

RE: December 4, 2020

Notice: This opinion is subject to formal revision before publication in the advance sheets of **Southern Reporter**. Readers are requested to notify the **Reporter of Decisions**, Alabama Appellate Courts, 300 Dexter Avenue, Montgomery, Alabama 36104-3741 ((334) 229-0649), of any typographical or other errors, in order that corrections may be made before the opinion is printed in **Southern Reporter**.

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2020-2021

1190765

Ex parte Henry W. Bradshaw

PETITION FOR WRIT OF MANDAMUS

(In re: Princeton Gregory

v.

Henry W. Bradshaw et al.)

(Mobile Circuit Court, CV-19-901666)

SHAW, Justice.

Henry W. Bradshaw, a defendant in a personal-injury action pending below, petitions for a writ of mandamus directing the Mobile Circuit Court to vacate its order denying his motion to dismiss the claims of the plaintiff, Princeton Gregory, against him, and to enter an order dismissing Gregory's claims against Bradshaw for lack of personal jurisdiction. We grant the petition and issue the writ.

Facts and Procedural History

As alleged in Gregory's complaint and agreed to by the parties, in June 2017, Gregory, a resident of Mobile, and Bradshaw, a resident of Florida, were involved in a motor-vehicle accident in Mississippi. As a result, Gregory sued Bradshaw and others seeking damages for negligence and wantonness.¹

In response, Bradshaw entered a limited appearance in the action for the purpose of filing, pursuant to Rule 12(b)(2), Ala. R. Civ. P., a motion to dismiss Gregory's claims based on the trial court's alleged lack

¹Although not material to the resolution of the present appeal, the remaining defendants include Gregory's insurers, against whom he sought to recover uninsured/underinsured-motorist benefits.

1190765

of personal jurisdiction. In support of his motion, Bradshaw emphasized his Florida residency, as alleged in Gregory's complaint, and the undisputed location of the accident. More specifically, Bradshaw argued that Gregory's complaint failed to allege that Bradshaw's contacts with Alabama were sufficient to support personal jurisdiction over him. See generally Elliott v. Van Kleeef, 830 So. 2d 726, 730 (Ala. 2002) ("Two types of contacts can form a basis for personal jurisdiction: general contacts and specific contacts. General contacts, which give rise to general personal jurisdiction, consist of the defendant's contacts with the forum state that are unrelated to the cause of action and that are both continuous and systematic. ... Specific contacts, which give rise to specific jurisdiction, consist of the defendant's contacts with the forum state that are related to the cause of action." (quoting Ex Parte Phase III Constr., Inc., 723 So. 2d 1263, 1266 (Ala. 1998) (Lyons, J., concurring in the result))). Noting the lack of any specific accident-related contact with Alabama that would give rise to specific personal jurisdiction, Bradshaw maintained that general personal jurisdiction was the only potential basis for an exercise of personal jurisdiction. However, he disputed the existence of "continuous

1190765

and systematic" contact with Alabama to support such an exercise of jurisdiction in this case. Bradshaw supported his motion with his own affidavit attesting to the following facts: he possesses a Florida driver's license; the accident occurred in Mississippi; he is not currently and was not at the time of the accident an Alabama resident; and "[his] contacts with the State of Alabama and its residents and businesses have been minimal and sporadic."

Thereafter, Gregory amended his original complaint to add further jurisdictional allegations, including an assertion that "Bradshaw regularly does or solicits business, or engages in a persistent course of conduct and/or derives substantial revenue from goods used or consumed or services rendered in Alabama." Gregory also filed a response to Bradshaw's motion, seeking to conduct jurisdiction-related discovery regarding the factual allegations included in Bradshaw's affidavit, as described above; the trial court granted Gregory's request.

Following further filings, Bradshaw filed a renewed motion to dismiss Gregory's claims against him, which incorporated the above-described prior filings. Bradshaw subsequently filed an amended motion

1190765

to dismiss, adding excerpts from his deposition testimony, which was taken in response to Gregory's request to conduct discovery, and argued that his contacts did not support the trial court's exercise of personal jurisdiction. In his deposition testimony, which appears in the materials before us, Bradshaw, a retiree, indicated that he was born in and resided in Alabama until 2006, when he was 65 years old, at which time he remarried and moved to Florida. He testified that he occasionally came to Alabama to visit family or to purchase tobacco and that, while in Alabama, he might eat, purchase gasoline, or use a local Alabama branch of his bank. Bradshaw's testimony further indicated that the vehicle he was operating at the time of the accident was purchased by him in Florida and financed through a Florida-based bank and that the applicable insurance policy covering that vehicle had been issued in Florida.

Relying on Bradshaw's deposition testimony, Gregory filed a further response in opposition to Bradshaw's amended motion to dismiss in which he argued that Bradshaw's connection to and activities in Alabama, as described above, were sufficient to suggest that Bradshaw should have anticipated that he might be sued in Alabama or, at the very least, created

a jury question on the issue of general personal jurisdiction. The trial court apparently agreed and, following a hearing, denied Bradshaw's motion to dismiss.² This petition followed.³

Standard of Review

²The trial court's order did not include either the factual or legal findings on which its decision was based.

³Gregory contends that Bradshaw's petition is untimely. This argument, however, is without merit. Despite delay associated with the trial court's grant of Gregory's request to conduct jurisdictional discovery, the record reflects that the trial court's order denying Bradshaw's motion was entered on May 27, 2020, and that the instant petition was filed on June 24, 2020 -- well within the 42-day presumptively reasonable period provided in Rule 21, Ala. R. App. P. See Ex parte Pelham Tank Lines, Inc., 898 So. 2d 733, 734 (Ala. 2004) (" 'The time for taking an appeal' referenced by Rule 21(a) is that established by Rule 4(a)(1), Ala. R. App. P.: 'within 42 days (6 weeks) of the date of the entry of the judgment or order appealed from.' "). We are further unpersuaded that Bradshaw's participation in jurisdictional discovery below as ordered by the trial court, which discovery occurred after Bradshaw asserted his jurisdictional challenge, amounted to a waiver of his right to contest personal jurisdiction. See Ex parte Gregory, 947 So. 2d 385, 389-90 (Ala. 2006) (explaining that, despite his having allegedly "invoked the judicial system of the State of Alabama sufficient to waive his jurisdictional challenge" by submitting written discovery requests to the plaintiffs, the petitioner could not "be charged with such a waiver ... because he timely presented his challenge to the exercise of personal jurisdiction in his answer to the complaint").

" '[A] petition for a writ of mandamus is the proper device by which to challenge the denial of a motion to dismiss for lack of in personam jurisdiction. See Ex parte McInnis, 820 So. 2d 795 (Ala. 2001); Ex parte Paul Maclean Land Servs., Inc., 613 So. 2d 1284, 1286 (Ala. 1993). "'An appellate court considers de novo a trial court's judgment on a party's motion to dismiss for lack of personal jurisdiction.'" Ex parte Lagrone, 839 So. 2d 620, 623 (Ala. 2002) (quoting Elliott v. Van Kleef, 830 So. 2d 726, 729 (Ala. 2002)). Moreover, "[t]he plaintiff bears the burden of proving the court's personal jurisdiction over the defendant." Daynard v. Ness, Motley, Loadholt, Richardson & Poole, P.A., 290 F.3d 42, 50 (1st Cir. 2002).'

"Ex parte Dill, Dill, Carr, Stonbraker & Hutchings, P.C., 866 So. 2d 519, 525 (Ala. 2003).

" "'In considering a Rule 12(b)(2), Ala. R. Civ. P., motion to dismiss for want of personal jurisdiction, a court must consider as true the allegations of the plaintiff's complaint not controverted by the defendant's affidavits, Robinson v. Giarmarco & Bill, P.C., 74 F.3d 253 (11th Cir. 1996), and Cable/Home Communication Corp. v. Network Productions, Inc., 902 F.2d 829 (11th Cir. 1990), and 'where the plaintiff's complaint and the defendant's affidavits conflict, the ... court must construe all reasonable inferences in favor of the plaintiff.' Robinson, 74 F.3d at 255 (quoting

Madara v. Hall, 916 F.2d 1510, 1514 (11th Cir. 1990))." "

"Wenger Tree Serv. v. Royal Truck & Equip., Inc., 853 So. 2d 888, 894 (Ala. 2002) (quoting Ex parte McInnis, 820 So. 2d 795, 798 (Ala. 2001)). However, if the defendant makes a prima facie evidentiary showing that the Court has no personal jurisdiction, 'the plaintiff is then required to substantiate the jurisdictional allegations in the complaint by affidavits or other competent proof, and he may not merely reiterate the factual allegations in the complaint.' Mercantile Capital, LP v. Federal Transtel, Inc., 193 F. Supp. 2d 1243, 1247 (N.D. Ala. 2002)(citing Future Tech. Today, Inc. v. OSF Healthcare Sys., 218 F.3d 1247, 1249 (11th Cir. 2000)). See also Hansen v. Neumueller GmbH, 163 F.R.D. 471, 474–75 (D. Del. 1995) ('When a defendant files a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(2), and supports that motion with affidavits, plaintiff is required to controvert those affidavits with his own affidavits or other competent evidence in order to survive the motion.') (citing Time Share Vacation Club v. Atlantic Resorts, Ltd., 735 F.2d 61, 63 (3d Cir. 1984))."

Ex parte Covington Pike Dodge, Inc., 904 So. 2d 226, 229-30 (Ala. 2004)

(emphasis added).

Discussion

In his petition, Bradshaw correctly notes that neither the allegedly negligent and/or wanton conduct described in the complaint nor the underlying accident that purportedly resulted from that conduct occurred in Alabama. He further argues that his "infrequent" and "sporadic" visits

1190765

to Alabama since his move to Florida in 2006 were both unrelated to the subject accident and were insufficient to support personal jurisdiction. We agree.

As this Court states in Ex parte McNeese Title, LLC, 82 So. 3d 670, 673 (Ala. 2011):

"Jurisdiction over out-of-state defendants is acquired pursuant to Rule 4.2(b), Ala. R. Civ. P., which provides, in pertinent part:

" 'An appropriate basis exists for service of process outside of this state upon a person or entity in any action in this state when the person or entity has such contacts with this state that the prosecution of the action against the person or entity in this state is not inconsistent with the constitution of this state or the Constitution of the United States...'

"In other words, '[t]his rule extends the personal jurisdiction of Alabama courts to the limit of due process under the United States and Alabama Constitutions.' Hiller Invs., Inc. v. Insultech Group, Inc., 957 So. 2d 1111, 1115 (Ala. 2006). Under this rule, the exercise of jurisdiction is appropriate so long as the out-of-state defendant has '"some minimum contacts with this state [so that] ... it is fair and reasonable to require the person to come to this state to defend an action.'" Dillon Equities v. Palmer & Cay, Inc., 501 So. 2d 459, 461 (Ala. 1986) (quoting former Rule 4.2(a)(2)(I), Ala. R. Civ. P.)."

This Court has also stated:

"The sufficiency of a party's contacts are assessed as follows:

" "Two types of contacts can form a basis for personal jurisdiction: general contacts and specific contacts. General contacts, which give rise to general personal jurisdiction consist of the defendant's contacts with the forum state that are unrelated to the cause of action and that are both 'continuous and systematic.' Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 414 n. 9, 415, 104 S.Ct. 1868, 80 L. Ed. 2d 404 (1984); [citations omitted]. Specific contacts, which give rise to specific jurisdiction, consist of the defendant's contacts with the forum state that are related to the cause of action. Burger King Corp. v. Rudzewicz, 471 U.S. 462, 472-75, 105 S. Ct. 2174, 85 L. Ed. 2d 528 (1985). Although the related contacts need not be continuous and systematic, they must rise to such a level as to cause the defendant to anticipate being haled into court in the forum state. Id."

" 'Ex parte Phase III Constr., Inc., 723 So. 2d 1263, 1266 (Ala. 1998) (Lyons, J., concurring in the result). ...

" 'In the case of either general in personam jurisdiction or specific in personam jurisdiction, "[t]he 'substantial connection' between the defendant and the forum state necessary for a

finding of minimum contacts must come about by an action of the defendant purposefully directed toward the forum State." Asahi Metal Indus. Co. v. Superior Court of California, 480 U.S. 102, 112, 107 S. Ct. 1026, 94 L. Ed. 2d 92 (1987). This purposeful-avilment requirement assures that a defendant will not be haled into a jurisdiction as a result of the "' unilateral activity of another person or a third person.'" Burger King, 471 U.S. at 475, 105 S. Ct. 2174, quoting Helicopteros Nacionales de Colombia, S.A. v. Helicopteros Nacionales, 466 U.S. 408, 417, 104 S. Ct. 1868, 80 L. Ed. 2d 404 (1984).'

"In Burger King the United States Supreme Court explained:

" '[I]t is essential in each case 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.

" 'This purposeful avilment requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of random, fortuitous, or attenuated contacts, or of the unilateral activity of another party or a third person. Jurisdiction is proper, however, where the contacts proximately result from actions by the defendant himself that create a substantial connection with the forum State. Thus where the defendant deliberately has engaged in significant activities within a State, or has created continuing obligations between himself and residents of the forum, he manifestly has availed himself of the privilege of conducting business there, and because his activities are

1190765

shielded by the benefits and protections of the forum's laws it is presumptively not unreasonable to require him to submit to the burdens of litigation in that forum as well.'

"471 U.S. at 475-76, 105 S. Ct. 2174 (internal quotations and citations omitted)."

Ex parte Georgia Farm Bureau Mut. Auto. Ins. Co., 889 So. 2d 545, 550-51

(Ala. 2004).

Further,

"'If there are substantial contacts with the state, for example a substantial and continuing business, and if the cause of action arises out of the business done in the state, jurisdiction will be sustained. If there are substantial contacts with the state, but the cause of action does not arise out of these contacts, jurisdiction may be sustained. But if there is a minimum of contacts, and the cause of action arises out of the contacts, it will normally be fair and reasonable to sustain jurisdiction. If there is a minimum of contacts and the cause of action does not arise out of the contacts, there will normally be no basis of jurisdiction, since it is difficult to establish the factors necessary to meet the fair and reasonable test.' "

View-All, Inc. v. United Parcel Serv., 435 So. 2d 1198, 1201 (Ala. 1983)

(quoting 2 J. Moore, Federal Practice, ¶ 4.25, pp. 4-258 through 4-267 (2d ed. 1982) (emphasis added)).

1190765

As an initial matter, we note that because Gregory appears to have argued in the trial court that Alabama courts possess only general personal jurisdiction over Bradshaw based on his contacts with our State, we also limit our consideration to that claim. Gregory, who bore the burden of establishing the jurisdiction of Alabama courts over Bradshaw, see, e.g., Branded Trailer Sales, Inc. v. Universal Truckload Servs., Inc., 74 So. 3d 404, 409 (Ala. 2011), argues that he presented evidence of Bradshaw's contacts with Alabama that were sufficient to, "at a minimum, ... create a jury question whether exercising jurisdiction would comport with due process."

As Gregory concedes, however, "" regardless of whether jurisdiction is alleged to be general or specific, the nexus between the defendant and the forum state must arise out of an " action of the defendant [that was] purposefully directed toward the forum State."" Branded Trailer Sales, Inc., 74 So. 3d at 410 (quoting Ex parte Covington Pike Dodge, 904 So. 2d at 230, quoting in turn other cases (emphasis added)). Further, as the United States Supreme Court explained in Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 924 (2011), "[f]or an individual,

1190765

the paradigm forum for the exercise of general jurisdiction is the individual's domicile."

Gregory's amended complaint alleges that Bradshaw regularly conducts personal business in Alabama. Bradshaw, however, submitted affidavit and deposition testimony establishing that he has not lived in Alabama since 2006 and that his contacts with Alabama since that time have been "sporadic and insubstantial" in nature, including occasional familial or other brief visits amounting to an estimated total of six contacts per year. Bradshaw's testimony, as described above, further indicated that the nature of his contacts was largely derived from a motive of personal benefit to himself rather than an attempt to benefit from the protections of the laws of Alabama or an effort to further conduct aimed at Alabama or its citizens. Further, Bradshaw's alleged tortious conduct, which occurred on the return trip to Florida from a family vacation to visit relatives in Mississippi, indisputably did not arise out of any action by Bradshaw that was directed at Alabama or its residents. See Branded Trailer Sales, Inc., supra. See also Ex parte City Boy's Tire & Brake, Inc., 87 So. 3d 521, 529 (Ala. 2011) (" 'As a general rule, the exercise of judicial

1190765

power is not lawful unless the defendant "purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." ' ') (quoting J. McIntyre Mach., Ltd. v. Nicastro, 564 U.S. 873, ___ (2011), quoting in turn other cases)), and Ex parte Alamo Title Co., 128 So. 3d 700, 710 (Ala. 2013) (" 'In the case of either general in personam jurisdiction or specific in personam jurisdiction, "[t]he 'substantial connection' between the defendant and the forum state necessary for a finding of minimum contacts must come about by an action of the defendant purposefully directed toward the forum State." ' ") (quoting Elliott v. Van Kleef, 83 So. 2d 726, 731 (Ala. 2002), quoting in turn other cases)). We agree that Gregory failed to establish that Bradshaw, whose domicile is Florida, engaged in any "continuous and systematic" contacts that should have led Bradshaw to reasonably anticipate being haled into Alabama's courts or that created a "substantial connection" to Alabama. To the contrary, as we held in Ex parte Dragomir, 65 So. 3d 388, 392-93 (Ala. 2010):

"In attempting to demonstrate that Alabama has general jurisdiction over Dragomir, Pike cites evidence indicating (1) that Dragomir, before he moved to Michigan, had been an

1190765

Alabama resident from approximately 1992 to 1998 and (2) that Dragomir had some sporadic contact with Alabama after the accident in Iowa. However, Dragomir's prior residency in Alabama -- some 10 years before the accident in Iowa -- is temporally too remote to serve as a basis for establishing that Dragomir had 'continuous and systematic' contacts with Alabama that would sustain jurisdiction over Dragomir in the underlying action. Ex parte Phil Owens Used Cars, Inc., 4 So. 3d 418, 426–27 (Ala. 2008) (rejecting, as too remote to support general jurisdiction, the defendant's contacts with Alabama that had occurred approximately 15 years before the accrual of the plaintiffs' causes of action)."

In Dragomir, we further rejected the notion that the "few occasions" on which the petitioner, a long-haul truck driver, had transported goods through or delivered goods to Alabama were, even when coupled with other alleged contacts, sufficient to sustain an exercise of personal jurisdiction in that case.

We thus disagree that Bradshaw's contacts with Alabama, the brief and intermittent nature of which were established below, amount to the contacts that this Court has deemed sufficient to sustain an exercise of personal jurisdiction in other cases. Compare Leithead v. Banyan Corp., 926 So. 2d 1025, 1031 (Ala. 2005) (holding that the trial court had general jurisdiction over a foreign corporation based on the corporation's contacts

1190765

with Alabama, which included more than 270 business-related telephone calls to the plaintiff in Alabama; its execution and provision of an employment contract and stock certificates to the plaintiff in Alabama; the mailing of stock certificates to the plaintiff in Alabama; and its employment of an Alabama resident as a bookkeeper), Ex parte McInnis, 820 So. 2d at 805-07 (holding, in a case involving a product placed into the stream of commerce that allegedly caused harm upon reaching its eventual destination, exercise of personal jurisdiction was appropriate over two nonresident corporate officers who had visited Alabama four times "to develop a market [there]" for the allegedly defective product and who had traveled to Alabama to visit an existing corporate customer, i.e., both were deemed to have engaged in acts directed toward Alabama and/or to serve its consumer markets, but declining to exercise personal jurisdiction over a third nonresident corporate officer who denied having any physical presence within Alabama); and Ex parte Newco Mfg. Co., 481 So. 2d 867, 869 (Ala. 1985) (holding that corporate defendant was subject to general jurisdiction in Alabama where it had engaged in a total of 2,000 transactions in Alabama over a 6-year period resulting in annual sales

1190765

revenue exceeding \$65,000). In rejecting Gregory's claims to the contrary, we note that he cited no authority indicating that the purported convenience of Alabama-based litigation to Bradshaw -- as opposed to Mississippi-based litigation -- is relevant to a jurisdictional analysis, especially in light of Bradshaw's obvious challenge to Alabama's jurisdiction over him.

In sum, because Gregory, even with the benefit of jurisdictional discovery, does not demonstrate minimum contacts between Bradshaw and Alabama sufficient to establish general jurisdiction, we conclude that an exercise of personal jurisdiction over Bradshaw in this case would not satisfy "the fair and reasonable test." View-All, Inc., 435 So. 2d at 1201.

Conclusion

Bradshaw has demonstrated a clear lack of general personal jurisdiction over him in connection with Gregory's claims. Thus, Bradshaw has demonstrated both that the trial court erred in denying his motions to dismiss and a clear legal right to the requested relief. We, therefore, grant the petition and issue the writ directing the Mobile Circuit Court to vacate its order denying Bradshaw's amended motion to

1190765

dismiss and to enter an order dismissing Gregory's claims against Bradshaw on the basis of a lack of personal jurisdiction.

PETITION GRANTED; WRIT ISSUED.

Parker, C.J., and Bolin, Wise, Bryan, Sellers, Mendheim, Stewart, and Mitchell, JJ., concur.