STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1959

Gene R. Backe, et al.,
Respondents,

vs.

A.W. Kuettel & Sons, Inc., et al.,
Defendants,

Conwed Corporation,
Appellant.

Filed July 13, 2020
Affirmed
Reilly, Judge

Ramsey County District Court
File No. 62-CV-19-4638

Chad C. Alexander, Michael R. Strom, Alexander J. Christians, Sieben Polk, P.A., Eagan, Minnesota (for respondents)

Steven J. Kirsch, Bradley R. Bultman, Patrick H. O'Neill, III, Larson • King, LLP, St. Paul, Minnesota; and

Kristi K. Brownson, Brownson Norby, PLLP, Minneapolis, Minnesota (for appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Reilly, Judge; and Florey, Judge.

U N P U B L I S H E D O P I N I O N

REILLY, Judge

Appellant challenges the district court's denial of its motion to dismiss respondent's asbestos-exposure claims. Appellant asserts that the district court erred (1) by declining to adopt a temporal-relevance test as a threshold matter in deciding personal jurisdiction, and (2) by determining that specific personal jurisdiction exists. We affirm.

FACTS

This case arises out of asbestos-exposure claims asserted by plaintiffs-respondents Gene R. Backe and Carol J. Backe (referred to collectively as Backe) against defendant-appellant Conwed Corporation (Conwed), an asbestos manufacturer and supplier. On review of an order denying a motion to dismiss for lack of personal jurisdiction, "the plaintiff need only make a prima facie showing of sufficient Minnesota-related activities through the complaint and supporting evidence, which will be taken as true." *Hardrives, Inc. v. City of LaCrosse*, 240 N.W.2d 814, 816 (Minn. 1976) (citation omitted).

Taking the allegations in the complaint and supporting documentation as true, these facts are established. Conwed is a Delaware corporation with its principal place of business in New York. Conwed operated a mill in Cloquet, Minnesota, from 1959 to 1985, and manufactured asbestos-containing ceiling tile at the mill from 1959 to 1974. In 1985, Conwed sold the mill and its ceiling-tile business to another manufacturer. Conwed stopped conducting business in Minnesota in 1985.

Backe is a lifelong resident of Cloquet and continues to live within blocks of the mill. Backe's father worked at the mill from 1939 to 1975.[1] Backe's father routinely came home from work "covered in asbestos fiber" and contaminated the family home by bringing asbestos dust home on his hair, body, and clothing. In 1961, Backe visited his father at the mill and walked through several areas of the plant. During his visit, Backe saw Conwed employees dumping burlap bags of asbestos into large vats, as part of the process of making the ceiling tiles. Backe knew that the burlap bags contained asbestos because he later performed the same work.

Backe began working at the mill in 1963. Throughout his employment, Backe was exposed to asbestos-containing products and raw materials manufactured, sold, and distributed by Conwed. Conwed's products released airborne fibers, which Backe inhaled and ingested. Backe continued to live with his parents until 1966, and often visited his parents after he moved out. Backe routinely came home covered with asbestos and other dust from his own work at Conwed. A September 1959 Conwed memorandum identified asbestos as one of the "hazards associated with the production of our [products]," and noted that asbestos could cause "[l]ung disease caused by inhaling asbestos dust." Despite knowing about the health hazards associated with exposure to asbestos dust in 1959, Conwed did not warn Backe that asbestos was hazardous to his health or that he should wear respiratory protection.

[1] Backe's father worked at the mill for Conwed's predecessor and, later, for Conwed.

Backe was diagnosed with mesothelioma, a lung disease, in December 2018. Backe underwent chemotherapy in Duluth and all of his medical care has been in Minnesota. Backe has been advised that mesothelioma is not curable.

In June 2019, Backe sued Conwed, among others, asserting claims for negligence, strict liability, and breach of warranty.[2] Conwed moved to dismiss the complaint, arguing that Minnesota lacks personal jurisdiction over the company because it has not conducted business in Minnesota since 1985. The district court denied Conwed's motion to dismiss, determining that minimum contacts existed and that traditional notions of fair play and substantial justice "favor the exercise of Minnesota's jurisdiction notwithstanding the date of the contacts." Conwed appeals.

D E C I S I O N

I. Standard of Review

If a defendant challenges a court's exercise of personal jurisdiction, the plaintiff bears the burden of making a prima facie showing that personal jurisdiction is proper. *Id.* at 816. The existence of personal jurisdiction is a question of law subject to de novo review on appeal. *Juelich v. Yamazaki Mazak Optonics Corp.*, 682 N.W.2d 565, 569 (Minn. 2004). On review, we accept the factual allegations in the complaint and supporting affidavits as true, and, in a close case, we resolve any doubt in favor of retaining jurisdiction. *Hardrives, Inc.*, 240 N.W.2d at 816.

[2] Additional named defendants are not parties to this appeal. The district court stayed further proceedings pending the outcome of this appeal.

II. We decline to apply a temporal-relevance test as a threshold consideration to a personal-jurisdiction analysis.

Conwed challenges the state's exercise of personal jurisdiction and urges this court to determine as a threshold matter that it is not subject to specific personal jurisdiction because it lacks "temporally relevant contacts with Minnesota." Conwed acknowledges that it had contacts in the state before 1985. Yet Conwed argues that it is "undisputed that Conwed lacks sufficient minimum contacts under the temporal relevance standard" because it has not "purposefully availed" itself of the privileges and benefits of doing business in Minnesota since 1985. Conwed claims that the district court misapplied the law by failing to adopt a temporal-relevance test before conducting a specific-personal-jurisdiction analysis.

We disagree. A Minnesota court may exercise personal jurisdiction over a foreign corporation when our long-arm statute, codified at Minn. Stat. § 543.19 (2018), authorizes it and the exercise of such jurisdiction does not violate the due-process requirements of the United States Constitution. *Valspar Corp. v. Lukken Color Corp*., 495 N.W.2d 408, 410-11 (Minn. 1992). "Because Minnesota's long-arm statute is coextensive with the constitutional limits of due process, the inquiry necessarily focuses on the personal-jurisdiction requirements of the federal constitution." *Lorix v. Crompton Corp*., 680 N.W.2d 574, 577 (Minn. App. 2004), *review denied* (Minn. Sept. 21, 2004); *see also Valspar Corp*., 495 N.W.2d at 411 ("If the personal jurisdiction requirements of the federal constitution are met, the requirements of [Minnesota's] long-arm statute will necessarily be met also."). "The Due Process Clause of the Fourteenth Amendment limits the power

of a state court to render a valid personal judgment against a nonresident defendant." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291, 100 S. Ct. 559, 564 (1980) (citation omitted). A state may not exercise personal jurisdiction unless the defendant has "minimum contacts" with the state and maintaining the lawsuit "does not offend traditional notions of fair play and substantial justice." *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S. Ct. 154, 158 (1945) (citation and internal quotation marks omitted).

Minnesota courts apply a five-factor test to determine whether the exercise of personal jurisdiction accords with federal due process. *Aftanase v. Economy Baler Co.*, 343 F.2d 187, 197 (8th Cir. 1965) (articulating five-factor minimum-contacts test); *see also Hardrives, Inc.*, 240 N.W.2d at 817-18 (adopting *Aftanase*'s minimum-contacts test in Minnesota). Under the *Hardrives* test, we assess (1) the quantity of contacts with Minnesota, (2) the nature and quality of those contacts, (3) the connection of the cause of action with the contacts, (4) Minnesota's interest in providing a forum, and (5) the convenience of the parties. 240 N.W.2d at 817.

Conwed argues that this court should apply a temporal-relevance test before considering the five *Hardrives* factors. Conwed acknowledges that there is no Minnesota authority on point. Instead, Conwed relies on caselaw from the Eighth Circuit suggesting that a district court should consider contacts occurring (1) at the time the complaint was filed, (2) within a reasonable period of time immediately prior to the filing of the complaint, or (3) when the claim arose. Conwed argues that, applying the same analysis, this court should determine that Conwed did not have contacts in Minnesota when Backe filed his

complaint, within a reasonable period of time immediately prior to the filing of the complaint, or when Backe was diagnosed with mesothelioma.

Conwed's argument is not persuasive. The decisions of the United States Supreme Court and the Minnesota Supreme Court bind this court, but not the decisions of the federal courts.[3] *See Citizens for a Balanced City v. Plymouth Congregational Church*, 672 N.W.2d 13, 20 (Minn. App. 2003) (recognizing that this court is only bound by decisions of the United States Supreme Court and the Minnesota Supreme Court). And Conwed concedes that the temporal-relevance test has not been recognized by the United States Supreme Court or by the Minnesota Supreme Court. Accordingly, the Eighth Circuit caselaw cited by counsel is not dispositive authority for this court, and we decline to apply it here. Conwed's argument that we should recognize a temporal-relevance test is better directed to the Minnesota Supreme Court or to the legislature. *See Tereault v. Palmer*, 413 N.W.2d 283, 286 (Minn. App. 1987) ("[T]he task of extending existing law falls to the supreme court or the legislature, but it does not fall to this court."), *review denied* (Minn. Dec. 18,

[3] Appellant relies heavily on federal cases, which are not binding on this court and do not compel application of a temporal-relevance test. *See Johnson v. Woodcock*, 444 F.3d 953, 956 (8th Cir. 2006) (analyzing personal-jurisdiction issue under traditional five-factor test); *Pecoraro v. Sky Ranch for Boys, Inc.*, 340 F.3d 558, 562 (8th Cir. 2003) (analyzing case under five-factor test); *Clune v. Alimak AB*, 233 F.3d 538, 540, 544-45 (8th Cir. 2000) (determining personal jurisdiction existed over out-of-state corporation under traditional five-factor test). Conwed also cites to unpublished caselaw and cases from other jurisdictions. Because these cases are not binding, we do not address them. *See* Minn. Stat. § 480A.08, subd. 3 (2018) (recognizing that unpublished decisions are not precedential); *see also Mahowald v. Minn. Gas Co.*, 344 N.W.2d 856, 861 (Minn. 1984) (noting that cases from other jurisdictions are not binding).

1987). The district court did not err by declining to consider the timing of Conwed's contacts with Minnesota as a threshold matter.

III. Conwed is subject to specific personal jurisdiction in Minnesota.

We next turn to a consideration of the five-factor test set forth in *Hardrives, Inc.*, 240 N.W.2d at 817. The first three factors determine whether the defendant has sufficient "minimum contacts" with the state, while the last two factors determine whether jurisdiction is reasonable under concepts of "fair play and substantial justice." *Juelich*, 682 N.W.2d at 570. "Although the key inquiry is whether minimum contacts have been established, a strong showing on the reasonableness factors may serve to fortify a borderline showing of minimum-contacts factors." *Rilley v. MoneyMutual, LLC*, 884 N.W.2d 321, 328 (Minn. 2016) (quotation omitted).

Caselaw recognizes two distinct types of personal jurisdiction: "general" jurisdiction and "specific" jurisdiction. *Valspar*, 495 N.W.2d at 411. "Personal jurisdiction refers to a court's power to exercise control over the parties in a case," and "[s]pecific personal jurisdiction exists when a plaintiff's suit arises from or relates to the defendant's forum contacts." *Young v. Maciora*, 940 N.W.2d 509, 514 (Minn. App. 2020) (citation and quotation omitted). Backe does not assert that Minnesota courts have general personal jurisdiction over Conwed and limits his analysis to whether specific personal jurisdiction exists.

a. Sufficient Minimum Contacts

The first three *Hardrives* factors consider whether minimum contacts are present. 240 N.W.2d at 817. Minimum contacts exist when a defendant purposefully avails itself

of the privileges, benefits, and protections of the forum state, so that the defendant "should reasonably anticipate being haled into court there." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474-75, 105 S. Ct. 2174, 2183 (1985) (citation omitted); *see also Young*, 940 N.W.2d at 515 ("Minimum contacts exist when a defendant purposefully avails himself of a forum's privileges, benefits, and protections, such that the defendant should reasonably anticipate being haled into court there." (quotations omitted)). "In determining whether a defendant has sufficient 'minimum contacts,' we consider the contacts alleged by the plaintiff in the aggregate and not individually, by looking at the totality of the circumstances." *Rilley*, 884 N.W.2d at 337.

The district court determined that the quantity of Conwed's contacts with Minnesota, the nature, and quality of those contacts, and the connection of the cause of action with the contacts all favor a specific-personal-jurisdiction finding. We agree. Conwed operated a mill in Minnesota and manufactured asbestos-containing ceiling tile at the mill from 1959 to 1974. Backe was exposed to asbestos at Conwed's mill during this period, and he alleges that this exposure damaged his lungs and caused his mesothelioma. *See Juelich*, 682 N.W.2d at 570 (directing appellate court to accept plaintiff's allegations in complaint and supporting evidence as true at pretrial stage).

Conwed concedes that it had "numerous and continuing contacts with Minnesota up until 1985" and owned and operated the Minnesota mill where Backe was exposed to asbestos. But Conwed argues that its pre-1985 contacts are "too attenuated in time" to support a personal-jurisdiction finding under the minimum-contacts factors. We find this argument unpersuasive.

The Minnesota Supreme Court recently conducted a traditional minimum-contacts analysis in *Bandemer v. Ford Motor Co.*, and considered whether to narrow the five-factor test. 931 N.W.2d 744, 748 (Minn. 2019), *cert. granted*, 140 S. Ct. 916 (2020). The plaintiff was injured in a car accident in Minnesota in a 1994 Ford vehicle and filed a complaint against defendant Ford Motor Company asserting claims for products liability, negligence, and breach of warranty. *Id.* The district court held that the exercise of specific personal jurisdiction over the defendant was proper. *Id.* On appeal, the supreme court considered the defendant's argument that Minnesota courts should adopt a "causal" standard "under which the defendant's contacts with Minnesota [must] have caused the plaintiff's claims for personal jurisdiction over the defendant to be proper." *Id.* at 751-52. The supreme court rejected this approach and declined to apply "a new, narrower standard" than the standard adopted in long-standing United States Supreme Court precedent. *Id.* at 752-53.

This holding adheres to long-settled precedent. For example, in *Int'l Shoe Co.*, the United States Supreme Court stated that "to the extent that a corporation exercises the privilege of conducting activities within a state, it enjoys the benefits and protection of the laws of that state." 326 U.S. at 319, 66 S. Ct. at 160. The opinion noted that these privileges come with obligations as well, "so far as those obligations arise out of or are connected with the activities within the state." *Id.* Based on this existing United States Supreme Court and Minnesota Supreme Court precedent, we decline to narrow the minimum-contacts factors. We conclude that sufficient minimum contacts support the exercise of personal jurisdiction over Conwed.

b. Fair Play and Substantial Justice

The final two *Hardrives* factors also support a determination that the exercise of jurisdiction is "reasonable" and does not offend the concepts of "fair play and substantial justice." *Bandemer*, 931 N.W.2d at 749. When a case involves an alleged injury to a Minnesota resident, both the resident and the state have an interest in resolving the dispute here. *C.H. Robinson Worldwide, Inc. v. FLS Transp., Inc*., 772 N.W.2d 528, 538 (Minn. App. 2009), *review denied* (Minn. Nov. 24, 2009). As for the convenience of the parties, we recognize that "[t]he unique burdens placed upon one who must defend oneself in a foreign legal system should have significant weight in assessing the reasonableness of stretching the long arm of personal jurisdiction over national borders." *Asahi Metal Indus. Co. v. Superior Court of California*, 480 U.S. 102, 114, 107 S. Ct. 1026, 1033 (1987). But "[w]hen minimum contacts have been established, often the interests of the plaintiff and the forum in the exercise of jurisdiction will justify even the serious burdens placed on the alien defendant." *Id.*

The district court determined that the "reasonableness factors are strong," and that "the convenience of the parties is either neutral or favors Minnesota jurisdiction" because Backe and many witnesses are Minnesota residents and Backe received medical treatment in Minnesota. Once again, we agree. Minnesota has a strong interest in providing a forum to Backe, who alleges he suffered an injury in the state while working at Conwed's mill. And while resolving the dispute in Minnesota may be inconvenient to Conwed because it no longer has a business presence here, the record supports a determination that minimum

contacts exist so that Conwed should "reasonably anticipate" being haled into our courts. *World-Wide Volkswagen Corp.*, 444 U.S. at 297, 100 S. Ct. at 567.

Conwed argues that Minnesota lacks jurisdiction because Conwed has been "immunize[d] . . . from suit in Minnesota federal courts" based on *McGill v. Conwed Corp.*, No. CV 17-01047, 2017 WL 4534827, at *1 (D. Minn. Oct. 10, 2017). In *McGill*, the plaintiff, a Kansas resident, alleged that he was exposed to Conwed's asbestos-containing materials while installing ceiling tile in Kansas. *Id.* at *2. While the case was ultimately dismissed for lack of personal jurisdiction, it is readily distinguishable. *Id.* at *11. The plaintiff in *McGill* was not a Minnesota resident and sustained no injuries in Minnesota. *Id.* at *2. Thus, the court reasoned that Minnesota did not have a "clear interest in providing a forum" and the convenience of the parties did not favor retaining jurisdiction. *Id.* at *10. Here, by contrast, Backe is a Minnesota resident, he was exposed to asbestos as a child and young adult when his father worked at Conwed's Minnesota plant. Backe also worked at Conwed's Minnesota-based plant and was exposed to asbestos in that plant. And many of the potential witnesses and medical records are in Minnesota. *McGill* is therefore both unprecedential and inapposite.

We determine that analysis of the final two factors supports a conclusion that the exercise of jurisdiction does not offend traditional notions of fair play and substantial justice. *Juelich*, 682 N.W.2d at 570. And, at this stage in the litigation, we are mindful that we must resolve any doubt in favor of retaining jurisdiction. *Hardrives, Inc.*, 240 N.W.2d at 816. Backe has made a prima facie showing that Minnesota courts have specific

personal jurisdiction over Conwed under the five-factor test. The district court thus did not err by denying Conwed's motion to dismiss for lack of personal jurisdiction.

Affirmed.