdiction." See, Int'l Mariculture Resources v. Grant, 336 S.C. 434, 437, 520 S.E.2d 160, 161 (Ct. App. 1999); see also Allen v. Columbia Fin. Mgmt, Ltd., 297 S.C. 481, 484, 377 S.E.2d 352, 354 (Ct. App. 1988) (holding that because the defendant challenged personal jurisdiction, the plaintiff bore the burden of showing the existence of personal jurisdiction). Before trial, the plaintiff must "make a *prima facie* showing by pleadings and affidavits that the trial court should exercise personal jurisdiction" over the defendants. See, Allen, 297 S.C. at 484, 377 S.E.2d at 354. "When a non-resident defendant attacks the allegations of a complaint based on jurisdiction, the court is not confined to the allegations of the complaint, but may resort to affidavits or other evidence to determine jurisdiction." See, Power Prods. & Servs. Co., Inc. v. Kozma, 379 S.C. 423, 430, 665 S.E.2d 660, 664 (Ct. App. 2008).

The question of personal jurisdiction over a non-resident defendant is one which must be resolved upon the facts of each particular case. See, Cockrell v. Hillerich &

Bradsby Co., 363 S.C. 485, 491, 611 S.E.2d 505, 508 (2005). Due process requires that there exist minimum contacts between the defendant and the forum state such that maintenance of the suit does not offend traditional notions of fair play and substantial justice. Further, due process mandates that the defendant possess sufficient minimum contacts with the forum state, so that he could reasonably anticipate being haled into court there. Without minimum contacts, the court does not have the power to adjudicate the action. The court must also find that the exercise of jurisdiction is reasonable or fair. See, Cockrell v. Hillerich & Bradsby Co., 363 S.C. 485, 491, 611 S.E.2d 505,508 (2005) (citations omitted).

Under the fairness prong, the court must consider: (1) the duration of the activity of the non-resident within the state; (2) the character and circumstances of the commission of the non-resident's acts; (3) the inconvenience resulting to the parties by conferring or refusing to confer jurisdiction over the non-resident; and (4) the State's interest in exercising jurisdiction. See, Cockrell v. Hillerich & Bradsby Co., 363 S.C. 485, 491, 611 S.E.2d 505,508 (2005), citing, Clark v. Key, 304 S.C. 497, 405 S.E.2d 599 (1991) and Southern Plastics Co. v. Southern Commerce Bank, 310 S.C. 256, 260, 423 S.E.2d 128, 131(1992).

A plaintiff may attempt to demonstrate personal jurisdiction by two distinct avenues: general and specific. General jurisdiction is premised on a defendant's overall contact with the forum state, and depends upon a defendant maintaining "continuous and systematic" contacts with the state that are "so substantial and of such a nature as to justify suit against the defendant on causes of action arising from dealings entirely different from those activities." See, Cribb v. Spatholt, 382 S.C. 475, 482, 676 S.E.2d 706, 710 (Ct. App. 2009) (citing Int'l Shoe Co. v. Washington, 326 U.S. 310, 318 (1945)). Specific personal jurisdiction, on the other hand, requires a showing that the defendant has sufficient contacts with the forum relating to claims at issue such that it has purposefully availed itself of the privilege of conducting business in the forum. See, Pitts v. Fink, 389 S.C. 156, 164-65, 698 S.E.2d 626, 630-31 (Ct. App. 2010).

General personal jurisdiction must be predicated upon "an enduring relationship" with this state. S.C. Code. Ann. §36-2-802 (2003). An "enduring relationship" is characterized by contacts that are substantial, continuous, and systematic. See,

Cockrell v. Hillerich & Bradsby Co., 363 S.C. 485, 494- 95, 611 S.E.2d 505, 510 (2005); see also Coggershall v. Reproductive Endocrine Assocs. of Charlotte, 376 S.C. 12, 17, 655 S.E.2d 476, 479 (2007). In South Carolina, the threshold of contacts necessary to meet this standard is substantial, and significantly higher than the Complaint's singular allegation that the alleged transfers were initiated and received while the Defendant resided in Horry County. Even relatively periodic contacts with South Carolina are insufficient where the Defendant does not have a regular and sustained practice of directing its activities at South Carolina. See, e.g., Cockrell, 363 S.C. at 495, 611 S.E.2d at 510 (certifying products regularly sold in South Carolina insufficient to support exercising general jurisdiction); Coggershall, 376 S.C. at 17, 655 S.E.2d at 479 (performing services for nearly 3,000 South Carolina residents, doing business with multiple South Carolina vendors, and earning over \$2 million in revenues not enough to support a finding of general personal jurisdiction). The mere act of residing in Horry County at one point in time, and receiving transfers of funds from a spouse, is not sufficient to deem the Defendant essentially "at home" in this state.

The Defendant is 73-years old, in poor health, and has not resided in South Carolina since December 2022. He currently has no assets, interests, or other contacts within South Carolina. The Plaintiffs have not sufficiently alleged or proven the existence of general personal jurisdiction. The Defendant lacks the continuous and systematic contact with South Carolina required to establish general jurisdiction for the Defendant, a non-resident.

Specific jurisdiction over a cause of action arising from a defendant's contacts with the state is granted pursuant to the long arm statute. See, S.C. Code Ann. §36-2-803 (2003). South Carolina's long-arm statute has been construed to extend to the outer limits of the due process clause. See, Cockrell v. Hillerich & Bradsby Co., 363 S.C. 485, 494- 95, 611 S.E.2d 505, 510 (2005) (citing Meyer v. Paschal, 330 S.C. 175, 498 S.E.2d 635 (1998)). Because South Carolina treats its long-arm statute as co-extensive with the due process clause, the sole question becomes whether the exercise of personal jurisdiction would violate due process. See, Moosally v. W.W. Norton & Co., Inc., 358 S.C. 320, 329, 594 S.E.2d 878, 883 (Ct. App. 2004) (citing Sonoco Prods. Co. v. Inteplast Corp., 867 F. Supp. 352, 354 (D.S.C.1994)).

As it relates to specific jurisdiction, the Plaintiffs have not met their burden to establish that the Defendant has sufficient contacts with South Carolina related to the claims made. The Complaint does not claim the Defendant made any transfers, merely that he received transfers. Receipt of transfers from a non-party is not sufficient for the Court to exercise specific personal jurisdiction over the Defendant.

Exercising jurisdiction over the Defendant would violate traditional notions of fair play and substantial justice. In considering the fairness of exerting jurisdiction over a non-resident defendant, the following factors are considered: (1) the duration of the defendant's activity in this state; (2) the character and circumstances of its acts in this state; (3) the inconvenience to the parties by conferring or refusing to confer jurisdiction over the non-resident; and (4) the state's interest in exercising jurisdiction. See, State v. NV Sumatra Tobacco Trading, Co., 379 S.C. 81, 91, 666 S.E.2d 218, 223 (2008).

The Defendant is a resident of Florida, is 73 years old, and is in ill health. The Plaintiffs are residents of New York. The Defendant does not individually own any assets in South Carolina. Since the Defendant is a resident of Florida, the exercise of jurisdiction over him in South Carolina is extremely inconvenient to him, especially at his age and health. Since, the Plaintiffs are from New York, there is no additional inconvenience for them if the case is heard in Florida rather than South Carolina. See, Aviation Assocs. & Consultants, Inc. v. Jet Time, Inc., 303 S.C. 502, 509, 402 S.E.2d 177, 180-81 (1991) ("[W]hile it may be inconvenient for Aviation, a South Carolina corporation, to litigate this case in Oklahoma, it would be no less inconvenient for Cobra, an Oklahoma corporation, to have to defend this case in South Carolina."). Therefore, the inconvenience factor weighs in favor of the Defendant.

There exists no South Carolina interest in resolving a dispute between two non-residents, which can be determine in another state. Since the Complaint does not allege transfers by the Defendant, any connection between the actions claimed and the State of South Carolina is weak at best. The mere receipt of money from a spouse during marriage is not an issue in which the State of South Carolina would have a strong interest in resolving for non-resident Plaintiffs.

Given the sparsity of the Defendant's "activity in this state" having any connection to Plaintiffs' claims, and the lack of inconvenience to the Plaintiffs which would result

from a finding that specific personal jurisdiction is lacking, the exercise of specific personal jurisdiction over the Defendant and compelling him to appear and litigate in South Carolina would be fundamentally unfair. The Plaintiffs' allegations in the Complaint are not sufficient to support the exercise of general jurisdiction. Likewise, the Defendant's connections to South Carolina relating to the alleged conduct at issue in this lawsuit do not support the exercise of specific personal jurisdiction over him. As such, the exercise of personal jurisdiction over the Defendant would neither comport with the requirements of due process, nor be fair.

IT IS THEREFORE, ORDERED, ADJUDGED, AND DECREED that the Plaintiffs' Complaint is dismissed for lack of personal jurisdiction.

AND IT IS SO ORDERED.

**[Judge's signature page to follow]**



Horry Common Pleas

**Case Caption:** Lynn Dilucchio , plaintiff, et al VS George C Zitzelberger

**Case Number:** 2024CP2604462

**Type:** Order/Other

So Ordered

s/ The Honorable Michael G. Nettles #2140

STATE OF SOUTH CAROLINA  
COUNTY OF HORRY  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2024 CP-26-04462

LYNN DILUCCHIO AND KEVIN KEMPER, AS CO-  
ADMINISTRATORS C.T.A OF THE ESTATE OF AUGUSTA  
KEMPER

GEORGE C. ZITZELBERGER

RECEIVED

Jun 11 2025

SC Court of Appeals

PLAINTIFF(S)

DEFENDANT(S)

<p><b>Submitted by:</b> Daniel J. MacDonald, Sr. MacDonald &amp; Hicks, PA 1107 – 48<sup>th</sup> Avenue North, Suite 210 Myrtle Beach, SC 29577</p>	<p><b>Attorney for :</b> <input type="checkbox"/> Plaintiff <input checked="" type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant</p>
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**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRCP;  Rule 41(a), SCRCP (Vol. Nonsuit);  Rule 43(k), SCRCP (Settled);  Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRCP;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order (formal order to follow)  Statement of Judgment by the Court:

**ORDER INFORMATION**

This order  ends  does not end the case.  
Additional Information for the Clerk :

**INFORMATION FOR THE JUDGMENT INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	N/A
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:





Horry Common Pleas

**Case Caption:** Lynn Dilucchio , plaintiff, et al VS George C Zitzelberger

**Case Number:** 2024CP2604462

**Type:** Order/Form 4

So Ordered

s/ The Honorable Michael G. Nettles #2140