



Alerts

Minnesota District Court Finds Jurisdiction Over Ohio Lawyer

April 18, 2012

Lawyers for the Profession® Alert

Western Thrift and Loan Corp. v. Rucci, 2012 WL 1021681 (D. Minn. 2012)

Brief Summary

The U.S. District Court for the District of Minnesota concluded that its exercise of personal jurisdiction over an Ohio attorney was appropriate in light of his activities within the state.

Complete Summary

Plaintiff former client sued defendant attorney, alleging claims of negligence/malpractice and breach of contract relating to the lawyer's representation of the former client in a previous legal proceeding (the "R&D Litigation"), which was pending in Minnesota. The former client was a defendant in the R&D Litigation and was initially defended by another law firm. That firm was discharged, however, and the former client then retained defendant attorney, who was a citizen of Ohio and practiced law in Ohio and California.

Defendant lawyer was not admitted to practice law in Minnesota and so applied for admission *pro hac vice* in the R&D Litigation. In his application, he "request [ed] permission to appear and participate as an attorney at law" and "agree[d] to participate in the preparation and the presentation of the case . . . and accept service of all papers served." Because defendant lawyer was not associated with local counsel, his application was denied. On April 2, 2009, the court granted the prior firm's motion to withdraw and ordered that the former client obtain new counsel before May 1, 2009. On April 3, 2009, the prior firm notified the former client that it was withdrawing as counsel, and that it had been informed that defendant attorney would be taking over the case. On May 5, 2009, defendant attorney emailed an informal request to the magistrate judge, seeking an extension of time to associate with local counsel. The lawyer explained that he had "contacted four local attorneys, but ha[d] not been able to find one willing to act as local counsel." The magistrate judge denied the motion on May 12, 2009.

On May 26, 2009, plaintiffs in the R&D Litigation moved for entry of default. On June 9, 2009, defendant attorney filed a notice of filing bankruptcy on behalf of a co-defendant of the former client in that underlying litigation, which stayed the R&D Litigation. In October 2009, the stay was lifted. A pretrial conference was held on November 30, 2009, but no attorney appeared on behalf of the former

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client. Although the attorney had been receiving copies of all the notices and submissions in the R&D Litigation, he did not participate in any manner after filing the bankruptcy notice. On January 21, 2010, plaintiffs in the R&D Litigation again filed a motion for entry of default judgment. The court granted the motion on May 10, 2010, stating that “[the attorney] did not take the steps necessary to be admitted to practice before this court, nor did he secure substitute counsel as required by the magistrate judge’s April 1, 2009 order. The court imputes [the lawyer’s] failure to defend this case to [the former client], and default judgment is warranted on this basis.” The former client subsequently entered into a settlement agreement in the R&D Litigation.

The former client then sued the attorney based on his unsuccessful attempts to associate with local counsel, failure to obtain proper admittance to the court, and failure to respond to or file any documents in the R&D Litigation, resulting in the entry of default judgment. The former client alleged that it did not know that defendant lawyer had failed to be admitted to represent the former client, and so it did not know that it was unrepresented until it was too late.

Defendant attorney moved to dismiss based on lack of personal jurisdiction. The court initially noted that to survive a motion to dismiss for lack of personal jurisdiction, a plaintiff must establish a *prima facie* case that the forum state has personal jurisdiction over the defendant. The court must view the evidence in the light most favorable to the plaintiff when deciding whether the plaintiff has made the requisite showing. The court must determine whether the exercise of personal jurisdiction over a non-resident defendant complies with the state long-arm statute, and if so, whether it comports with due process. Minnesota’s long-arm statute, Minn. Stat. § 543.19, confers jurisdiction to the fullest extent permitted by due process.

Due process allows a court to exercise personal jurisdiction over a non-resident defendant if the defendant has “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.” *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)). The lawyer’s contacts with the state must be such that the defendant “should reasonably anticipate being haled into court there.” *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980).

The former client argued that defendant attorney was subject to specific personal jurisdiction in Minnesota because the lawsuit arose out of or related to the lawyer’s contacts with Minnesota during the R&D Litigation. Defendant attorney argued that he did not have the requisite minimum contacts to be subject to personal jurisdiction in Minnesota, and that litigation there would be inconvenient for the parties. He further argued that he had never been to Minnesota, had no offices or property in the state, and was not licensed to practice law there. Defendant attorney also argued that his only communications with the former client occurred in California or Ohio, not Minnesota. The court noted, however, that defendant lawyer’s contacts with Minnesota were his: (1) unsuccessful application for admission *pro hac vice* in the R&D Litigation; (2) communications with the court with respect to that application; (3) contacts with four different local attorneys in his attempt to associate with local counsel; and (4) filing of the notice of bankruptcy with the court in the R&D Litigation. These contacts were all directly related to his representation, or attempted representation, of the former client, which was the same conduct upon which this suit was based.

The court found that defendant attorney had purposefully availed himself of the privilege of conducting activities within Minnesota, and that the former client’s cause of action arose out of and related to the lawyer’s contacts with Minnesota during the R&D Litigation. The court thus concluded that its exercise of personal jurisdiction over defendant attorney was appropriate.

Significance of Opinion

This decision is noteworthy because it again shows that courts are very willing to exercise personal jurisdiction over nonresident attorneys even when the lawyer’s contacts with the forum state are fairly minimal.

For further information, please contact [Terrence P. McAvoy](#).

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