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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1414, A12-0965**

In re John Ward Gillman Engraved June 20, 1775 Copper Printing Plate:

Gary Eldon Lea,
Respondent,

vs.

Heritage Auctions, Inc.,
Defendant,

State of New Hampshire,
Appellant.

Filed February 11, 2013
Affirmed in part, reversed in part, and remanded
Collins, Judge*

Filmore County District Court
File No. 23-CV-10-725

Bennett A. Myers, Bosshard Parke, Ltd. LaCrosse, Wisconsin 54602 (for respondent Lea)

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Hampshire (for appellant State of New Hampshire)

Considered and decided by Halbrooks, Presiding Judge; Stauber, Judge; and
Collins, Judge.

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals
by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

COLLINS, Judge

Appellant, the State of New Hampshire, argues that the district court erred in determining that Minnesota's exercise of jurisdiction over New Hampshire comports with due process under a minimum-contacts analysis, and Minnesota's long-arm statute permits Minnesota to exercise jurisdiction over New Hampshire. New Hampshire also challenges the validity of the default judgment entered in June 2011 while the previous appeal was pending. We affirm in part, reverse in part, and remand.

FACTS

This appeal stems from a dispute regarding ownership of a 1775 John Ward Gilman¹ copper-engraved provincial-currency printing plate. On October 1, 2009, respondent Gary Lea purchased the plate at an estate sale in Minnesota. Lea later contracted with Heritage Auctions Inc. to sell the plate at a Massachusetts auction scheduled for August 11, 2010. The auction reserve was set at \$50,000, and several institutions and individuals expressed interest in purchasing the plate. On the morning of the auction New Hampshire asserted ownership of the plate and threatened legal action if it was not withdrawn from the auction. Lea and Heritage withdrew the plate from the auction, and the plate was returned to Lea in Minnesota.

¹ The caption in the district court referred to the "Gillman" plate and that spelling is used in the caption on appeal. *See* Minn. R. Civ. App. P. 143.01 (directing that the title of an action "not be changed in consequence of [an] appeal"). But the parties agree that the correct spelling is "G-i-l-m-a-n."

On August 13, 2010, Lea commenced a declaratory-judgment action in district court, seeking a declaration that he is the exclusive owner of the plate. New Hampshire moved to dismiss the action for lack of jurisdiction, arguing, in part, that New Hampshire does not have sufficient minimum contacts with Minnesota to satisfy the requirements of due process. The district court denied New Hampshire's motion and subsequent request for reconsideration. While appeal of that decision was pending, the district court granted Lea's motion for default judgment because New Hampshire had not filed an answer. New Hampshire appealed the default judgment prior to the resolution of the first appeal. On November 7, 2011, this court reversed the district court's denial of New Hampshire's motion to dismiss and remanded for the district court to determine whether an exercise of in rem jurisdiction in this case comports with traditional notions of fair play and substantial justice. *In re John Ward Gillman Engraved June 20, 1775 Copper Printing Plate v. Heritage Auctions, Inc.*, 806 N.W.2d 861, 869 (Minn. App. 2011). On April 12, 2012, the district court issued its order on remand, concluding that Minnesota courts have the requisite jurisdiction over New Hampshire because New Hampshire (1) asserts a claim of ownership over personal property located in Minnesota, and (2) has sufficient minimum contacts with Minnesota such that the exercise of jurisdiction does not offend traditional notions of fair play and substantial justice. This appeal, consolidated with the default-judgment appeal, followed.

DECISION

I.

In the first appeal, we concluded that due process requires that an exercise of in rem jurisdiction comport with traditional notions of fair play and substantial justice. *See In re John Ward Gillman*, 806 N.W.2d at 869. On remand, the district court applied the fairness standard set forth by the United States Supreme Court and concluded Minnesota may properly exercise jurisdiction over New Hampshire. *See Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316-19, 66 S. Ct. 154, 158-160 (1945). New Hampshire challenges this conclusion, seeking dismissal for lack of personal jurisdiction.

Whether personal jurisdiction exists presents a question of law, which we review de novo. *Juelich v. Yamazaki Mazak Optonics Corp.*, 682 N.W.2d 565, 569 (Minn. 2004). When personal jurisdiction has been challenged, it is the plaintiff's burden to prove that the forum state has personal jurisdiction over the defendant. *Id.* at 569-70. But a plaintiff need only make a prima facie showing of personal jurisdiction before trial, and the complaint and any supporting evidence must be taken as true. *Hardrives, Inc. v. City of La Crosse*, 307 Minn. 290, 293, 240 N.W.2d 814, 816 (1976). The power of Minnesota courts over out-of-state defendants extends to the full extent of constitutional due process, and any doubts are resolved in favor of retaining jurisdiction. *Id.* at 296, 240 N.W.2d at 818.

To exercise personal jurisdiction over a nonresident, Minnesota courts require that (1) the defendant have minimum contacts with Minnesota in order to satisfy due process, and (2) the requirements of Minnesota's long-arm statute are satisfied. *Marshall v. Inn*

on Madeline Island, 610 N.W.2d 670, 673 (Minn. App. 2000); *see generally* Minn. Stat. § 543.19 (2012). We address each requirement in turn.

The defendant's contact with the forum state must be sufficient to ensure that the exercise of jurisdiction does not offend traditional notions of fair play and substantial justice. *Marshall*, 610 N.W.2d at 673-74. According to the minimum-contacts analysis, the defendant must have purposefully availed itself of the privilege of conducting activities within the state. *Id.* At 674. Due process also requires that a defendant be able to "reasonably anticipate" being haled into the forum state's court. *Id.*

Minnesota courts consider five factors to determine the existence of personal jurisdiction: "(1) The quantity of the contacts with the forum state, (2) The nature and quality of the contacts, (3) The source and connection of the cause of action with these contacts, (4) The interest of the state in providing a forum, (5) The convenience of the parties." *Id.* The first three factors are of primary importance, while the factors of state interest and convenience of the parties require lesser consideration. *Dent-Air, Inc. v. Beech Mountain Air Serv., Inc.*, 332 N.W.2d 904, 907 (Minn. 1983).

A.

The first two factors require evaluating the quantity and quality of New Hampshire's contacts with Minnesota. New Hampshire contacted Heritage, which was selling the plate at auction on Lea's behalf. On August 3, 2010 New Hampshire sent a letter to Heritage at its Texas office and demanded "any information regarding the transactional history of the plate that would refute [New Hampshire]'s claim of ownership" within three days or "[New Hampshire] will file a writ of replevin on Friday

in superior court to have the copper plate withdrawn from the auction.” Lea promptly executed and sent an affidavit containing his personal information, information regarding the circumstances under which he purchased the plate, and asserting that when he purchased the plate he had no reason to believe ownership was contested. Two days later, New Hampshire requested that Heritage not sell the plate, stating that the “request is made so that we may avoid having to file any legal action today.” On the same day, Lea withdrew the plate from the auction. New Hampshire argues that, because Heritage is located in Texas, its contacts with Heritage were not contacts with Minnesota. However, Heritage was selling the plate at auction for Lea, a Minnesota resident, and the purpose and subject of the contact (ownership of the plate) directly affected Lea.

A single, isolated transaction may be sufficient to confer personal jurisdiction over a nonresident defendant if the cause of action arose out of that contact. *Marquette Nat’l Bank v. Norris*, 270 N.W.2d 290, 295 (Minn. 1978). New Hampshire cites cases discussing *Marquette*, but exaggerates the narrowing of *Marquette*’s holding. Minnesota courts continue to regularly cite *Marquette* for the holding that jurisdiction can arise from a single contact if the cause of action arose out of that contact. *See JL Schwieleks Constr., Inc. v. Goldridge Constr., Inc.*, 768 N.W.2d 529, 535 (Minn. App. 2010).

New Hampshire advances a number of other arguments, including that it did not initiate the litigation and did not induce Lea to purchase the plate. Lea does not contest that he commenced the lawsuit, nor does he contend that New Hampshire induced him to buy the plate. New Hampshire also asserts that it “consistently and respectfully resisted” litigation, that its contact with Heritage was “mere inquiry” or efforts to resolve

disagreements, and that Lea “answered inquiries and invitations to resolve legitimate ownership questions . . . with a slap of litigation.” *See Dent-Air*, 332 N.W.2d at 908 (“Mere inquiry by a prospective buyer or seller, without more, will not sustain jurisdiction.”). But New Hampshire’s characterization of its contact as resisting litigation and “mere inquiry” is unsupported by the record; rather, New Hampshire requested and received an affidavit, threatened legal action, effectively prevented the sale of the plate, and asserted ownership of the plate.

New Hampshire also relies on Minnesota caselaw holding that phone and mail contacts alone do not establish personal jurisdiction. *See S.B. Schmidt Paper Co. v. A to Z Paper Co.*, 452 N.W.2d 485, 488 (Minn. App. 1990); *Walker Management, Inc. v. FHC Enters.*, 446 N.W.2d 913, 915 (Minn. App. 1989), *review denied* (Minn. Dec. 15, 1989). But in *S.B. Schmidt* there was no connection between the parties’ contract and the state; the allegedly non-conforming goods were not shipped from Minnesota, but from Mexico. 452 N.W.2d at 489. And in *Walker*, the defendant did not purposefully avail itself of Minnesota law because every significant element in the formation of the agreement between the parties occurred outside Minnesota and all of the services were to be performed in the Chicago area. 446 N.W.2d at 915. There, Minnesota did not have a significant interest in providing a forum because “all of [the plaintiff’s] efforts were directed, not to Minnesota residents, but to residents in and around the Chicago area[.]” and a lawsuit brought by the defendant against the plaintiff was still pending in Cook County, Illinois, so that forum was available for the plaintiff to counterclaim and litigate. *Id.* at 916.

Finally, New Hampshire argues that the communications with Lea through Heritage are not contacts with Minnesota because the focus of a jurisdiction analysis is the defendant's contacts with the forum *state*, not with its *residents*. See *Sherburne Cnty. Soc. Servs. v. Kennedy*, 426 N.W.2d 866, 868 (Minn. 1988). But the cases cited by New Hampshire are distinguishable. In *Sherburne County*, for example, the issue was whether a county may hale a nonresident into a Minnesota district court to defend a paternity action because he allegedly fathered a child with a Minnesota resident. *Id.* at 867. As discussed above, New Hampshire's contact was not an isolated out-of-state contact but was instead contacting a Minnesota resident, demanding and receiving information, and asserting a claim of ownership of property in the possession of the Minnesota resident. It is also notable that this is an in rem action. In such case, the United States Supreme Court has discussed applying the same test in analyzing in rem jurisdiction as the test for personal jurisdiction. While noting that these illustrations may not contain all factors necessary for a jurisdictional determination, the Supreme Court stated:

[T]he presence of property in a State may bear on the existence of jurisdiction by providing contacts among the forum State, the defendant, and the litigation. For example, when claims to the property itself are the source of the underlying controversy between the plaintiff and the defendant, it would be unusual for the State where the property is located not to have jurisdiction. In such cases, the defendant's claim to property located in the State would normally indicate that he expected to benefit from the State's protection of his interest. The State's strong interests in assuring the marketability of property within its borders and in providing a procedure for peaceful resolution of disputes about the possession of that property would also support jurisdiction, as would the likelihood that important records and witnesses will be found in the State.

Shaffer v. Heitner, 433 U.S. 186, 207-08, 97 S. Ct. 2569, 2581 (1977) (footnotes omitted). On this record, we conclude that the quantity and quality of contacts supports Minnesota's exercise of jurisdiction over New Hampshire.

B.

The third factor determining personal jurisdiction is the connection between the cause of action and the contacts of a nonresident defendant. *Juelich*, 682 N.W.2d at 570. New Hampshire argues that its communications were unrelated to the cause of action. That argument fails. Lea's cause of action (seeking declaration of his ownership of the plate) and New Hampshire's contact with Lea through Heritage (disputing the ownership of the plate) are directly connected. New Hampshire's contact caused Lea to withdraw the plate from auction, cast doubt on the ownership of the plate, and continues to prevent Lea from selling the plate. This factor weighs in favor of exercising jurisdiction.

C.

The final factors are the interest of the state in providing a forum and the convenience of the parties. These two factors implicate whether the exercise of jurisdiction is reasonable according to traditional notions of fair play and substantial justice. *Id.* Minnesota has an interest in providing a forum for its residents who claim to be wronged. *Marshall*, 610 N.W.2d at 676. And although convenience of the parties must be considered, it "is rarely dispositive." *Marquette*, 270 N.W.2d at 295.

New Hampshire argues that it has an interest in serving as the forum for resolution of this dispute. While New Hampshire has an interest in enforcing its laws and protecting its colonial patrimony, that interest does not exceed Minnesota's interests in providing a

forum for its residents and enforcing its property laws. This factor weighs in favor of exercising jurisdiction.

Finally, we consider the convenience of the parties. In considering this factor, the district court discussed New Hampshire's engagement of the Minnesota attorney general's office and the imbalance of resources available to the parties. The district court noted that Lea is a part-time employee of a school district. In addition to financial factors, after New Hampshire threatened legal action against a Minnesota resident regarding a plate that was purchased in Minnesota and is retained in Minnesota, New Hampshire may reasonably anticipate Minnesota court proceedings in order to resolve the matter. This factor also weighs in favor of jurisdiction.

While mindful that the presence of the plate in Minnesota alone is insufficient to establish jurisdiction, because each relevant factor weighs in favor of Minnesota exercising jurisdiction, doing so does not offend due process. All that remains is whether New Hampshire falls within the Minnesota long-arm jurisdiction statute. *See Marshall*, 610 N.W.2d at 673.

New Hampshire argues that the district court erred in determining that Minnesota's long-arm statute permits the exercise of personal jurisdiction over New Hampshire. In particular, New Hampshire argues that the statute does not apply because it is not an "individual" or a "corporation" under the statute. The district court found that the long-arm statute's requirements are met because New Hampshire asserts a claim of ownership over personal property located in Minnesota.

Minnesota's long-arm statute defines personal jurisdiction over foreign defendants. Minn. Stat. § 543.19. The Minnesota Supreme Court stated: "We think the most basic interest of our legislature in enacting [section] 543.19 was to afford maximum protection to this state's residents injured by acts of nonresidents; that is, to extend the extraterritorial jurisdiction of our courts to the maximum limits consistent with constitutional limitations." *Hunt v. Nevada State Bank*, 285 Minn. 77, 96, 172 N.W.2d 292, 304 (1969). Minnesota's long-arm statute and the federal due-process clause are co-extensive, meaning that if the federal constitution's due-process requirements are met, the long-arm statute's requirements are necessarily satisfied. *Marshall*, 610 N.W.2d at 673. Therefore, we need only consider whether asserting jurisdiction over New Hampshire is consistent with federal constitutional requirements of due process. *Domtar v. Niagara Fire Ins. Co.* 533 N.W.2d 25, 29-30 (Minn. 1995). Because the due-process requirements are met as discussed above, the Minnesota long-arm statute permits personal jurisdiction over New Hampshire. Therefore, we affirm the district court's order on remand that, on this record, Minnesota courts have jurisdiction over New Hampshire.

II.

New Hampshire also argues that the June 2011 default judgment is void, reasoning that the district court did not have jurisdiction to enter a default judgment because New Hampshire's appeal of jurisdiction was pending. An appeal suspends the district court's authority to make any order that affects the order or judgment being appealed, but the district court retains jurisdiction as to collateral matters. Minn. R. Civ. App. P. 108.01, subd. 2. The rationale for immediate appealability of an order denying a motion to

dismiss for lack of jurisdiction is that a defendant should not be required to assume the burdens of litigation if jurisdiction is lacking. *Aon Corp. v. Haskins*, 817 N.W.2d 737, 739 (Minn. App. 2012).

Here, the district court proceeded even though New Hampshire had appealed jurisdiction and requested an extension of time to file an answer. The default judgment was not “independent of, supplemental to, or collateral to the order or judgment appealed from,” thus the district court lacked authority to issue such a judgment. *See* Minn. R. Civ. App. P. 108.01, subd. 2. Therefore, we reverse the default judgment and remand to the district court to resume proceedings on the merits.

Affirmed in part, reversed in part, and remanded.