2016 IL App (1st) 161107-U

SIXTH DIVISION
December 2, 2016

No. 1-16-1107

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JILLIAN CORIGLIONE,	)	Appeal from the
	)	Circuit Court
Plaintiff-Appellee,	)	of Cook County.
	)	
v.	)	
	)	
JOHN PETTIGREW and JOAN PETTIGREW,	)	
	)	No. 14 L 8709
Defendants-Appellants,	)	
	)	
(MARY PETTIGREW,	)	Honorable
	)	Eileen Brewer,
Defendant).	)	Judge Presiding.
	)	

JUSTICE DELORT delivered the judgment of the court.
Justices Cunningham and Rochford concurred in the judgment.

ORDER

¶ 1 ***Held:*** The circuit court erred by not dismissing the complaint in this personal injury lawsuit against certain defendants. The defendants lacked sufficient contacts in Illinois to subject themselves to the jurisdiction of Illinois courts, notwithstanding plaintiff's contention that they negligently entrusted a motor vehicle to a driver who was involved in an automobile accident in Illinois.

¶ 2 Plaintiff Jillian Coriglione filed a one-count complaint against defendants Mary Pettigrew, John Pettigrew, and Joan Pettigrew. The complaint alleged that Mary negligently

drove an automobile owned by John and Joan in Chicago, Illinois, causing it to collide with the rear of an automobile driven by Coriglione. Coriglione alleged she was injured and lost income because of the collision. The sole allegations in the complaint against John and Joan are that they negligently failed to maintain their vehicle, and negligently entrusted the vehicle to Mary. Mary was not served with process and did not appear in the circuit court.

¶ 3 John and Joan filed a motion to dismiss the complaint against them pursuant to sections 2-301 and 2-619 of the Illinois Code of Civil Procedure. 735 ILCS 5/2-301, 2-619 (West 2014). The motion was supported by their affidavits, in which they swore that: (1) they were residents of Ohio; (2) neither was driving nor present at the time of the collision; (3) the driver, Mary, was their daughter, and was not driving the vehicle as their agent, their spouse's agent, or at their behest; and (4) they do not conduct business in Illinois and own no real property in this state. Based on these assertions, they contended that their mere ownership of the vehicle was insufficient for Illinois courts to acquire personal jurisdiction over them.

¶ 4 In response, Coriglione relied on section 2-209(a)(2) of the Illinois Code of Civil Procedure, 735 ILCS 5/2-209(a)(2) (West 2014), which provides that commission of a tortious act by any person, whether or not a resident, within Illinois, is sufficient to confer jurisdiction. She further noted that Illinois recognizes the tort of negligent entrustment. See, *e.g.*, *Farm v. McGlawn*, 84 Ill. App. 3d 107, 110 (1980). She contended that there were issues of fact precluding dismissal because the defendants' affidavits were "unsupported and self-serving," but she did not provide any counter-affidavits of her own.

¶ 5 The circuit court denied the motion to dismiss, "finding that the tortious acts plead (negligent entrustment and negligent maintenance) vested in Illinois." John and Joan filed a motion to reconsider which the court denied. They then filed a petition for leave to appeal the

denial of their motion to dismiss in this court pursuant to Ill. Sup. Ct. R. 306(a)(3) (eff. Mar. 8, 2016). This court granted the petition on April 26, 2016. John and Joan opted to have their petition for leave to appeal stand as their brief. See Ill. Sup. Ct. R. 306(b)(5) (eff. March 8, 2016). Coriglione has not filed a brief in this court. However, the issues and record are straightforward, and we will address the merits of the appeal in accordance with the standards of *First Capitol Mortgage Corp v. Talandis Construction Corp.*, 63 Ill.2d 128 (1976).

¶ 6 When a non-resident defendant contests personal jurisdiction, the plaintiff has the burden to establish a *prima facie* basis to exercise personal jurisdiction over the defendant. *Russell v. SNFA*, 2013 IL 113909, ¶ 28. Facts contained in an uncontested affidavit denying jurisdiction must be accepted as true. *Johnson v. Ortiz*, 244 Ill. App. 3d 384, 388 (1993). While conflicts in the pleadings and affidavits must be resolved in the plaintiff's favor, "the defendant may overcome plaintiff's prima facie case for jurisdiction by offering uncontradicted evidence that defeats jurisdiction." *Russell*, 2013 IL 113909, ¶ 28. If, as here, the court resolves the jurisdictional question solely on documentation without an evidentiary hearing, our review is *de novo*. *Id*.

¶ 7 Subsection (c) of Illinois' so-called "long arm statute," 735 ILCS 5/2-209(c) (West 2014), commonly referred to as the "catch-all provision," broadly provides that a court "may also exercise jurisdiction on any other basis now or hereafter permitted by the Illinois Constitution and the Constitution of the United States." Thus, the sole question before us is whether the defendants' connections or contacts with Illinois are sufficient to satisfy federal and Illinois due process protections. *Russell*, 2013 IL 113909, ¶ 30. Due process, in turn, " 'requires that the defendant have certain minimum contacts with the forum State such that maintenance of

the suit there does not offend 'traditional notions of fair play and substantial justice.' " *Id*. ¶ 34 (quoting *Wiles v. Morita Iron Works Co.*, 125 Ill. 2d 144, 150 (1988)).

¶ 8 The "minimum contacts" test is the "threshold issue in any personal jurisdiction challenge in Illinois." *Id*. ¶ 36. Jurisdiction will be found if a defendant has "purposefully directed its activities at the forum state and the cause of action arose out of or relates to the defendant's contacts with the forum state." *Id*. ¶ 40. The Supreme Court has noted that "this purposeful availment requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of random fortuitous, or attenuated contacts [citations] or of the unilateral activity of another party or a third person." (Internal quotation marks omitted.)" *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985).

¶ 9 Applying these tests, we find that the circuit court erred in denying the motion to dismiss. The uncontroverted affidavits of the defendants stated that they had no contacts whatsoever with Illinois and that their daughter was not driving the car in Illinois as their agent. This is exactly the type of "fortuitous" contact caused by the activity of a third person which the *Burger King* court found to be insufficient to establish jurisdiction.

¶ 10 *Johnson* is helpful to our analysis here. The complaint in *Johnson* alleged that the owner of an automobile, a resident of Indiana, negligently entrusted the vehicle to her brother, who was then involved in an accident with the plaintiff in Illinois. The court noted that there was uncontradicted evidence that "defendant had no contacts with Illinois in any form or manner." *Johnson*, 244 Ill. App. 3d at 389. Accordingly, the court determined, the defendant lacked "minimum contacts" with Illinois sufficient to establish jurisdiction. *Id*. The main distinction between *Johnson* and this case is that Coriglione's complaint also contains a bare conclusory assertion that the defendants "negligently failed to properly maintain" the vehicle. That

distinction makes no difference, however, because neither the complaint nor anything submitted by Coriglione shows how this alleged state of disrepair contributed to the collision. Therefore, the maintenance allegation was insufficient to demonstrate the defendants had minimum contacts in Illinois to create jurisdiction over them.

¶ 11 Accordingly, we reverse the order of the circuit court denying the motion to dismiss.

¶ 12 Reversed.