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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM Horry COUNTY
Court of Common Pleas
Honorable Michael G. Nettles

Case No. 2024-CP-26-04462
Appellate Case No. 2025-001152

Lynn Dilucchio and Kevin Kemper, as
Co-Administrators C/T/A of the Estate of
Augusta Kemper.....Appellants,

v.

George C. Zitzelberger..... Respondent.

FINAL RESPONDENT'S BRIEF

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II. THE TRIAL COURT PROPERLY FOUND THAT THE EXERCISE OF
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STATEMENT OF ISSUES ON APPEAL

1. Did the trial court properly grant Respondent's Motion to Dismiss the Appellants' Complaint pursuant to Rule 12(b)(2), SCRCP?
2. Did the trial court properly find that the exercise of either specific or general jurisdiction did not comport with the due process standards of fair play and substantial justice law because the Respondent did not have sufficient contacts with the State of South Carolina to support Appellants' claim of jurisdiction?
3. As an additional sustaining ground, did the trial court lack specific jurisdiction where the Appellants' claims against the Respondent are not provided for in S.C. Code Ann. §36-2-803 and, therefore, are not a basis for specific jurisdiction?
4. Did the trial court properly find that the mere receipt of alleged "fraudulent transfers" while a resident in South Carolina was not sufficient to support Appellants' claim of specific jurisdiction over the Respondent?
5. Did the trial court properly apply the fair play and substantial justice factors in determining that the South Carolina Courts did not have jurisdiction over the Respondent for the Appellants' claims?

STATEMENT OF THE CASE

The Circuit Court properly dismissed the Appellants' action against the Respondent pursuant to Rule 12(b)(2), SCRCP for lack of personal jurisdiction, both general or specific.

On June 27, 2024, Lynn Dilucchio and Kevin Kemper, as Co-Administrators C/T/A of the Estate of Augusta Kemper (Appellants), filed an action which alleges that George C. Zitzelberger (Respondent) is a resident of the State of Florida, and was the recipient of alleged fraudulent transfers of money from his wife, Patricia O'Connell (Patricia), who is not a party to this action. The Appellants obtained a Judgment by default against Patricia in an action filed in state court in New York; have domesticated the Judgment in South Carolina; and are attempting to collect the Judgment from the Respondent, a resident of Florida. The Appellants' pleading does not allege that the Respondent made any alleged transfers in violation of South Carolina's Statute of Elizabeth, and merely alleges that he received the funds from his wife.

On October 22, 2024, Respondent timely moved for dismissal of the Appellants Complaint pursuant to Rule 12(b)(2), SCRCP. Respondent argued that the South Carolina courts lacked both general and specific jurisdiction over him. Appellants opposed the Respondent's motion. The motion was set for hearing before the Honorable Michael G. Nettles, Circuit Court Judge, on April, 14, 2025. On May 16, 2025, Judge Nettles filed an Order dismissing the Appellants' Complaint for lack of general and specific jurisdiction.

Appellants filed a Notice of Appeal on June 11, 2026, seeking review of the Order Granting Respondent's Motion to Dismiss.

STATEMENT OF FACTS

Appellants are residents of Suffolk County, New York. (R. p. 12). Respondent is a resident of Marion County, Florida. (R. p. 12). Respondent was personally served with the pleading at his residence in Florida. (Affidavit of Service). At the time of the filing of the Summons and Complaint, Respondent had not lived in South Carolina for over two (2) years. (R. p. 24). Appellants did not name Patricia O'Connell, the Respondent's wife and the Judgment debtor, as a Defendant.

The Complaint alleges that Respondent received certain transfers of money from Patricia, his wife, while they lived in Horry County, South Carolina. The basis of the Appellants' claims is that Patricia is subject to a Judgment, and that Respondent received certain transfers from his wife which the Appellants claim are subject to attack under the South Carolina Statute of Elizabeth, S.C. Code Ann. §27-23-10, *et seq.*

Based upon the pleadings, the Affidavit and other evidence presented at the hearing, it is undisputed that, while living in South Carolina, Respondent was married to Patricia in 2018. (R. p. 35). During the time Respondent resided in South Carolina, he owned a restaurant-bar business and a townhouse, both of which were sold prior to his moving to Florida in 2022. (R. pp. 36-37). Patricia never owned an interest in the restaurant-bar owned by Respondent. (R. p. 5). Additionally, Respondent owned a motorcycle and a Trans Am automobile, which were also sold prior to the current action. (R. pp. 36-37). At the time of the filing and service of Appellants' Complaint, there is no evidence that Respondent personally owned any real or personal property in South Carolina. (R. p. 24). There is no evidence in the record which establishes that Respondent knew that the transfers made were in possible violation of the Statute of

Elizabeth. In fact, the evidence in the record supports Respondent's assertions that the alleged transfers were used to support legitimate costs of homeownership, support the Respondent's prior business activities, and/or other normal marital activities.

Respondent was the Trustee of a Trust, which owned a home in South Carolina. The home was sold as part of a negotiated settlement between Appellants and Patricia. Respondent, as Trustee, while living in Florida, signed the necessary documents to accommodate the sale of the property, and allow the proceeds of the sale be paid to the Appellants, and applied against the Judgment held against Patricia.

STANDARD OF REVIEW

The Circuit Court's ruling on the question of personal jurisdiction over a non-resident "should be affirmed unless unsupported by the evidence or influenced by an error of law." See, Moosally v. W.W. Norton & Co., 358 S.C. 320, 594, S.E. 2d 878 (Ct. App. 2004); see also, Ormand-Ward v. Litt, 2025 S.C. App. Lexis 69 (Ct. App. December 3, 2025), citing, Cribb v. Spatholt, 382 S.C. 490, 496, 676 S.E.2d 714, 717 (Ct. App. 2009). Personal jurisdiction over a non-resident defendant is a question to 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).

"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." See, Cockrell v. Hillerich & Bradsby Co., 363 S.C. 485, 491, 611 S.E.2d 505, 508 (2005); Hidria, USA, Inc. v. Delo, 415 S.C. 533, 540, 783 S.E.2d 839, 842 (Ct. App. 2016). "When a nonresident 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, Cribb, 382 S.C. at 497, 676 S.E.2d at 718 (quoting Power Prods. & Servs. Co. v. Kozma, 379 S.C. 423, 430, 665 S.E.2d 660, 664 (Ct. App. 2008)).

OVERVIEW OF JURISDICTION IN SOUTH CAROLINA

"Personal jurisdiction is exercised as 'general jurisdiction' or 'specific jurisdiction.'" See, Coggeshall v. Reprod. Endocrine Assocs. of Charlotte, 376 S.C. 12, 16, 655 S.E.2d 476, 478 (2007). "General jurisdiction is the State's right to exercise personal jurisdiction over a Defendant even though the suit does not arise out of or relate to the Defendant's contacts with the forum..." Id. "Specific jurisdiction is the State's right to exercise personal jurisdiction because the cause of action arises specifically from a Defendant's contacts with the forum; specific jurisdiction is determined under [section] 36-2-803 [of the South Carolina Code (Supp. 2025)]." Id. "The exercise of personal jurisdiction...must comport with due process requirements and must not offend traditional notions of fair play and substantial justice. Due process requires some act by which the Defendant purposefully avails itself of the privilege of conducting activities within the forum state." See, Ormand-Ward v. Litt, 2025 S.C. App. Lexis 69 (Ct. App. December 3, 2025); citing, Coggeshall v. Reprod. Endocrine Assocs. of Charlotte, 376 S.C. 12, 16, 655 S.E.2d 476, 478 (2007).

"The determination of whether a court may exercise personal jurisdiction over a nonresident involves a two-step analysis." See, Hidria, USA, Inc. v. Delo, 415 S.C. 533, 541, 783 S.E.2d 839, 843 (Ct. App. 2016) (quoting Sullivan v. Hawker Beechcraft Corp., 397 S.C. 143, 150, 723 S.E.2d 835, 839 (Ct. App. 2012)). "The trial court must (1) determine whether the South Carolina long-arm statute applies, and (2) whether the

nonresident's contacts in South Carolina are sufficient to satisfy due process." Id. (quoting Sullivan, 397 S.C. at 150, 723 S.E.2d at 839). "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." See, Moosally v. W.W. Norton & Co., 358 S.C. 320, 330, 594 S.E.2d 878, 883 (Ct. App. 2004).

"The determination of whether the requirements of due process are satisfied involves a two-prong analysis of (1) the 'power' prong, under which minimum contacts grant a court the 'power' to adjudicate the action; and (2) the 'fairness' prong, which requires the exercise of jurisdiction to be 'reasonable' or 'fair.'" See, Hidria, USA, Inc., 415 S.C. at 541, 783 S.E.2d at 843 (quoting S. Plastics Co. v. S. Com. Bank, 310 S.C. 256, 260, 423 S.E.2d 128, 131 (1992)). "The Appellant bears the burden of satisfying both tests." Id. "If either prong fails, the exercise of personal jurisdiction over the [nonresident] Defendant fails to comport with the requirements of due process." See, Moosally v. W.W. Norton & Co., 358 S.C. 320, 331, 594 S.E.2d 878, 884 (Ct. App. 2004). (alteration in original) (quoting S. Plastics Co., 310 S.C. at 260, 423 S.E.2d at 131).

"Under the power prong, a minimum contacts analysis requires a court to find that the Defendant directed its activities to residents of South Carolina, and that the cause of action arises out of, or relates to, those activities. Without minimum contacts, the court does not have the 'power' to adjudicate the action. It is essential...that there be some act by which the Defendant purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of

its laws. Th[is]...requirement ensures that a Defendant will not be haled into a jurisdiction solely as a result of random, fortuitous, or attenuated contacts.” Id. (emphasis added) (quoting Moosally, 358 S.C. at 331-32, 594 S.E.2d at 884).

Under the fairness prong, we examine such factors as the burden on the Defendant, the extent of the Appellant's interest, South Carolina's interest, efficiency of adjudication, and the several states' interest in substantive social policies. See, Moosally v. W.W. Norton & Co., 358 S.C. 320, 331, 594 S.E.2d 878, 884 (Ct. App. 2004) (quoting S. Plastics Co., 310 S.C. at 260, 423 S.E.2d at 131). While choice of law analysis is separate and distinct from personal jurisdiction analysis, which state's law controls is a factor to be considered under the fairness prong of due process. Id., (quoting, Burger King Corp., 471 U.S. at 481-82).

ARGUMENT ON ISSUES I, II, III, IV, and V

- I. THE TRIAL COURT PROPERLY GRANTED RESPONDENT'S MOTION TO DISMISS THE APPELLANTS' COMPLAINT PURSUANT TO RULE 12(B)(2), SCRPC.
- II. THE TRIAL COURT PROPERLY FOUND THAT THE EXERCISE OF EITHER SPECIFIC OR GENERAL JURISDICTION DID NOT COMPORT WITH THE DUE PROCESS STANDARDS OF FAIR PLAY AND SUBSTANTIAL JUSTICE LAW BECAUSE THE RESPONDENT DID NOT HAVE SUFFICIENT CONTACTS WITH THE STATE OF SOUTH CAROLINA TO SUPPORT APPELLANTS' CLAIM OF JURISDICTION.
- III. AS AN ADDITIONAL SUSTAINING GROUND, THE TRIAL COURT LACKED SPECIFIC JURISDICTION WHERE THE APPELLANTS' CLAIMS AGAINST THE RESPONDENT ARE NOT PROVIDED FOR IN S.C. CODE ANN. §36-2-803 AND, THEREFORE, ARE NOT A BASIS FOR SPECIFIC JURISDICTION.
- IV. THE TRIAL COURT PROPERLY FOUND THAT THE MERE RECEIPT OF ALLEGED "FRAUDULENT TRANSFERS" WHILE A RESIDENT IN SOUTH CAROLINA WAS NOT SUFFICIENT TO SUPPORT APPELLANTS' CLAIM OF SPECIFIC JURISDICTION OVER THE RESPONDENT.
- V. THE TRIAL COURT PROPERLY APPLIES THE FAIR PLAY AND SUBSTANTIAL JUSTICE FACTORS IN DETERMINING THAT THE SOUTH CAROLINA COURTS DID NOT HAVE JURISDICTION OVER THE RESPONDENT FOR THE APPELLANTS' CLAIMS.

Respondent's Prior Contacts to South Carolina Do Not Support Appellants' Claims that General Jurisdiction Exists in this Case.

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). 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).

Appellants have failed to establish sufficient contacts necessary to establish general jurisdiction. Respondent is 73-years old, in bad health, and has not resided in South Carolina since December 2022. The mere act of residing in Horry County at one point in time is not sufficient to deem Respondent essentially "at home" in this state. At the time of the filing, Respondent owned no assets or business interests in South Carolina, and did not have other contacts initiated by him within South Carolina. The Complaint's simple allegation that the alleged transfers by Respondent's spouse were received by Respondent while he resided in Horry County does not support the claims of jurisdiction because they are not actions initiated by Respondent. Under the South Carolina Statute of Elizabeth, the improper action is not the receipt of the funds, but the transfer by Patricia with the intent to avoid her creditors. On the whole, Respondent's contacts with South Carolina are not so substantial, and of such a nature, as to justify the exercise of general jurisdiction against Respondent in South Carolina.

The Circuit Court Properly Determined That Specific Jurisdiction Did Not Exist Over the Respondent In South Carolina for the Appellants' Claims.

For specific jurisdiction to attach under the long-arm statute, "only a cause of action arising from acts enumerated in this section may be asserted against [the nonresident Defendant]." See, S.C. Code Ann. §36-2-803(B). The South Carolina Long Arm Statute, S.C. Code Ann. §36-2-803 (2003), is co-extensive with the due process clause. See, Cockrell v. Hillerich & Bradsby Co., 363 S.C. 485, 492, 611 S.E.2d 505, 508 (2005).

The due process requirements must be met as to each Defendant, and thus the Court is to assess individually each Defendant's contacts with South Carolina. See, Cockrell v. Hillerich & Bradsby Co., 363 S.C. 485, 492, 611 S.E.2d 505, 509 (2005) (quoting, Rush v. Savchuk, 444 U.S. 320, 62 L. Ed. 2d 516, 100 S. Ct. 571 (1980)). Further, the focus must center on the contacts generated by the **Defendant**, and not on the unilateral actions of some other entity...." (*emphasis added*). See, Cockrell v. Hillerich & Bradsby Co., 363 S.C. 485, 494-95, 611 S.E.2d 505, 510 (2005) (quoting, Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 417, 80 L. Ed. 2d 404, 104 S. Ct. 1868 (1984) (holding "unilateral activity of another party or a third person is not an appropriate consideration")). The focus is on whether the Defendant's conduct and connection with the forum state are such that he should reasonably anticipate being haled into court there. See, Cockrell v. Hillerich & Bradsby Co., 363 S.C. 485, 492, 611 S.E.2d 505, 509 (2005) (quoting, World-Wide Volkswagen Corp., 444 U.S. at 297).

Appellants' claims or causes of action against Respondent are not listed in S.C. Code Ann. §36-2-803(A) and, therefore, cannot be a basis for specific jurisdiction.

¹Alternatively, if S.C. Code Ann. §36-2-803 does apply, Respondent lacks sufficient contacts with South Carolina to support jurisdiction. Important to specific jurisdiction is that the alleged transfer of funds claimed to violate the Statute of Elizabeth was not transferred by Respondent, but is specifically alleged by Appellants in their Complaint to have been the action of Respondent's wife, Patricia, a third-party who is not a Respondent in this case. Respondent's receipt of monetary transfers from his spouse are not sufficient to support a finding of specific or general jurisdiction.

Appellants argue that the use of the funds by Respondent while he resided in South Carolina support a finding of specific jurisdiction. Initially, it must be pointed out that if the funds were used to improve a real property or support a business, then the transfers would not be fraudulent under the Statute of Elizabeth because they would not be for the purpose of avoiding a creditor. As is established by the record, any assets obtained or supported by the transfers are no longer personally owned by the Respondent, and were not owned at time of the filing of the Complaint. If, as Appellants argue, the transfers of money are the activities which properly support their claim of specific jurisdiction, those transfers were not made by Respondent and, therefore, cannot support the Appellants' claim of specific jurisdiction.

The Exercise of Jurisdiction Over the Respondent Would Violate the Notions of Fair Play and Substantial Justice.

Exercising jurisdiction over Respondent would violate traditional notions of fair play and substantial justice. In considering the fairness of exerting jurisdiction over a

¹ This specific argument was not contained in the Order dismissing Appellants complaint, however it is supported by the record and as the successful party it is being raised as an additional sustaining ground. See, I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 417 526 S.E.2d 716, 721 (2000).

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 nonresident; 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).

Appellants' Complaint does not claim transfers were made by Respondent, only that Respondent received transfers of money from his spouse, Patricia, while living in South Carolina. The character of the acts alleged is not sufficient to satisfy the notions of fair play and substantial justice necessary to support the assertion of jurisdiction over a non-resident Defendant.

Respondent is a resident of Florida, and Appellants are residents of New York. The relief sought relates to recovery of money, and does not relate to any specific property located in South Carolina. Given that Respondent is a resident of Florida, 73-years old, and in ill health, the exercise of jurisdiction over him in South Carolina is extremely inconvenient. Since, Appellants are from New Jersey, 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 Respondent.

There exists no South Carolina interest in resolving a dispute between two non-residents, which can be determined in another state. Since the Complaint does not

allege transfers by Respondent, or seek any interest in property located in South Carolina, the connection between the actions claimed and the State of South Carolina are 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 Appellants.

CONCLUSION

Appellants' allegations in the Complaint, and the evidence in the record, do not support the exercise of general jurisdiction over Respondent. Likewise, because the Appellants' claims are not specifically a basis for jurisdiction under S.C. Code Ann. §36-2-803(B), and Respondent's connections to South Carolina relating to the alleged conduct at issue in this lawsuit are not substantial, the trial court properly determined that the exercise of specific personal jurisdiction over Respondent was not proper. Under either general or specific jurisdiction, the exercise of personal jurisdiction over Respondent would neither comport with the requirements of due process, as it would not be fair or substantially just. Therefore, the trial court's Order dismissing the Appellants' Complaint against Respondent should be affirmed.

Respectfully Submitted,

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