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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-106

No. COA21-214

Filed 15 February 2022

Guilford County, No. 20 CVS 7341

KEVIN JONES, Individually and as Guardian Ad Litem for DEVIN JONES, a minor,  
Plaintiff,

v.

ATLAS DISTRIBUTIONS, LLC d/b/a ATLAS & BEYOND and LINDSAY SCHEEL,  
Defendants.

Appeal by plaintiff from order entered 11 January 2021 by Judge Susan E.  
Bray in Guilford County Superior Court. Heard in the Court of Appeals 17 November  
2021.

*Pinto Coates Kyre & Bowers, PLLC, by Jon Ward and Britney M. Millisor, for  
plaintiff-appellant.*

*Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P., by Daniel F. E.  
Smith, for defendants-appellees.*

DIETZ, Judge.

¶ 1

Plaintiff Kevin Jones appeals the trial court's order dismissing his claims against Defendants Atlas Distributions, LLC and Lindsay Scheel for lack of personal jurisdiction. As explained below, under the applicable standard of review, we must presume that the trial court weighed the parties' competing affidavits and other

evidence and found that Defendants did not know Jones resided in North Carolina and did not purposefully avail themselves of the benefits and protections of the law of our State. Thus, the trial court properly found no personal jurisdiction over Defendants.

### **Facts and Procedural History**

¶ 2 Kevin Jones is a North Carolina resident. In 2020, Jones spoke to Lindsay Scheel about becoming involved in Scheel's company, Atlas Distributions, LLC. Scheel resides in Texas, and Atlas Distributions has its principal place of business in Montgomery, Texas. Atlas Distributions, which is now defunct, was a multi-level marketing company focused on coaching and training for foreign exchange markets and the sale and use of cannabidiol oil. Atlas Distributions had a nationwide business model and did not promote its business toward North Carolina or conduct any of its business events in North Carolina.

¶ 3 After an initial phone conversation between Jones and Scheel, Jones traveled to Atlanta, Georgia to attend a corporate event put on by Atlas Distributions. While at the Georgia event, Jones and Scheel signed a document that Jones contends was a contract and Scheel contends was merely an agreement to agree.

¶ 4 In September 2020, Jones sued Defendants, alleging breach of contract and other related claims, all involving the terms discussed in the document signed at the Atlanta meeting.

¶ 5 Defendants moved to dismiss for lack of personal jurisdiction. The parties submitted a number of affidavits on the jurisdictional issue, including affidavits from Jones, Scheel, and others, and responded to limited discovery on the jurisdictional issue. After a hearing on the motion, the trial court entered an order dismissing Jones’s claims for lack of personal jurisdiction. Jones timely appealed.

### Analysis

¶ 6 Our review of this appeal is largely constrained by our standard of review and, in particular, our need to presume, in the absence of express findings of fact, that the trial court made credibility determinations that support the court’s ruling.

¶ 7 “The standard of review to be applied by a trial court in deciding a motion under Rule 12(b)(2) depends upon the procedural context confronting the court.” *Banc of Am. Sec. LLC v. Evergreen Int’l Aviation, Inc.*, 169 N.C. App. 690, 693, 611 S.E.2d 179, 182 (2005). “Typically, the parties will present personal jurisdiction issues in one of three procedural postures: (1) the defendant makes a motion to dismiss without submitting any opposing evidence; (2) the defendant supports its motion to dismiss with affidavits, but the plaintiff does not file any opposing evidence; or (3) both the defendant and the plaintiff submit affidavits addressing the personal jurisdiction issues.” *Id.*

¶ 8 This case falls into the third category, with both sides relying on affidavits and other evidence to support their jurisdictional arguments. In this scenario, the trial

court may decide the motion without a full evidentiary hearing. If the court chooses to do so, it “must determine the weight and sufficiency of the evidence presented in the affidavits much as a juror.” *Id.* at 694, 611 S.E.2d at 183.

¶ 9 When a court makes these sorts of credibility determinations based solely on affidavits, the court often makes specific findings of fact. *Id.* But there is no requirement that the trial court make express findings unless “requested by a party.” *Id.* “When the record contains no findings of fact, it is presumed . . . that the court on proper evidence found facts to support its judgment.” *Id.*

¶ 10 Here, there were competing affidavits and no express findings of fact in the trial court’s order. Thus, we must presume that the trial court made findings in support of Defendants. Our task is to review the record to determine whether it contains *any* evidence that would support findings that, in turn, support the trial court’s ultimate determination of the jurisdictional issue. *Id.*

¶ 11 “The Fourteenth Amendment’s Due Process Clause limits a state court’s power to exercise jurisdiction over a defendant.” *Mucha v. Wagner*, 378 N.C. 167, 2021-NCSC-82, ¶ 8. In a case like this one, involving what is known as “specific jurisdiction,” courts examine whether the defendants had “fair warning that a particular activity may subject them to the jurisdiction of a foreign sovereign, so that they may structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit.” *Id.* ¶ 10.

¶ 12 The acts necessary to provide this fair warning often are described as “purposeful availment” because courts examine whether the defendants purposefully availed themselves of the privilege of conducting activities in North Carolina. *Id.* Identifying which party initiates the contact with the forum state is “a critical factor in assessing whether a nonresident defendant has made ‘purposeful availment.’” *CFA Medical, Inc. v. Burkhalter*, 95 N.C. App. 391, 395, 383 S.E.2d 214, 216 (1989). To satisfy the test, the defendant “must expressly aim his or her conduct at that state” or “must have targeted the forum state specifically.” *Mucha*, ¶¶ 16, 20.

¶ 13 “Although a contractual relationship between a North Carolina resident and an out-of-state party alone does not automatically establish the necessary minimum contacts with this State, nevertheless, a single contract may be a sufficient basis for the exercise of in personam jurisdiction if it has a substantial connection with this State.” *Tom Togs, Inc. v. Ben Elias Indus. Corp.*, 318 N.C. 361, 367, 348 S.E.2d 782, 786 (1986). But importantly, it is “not the existence of the defendant’s contract with a North Carolina resident” that suffices to establish the necessary minimum contacts with this State. *Mucha*, ¶ 12. Instead, it is “the fact that the defendant had made an offer to a plaintiff whom defendant *knew to be located in North Carolina.*” *Id.*

¶ 14 Here, Defendants presented evidence in affidavits that they never promoted their business towards North Carolina residents and never held any corporate or marketing events in North Carolina. They also presented evidence that they expected

Jones to “travel across the country” in his work for Defendants and that none of his work was directed specifically at North Carolina.

¶ 15 Defendants also presented evidence that all communications between the parties took place either by phone or in a meeting out of state. Finally, Defendants presented evidence that they did not know Jones resided in North Carolina, did not know they ever communicated with him while he was in North Carolina, and did not know any of their business discussions concerned work to be performed in North Carolina. With respect to the North Carolina address at the top of the document signed by the parties in Atlanta, Scheel testified that, according to Jones, this was the address for a third-party business with whom Jones worked, and not an address for Jones himself:

While the agreement does reference a North Carolina address, I was told by Mr. Jones that such address belonged to Global Alliance, LLC, which was an entity owned by Mr. Jones’ business partner, BJ Gleason, who is also mentioned in the subject contract letter. I was never told that this address was Mr. Jones’ home address, and even to this day I do not believe this address is associated with Mr. Jones’ residence.

¶ 16 Finally, in response to an affidavit from Edward Cobbler, who stated that Scheel offered to pay him for private security work and investigations in North Carolina related to Jones’s work for Defendants, Scheel testified in her own affidavit that Defendants did not hire Cobbler and that Cobbler did not perform any work for

Defendants.

¶ 17 Taken together, this affidavit testimony and accompanying evidence is sufficient to support findings by the trial court that Defendants never purposefully availed themselves of the benefits and protections of the laws of North Carolina. *Mucha*, ¶ 17. Specifically, the evidence supported findings by the trial court that Defendants never met with Jones in North Carolina, did not know Jones resided in North Carolina, did not know Jones was in North Carolina when they communicated with him, did not hire Jones to perform any work directed at North Carolina, and did not hire Cobbler to perform work in North Carolina.

¶ 18 Because the parties did not request express fact findings, we must presume that the court made these findings. *Banc of Am. Sec. LLC*, 169 N.C. App. at 693, 611 S.E.2d at 182. These findings, in turn, support the trial court's conclusion that Defendants did not have sufficient contacts with North Carolina to confer specific jurisdiction for the claims asserted in the complaint. Accordingly, we affirm the trial court's order granting Defendants' motion to dismiss for lack of personal jurisdiction.

### **Conclusion**

¶ 19 We affirm the trial court's order.

AFFIRMED.

Judges TYSON and GRIFFIN concur.

Report per Rule 30(e).