

NOTICE
Decision filed 07/21/16. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2016 IL App (5th) 150462-U

NO. 5-15-0462

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

CARDINAL CATASTROPHE SERVICES, INC.,)	Appeal from the
)	Circuit Court of
)	Madison County.
Petitioner-Appellant,)	
)	
v.)	No. 14-SC-2236
)	
HOPE R. WUELLNER-BROOKS,)	Honorable
)	Ralph J. Mendelsohn,
Respondent-Appellee.)	Judge, presiding.

JUSTICE MOORE delivered the judgment of the court.
Presiding Justice Schwarm and Justice Goldenhersh concurred in the judgment.

ORDER

¶ 1 *Held:* Circuit court's order affirmed where petitioner's complaint was properly dismissed because the circuit court lacked personal jurisdiction over the respondent.

¶ 2 The petitioner, Cardinal Catastrophe Services, Inc., appeals the August 26, 2015, order of the circuit court of Madison County, that dismissed with prejudice the petitioner's first amended complaint against the respondent, Hope R. Wuellner-Brooks, for tortious interference with a contract. For the following reasons, we affirm.

¶ 3

FACTS

¶ 4 On October 31, 2014, the petitioner filed a two-count, first amended complaint against Ned Wuellner and the respondent—a resident of Texas—in small claims court.¹ The complaint alleged, *inter alia*, that Ned Wuellner entered into a contract with the petitioner on April 15, 2014; that the respondent had knowledge of the contractual relationship; that the respondent claimed to be "handling the contract"; that the respondent induced Ned Wuellner to breach the contract; that Ned Wuellner did in fact breach the contract as a result of the respondent's tortious intermeddling with the contract; and that as a direct and proximate result of the breach, the petitioner was damaged in the amount of approximately \$5,800 in lost profits, plus costs, prejudgment interest, and reasonable attorney fees. Punitive damages were also requested. The petitioner sought judgment against the respondent in an amount not to exceed \$10,000.

¶ 5 On January 21, 2015, the respondent's counsel filed, *inter alia*, a special and limited entry of appearance to contest jurisdiction. The circuit court entered an order on August 26, 2015, granting the respondent's counsel a special and limited appearance and dismissing the first amended complaint with prejudice for lack of jurisdiction. The

¹On March 10, 2015, counsel for Ned Wuellner filed a suggestion of death, indicating that Ned Wuellner passed away on February 23, 2015. On April 13, 2015, the petitioner filed a motion to voluntarily dismiss without prejudice count I of the first amended complaint against Ned Wuellner, which the circuit court granted on April 17, 2015, leaving count II against the respondent.

circuit court denied the petitioner's motion to reconsider in an order entered on October 16, 2015. The petitioner filed a timely notice of appeal.

¶ 6

ANALYSIS

¶ 7 The sole issue on appeal is whether the circuit court erred by dismissing with prejudice the petitioner's first amended complaint. "[A] *de novo* standard of review applies when the trial court heard no testimony and determined jurisdiction solely on the basis of documentary evidence." *Gaidar v. Tippecanoe Distribution Service, Inc.*, 299 Ill. App. 3d 1034, 1040 (1998).

¶ 8 "It is well understood that a plaintiff 'bears the burden of making a *prima facie* showing that the trial court has personal jurisdiction over a nonresident defendant.' " *Madison Miracle Productions, LLC v. MGM Distribution Co.*, 2012 IL App (1st) 112334, ¶ 34 (quoting *McNally v. Morrison*, 408 Ill. App. 3d 248, 254 (2011)). " 'To determine whether the plaintiff has set forth a *prima facie* case for jurisdiction, the trial court must consider the uncontroverted pleadings, documents and affidavits, as well as any facts asserted by the defendant that have not been contradicted by the plaintiff.' " *Id.* (quoting *Cardenas Marketing Network, Inc. v. Pabon*, 2012 IL App (1st) 111645, ¶ 28). "A plaintiff's *prima facie* case may be overcome by a defendant's uncontradicted evidence that defeats jurisdiction." *Alderson v. Southern Co.*, 321 Ill. App. 3d 832, 846 (2001).

¶ 9 The petitioner states in its brief that there is no affidavit attached to the special and limited entry of appearance to contest jurisdiction that was filed by the respondent's counsel. Section 2-301(a) of the Illinois Code of Civil Procedure provides, *inter alia*, that "a party may object to the court's jurisdiction over the party's person *** by filing a

motion ***. Unless the facts that constitute the basis for the objection are apparent from papers already on file in the case, the motion must be supported by an affidavit setting forth those facts." 735 ILCS 5/2-301(a) (West 2014). However, in this case the petitioner's complaint is devoid of any factual allegations regarding the residence of the respondent, which in itself indicates that the petitioner had presented no *prima facie* case regarding personal jurisdiction in the first place. The respondent's special and limited appearance contains the only allegation of record regarding her Texas residency, and while not supported by affidavit, is uncontroverted. Moreover, Illinois Supreme Court Rule 286(b) (eff. Aug. 1, 1992) provides that "[i]n any small claims case *** the court may relax the rules of procedure and the rules of evidence." Accordingly, we find that the absence of the affidavit in support of the special and limited appearance is not fatal to the respondent's objection to personal jurisdiction, and we turn to the merits.

¶ 10 In support of its argument that the circuit court has personal jurisdiction over the respondent, the petitioner cites the "catchall" provision of the Illinois long-arm statute, which provides that a court may exercise jurisdiction over a nonresident defendant "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 2014). In arguing a constitutional basis for personal jurisdiction in this case, the petitioner cites *Calder v. Jones*, 465 U.S. 783 (1984), where the United States Supreme Court applied an "effects test" in the context of a libel suit. The *Calder* Court held that personal jurisdiction over petitioners in California was proper because their intentional conduct in Florida was calculated to cause injury to the respondent in California. *Id.* at 791.

¶ 11 On that basis, the petitioner in this case argues that *where* the harm occurs is what confers personal jurisdiction over the respondent, regardless of her state of residence, and because the effect of the respondent's actions caused the petitioner a harm in Illinois, personal jurisdiction is established. We disagree. In *Walden v. Fiore*, the United States Supreme Court explained that although *Calder* "recognized that the defendants' activities 'focus[ed]' on the plaintiff, [the] jurisdictional inquiry 'focuse[d] on "the relationship among the defendant[s], the forum, and the litigation." ' " *Walden v. Fiore*, 571 U.S. ____, ____, 134 S. Ct. 1115, 1123 (2014) (quoting *Calder*, 465 U.S. at 788, quoting *Shaffer v. Heitner*, 433 U.S. 186, 204 (1977)). "Specifically, we examined the various contacts the defendants had created with California (and not just with the plaintiff) by writing the allegedly libelous story." *Id.* "The crux of *Calder* was that the reputation-based 'effects' of the alleged libel connected the defendants to California, not just to the plaintiff." *Id.* at ____, 134 S. Ct. at 1123-24. The *Walden* Court then applied the minimum contacts analysis to determine whether personal jurisdiction existed in that case. See *id.* at ____, 134 S. Ct. at 1124. For these reasons, we decline to apply the broad reading of *Calder* as suggested by the petitioner in this case and proceed with the legal principles applicable to the determination of whether the courts of Illinois have personal jurisdiction over the respondent.

¶ 12 "[F]ederal due process requires that a 'nonresident defendant must have "certain minimum contacts with [the forum state] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" [Citation.]" *Madison Miracle Productions, LLC*, 2012 IL App (1st) 112334, ¶ 48 (quoting *Kalata v. Healy*, 312

Ill. App. 3d 761, 768 (2000)). Here, at all times relevant to the allegations set forth in count II of the first amended complaint, the respondent was and is a resident of the state of Texas. In reviewing the allegations of the complaint, the petitioner has failed to establish the "minimum contacts" necessary so that maintenance of the suit would not offend traditional notions of fair play and substantial justice. See *Walden*, 571 U.S. at ____, 134 S. Ct. at 1124.

¶ 13 Count II of the first amended complaint and subsequent filings by the petitioner lack any allegations whatsoever regarding the nature and number of contacts that the respondent has with the State of Illinois generally, or even in conjunction with the allegations specified in the complaint. The petitioner was provided leave to conduct discovery and yet failed to provide any additional contacts between the respondent and the State of Illinois other than that which was originally alleged in the first amended complaint. The only contact alleged by the petitioner is a single reference in paragraph 6 that the respondent was claiming to be "handling the contract" and that the attached contract was "no good." These bare allegations do not rise to the level of "minimum contacts" necessary to confer personal jurisdiction over the respondent. There is no description of how these claims were made by the respondent, how the claims were delivered, by whom, to where, or from where the claims were made. For these reasons, the petitioner has failed to establish the minimum contacts necessary to confer personal jurisdiction on the respondent. Accordingly, the circuit court properly dismissed with prejudice the first amended complaint.

¶ 14

CONCLUSION

¶ 15 The October 16, 2015, order of the circuit court of Madison County is affirmed.

¶ 16 Affirmed.