

A06-2311

STATE OF MINNESOTA

IN COURT OF APPEALS

Raymond R. Pierce and Linda
Pierce, husband and wife

Appellants,

vs.

Blume Law Firm, PC

Respondent

APPELLANTS' BRIEF AND APPENDIX

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STATEMENT OF ISSUES

- I. Did the district court err when it ruled that Appellants could not collaterally attack the Arizona court judgment when the Arizona court issuing the judgment did not consider or decide the question of personal jurisdiction?

Without analyzing the collateral estoppel effect of the Arizona judgment, the district court ruled that Appellants could not collaterally attack the Arizona Court judgment.

Apposite Cases:

Lyons Financial Services, Inc. v. Waddill, 625 N.W.2d 155 (Minn. App. 2001)

David M. Rice, Inc. v. Intrex, Inc., 257 N.W.2d 370, 372 (Minn. 1977).

Wright v. Mohs, 364 N.W.2d 848, 850 (Minn. App. 1985)

- II. Did Arizona have personal jurisdiction over Appellants?

In ruling that that Appellants could not collaterally attack the Arizona judgment, the district court did not address Appellants' argument that the Arizona court lacked personal jurisdiction.

Apposite Cases:

Rollin v. William v. Frankel & Co., 996 P.2d 1254 (Arizona 2000)

Helicopteros Nacionales de Colombia v. Hall, 466 U.S. 408, 415-16 (1984).

STATEMENT OF THE CASE

Appellants Raymond and Linda Pierce are residents of Minnesota. On June 9, 2005, Respondent Blume Law Firm P.C. sued Appellants and their son Jason Pierce and his wife in Maricopa County, Arizona. Respondent's Arizona Complaint alleged Appellants were liable on a promissory note signed by their son Jason. In their pro se answer, Appellants denied liability and asserted that the Arizona Court lacked personal jurisdiction. On August 30, 2005, Respondent moved for summary judgment, representing, among other things, that Appellant Raymond Pierce had also signed the note. On September 20, 2005, Respondent advised the Arizona Court that Appellants and their co-defendants had missed the deadline for filing responsive pleadings and submitted a proposed order entering judgment against all defendants. On September 26, 2005, the Arizona court signed Respondent's proposed order and entered judgment against Appellants and their co-defendants, awarding damages in the amount of \$29,500.00 and ordering the transfer of title to a motorcycle from Appellant Raymond Pierce to Respondent.

Respondent filed the Arizona judgment in Hennepin County District Court on December 14, 2005, and Hennepin County docketed this judgment on January 12, 2006. On March 23, 2006, Appellants moved in Hennepin County District Court to vacate the Arizona Court judgment on the grounds that Arizona Court lacked personal jurisdiction. In an order dated May 23, 2006, the district court ruled Appellants' motion to vacate was premature. On September 22, 2006, Appellants renewed their motion to vacate the Arizona Court judgment. In an order dated October 9, 2006, the district court denied Appellants' motion.

Following entry of judgment on the district court's order on October 12, 2006, Appellants filed this appeal.

STATEMENT OF FACTS

Appellants Raymond and Linda Pierce have lived in Minnesota since 1993 and have never lived in Arizona. (Raymond Pierce Affidavit, ¶1-2, 4 ("R.Pierce ¶1-2, 4"); Linda Pierce Affidavit, ¶3-4, 13 ("L.Pierce ¶3-4, 13").) The only time Appellants were physically present in Arizona was during their occasional visits to their adult son, Jason Pierce, who moved from Minnesota to Arizona in 1999. (R.Pierce Aff., ¶4-5; L.Pierce Aff., ¶3.) During one of these visits in March 2000, Jason Pierce asked Raymond Pierce to co-sign for a Harley Davidson motorcycle he wanted to purchase. (R.Pierce Aff., ¶6.) Because Jason's credit was poor, the seller required that Raymond Pierce purchase the motorcycle in his name.¹ (Id.; see Motorcycle purchase agreement, attached as Defendants' Exhibit 1.²) Raymond and Jason intended to transfer title to Jason when his circumstances improved, but the transfer never took place due to Jason's continued financial difficulties. (R.Pierce Aff., ¶8.) Nevertheless, Jason Pierce had exclusive use and possession of the motorcycle in Arizona where he lived. (Id., ¶7.)

Contact Between Appellants and Respondent.

Several years after the motorcycle purchase, Jason Pierce retained Respondent Blume Law Firm P.C. to represent him in several legal matters in Arizona. (Id., ¶¶9-12.) On August 4, 2004, Jason Pierce signed a promissory note

¹ The motorcycle purchase agreement lists Raymond Pierce's address as 5200 Heritage Hills, Bloomington, MN, his current address.

² Appellants offered 11 exhibits and 2 reply exhibits. These exhibits were labeled Defendants' Exhibits 1 through 11 and Defendants' Reply Exhibits A and B. For purposes of consistency, Appellants will refer to their exhibits in this way.

in the amount of \$28,000.00 to secure legal fees he owed to Respondent. (See Promissory Note, attached as Exhibit 1 to Respondent's Arizona Complaint, which in turn was submitted as Defendants' Exhibit 4.) Jason Pierce is the only obligor and signatory on the note. (Id.) Unbeknownst to the Appellants, Jason Pierce had also agreed to put the motorcycle up as collateral for his debt to Respondent. (See Id.; R.Pierce Aff., ¶13.) Jason did not advise Appellants about the note or involve them in his dealings with Respondent. (Id.; L.Pierce Aff., ¶5.)

On August 19, 2004, Respondent sent Raymond Pierce a letter, addressed to his current address in Minnesota, requesting that he re-sign the Motorcycle's title and return it to Respondent. (R.Pierce Aff., ¶18; see Defendants' Exhibit 2.) Uncertain as to why Respondent would be asking him to sign and return the motorcycle title, Raymond Pierce contacted Jason. (R.Pierce Aff., ¶18-19.) Jason told him that he had given Respondent a promissory note and had put up the motorcycle as collateral for the note. (Id. ¶20.) Jason Pierce assured his father that he would prevail on the lawsuit with Respondent's help and would then pay Respondent in full. (Id.) Respondent made no further demand for Raymond Pierce sign the title. (Id., 20-21)

Respondent's Arizona Complaint.

Some time after November 2004, a dispute developed between Respondent and Jason Pierce, the latter alleging that Respondent had inadequately represented him and the former alleging that Jason had failed to pay for legal services. (See Id., ¶14-16.) Appellants were not involved in this dispute and Respondent made no demand upon Appellants for payment of the Note. (R.Pierce Aff., ¶23.; L.Pierce Aff., ¶7-8.)

On or about July 5, 2005, Respondent personally served Appellants with an Arizona Summons and Complaint at their Minnesota address. (See Affidavit of Service, Defendants' Exhibit 5.) Respondent attached a copy of the promissory note, signed only by Jason Pierce, to its Arizona Complaint. (See Exhibit 1 to the Arizona Complaint, Defendants' Exhibit 4.) Respondent's Complaint nevertheless alleged that the Note was enforceable against Appellants and that Appellants had breached the note by failing to make the payments. (See Arizona Complaint, ¶¶14, 16.)

Personal Jurisdiction Allegations.

Respondent alleged that Arizona had personal jurisdiction over Appellants because they had "caused events to occur in Maricopa County, Arizona, upon which Plaintiff's claims are based." (Arizona Complaint, ¶3, Defendants' Exhibit 4.) In their pro se Answer, Appellants expressly denied that the Arizona Court had personal jurisdiction:

Answering Plaintiff's Complaint paragraph 3 admit Raymond Pierce's marital status and deny each and every other allegation therein contained.

* * *

Answering Plaintiff's Complaint paragraphs 4 and 5 Raymond denies those allegations. Venue and jurisdiction are not proper.

(Separate Answer of Raymond Pierce and Linda Pierce, ¶¶3, 4, submitted as Defendants' Exhibit 6.)

Arizona Summary Judgment.

In August 2005, Respondent moved for summary judgment against Appellants and their Arizona co-defendants. (See Respondent's "Motion for Summary Judgment," Defendants' Exhibit 7, p. 3.) Respondent continued to

represent to the Arizona Court that Raymond Pierce had signed the note, even though the face of the Note shows that only Jason Pierce had signed it:

"A valid promissory note and security agreement was entered into by Jason Pierce **and Raymond Pierce** for the payment of a principal sum of \$28,000.00 . . ."

(Plaintiff's Separate Statement of Material Fact, ¶1, Defendants' Exhibit 8 (emphasis added.) Respondent's motion for Summary Judgment did not present the issue of personal jurisdiction to the Court. (See Id.; see also Defendants' Exhibit 7.) On September 20, 2005, Respondents filed a Notice of No Response and Request for Ruling and Proposed Order, alleging Appellants and their co-defendants had not responded timely to its motion for summary judgment. (See Notice of No Response and Request for Ruling and Proposed Order, submitted as Defendants' Exhibits 9 and 10 respectively.) Upon receipt of Respondent's motion for summary judgment, Jason Pierce had assured Appellants that he and his advisors would take care of responding to the motion. (R.Pierce Aff., ¶38.) When Appellants received Respondent's Notice of No Response, Jason Pierce continued to assure them he would handle it and that there was nothing to worry about. (Id., ¶40.) Unfortunately, Jason Pierce did not take care of the matter and on September 26, 2005, Judge Robert Houser of the Maricopa County Superior Court signed Respondent's proposed order granting summary judgment to Respondent against Appellants, their son Jason and Jason's wife. (See Arizona Court's September 26, 2005, Order for Summary Judgment, submitted as Defendants' Exhibit 11, Appellants' Appendix, pp. 7-9.) The Arizona Court's Order did not mention or address the issue of personal jurisdiction. (Id.)

STANDARD OF REVIEW

Whether personal jurisdiction exists is a question of law and therefore this Court's review is de novo. See V.H. v. Estate of Birnbaum, 543 N.W.2d 649, 653 (Minn. 1996).

Whether a district court erred in application of collateral estoppel/issue preclusion is a mixed question of fact and law subject to de novo review. Green v. City of Coon Rapids, 485 N.W.2d 712, 718 (Minn. App. 1991).

ARGUMENT

I. THE DISTRICT COURT ERRED WHEN IT RULED APPELLANTS COULD NOT COLLATERALLY ATTACK THE ARIZONA JUDGMENT.

The district court appeared to rule that the Appellants' "inaction" during the Arizona lawsuit and their failure to appeal in Arizona first required denial of their motion to vacate:

Defendants R.Pierce and L.Pierce were personally served, answered and cannot collaterally attack the Arizona judgment. Their inaction in the Arizona proceeding cannot be grounds for this Court to act and to, in effect, serve as an appeals court. *See Corsica Cheese, Inv. v. Roers Enter., Inc.*, 389 N.W.2d 751, 753-54 (Minn. App. 1986).

* * *

Defendants R.Pierce and L.Pierce cannot vacate a foreign judgment pursuant to Minn. R. Civ. P. 60.02 where they did not appeal the judgment in the state of rendition. *United Bank of Skyline v. Fales*, 395 N.W.2d 131, 133 (Minn. Ct. App. 1986) *aff'd* 405 N.W.2d 416 (Minn. 1987).

(October 9, 2006, Order, Conclusions of Law, ¶¶1, 4, Appellants' appendix at pp. 5-6.) The district court's analysis omits a vital step. In Minnesota, a party can collaterally attack a foreign court's judgment by demonstrating that the foreign court rendered the judgment in the absence of personal jurisdiction over the defendant. David M. Rice, Inc. v. Intrex, Inc., 257 N.W.2d 370, 372 (Minn. 1977). Such judgments are not entitled to full faith and credit in Minnesota. Uniform Enforcement of

Foreign Judgments Acts, Minn. Stat. § 548.27; Hutson v. Christensen, 203 N.W.2d 535, 538 (Minn. 1972). A collateral attack upon a foreign judgment is barred only when the foreign court has already fully and fairly addressed the issue of lack of personal jurisdiction, because such a ruling triggers collateral estoppel. Lyons Financial Services, Inc. v. Waddill, 625 N.W.2d 155, 158 (Minn. App. 2001) citing United Bank of Skyline v. Fales, 405 N.W.2d 416, 417 (Minn. 1987) (If a foreign court already fully and fairly addressed the contention that it lacked jurisdiction, then collateral estoppel applies and its decision on that issue must be given effect.)

The issue was the issue of personal jurisdiction fully litigated in Arizona, thereby requiring application of collateral estoppel? Examination of the undisputed record shows that it was not.

A. Collateral Estoppel Does Not Apply To The Arizona Judgment Because The Issue of Personal Jurisdiction Was Not Fully Litigated.

“Collateral estoppel bars the relitigation of issues which are both identical to those issues already litigated by the parties in a prior action and necessary and essential to the resulting judgment.” Heine v. Simon, 674 N.W.2d 411, 421 (Minn. App. 2004) (quotation omitted). Collateral estoppel applies when: (1) the issue sought to be raised is identical to one in a prior adjudication; (2) there was a final judgment on the merits in the prior proceeding; (3) the estopped party was a party or in privity with a party to the prior adjudication; and (4) the estopped party was given a full and fair opportunity to be heard on the adjudicated issue. Ellis v. Minneapolis Comm’n on Civil Rights, 319 N.W.2d 702, 704 (Minn. 1982). As a flexible doctrine, the focus is on whether its application would work an injustice on the party against whom estoppel is urged. Johnson v. Consol. Freightways, Inc., 420 N.W.2d 608, 613-14 (Minn. 1988) (citation omitted).

A prerequisite for application of collateral estoppel is that an issue must have been actually litigated to be deemed conclusively determined. McBroom v. Al-Chroma, Inc., 386 N.W.2d 369, 374 (Minn. App. 1986); Restatement Second Judgments, §27 ("When issue of fact or law is actually litigated and determined by a valid judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim.") When construing the term "actually litigated," this Court has construed the term literally, *i.e.* that an issue must be discussed and specifically decided before having collateral estoppel effect. See Lyons Financial Services, Inc. v. Waddill, 625 N.W.2d 155, 158 (Minn. App. 2001) (notwithstanding California court's claim it had made a "substantive" ruling, issue of personal service was not actually litigated where nothing in the record showed issue of personal service had actually being addressed); Wright v. Mohs, 364 N.W.2d 848, 850 (Minn. App. 1985) (while Tennessee court implicitly found it had personal jurisdiction by entering judgment, motion to vacate in Minnesota was allowed because the Tennessee Court did not address the issue); In re Application of Hofstad to Register Title to Certain Land, 376 N.W.2d 698, 700 (Minn. App. 1985) ("Collateral estoppel * * * operates only as to matters actually litigated, determined by, and essential to a previous judgment"); see also Restatement Second of Judgments, §27, comment e.

In this case, nothing in the record indicates that the issue of personal jurisdiction was "actually litigated" in Arizona.³ Instead, the record shows, quite

³ While the district court did not analyze collateral estoppel, the two cases it cited to support its decision ruled that collateral estoppel applied because the foreign courts in both cases had considered and decided the issue in question. See October 9, 2006, Order, Conclusions of Law ¶¶1,4; Corsica Cheese, Inv. v. Roers Enter., Inc., 389 N.W.2d

clearly, that the Arizona court granted summary judgment in response to Respondent's request for entry of judgment when Appellants' son failed to respond properly and timely to the motion for summary judgment. (See September 26, 2005, Order for Summary Judgment, Appellants' Exhibit pp. 7-9; Defendants' Exhibit 11; R.Pierce Aff., ¶¶36-41.) The issue of personal jurisdiction was not mentioned or raised in Respondent's motion papers and was not mentioned or addressed in the order for summary judgment. (See Id.; Respondent's Arizona motion papers, Defendants' Exhibits 7, 8, 9 and 10.)

In closing, it is clear from the undisputed record that the issue of personal jurisdiction was never fully and fairly litigated in Arizona. As a result, collateral estoppel does not apply and Appellants are free to collaterally attack the Arizona judgment for lack of personal jurisdiction.

II. THE ARIZONA JUDGMENT SHOULD BE VACATED BECAUSE THE ARIZONA LACKED PERSONAL JURISDICTION.

A. This Court Should Rule On The Existence of Personal Jurisdiction Even Though The District Court Did Not Address Appellants' Arguments on the Issue.

Appellants premised their motion to vacate the Arizona judgment on the argument that the Arizona Court lacked personal jurisdiction. (See March 23, 2006 and August 25, 2006 Notices of Motion.) The district court did not address this argument in its ruling. This Court can still decide the issue, however, because the existence of personal jurisdiction is determinative of the entire controversy and neither party has been prejudiced by the lack of a prior ruling. Mahoney & Hagberg v. Newgard, 712 N.W.2d 215, 218-19 (Minn. App. 2006.) Significantly, the facts are undisputed by virtue of Respondent's failure to submit

751, 753-54 (Minn. App. 1986); United Bank of Skyline v. Fales, 395 N.W.2d 131, 133 (Minn. App. 1986)

any verified factual allegations in its responses to either of Appellants' motions to vacate. As a result, Respondents cannot claim disadvantage if this Court addresses the personal jurisdiction issue. See Holen v. Minneapolis-St.Paul Metro. Airport Comm'n, 250 Minn. 130, 135, 84 N.W.2d 282, 286 (1957) (No party is disadvantaged where the facts are undisputed.)

B. Arizona Did Not Have Personal Jurisdiction Because Respondent's Claims Do Not Arise From Or Relate To Appellants' Contacts With Arizona.

Under full faith and credit, a judgment in one state is conclusive on the merits in every other state, but only if the court of the first state had jurisdiction to render the original judgment. Williams v. State of North Carolina, 325 U.S. 226, 229, 65 S. Ct. 1092, 1095 (1945). Minnesota courts will vacate a foreign judgment when a defendant demonstrates that the foreign court rendered the judgment in the absence of personal jurisdiction over the defendant. David M. Rice, Inc. v. Intrex, Inc., 257 N.W.2d 370, 372 (Minn. 1977). In determining whether a foreign court lacked personal jurisdiction, Minnesota courts must "apply the law of the foreign state as construed by the courts of that state." S.V. Mgmt. Co. v. Ellis, 472 N.W.2d 674, 676 (Minn. App. 1991) (quotation omitted), *review denied* (Minn. Sept. 13, 1991). Arizona's long-arm statute provides for personal jurisdiction co-extensive with the limits of federal due process. Ariz. R. Civ. P. 4.2(a) (2004); Batton v. Tennessee Farmers Mut. Ins. Co., 736 P.2d 2, 4 (Ariz. 1987).

General vs. Specific Jurisdiction

Federal due process requires that nonresident defendants have certain minimum contacts with the forum state, so that the exercise of personal jurisdiction does not offend traditional notions of fair play and substantial

justice. Ochoa v. J.B. Martin and Son's Farm, Inc., 287 F.3d 1182, 1188 (9th Cir. 2002) (Applying Arizona law and quoting International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945)). The nature and quality of the requisite contacts varies depending on whether the type of jurisdiction being asserted is general or specific. General personal jurisdiction exists when a nonresident defendant's contacts with the forum state are so substantial and are of such a nature (continuous and systematic) that the state may assert jurisdiction over the defendant even for causes of action unrelated to the defendant's contacts with the forum state. Helicopteros Nacionales de Colombia v. Hall, 466 U.S. 408, 415-16 (1984). Specific personal jurisdiction exists when the defendant's contacts with the forum state are limited, yet connected with the plaintiff's claim such that the claim arises out of or relates to the defendant's contacts with the forum. See Burger King Corp. v. Rudzewicz, 471 U.S. 462, 472 (1985); Helicopteros Nacionales, 466 U.S. at 414.

Appellants occasional visits to their adult son and one large consumer purchase while on such a visit do not constitute the type of "continuous and systematic" contacts required to impose general jurisdiction. See Brand v. Menlove Dodge, 796 F.2d 1070, 1073 (9th Cir. 1986) (The standard for establishing general jurisdiction is "fairly high"); Gates Lear Jet Corp. v. Jensen, 743 F.2d 1325, 1331 (9th Cir. 1984) (to constitute general jurisdiction defendant's contacts must be of the sort that approximate physical presence.) Accordingly, the issue becomes whether Arizona had specific jurisdiction over Appellants.

Specific Jurisdiction Defined.

The Ninth Circuit Court of Appeals, applying Arizona and federal law, uses a three part test to determine whether a court may exercise specific

jurisdiction: (1) The nonresident defendant must do some act or consummate some transaction with the forum or perform some act by which he purposefully avails himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections; (2) [t]he claim must be one which arises out of or results from the defendant's forum-related activities; and (3) exercise of jurisdiction must be reasonable. Cybersell, Inc. v. Cybersell, Inc., 130 F.3d 414, 416 (9th Cir. 1997); Williams v. Lakeview Co., 199 Ariz. 1, 3, ¶ 7, 13 P.3d 280, 282 (2000). All of these requirements must be met for jurisdiction over the defendant to comply with due process. Omeluk v. Langsten Slip & Batbyggeri A/S, 52 F.3d 267, 270 (9th Cir. 1995).

1. **Arizona did not have specific, personal jurisdiction because Appellants' contacts with Arizona have no relation to Respondents' claims.**

Arizona law provides that its courts do not have personal jurisdiction when there is not a sufficient connection between the non-resident's contacts and the cause of action:

If the non-resident defendants' forum-related activities are not sufficiently connected for the court to conclude that the plaintiffs' claim arises out of those activities, dismissal is warranted.

Rollin v. William v. Frankel & Co., 996 P.2d 1254, 1258 (Arizona 2000) (quoting Westphal v. Mace, 671 F.Supp. 665, 668 (D. Ariz. 1987)). Arizona lacks personal jurisdiction in this case because there is absolutely no connection between Respondent's claims and Appellants' contacts with Arizona. The undisputed record shows that Appellants only connection to Arizona was a handful of visits to their adult son and Raymond Pierce's purchase of a motorcycle for his son in March 2000. (See R. Pierce Aff., ¶¶6-8.) The promissory note upon which Respondent's claims arise from was not signed until four years later (August 4,

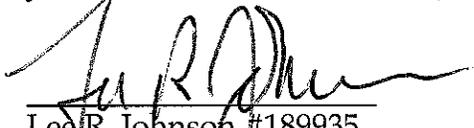
2004) and Appellants had no involvement with the debt which the note secured. In short, there is no plausible connection between Appellant Raymond Pierce's March 2000 motorcycle purchase and his son's default on a promissory note more than four years later. As a result of this complete lack of connection between Respondent's claims and Appellants contacts with Arizona, Arizona has no personal jurisdiction over Appellants.⁴

CONCLUSION

Appellants Raymond and Linda Pierce respectfully request that this Court reverse the district court's denial of their motion to vacate and grant Appellants' motion to vacate on the grounds that the record created during Appellants' two motions for vacation of the Arizona judgment establishes that the Arizona judgment was void because of lack of personal jurisdiction.

Dated: January 6, 2007.

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⁴ In light of Appellants' minimal contacts with Arizona, imposition of jurisdiction over Appellants would be unreasonable when he did not sign the promissory note at the heart of Respondent's claims. See Burger King Corp. v. Rudzewicz, 471 U.S. at 476 (for jurisdiction to be reasonable, it must comport with fair play and substantial justice.)

The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2) (with amendments effective July 1, 2007).