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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-956

Filed 21 May 2025

New Hanover County, No. 22CVS000353

GILBERT LEROY LITTLE, Plaintiff,

v.

MICHAEL CLAY, Defendant.

Appeal by Defendant from order entered 3 September 2024 by Judge J. Stanley Carmical in New Hanover County Superior Court. Heard in the Court of Appeals 18 March 2025.

*James W. Lea, III, for Plaintiff-Appellee.*

*Rice Law, PLLC, by Mark Spencer Williams and Christine M. Sprow, for Defendant-Appellant.*

GRIFFIN, Judge.

Defendant Michael Clay appeals from the trial court's order denying Defendant's Motion to Dismiss pursuant to Rules 12(b)(1) and 12(b)(2) of the North Carolina Rules of Civil Procedure. Defendant raises three issues on appeal. Defendant contends the trial court: (1) made findings unsupported by competent evidence; (2) lacks personal jurisdiction over Defendant; and (3) lacks subject-matter

jurisdiction over Plaintiff's claims for alienation of affections and criminal conversation. We hold the trial court did not err.

### **I. Factual and Procedural Background**

As this case comes to us upon motions to dismiss pursuant to Rules 12(b)(1) and (2) of the North Carolina Rules of Civil Procedure, we treat the allegations as true “and construe them in the light most favorable to the plaintiff.” *Munger v. State*, 202 N.C. App. 404, 410, 689 S.E.2d 230, 235 (2010) (citation and internal marks omitted). Plaintiff's projected evidence tends to show as follows:

Plaintiff Gilbert Leroy Little and Rebecca Beatty Little (“Rebecca”) were married on 17 July 2009 and divorced on 1 December 2021. While married, Plaintiff and Rebecca were residents of New Hanover County, North Carolina, for several years. While Plaintiff and Rebecca were residing in North Carolina, Defendant initiated an affair with Rebecca.

Defendant is a citizen and resident of Maricopa County, Arizona, and has never resided in North Carolina. Defendant is connected to North Carolina through his employment with North Carolina corporations.

Defendant and Rebecca were employed by Synexus Clinical Research US, Inc., and their time at Synexus overlapped from 2016-2018. After Defendant became employed by Pharmaceutical Product Development, Inc. (“PPD”) (a North Carolina corporation) in 2018, “he was instrumental in luring Rebecca to join PPD shortly thereafter.” Rebecca accepted a position with PPD, and in July 2018, Plaintiff,

Rebecca, and their minor children moved to New Hanover County, North Carolina, “where PPD operates its principal place of business.”

“While legitimate business communication occurred between Defendant and Rebecca during their time as professional colleagues, . . . Defendant’s communications to Rebecca became more frequent than required of coworkers and went beyond mere professional correspondence.” Defendant “intentionally, willfully, and deliberately seduc[ed], entic[ed], and alienat[ed] the affection of Rebecca from Plaintiff.” Defendant solicited Rebecca’s love and affection “by using telephonic and internet communications of romantic and lascivious natures.”

Plaintiff and Rebecca eventually moved to Williamson County, Tennessee, and divorced shortly thereafter. On 1 February 2022, Plaintiff filed a verified Complaint against Defendant for alienation of affections, criminal conversation, and intentional infliction of emotional distress in New Hanover County Superior Court. Defendant filed a Motion to Dismiss pursuant to Rules 12(b)(1) and 12(b)(2) on 1 March 2022. Defendant included and incorporated verified affidavits of Defendant and Rebecca in his Motion. On 24 May 2022, Plaintiff filed a verified Amended Complaint. In response, Defendant filed an Amended Motion, incorporating the previously filed affidavits on 16 June 2022.

The trial court held a hearing on Defendant’s Motion on 1 August 2022 in New Hanover County Superior Court. The trial court denied Defendant’s Motion, and Defendant appealed the trial court’s order to this Court. We remanded the trial

court's order, instructing the trial court to clarify its grounds for dismissal. *See Little v. Clay*, 291 N.C. App. 692, 895 S.E.2d 480, 2023 WL 8740683, at \*2 (2023). On 22 August 2024, the trial court clarified and amended its prior order pursuant to the remand of this Court. On 3 September 2024, an amended order was entered denying Defendant's Motion pursuant to Rules 12(b)(1) and 12(b)(2). Defendant timely appeals from the trial court's amended order.

## **II. Appellate Jurisdiction**

Defendant appeals from an interlocutory judgment denying his Motion to Dismiss pursuant to Rules 12(b)(1) and 12(b)(2). "Interlocutory orders are those made during the pendency of an action which do not dispose of the case but instead leave it for further action by the trial court in order to settle and determine the entire controversy." *Green v. Kearney*, 203 N.C. App. 260, 264, 690 S.E.2d 755, 759–60 (2010) (quoting *Carriker v. Carriker*, 350 N.C. 71, 73, 511 S.E.2d 2, 4 (1999)). "As a general rule, interlocutory orders are not immediately appealable." *Id.* at 264, 690 S.E.2d at 760 (quoting *Turner v. Hammocks Beach Corp.*, 363 N.C. 555, 558, 681 S.E.2d 770, 773 (2009)). However, there are exceptions to this rule. "[Section] 1-277 allows a party to immediately appeal the denial of a motion to dismiss if the denial either (1) affects a substantial right or (2) is based on lack of personal jurisdiction." *Meherrin Indian Tribe v. Lewis*, 197 N.C. App. 380, 384, 677 S.E.2d 203, 207 (2009).

Section 1-277(b) "permits the immediate appeal of a ruling, whether granting or denying a motion to dismiss under Rule 12(b)(2), as to the court's jurisdiction over

the defendant's person or property." *Teachy v. Coble Dairies, Inc.*, 306 N.C. 324, 327, 293 S.E.2d 182, 184 (1982); N.C. Gen. Stat. § 1-277(b) (2023). However, the same cannot be said for subject-matter jurisdiction.

This Court has held that while an order "*granting* a motion to dismiss for lack of subject[-]matter jurisdiction is immediately appealable under [section 1-277(a), because it determines or discontinues the action[.]]" an order *denying* a motion to dismiss for lack of subject-matter jurisdiction is not immediately appealable. *Green*, 203 N.C. App. at 265, 690 S.E.2d at 760 (emphasis in original) (citation omitted). *See also Shaver v. N.C. Monroe Const. Co.*, 54 N.C. App. 486, 487, 283 S.E.2d 526, 527 (1981) ("A trial judge's order denying a motion to dismiss for lack of subject[-]matter jurisdiction is interlocutory and not immediately appealable.").

In such situations, for this Court to review a denial of a motion to dismiss based on subject-matter jurisdiction, a defendant would ordinarily need to show how the order "affects a substantial right that would be jeopardized in the absence of review prior to a final determination on the merits." *Green*, 203 N.C. App. at 265, 690 S.E.2d at 760 (citation omitted). *See also Crouse v. Mineo*, 189 N.C. App. 232, 235, 658 S.E.2d 33, 35 (2008) ("An appellant bears the burden of demonstrating that an order will adversely affect a substantial right." (citation omitted)).

However, we also recognize "issues challenging subject[-]matter jurisdiction may be raised at any time, even for the first time on appeal." *Gurganus v. Gurganus*, 252 N.C. App. 1, 4, 796 S.E.2d 811, 814 (2017). Additionally, a trial court must have

proper personal and subject-matter jurisdiction to decide a case, *Catawba Cnty. ex rel. Rackley v. Loggins*, 370 N.C. 83, 88, 804 S.E.2d 474, 478 (2017), and this is the second time this case has been brought before us concerning the same issues. See *Little v. Clay*, 291 N.C. App. 692, 895 S.E.2d 480, 2023 WL 8740683, at \*2. “[G]iven the posture of the case, judicial economy and efficient use of judicial resources” we are in favor of exercising our discretion to grant certiorari of the issue pursuant to N.C. Gen. Stat. § 7A-32(c) (2023). *State v. Springs*, 292 N.C. App. 207, 213, 897 S.E.2d 30, 36 (2024). As a result, we proceed to address the merits of Defendant’s arguments concerning the trial court’s personal and subject-matter jurisdiction.

### **III. Analysis**

Defendant alleges the trial court erred by denying Defendant’s Motion to Dismiss pursuant to Rules 12(b)(1) and 12(b)(2) of the North Carolina Rules of Civil Procedure. Specifically, Defendant contends the trial court’s findings are not supported by competent evidence and the trial court does not have proper personal or subject-matter jurisdiction.

#### **A. Personal Jurisdiction**

“The standard of review of an order determining personal jurisdiction is whether the findings of fact by the trial court are supported by competent evidence in the record.” *ITG Brands, LLC v. Funders Link, LLC*, 284 N.C. App. 322, 326, 876 S.E.2d 304, 308 (2022) (quoting *Bell v. Mozley*, 216 N.C. App. 540, 543, 716 S.E.2d 868, 871 (2011)). “Competent evidence is evidence that a reasonable mind might

accept as adequate to support the finding.” *Myers v. Broome-Edwards*, 294 N.C. App. 364, 366–67, 903 S.E.2d 381, 384 (2024) (citation and internal marks omitted). If this Court determines that there is competent evidence to support the findings, we are “bound by the trial court’s findings of fact even if there is also other evidence in the record that would sustain findings to the contrary.” *Id.* at 366, 903 S.E.2d at 384 (citation and internal marks omitted). “We review *de novo* the issue of whether the trial court’s findings of fact support its conclusion of law that the court has personal jurisdiction over a defendant.” *ITG Brands, LLC*, 284 N.C. App. at 326, 876 S.E.2d at 308 (citation and internal marks omitted).

### **1. Competent Evidence**

As an initial matter, Defendant does not challenge specific findings in the trial court’s order. Instead, Defendant argues the allegations in Plaintiff’s Amended Complaint are not competent evidence as they are based “upon information and belief” and should not have been considered by the trial court. Furthermore, Defendant argues it was error for the trial court to weigh the allegations in Plaintiff’s Amended Complaint against the affidavits submitted by Defendant. We disagree.

This Court has held if a defendant “supplements his motion to dismiss with an affidavit or other supporting evidence, the ‘allegations in the complaint can no longer be taken as true or controlling and [the] plaintiff cannot rest on the allegations of the complaint.’” *Banc of Am. Sec. LLC v. Evergreen Int’l Aviation, Inc.*, 169 N.C. App. 690, 693, 611 S.E.2d 179, 182 (2005) (quoting *Bruggeman v. Meditrust Acquisition*

Co., 138 N.C. App. 612, 615–16, 532 S.E.2d 215, 218 (2000)). In such situations, the court considers “(1) any allegations in the complaint that are not controverted by the defendant’s affidavit and (2) all facts in the affidavit (which are uncontroverted because of the plaintiff’s failure to offer evidence)” to determine whether there is evidence to support an exercise of personal jurisdiction. *Id.* at 693–94, 611 S.E.2d at 183 (citing *Bruggeman*, 138 N.C. App. at 615–16, 532 S.E.2d at 218). However, this principle is generally applied in cases where there is an unverified complaint and a competing affidavit. *See Bruggeman*, 138 N.C. App. at 615–16, 532 S.E.2d at 217; *Wyatt v. Walt Disney World Co.*, 151 N.C. App. 158, 168–69, 565 S.E.2d 705, 711–12 (2002).

But, even in those situations where the “affidavit contradicts almost every material allegation” in a plaintiff’s unverified complaint, this Court has held “the plaintiff’s burden of establishing *prima facie* that grounds for personal jurisdiction exist can still be satisfied if some form of evidence in the record supports the exercise of personal jurisdiction.” *Bruggeman*, 138 N.C. App. at 616, 532 S.E.2d at 218 (emphasis in original).

Here, Plaintiff filed a verified complaint and Defendant submitted competing affidavits. “A verified complaint may be treated as an affidavit if it (1) is made on personal knowledge, (2) sets forth such facts as would be admissible in evidence, and (3) shows affirmatively that the affiant is competent to testify to the matters stated therein.” *Eluhu v. Rosenhaus*, 159 N.C. App. 355, 359, 583 S.E.2d 707, 711 (2003)



(citations and internal marks omitted).

When a trial court, as the court did here, decides a motion to dismiss based on competing affidavits alone, “the trial judge must determine the weight and sufficiency of the evidence presented in the affidavits as much as a juror.” *ITG Brands, LLC*, 284 N.C. App. at 326, 876 S.E.2d at 308 (quoting *Fungaroli v. Fungaroli*, 51 N.C. App. 363, 367, 276 S.E.2d 521, 524 (1981)).

Here, after reviewing Plaintiff’s verified Amended Complaint and the affidavits submitted by Defendant, the trial court made findings and held Plaintiff’s allegations sufficient for the court to assert personal jurisdiction over Defendant. “On appeal, this Court is not ‘free to revisit questions of credibility or weight that have already been decided by the trial court.’” *Id.* (quoting *Banc of Am. Sec.*, 169 N.C. App. at 695, 611 S.E.2d at 183). “[This] [C]ourt’s duty goes no further than to determine whether the record contains *any* evidence tending to support the finding.” *Hunt v. N.C. State Univ.*, 159 N.C. App. 111, 113, 582 S.E.2d 380, 382 (2003) (emphasis added) (citation omitted). Although a trial court is not required to make specific findings when denying a motion to dismiss unless requested by a party, N.C. R. Civ. P. 52(a)(2) (2023), the trial court here, among other findings, found that Defendant had sufficient minimum contacts with the forum state in that Defendant:

- (a) Solicited Rebecca Little while she was present in North Carolina by telephone and internet communications;
- (b) Referenced communications occurred while she was in North Carolina;

- (c) Defendant was employed by Synexus Clinical Research in 2016/2017 in North Carolina and was a co-worker with Rebecca Little;
- (d) Defendant made a job change in 2018 and lured [Rebecca] to join PPD located in Wilmington, North Carolina; and
- (e) Their time working for PPD overlapped in 2018/2019.

These facts are supported by Plaintiff's verified Amended Complaint. Therefore, we are bound by these findings and hold the findings are supported by competent evidence. *See Fungaroli*, 51 N.C. App. at 367–8, 276 S.E.2d at 524 (“The presumed finding of fact that [the] defendant participated in the alleged act of removing [the] plaintiff's child from North Carolina is supported by both [the] plaintiff's complaint and her affidavit. Therefore, we are bound by that finding of fact[.]”).

Defendant's contention that Plaintiff's allegations are based upon “information and belief” and therefore cannot be considered competent evidence is misconstrued. A plaintiff “may allege facts based on actual knowledge, or upon information and belief.” *Myrtle Apartments, Inc. v. Lumbermen's Mut. Cas. Co.*, 258 N.C. 49, 51, 127 S.E.2d 759, 761 (1962). We do recognize, however, that allegations of misconduct, “absent any allegations going to a nexus between such misconduct and this State, are simply insufficient to permit the reasonable inference that personal jurisdiction over [the] defendant could properly be acquired.” *Tompkins v. Tompkins*, 98 N.C. App. 299, 304, 390 S.E.2d 766, 769 (1990).

Defendant relies on *Eluhu v. Rosenhaus*, a case where this Court affirmed the trial court's dismissal of a plaintiff's complaint where the allegations were "only general allegations as to [the] defendant's relationship with Ms. Eluhu, several of which either contain[ed] no reference to place or time or [did] not qualify as evidentiary statements as they [were] based only 'upon information and belief.'" 159 N.C. App. 355, 359–60, 583 S.E.2d 707, 711 (2003) (citation omitted).

*Eluhu*, albeit similar to the present case, is factually distinguishable. In *Eluhu*, like the present case, the plaintiff sued the defendant for alienation of affections. *Id.* at 356, 583 S.E.2d at 709. However, the plaintiff's allegations in *Eluhu* lacked any nexus to North Carolina. *Id.* at 360, 583 S.E.2d at 711. Despite the plaintiff's argument that the contacts between the defendant and North Carolina giving rise to the cause of action was a beach vacation "during which [the] [d]efendant connected with [the] [p]laintiff's wife[.]" the plaintiff's complaint contained "no allegation with respect to [that] trip, but rather only general allegations as to [the] defendant's relationship with Ms. Eluhu[.]" *Id.* at 359–60, 583 S.E.2d at 711. As a result, this Court held the plaintiff's allegations were insufficient to withstand a motion to dismiss. *Id.* at 361, 583 S.E.2d at 712. Here, unlike the plaintiff in *Eluhu*, Plaintiff does make sufficient allegations referencing misconduct within the state of North Carolina. In his Amended Complaint, Plaintiff alleges the following:

5. Upon information and belief . . . Defendant initiated an affair with Rebecca while Plaintiff and Rebecca were domiciled in Wilmington, North Carolina and thereafter,

while Plaintiff and Rebecca resided in Wilmington with their minor children, with actual knowledge of the relationship existing between Plaintiff and Rebecca, Defendant began to intentionally, willfully, and deliberately seduce, entice, and alienate the affection of Rebecca from Plaintiff. . . .

. . .

12. Upon information and belief, Defendant solicited Rebecca during the marriage while Rebecca was domiciled and present in North Carolina and Defendant was located outside of North Carolina. Defendant effected the solicitation by using telephonic and internet communications of romantic and lascivious natures.

13. Upon information and belief, some of the communications referenced in Paragraph 1[2], above, occurred while Rebecca was in the marital home in North Carolina. Some of the referenced communications occurred while Rebecca was in the marital home in North Carolina at the same time as Plaintiff and the minor children of Plaintiff and Rebecca's marriage.

14. Defendant and Rebecca were coworkers at Synexus Clinical Research US, Inc. Their time at Synexus overlapped in years 2016-2018. Upon information and belief, when Defendant made a job change to PPD in 2018, he was instrumental in luring Rebecca to join PPD shortly thereafter. Rebecca's job change to PPD led to Plaintiff, Rebecca, and their minor children being domiciled in New Hanover County, North Carolina, where PPD operates its principal place of business. Defendant and Rebecca's time both working for PPD overlapped in years 2018-2019.

15. While legitimate business communication occurred between Defendant and Rebecca during their time as professional colleagues, upon information and belief Defendant's communications to Rebecca became more frequent than required of coworkers and went beyond mere professional correspondence. Such communications were of romantic and lascivious natures as referenced in

Paragraph 1, above, and did in fact alienate the affections of Rebecca from Plaintiff while both Plaintiff and Rebecca were located in North Carolina.

...

18. North Carolina has an interest in this case because Rebecca's affection for Plaintiff was alienated while Rebecca and Plaintiff were domiciled and present in this State. . . . Upon information and belief, North Carolina has an interest in this case because evidence and witness testimony are available in this State through Defendant and Rebecca's past coworkers at PPD and Defendant's coworkers at his present place of employment, Javara, Inc., a corporation with a principal place of business in Winston-Salem, North Carolina.

...

20. . . . [W]hile Plaintiff and Rebecca were domiciled in North Carolina, Defendant with actual knowledge of the relationship between Plaintiff and Rebecca, and with the wrongful and malicious intent to injure . . . . had sexual intercourse with Rebecca.

As the allegations demonstrate, Plaintiff's Amended Complaint consists of more than "general assertions" as to Defendant's relationship with Rebecca. The Amended Complaint contains specific allegations referencing time and place, establishing the nexus between the misconduct and North Carolina. *See Tompkins*, 98 N.C. App. at 304, 390 S.E.2d at 769. As a result, we hold the trial court's findings are supported by competent evidence because there is some evidence in the record to support the trial court's findings. *See Myers*, 294 N.C. App. at 366, 903 S.E.2d at 384.

## **2. Long-arm statute**

We now turn to the issue of whether the trial court's findings of fact support

its conclusions of law that the court may exercise personal jurisdiction over Defendant. To determine whether North Carolina may assert personal jurisdiction over a non-resident defendant, the trial court must engage in a two-step analysis. *Brown v. Ellis*, 363 N.C. 360, 363, 678 S.E.2d 222, 223 (2009). “First, jurisdiction over the action must be authorized by [section] 1-75.4[.]” *Skinner v. Preferred Credit*, 361 N.C. 114, 119, 638 S.E.2d 203, 208 (2006) (citing *Dillon v. Numismatic Funding Corp.*, 291 N.C. 674, 675, 231 S.E.2d 629, 630 (1977)). “Second, if the long-arm statute permits consideration of the action, exercise of jurisdiction must not violate the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution.” *Id.*

Section 1-75.4 allows personal jurisdiction to be asserted:

in any action claiming injury to person or property within this State arising out of an act or omission outside this State by the defendant, provided in addition that at or about the time of the injury . . . [s]olicitation or services activities were carried on within this State by or on behalf of the defendant[.]

N.C. Gen. Stat. § 1-75.4(4)(a) (2023).

“[T]he statute requires only that the action “claim” injury to person or property within this state in order to establish personal jurisdiction.” *Cooper v. Shealy*, 140 N.C. App. 729, 732, 537 S.E.2d 854, 856 (2000) (quoting *Godwin v. Walls*, 118 N.C. App. 341, 349, 455 S.E.2d 473, 480 (1995)). “The statute does not require there to be evidence of proof of such injury.” *Id.*

To survive a motion to dismiss on an alienation of affections claim, a plaintiff

is only required to allege the following in a complaint: “(1) plaintiff and [his wife] were happily married and a genuine love and affection existed between them; (2) the love and affection [between them] was alienated and destroyed; and (3) the wrongful and malicious acts of [the] defendant produced the alienation of affections.” *Id.* at 732–33, 537 S.E.2d at 856–57 (quoting *Chappell v. Redding*, 67 N.C. App. 397, 399, 313 S.E.2d 239, 241 (1984)).

This Court has held alienation of affections a type of “injury” as contemplated by section 1-75.4, and “telephone contacts (including telephone calls and telephone transmitted e-mail) [] ‘solicitations’ within the meaning of [section] 1-75.4[.]” *Id.* at 7334, 537 S.E.2d at 857. *See id.* at 734, 35, 537 S.E.2d at 857, 58 (holding section 1-75.4 authorized personal jurisdiction where the plaintiff sufficiently alleged the defendant “telephoned her husband in North Carolina in order to solicit his affections” and the plaintiff, while living in North Carolina, “suffered injury, the destruction of her husband’s love and affection, as the direct result of [the] defendant’s wrongful conduct”).

Here, as discussed above, Plaintiff makes the necessary allegations in his Amended Complaint for an alienation of affections claim with a sufficient nexus to the misconduct and this State. Additionally, Plaintiff’s claim of injury is sufficient as his injury occurred within this State and was allegedly caused by “[D]efendant’s solicitation of [P]laintiff’s [wife’s] love and affection by telephoning [P]laintiff’s home in North Carolina.” *Id.* at 734, 35, 537 S.E.2d at 857, 58. We conclude, therefore,

that section 1-75.4 authorizes personal jurisdiction over Defendant.

### **3. *Minimum Contacts***

“Since we have determined that personal jurisdiction is authorized by the long-arm statute, we must now address whether [D]efendant had such minimum contacts with the forum state to comport with due process.” *Id.* at 734, 537 S.E.2d at 857. To determine whether Defendant’s contacts are sufficient, we consider “(1) the quantity of the contacts; (2) the quality and nature of the contacts; (3) the source and connection of the cause of action to the contacts; (4) the interests of the forum state[;] and (5) the convenience to the parties.” *Id.* at 734, 537 S.E.2d at 857–58 (quoting *Fran’s Pecans, Inc. v. Greene*, 134 N.C. App. 110, 114, 516 S.E.2d 647, 650 (1999)).

Here, Defendant alleges his only contacts with North Carolina were “sixteen [work-related] trips and two family vacations over a four[-]year period.” While this amount may not be extensive, his contacts—eliciting communication with Plaintiff’s wife while Plaintiff and his wife were living in North Carolina—were sufficient for purposes of section 1-75.4. *See id.* at 735, 537 S.E.2d at 858 (“The quantity of [the] defendant’s contacts with North Carolina may not have been extensive. However, we have already determined that the contacts were sufficient for purposes of [section] 1-75.4[.]”). Furthermore, Plaintiff’s cause of action was connected to Defendant’s alleged misconduct in North Carolina—alienating Plaintiff’s marriage by soliciting Plaintiff’s wife’s love and affection. *Id.*



Additionally, North Carolina has a heightened interest in protecting its citizens against foreign tortfeasors, specifically in alienation of affections and criminal conversations claims. *Id.* See also *Fish v. Stetina*, \_\_\_ N.C. App. \_\_\_, \_\_\_, 913 S.E.2d 236, 247 (2025) (recognizing North Carolina as one of the few states that adjudicates alienation of affections claims). Although we recognize both parties do not currently reside in North Carolina, Plaintiff and his wife were living in North Carolina at the time the alleged misconduct occurred. Moreover, Plaintiff alleges witnesses are available in North Carolina through Defendant and Rebecca’s former coworkers at PPD, and Defendant’s coworkers at his current place of employment, Javara, Inc., another North Carolina corporation.

Defendant relies on *Bell v. Mozley* and *Eluhu v. Rosenhaus* to support his argument that he had insufficient minimum contacts with North Carolina. In *Bell*, an out-of-state plaintiff brought an alienation of affections claim against an out-of-state defendant, and the trial court asserted personal jurisdiction over the defendant. *Bell v. Mozley*, 216 N.C. App. 540, 541, 716 S.E.2d 868, 870 (2011). This Court reversed the trial court’s order holding the defendant did not have the requisite minimum contacts with North Carolina to comport with due process. *Id.* at 549, 716 S.E.2d at 874. We reasoned that the defendant’s contacts with this State were “strictly related to [the] defendant’s employment” and the defendant’s contacts were “clearly not the source of and are in no way related to [the] plaintiff’s claims for alienation of affection[s] and criminal conversation.” *Id.* at 546, 716 S.E.2d at 873.

Outside of a three-day vacation trip at the plaintiff's vacation home in Blowing Rock, North Carolina, where both parties were present, most of the alleged conduct occurred in other states. *Id.* at 545, 547–48, 716 S.E.2d at 874. Furthermore, both parties lived in South Carolina, and the “vast majority of the actions alleged in [the] plaintiff's complaint occurred in . . . South Carolina, and [the] plaintiff [] admitted that all witness affidavits obtained in [the] case were from individuals living within 50 miles of the parties in . . . South Carolina.” *Id.* at 548, 716 S.E.2d at 874. As a result, this Court recognized that *Bell* was the ultimate case of forum-shopping and held the trial court erred by asserting personal jurisdiction over the defendant. *Id.* at 548–49, 716 S.E.2d at 874.

Likewise, in *Eluhu*, this Court held the defendant lacked sufficient minimum contacts because “the evidence presented to the trial court showed that neither [the] plaintiff nor [the] defendant is a resident of North Carolina and that almost all of the contact between [the] defendant and [the plaintiff's wife] occurred in [another state].” *Eluhu*, 159 N.C. App. at 360, 583 S.E.2d at 711. Moreover, the “[p]laintiff neither alleged nor attested to the existence of witnesses or evidence within North Carolina necessary to his case.” *Id.* at 362, 583 S.E.2d at 712 (citation omitted).

We find *Bell* and *Eluhu* distinguishable. Here, unlike *Bell* and *Eluhu*, Plaintiff sufficiently alleges he and Rebecca were residents of North Carolina when the misconduct occurred, and the misconduct itself occurred in North Carolina. Plaintiff and Rebecca were not merely vacationing in North Carolina, nor did they just own a

second residence in this State. Rather, Plaintiff made sufficient allegations to show Defendant's misconduct occurred while he and Rebecca were residents of North Carolina, and Plaintiff "suffered injury, the destruction of [his wife's] love and affection, as the direct result of [D]efendant's wrongful conduct." *Cooper*, 140 N.C. App. at 734, 537 S.E.2d at 857. Additionally, unlike *Bell* and *Eluhu*, where it was unclear whether injury occurred in North Carolina, here, the allegations specifically state the injury occurred in this State. Lastly, unlike *Bell* and *Eluhu*, Plaintiff alleges witnesses are available in North Carolina to attest to his cause of action.

As a result, we conclude Defendant has had sufficient minimum contacts with North Carolina to comport with due process, and allowing Plaintiff to bring his claims does not "offend traditional notions of fair play and substantial justice." *Id.* at 736, 537 S.E.2d at 858 (quoting *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (cleaned up)).

In conclusion, "both our long-arm statute and federal due process permit exercise of personal jurisdiction by our courts over [D]efendant for alienation of affections and criminal conversation." *Id.* at 736, 537 S.E.2d at 859. As a result, we hold the trial court did not err by denying Defendant's Motion to Dismiss for lack of personal jurisdiction.

## **B. Subject-matter jurisdiction**

"Whether a trial court has subject-matter jurisdiction is a question of law, reviewed de novo on appeal." *McKoy v. McKoy*, 202 N.C. App. 509, 511, 689 S.E.2d

590, 592 (2010) (citation omitted). Rule 12(b)(1) of the North Carolina Rules of Civil Procedure allows a complaint to be dismissed due to lack of subject-matter jurisdiction over the claims asserted. N.C. R. Civ. P. 12(b)(1) (2023). “Subject-matter jurisdiction refers to ‘the legal power and authority of a court to make a decision that binds the parties to any matter properly brought before it.’” *Watson v. Joyner-Watson*, 263 N.C. App. 393, 394, 823 S.E.2d 122, 124 (2018) (quoting *Catawba Cty. ex rel. Rackley v. Loggins*, 370 N.C. 83, 88, 804 S.E.2d 474, 478 (2017)). Whereas personal jurisdiction is “the power to bring the person to be affected by the judgment before the court,” subject-matter jurisdiction “concerns the kind of action in question rather than the person affected by the action.” *Bassiri v. Pilling*, 287 N.C. App. 538, 544, 884 S.E.2d 165, 170 (2023) (citation and internal marks omitted).

Defendant alleges that “both alienation of affection and criminal conversation claims are transitory torts that require the tortious conduct to have occurred within the State of North Carolina in order to establish subject[-]matter jurisdiction.”

This Court recently recognized “[t]he question of whether the trial court has subject-matter jurisdiction is frequently conflated with the question of where the alleged alienating conduct and injury occurred because North Carolina is often the only jurisdiction involved that recognizes the claim.” *Bassiri*, 287 N.C. App. at 546, 884 S.E.2d at 171.

In *Bassiri*, a trial court dismissed a plaintiff’s alienation of affections complaint for lack of subject-matter jurisdiction where it was unclear whether the alleged

conduct occurred in North Carolina or Utah, both of which recognize a cause of action for an alienation of affections claim. *Id.* at 545, 884 S.E.2d at 170. In recognizing that “[e]stablishing [] the defendant’s alienating conduct occurred within a state that still recognizes alienation of affections as a valid cause of action is essential to a successful claim[,]” this Court held “it does not necessarily follow that the alleged alienating conduct must have occurred *in North Carolina* in order for a plaintiff to raise a valid alienation of affections claim over which the trial court would have subject-matter jurisdiction.” *Id.* (quoting *Hayes v. Waltz*, 246 N.C. App. 438, 443, 784 S.E.2d 607, 613 (2016) (emphasis in original)). Instead, “the alienating conduct must have occurred within a state that still recognizes alienation of affections as a valid cause of action[,]” and both North Carolina and Utah recognized alienation of affections as a valid cause of action. *Id.* (citation and internal quotations omitted).

This Court went on explain that while it is true “the factual determination of where the allegedly injurious conduct occurred is critical to the eventual *choice-of-law* analysis that determines whether a plaintiff has sufficiently alleged a valid cause of action under the applicable substantive law,” that is a separate issue from subject-matter jurisdiction. *Id.* at 546, 884 S.E.2d at 171. “[T]he dispositive question of law—whether the trial court possesses subject-matter jurisdiction over the *kind of action* in question—is a deceptively simple one.” *Id.* at 547, 884 S.E.2d at 171 (emphasis in original). An alienation of affections claim, is “a tort over which the trial courts of

this [S]tate indisputably possess subject-matter jurisdiction.” *Id.* As a result, this Court reversed and remanded the trial court’s order. *Id.*

Here, because Plaintiff alleges alienating conduct occurred “within a state that still recognizes alienation of affections as a valid cause of action” and North Carolina has subject-matter jurisdiction over “the kind of action in question,” the trial court did not err in concluding that it had proper subject-matter jurisdiction over Plaintiff’s Amended Complaint for alienation of affections and criminal conversation. *See id.* at 545, 546, 884 S.E.2d at 170, 171.

#### **IV. Conclusion**

We hold the trial court properly denied Defendant’s Motion to Dismiss pursuant to Rule 12(b)(1) and (b)(2).

AFFIRMED.

Chief Judge DILLON and Judge CARPENTER concur.

Report per Rule 30(e).