



Civil Practice and Procedure

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Personal Jurisdiction and the Internet: Four Recent Illinois Cases

Personal jurisdiction is fundamental to the civil justice system. In four recent cases, the Illinois Appellate Court analyzed whether Illinois courts have jurisdiction over defendants not located in Illinois, but who were alleged to have subjected themselves to jurisdiction in Illinois. By comparing these cases, the beginning of a doctrine for jurisdiction in circumstances related to communications over the internet begins to emerge.

Sheikholeslam v. Favreau

In *Sheikholeslam v. Favreau*, the plaintiff sought to immigrate to the United States from Iran and engaged the defendant lawyer to assist her. *Sheikholeslam v. Favreau*, 2019 IL App (1st) 181703, ¶ 5. The plaintiff filed suit against the lawyer and alleged legal malpractice for overcharging her, and for having a non-attorney provide her legal advice without attorney supervision. *Sheikholeslam*, 2019 IL App (1st) 181703, ¶ 5. It was also alleged that the defendant committed fraud based upon alleged knowing misrepresentations that she claimed to have relied on to her detriment. *Id.*

In response, the defendant filed a motion to dismiss asserting that Illinois courts did not have personal jurisdiction, and arguing that though he is licensed in Illinois, he resided in Montreal, Canada, and did not have an office in and never practiced law in Illinois. *Id.* ¶¶ 6-7. He argued that simply being licensed in Illinois did not confer jurisdiction over him in Illinois. *Id.* ¶ 6. He further averred that that he never met or spoke with plaintiff in Illinois and that the contract for the legal services was executed by plaintiff in Iran and by defendant in Canada and that none of the services were performed in Illinois. *Id.* ¶ 7.

Opposing the motion, the plaintiff asserted that there was long arm jurisdiction over the defendant because she would not have hired the defendant if he did not have a license to practice in Illinois. *Id.* ¶9. In support, the plaintiff attached a printout from the defendant's firm's website that identified him as the "founder and owner" of the firm who was a "Canadian and American immigration lawyer" who "is a member in good standing of the Quebec Bar in Canada and the Illinois Bar in U.S.A." *Id.* ¶ 10.

At oral argument before the trial court, the Cook County judge inquired whether the matter had to proceed in Illinois and the counsel for the plaintiff responded that the matter could proceed in Quebec as there is jurisdiction there. *Id.* ¶ 13. The trial court granted the defendant's motion to dismiss and found that the defendant was not "at home" in Illinois and merely had the Illinois license to allow him to practice. *Id.* ¶ 14.

On appeal, the Illinois Appellate Court First District, in holding that there was no general personal jurisdiction over the defendant, looked to the decision in *Robertson v. Miseti*, 2018 IL App (1st) 171674, in which the court rejected the proposition that a nonresident defendant's Illinois law license and advertised legal presence constituted such continuous and systematic contact with Illinois that the defendant could reasonably be hauled into court in Illinois. *Sheikholeslam*, 2019 IL App (1st) 181703, ¶ 21. Turning to specific personal jurisdiction, the court found that no aspect of the relationship

had a connection to Illinois, that his Illinois law license merely allowed him to practice before federal bodies, which was the object of the relationship. *Id.* ¶¶ 22-25. The dismissal was accordingly affirmed.

Dixon v. GAA Classic Cars, LLC

In *Dixon v. GAA Classic Cars, LLC*, the Illinois Appellate Court First District held that there was personal jurisdiction in Illinois over a North Carolina auctioneer of classic automobiles following the plaintiff seeing an advertisement posted on the defendant’s website for a 1973 Ford Bronco, as well as conducting email correspondence, text message exchanges, and telephone conferences regarding the operation of the auction and the condition of the vehicle. *Dixon v. GAA Classic Cars, LLC*, 2019 IL App (1st) 182416, ¶¶ 1-3, 26. The plaintiff successfully bid for the vehicle after the defendant told the plaintiff that the “frame was restored in 2017,” had new brakes and tires, and the vehicle was “garage kept” following restoration. *Dixon*, 2019 IL App (1st) 182416, ¶ 4.

However, upon receipt of the vehicle, the plaintiff recognized that the vehicle had significant problems and that the defendant misrepresented the condition of the vehicle. *Id.* ¶ 5. After having a mechanic experienced in these types of vehicles identify a dozen problems with the vehicle, the plaintiff filed suit alleging negligent misrepresentation, fraudulent misrepresentation, deceptive practices, and fraudulent concealment. *Id.* ¶¶ 6-7. The defendant, a North Carolina corporation, moved to dismiss for lack of personal jurisdiction, and the trial court granted the motion finding that there was no specific jurisdiction over the defendant. *Id.* ¶¶ 7-8.

In reviewing the dismissal, the First District analyzed the activities of the defendant that were directed toward Illinois: 1) the website had national reach, 2) the defendant sent emails to the plaintiff in Illinois; and 3) the telephone calls were directed toward the plaintiff in Illinois. *Id.* ¶ 13. The court recognized that “[t]he type of internet activity that is sufficient to establish personal jurisdiction remains an emerging area of jurisprudence.” *Id.* ¶ 14 (quoting *Bombliss v. Cornelsen*, 355 Ill App. 3d 1107, 1114 (3rd Dist. 2005)). The court recognized that the website alone was insufficient to lay personal jurisdiction. *Dixon*, 2019 IL App (1st) 182416, ¶¶ 14-15.

In this case though, the defendant also sent emails directed to Illinois and made phone calls wherein misrepresentations were allegedly made by the defendant, among other things. *Id.* ¶¶ 16-17. The court therefore found that the defendant purposefully directed activities toward Illinois and thus there was jurisdiction. *Id.* ¶¶ 21, 26.

Zamora v. Lewis

Are messages directed to Illinois enough to invoke personal jurisdiction? Likely not, as seen in *Zamora v. Lewis*, 2019 IL App (1st) 181642, in which the Illinois Appellate Court First District upheld the dismissal of an Airbnb host who rented a home in Maine to an Illinois plaintiff whose guests died in a fire at the home. *Zamora*, 2019 IL App (1st) 181642, ¶¶ 3-6. The plaintiff alleged negligence and consumer fraud against the defendants. *Id.* ¶ 10. The communications regarding the rental were over the Airbnb platform. *Id.* ¶ 4.

In response to the complaint, the defendants, Troy and Trina Lewis averred that they lived in Maine, they did not specifically target Illinois on Airbnb, and they would rent to anyone in the world who wanted to rent the home. *Id.* ¶¶ 14-15. The plaintiffs responded by attaching the messages that discussed the rental and that the renter was located in Illinois. *Id.* ¶ 17. The plaintiffs also referred to the Airbnb terms of service and the representation that the house had smoke

detectors. *Id.* ¶ 18. The trial court granted the defendants’ motion to dismiss finding that there was no personal jurisdiction over them. *Id.* ¶ 19.

Likening the case to *Pilipauskas v. Yakel*, 258 Ill. App. 3d 47 (1st Dist. 1994), in which the court found no personal jurisdiction over a Michigan lodge owner who rented to a Chicago resident, the court held that there was no personal jurisdiction because there was no solicitation or advertising in Illinois by the defendants. *Zamora*, 2019 IL App (1st) 181642, ¶¶ 52-53. The court found the brevity of the relationship was critical to the court’s analysis. *Id.* ¶ 54. The court stated “significantly, the Lewises’ commercial relationship with Gilbert did not create any obligations for them in Illinois with respect to her or any other Illinois residents, and beyond the one-time, two-day rental of the Lewises’ house in Maine to Gilbert, the arrangement did not create any future commitments between the parties.” *Id.* (citing *Walden v. Fiore*, 571 U.S. 277, 284 (2014)).

It is also important that the court did not consider the communications between the parties to be negotiations over the terms of the rental or the use of the home. *Zamora*, 2019 IL App (1st) 181642, ¶ 55. Contrasting with *Innovative Garage Door Co. v. High Ranking Domains, LLC*, 2012 IL App (2d) 120117, in which the court held that there was a jurisdiction over an out of state defendant based upon the multiple year relationship between the parties, the court observed “[w]hereas the defendant in *Innovative Garage* had a long-term and allegedly indefinite relationship with an Illinois business and substantial connections to Illinois residents based on its referral business model, the Lewises’ connection to Illinois was nothing more than a fleeting, one-time relationship with an Illinois resident that did not commit them to any long-term obligations in Illinois.” *Zamora*, 2019 IL App (1st) 181642, ¶¶ 57-58.

The court also contrasted its decision in *Dixon v. GAA Classic Cars*, the court observed that “in the present case, the communications between [the plaintiff] and the Lewises were far less in nature and quality and included merely one exchange.” *Zamora*, 2019 IL App (1st) 181642, ¶¶ 62-63. Further contrasting the situation in the *Zamora* case with the *Dixon* case, the court observed that the *Dixon* defendant owned the website whereas the Lewises did not own the website, Airbnb does. *Zamora*, 2019 IL App (1st) 181642, ¶ 63. The court concluded its analysis by stating “[i]n sum, the Lewises knowingly rented their house to an Illinois resident, and while this created a commercial relationship with an Illinois resident, it was a brief, one-time occurrence that was created randomly and fortuitously . . . and did not obligate the Lewises to any obligations in Illinois or further obligations . . . beyond the two-day rental period.” *Id.* ¶ 64. Dismissal for lack of personal jurisdiction was properly granted. *Id.*

Wesly v. National Hemophilia Foundation

In yet another personal jurisdiction case, the Illinois Appellate Court Third District answered a certified question and held that there was personal jurisdiction over Dr. Craig Kessler (“Kessler”), a Washington, D.C. resident and a volunteer member of the National Hemophilia Foundation, who allegedly made defamatory statements about the plaintiff (Wesly) via email. *Wesly v. Nat’l Hemophilia Found*, 2020 IL App (3d) 170569, ¶ 1. The certified question was “[c]an the Circuit Court [of Peoria County] properly exercise personal jurisdiction in a tort action over Dr. Kessler under the Illinois long-arm statute, and if so, can such an exercise of personal jurisdiction satisfy the requirements of due process?” *Id.*

The plaintiff, Wesly, received an award from the Foundation and shortly thereafter an email was sent wherein it was claimed that there were inaccuracies in information related to his background, qualifications, and experience. *Wesly*, 2020 IL App (3d) 170569, ¶ 3. The email was distributed on the Foundation’s website and at least one television station in Peoria County. *Id.* Wesly filed a suit against the Foundation and seven other defendants including Kessler alleging

defamation. *Id.* ¶ 4. The plaintiff obtained two emails in the course of discovery that were sent by Kessler to a physician in Peoria wherein Kessler questioned Wesly’s background. *Id.* ¶¶ 5-6.

Under Illinois law the tort of defamation occurs where the statements are published. *Id.* ¶ 12. Under Illinois’ long arm statute, the court held that there was jurisdiction. *Id.* ¶¶ 13-14. Turning to the due process analysis and whether there were sufficient minimum contacts the court stated that “[w]here the plaintiff’s claim is for an intentional tort, the inquiry focuses on whether the conduct underlying the claim was purposely directed to the forum state.” *Id.* ¶ 21 (citing *Tamburo v. Dworkin*, 601 F.3d 693, 702 (7th Cir. 2010)). Asserting that no Illinois court has considered the issue of whether a nonresident sending emails to an Illinois resident was sufficient contact to lay personal jurisdiction, the court cited and analyzed *Campbell v. Campbell*, 262 F. Supp. 3d 701 (N.D. Ill. 2017) and *Strabala v. Zhang*, 318 F.R.D. 81 (N.D. Ill. 2016), which addressed the issue and held that there were jurisdiction in such situations. *Id.* ¶¶ 22-25. Based upon the fact that Kessler purposely directed the emails into Illinois, the court held that due process was satisfied. *Wesly*, 2020 IL App (3d) 170569, ¶ 26 ¶ The court pointed to the fact that the content of one of the emails specifically referred to the area where the plaintiff is from, Peoria, the receipt of the email, and that Wesly worked in Illinois. *Id.* Further, the emails were published in Illinois. *Id.* Next, the court found that the cause of action arose out of Kessler’s conduct and that Illinois was a reasonable forum to resolve the case. *Id.* ¶¶ 27-34. The certified question was therefore answered in the affirmative. *Id.* ¶ 43.

Takeaways

These four recent cases, together with the cases they cite, begin to provide the contours of a doctrine for addressing personal jurisdiction in cases in which the defendant is alleged to have communicated via internet with plaintiffs in Illinois. The Illinois courts have given “purposeful availment” content in this context by seeming to require that a plaintiff show that something more than a transient relationship with Illinois is necessary for personal jurisdiction to be exercised in Illinois. A relationship between the communications and the cause of action as well as knowingly directing the communications into Illinois is necessary for jurisdiction to be exercised.

About the Author

Donald Patrick Eckler is a partner at *Pretzel & Stouffer, Chartered*, handling a wide variety of civil disputes in state and federal courts across Illinois and Indiana. His practice has evolved from primarily representing insurers in coverage disputes to managing complex litigation in which he represents a wide range of professionals, businesses and tort defendants. In addition to representing doctors and lawyers, Mr. Eckler represents architects, engineers, appraisers, accountants, mortgage brokers, insurance brokers, surveyors and many other professionals in malpractice claims.

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