

FIFTH DIVISION
December 16, 2016

No. 1-15-1327

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ANNA O'CONNOR,)	Appeal from the
)	Circuit Court of
Plaintiff-Respondent,)	Cook County.
)	
v.)	
)	
DIANE M. DEACON and VINCENT APRUZZESE,)	
)	
Defendants-Petitioners,)	
)	
<hr/>		No. 2014 L 7533
		consolidated with
DR. THOMAS MANOS, DDS,)	No. 2014 L 7537
)	
Plaintiff-Respondent,)	
)	
v.)	
)	
DIANE M. DEACON and VINCENT APRUZZESE,)	Honorable
)	William E. Gomolinski,
Defendants-Petitioners.)	Judge Presiding.

JUSTICE HALL delivered the judgment of the court.
Justice Lampkin and Justice Reyes concurred in the judgment.

ORDER

HELD: We affirm the decision of the circuit court of Cook County denying defendants' motion to dismiss this action for lack of personal jurisdiction.

¶ 1 Defendants Diane M. Deacon and Vincent Apruzzese appeal from an order of the circuit court denying their motions to dismiss pursuant to section 2-619 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619 (West 2012)) for alleged lack of personal jurisdiction. Defendants, who both reside in Florida, contend they had no minimum contacts with the State of Illinois sufficient to support the circuit court's exercise of personal jurisdiction over them with regard to defamation lawsuits filed against them by plaintiffs Anna O'Connor and Dr. Thomas Manos, D.D.S. Plaintiffs O'Connor and Manos are residents of Illinois. For the reasons that follow, we affirm.

¶ 2 BACKGROUND

¶ 3 This consolidated appeal arises from two defamation lawsuits. One filed by plaintiff O'Connor (docket number 2014 L 7533) and the other filed by plaintiff Manos (docket number 2014 L 7537). Both lawsuits alleged defamation and false light invasion of privacy against defendants in connection with their announced plans to commercially publish a manuscript for a book claiming that five trustees, which included plaintiffs, engaged in various acts of misconduct in their administration of a trust estate in which defendant Deacon was a beneficiary. Defendants Deacon and her lawyer Apruzzese coauthored the manuscript which they entitled "Conniving Trustees."

¶ 4 Shortly after plaintiffs and the other trustees received notice from defendants of the planned publication, they filed an action in the chancery division of the circuit court (docket number 2013 CH 19182) seeking to enjoin the publication based on their claims that it would

violate certain confidentiality provisions contained in a court-approved settlement agreement entered into between the parties approximately three years earlier resolving their prior litigation involving the trust estate.¹ Plaintiffs also filed their respective aforementioned defamation lawsuits against defendants in the law division of the circuit court.

¶ 5 Defendants moved to dismiss the defamation complaints for alleged lack of personal jurisdiction pursuant to section 2-619 of the Code. The circuit court denied the motions. The court held it could exercise specific personal jurisdiction over both defendants based on its findings that the defendants purposefully directed their activities at Illinois residents rendering themselves subject to applicable provisions of section 2-209 of the Code, commonly referred to as the Illinois long-arm statute (735 ILCS 5/2-209 (West 2010)). We agree.

¶ 6 ANALYSIS

¶ 7 Personal jurisdiction is "the authority of the court to litigate in reference to a particular defendant and to determine the rights and duties of that defendant." *In re Possession & Control of the Commissioner of Banks & Real Estate of Independent Trust Corp.*, 327 Ill. App. 3d 441, 463 (2001). Where, as in this case, a circuit court determines a jurisdictional question solely on the basis of documentary evidence, without an evidentiary hearing, our review is *de novo*. *Russell v. SNFA*, 2013 IL 113909, ¶ 28. Under such circumstances, plaintiffs bear the burden of establishing a *prima facie* basis for exercising personal jurisdiction over the nonresident defendants through the pleadings, documentary evidence and affidavits. See *Ruprecht Company v. Sysco Food Service of Seattle, Inc.*, 309 Ill. App. 3d 113, 118 (1999).

¹ In August 2013, plaintiffs obtained a temporary restraining order (TRO) requiring defendants to comply with the confidentiality provisions contained in the settlement agreement, preventing them from publishing to the public at large, the manuscript and all communications related to the planned publishing of the manuscript. The TRO remains in effect.

¶ 8 Section 2-209 of the Code governs the exercise of personal jurisdiction by an Illinois court over a nonresident defendant and is divided into three subsections identifying various grounds for exercising jurisdiction. See 735 ILCS 5/2-209(a), (b), and (c) (West 2010); *SNFA*, 2013 IL 113909, ¶ 29. Illinois courts traditionally employed a two-step analysis for determining personal jurisdiction over a nonresident defendant. First, the court determined whether the nonresident defendant performed any act enumerated in an applicable subsection of the statute; and second, whether the exercise of personal jurisdiction complied with the due process standards set forth in the Illinois and federal constitutions. See *Keller v. Henderson*, 359 Ill. App. 3d 605, 611 (2005); *Bell v. Don Prudhomme Racing*, 405 Ill. App. 3d 223, 228-29 (2010). Under this analysis, a *prima facie* case required the plaintiff to show both that the long-arm statute was satisfied and that the due process requirements were met. *Henderson*, 359 Ill. App. 3d at 611.

¶ 9 The traditional two-step analysis was collapsed into a one-step due process analysis after the legislature, pursuant to Public Act 86-840 (eff. Sept. 7, 1989), amended section 2-209 to include subsection (c), the so-called "catch-all provision." See *SNFA*, 2013 IL 113909, ¶ 30; *Kostal v. Pinkus Dermatopathology Laboratory, P.C.*, 357 Ill. App. 3d 381, 386 (2005). This provision provides that a court may "exercise jurisdiction on any other basis now or hereafter permitted by the Illinois Constitution and the Constitution of the United States." 735 ILCS 5/2-209(c) (West 2010). Following the enactment of subsection (c), if the contacts between the nonresident defendant and Illinois are sufficient to satisfy federal due process requirements for personal jurisdiction and none of the parties contend that due process under the Illinois constitution requires a more expansive meaning than the same language commands under the federal constitution, then the due process requirements under the Illinois constitution are deemed

to have been satisfied and no additional analysis is necessary. See *Madison Miracle Productions, LLC v. MGM Distribution Co.*, 2012 IL App (1st) 112334, ¶ 44; *Henderson*, 359 Ill. App. 3d at 619-20; *Zazove v. Pelikan, Inc.*, 326 Ill. App. 3d 798, 803 (2001).

¶ 10 Under federal due process requirements, a court may exercise personal jurisdiction over a nonresident defendant if the defendant had sufficient minimum contacts with the forum state "such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)). The plaintiff must show that the defendant had sufficient minimum contacts with Illinois and that the exercise of jurisdiction would not offend traditional notions of fair play and substantial justice. *SNFA*, 2013 IL 113909, ¶ 34.

¶ 11 The inquiry into whether the minimum contacts test has been satisfied depends upon what category of personal jurisdiction is being sought – general or specific. *Id.* at ¶ 36. Here, the circuit court determined it could exercise specific personal jurisdiction over both defendants. A plaintiff establishes the existence of specific jurisdiction by showing that the defendant purposefully directed its activities at residents of the forum state, that the claims asserted in the litigation arise out of or are related to the defendant's forum-related activities, and it is reasonable to require defendant to litigate in Illinois. See *SNFA*, 2013 IL 113909, ¶¶ 40-41. In such a case, "the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980).

¶ 12 Applying these principles to the case at bar and construing the documentary evidence in favor of plaintiffs we conclude that the plaintiffs have made a *prima facie* showing of personal jurisdiction to overcome the motions to dismiss where they established that the defendants

purposefully directed their activities at Illinois residents. The defendants' contacts with Illinois are sufficient to support a finding of specific personal jurisdiction because they purposefully directed certain communications to the plaintiffs, who are Illinois residents, and because the present litigation stems in part from those communications.

¶ 13 Our review of the record shows the following facts relevant to the issue of personal jurisdiction. On July 17, 2013, defendant Apruzzese, on behalf of himself and defendant Deacon, mailed a letter to one of the trustee's attorneys, Steven Mayer, at the attorney's law office in Milwaukee, Wisconsin. The letter was copied to each of the five trustees and to George Gonis, a beneficiary of the trust. It is undisputed that four of the five trustees, which includes the two plaintiffs, reside in Illinois. Enclosed with the letter were seven copies of the subject manuscript. The letter informed Attorney Mayer that copies of the manuscript were to be distributed to each of the trustees and to Gonis.

¶ 14 On that same date in July 2013, defendant Apruzzese, on behalf of himself and defendant Deacon, mailed separate letters to each of the trustees urging them to obtain a copy of the manuscript from Attorney Mayer. The letter advised the trustees to carefully review the manuscript and opined that they would be well advised to seek the advice of independent counsel to address the allegations of misconduct set forth in the manuscript.

¶ 15 On August 9, 2013, defendant Apruzzese, on behalf of himself and defendant Deacon, mailed a second letter to Attorney Mayer. The letter was again copied to each of the five trustees and to Gonis. Enclosed with the letter were seven copies of an updated manuscript which were to be distributed to each of the trustees and to Gonis. On that same date, defendant Apruzzese also mailed separate letters to each of the trustees urging them to obtain copies of the updated

manuscript. Once again, the letter instructed the trustees to carefully review the manuscript and advised them that they would be well advised to seek the advice of independent counsel.

¶ 16 In light of these uncontroverted facts, we find plaintiffs have demonstrated that the defendants purposefully directed their activities toward Illinois residents so as to establish sufficient minimum contacts to support specific personal jurisdiction. The letters and the allegedly defamatory manuscript, although written and mailed from Florida, were nevertheless directed at conduct allegedly occurring in Illinois by Illinois residents.

¶ 17 In addition, plaintiffs have also established that it is reasonable to require the defendants to litigate in Illinois. Defendants have already agreed that any disputes arising out of the settlement agreement should be brought in Illinois. Therefore, defendants clearly did not find that litigating in Illinois would be inconvenient or burdensome in regard to their contract dispute with plaintiffs. We see no reason why litigating a tort case in Illinois would be any more burdensome than litigating the contract dispute. See *Henderson*, 359 Ill. App. 3d at 618.

¶ 18 In sum, we find that plaintiffs have made a *prima facie* showing that the exercise of specific personal jurisdiction over defendants will not offend traditional notions of fair play and substantial justice. Because we find the circuit court has specific personal jurisdiction over the defendants, we need not address the parties' arguments regarding general personal jurisdiction, especially since the court never determined whether it had general jurisdiction over defendants.

¶ 19 Defendants raise a number of arguments in support of the proposition that the circuit court should have declined to exercise specific personal jurisdiction over them in this suit. None of their arguments is meritorious.

¶ 20 Defendants argue the circuit court erred by failing to engage in a separate and preliminary analysis of whether plaintiffs' complaint stated claims upon which relief could be granted before

deciding the jurisdictional issue. We disagree. Our courts have determined that jurisdictional issues are generally properly triable prior to addressing the merits. See *Ryburn v. People*, 349 Ill. App. 3d 990, 994 (2004) (when faced with a motion combining an objection to personal jurisdiction and a motion to dismiss for failure to state a cause of action, the trial court must address the jurisdictional issue first); see also *Steel Company v. Citizens for a Better Environment*, 523 U.S. 83, 93-95 (1998) (jurisdiction is generally a threshold issue that must be addressed prior to addressing the merits of a complaint).

¶ 21 Defendants finally argue the circuit court erred in holding that it could exercise specific personal jurisdiction over them since the plaintiffs failed to establish that the defendants committed a tortious act of defamation in Illinois where there was no publication of the subject manuscript. Defendants point out that publication is a required element of a cause of action for the tort of defamation. See *Popko v. Continental Casualty Co.*, 355 Ill. App. 3d 257, 261 (2005).

¶ 22 An alleged defamatory remark is "published" when it is communicated to someone other than the plaintiff. *Vickers v. Abbott Laboratories*, 308 Ill. App. 3d 393, 400 (1999). In this case, it is uncontroverted that the defendants authored the alleged defamatory manuscripts and then conveyed them to Attorney Mayer for distribution to the various trustees, including plaintiffs. We find that such conveyance and distribution constituted publication to a third person sufficient to support maintenance of the defamation action against defendants.

¶ 23 Contrary to the defendants' assertions, we do not believe that the decision in *Millsaps v. Bankers Life Co.*, 35 Ill. App. 3d 735 (1976), warrants reversal of the circuit court's threshold ruling on personal jurisdiction. In *Millsaps*, the reviewing court determined that an allegedly libelous letter written by defendant's physician and directed to plaintiff's attorney in response to

an inquiry by the attorney, was equivalent to a publication to the plaintiff himself, and was therefore privileged and not actionable. *Id.* at 742.

¶ 24 *Millsaps* does not support defendants' position because the relevant facts in that case are readily distinguishable from the facts in the instant case. In factual contrast to *Millsaps*, the defendants in this case sent the subject manuscripts to Attorney Mayer of their own volition and not in response to any request or invitation from either the trustees or Attorney Mayer.

¶ 25 For the foregoing reasons, we affirm the decision of the circuit court of Cook County denying defendants' motion to dismiss this action for lack of personal jurisdiction. We remand the matter to the circuit court for further proceedings consistent with this order.

¶ 26 Affirmed and remanded for further proceedings.