

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Teresa Villarreal :
 :
 Plaintiff-Appellant, :
 :
 v. : No. 11AP-68
 : (C.P.C. No. 06CVH-11-14766)
 Robert Smith, :
 : (ACCELERATED CALENDAR)
 Defendant-Appellee. :
 :

D E C I S I O N

Rendered on July 26, 2011

Teresa Villarreal, pro se.

Christopher J. Brown, for appellee.

APPEAL from the Franklin County Court of Common Pleas

TYACK, J.

{¶1} Teresa Villarreal ("Villarreal") is appealing from a summary judgment decision of the Franklin County Court of Common Pleas. For the reasons that follow, we affirm the decision of the common pleas court.

{¶2} On appeal, Villarreal assigns two assignments of error:

[1.] The Trial Court erred in granting Defendant-Appellee Robert Smith's Motion for Summary Judgment pursuant to Ohio Civ. Proc. R. 56(C) on the grounds that it lacked personal jurisdiction over the Defendant-Appellee.

[II.] Trial Court erred in denying Plaintiff-Appellant's Motion for Summary Judgment pursuant to Ohio Civ. Proc. R. 56(C).

{¶3} The alleged circumstances that lead to this case can be summarized as follows. Villarreal and appellee, Robert Smith ("Smith"), entered into an oral agreement with the help of Villarreal's agent in June 2003 in which Smith would transport two broodmare horses owned by Villarreal. Smith was to transport these two horses from Texas to Smith's place of business in Arkansas, where he was to perform breeding management services. As full compensation for Smith's services, Villarreal agreed to convey to Smith ownership in a registered colt foaled by one of her mares, and pay Smith \$50 for hauling expenses.

{¶4} The business relationship soured and Villarreal filed action in September 2003 in the Circuit Court of Miller County Arkansas. Villarreal subsequently filed for removal to the U.S. District Court, Eastern District of Texas which was denied. The Arkansas court issued a decision in February 2005, awarding Smith ownership of the colt and a judgment in his favor of over \$10,000.

{¶5} Villarreal brought this action to Ohio in November 2006, alleging Smith violated the Ohio Consumer Sales Practices Act, wrongfully converted the horses, and is in illegal possession of the same. Villarreal also requested a writ of replevin to retain the horses, and damages for alleged defamation during the Arkansas proceedings, the alleged defamation being the publishing of the Arkansas court's decision.

{¶6} Both parties eventually filed motions for summary judgment. Villarreal argues in her February 2008 motion that she is entitled to summary judgment as a matter of law given the facts deemed admitted due to Smith's alleged failure to respond to her requests for admission. Smith, in his April 2008 motion for summary judgment, argues that Villarreal's action is barred by both res judicata and lack of personal jurisdiction.

{¶7} The Franklin County Court of Common Pleas found in December 2010 that it lacked personal jurisdiction over Smith, granting Smith's motion and denying Villarreal's. The trial court found that jurisdiction could not be brought under Ohio's long-arm statute, R.C. 2307.382(A), and that bringing Smith within Ohio's jurisdiction would violate traditional notions of fair play and substantial justice under the Fourteenth Amendment to the United States Constitution, Due Process Clause. Villarreal has appealed to this court.

{¶8} Villarreal's first assignment of error asserts that the common pleas court erred in granting summary judgment for Smith by finding that it lacked personal jurisdiction over him.

{¶9} Summary judgment is appropriate only where: (1) no genuine issue of material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) viewing the evidence most strongly in favor of the non-moving party, reasonable minds can come to but one conclusion and that conclusion is adverse to the non-moving party. *Tokles & Son, Inc. v. Midwestern Indemn. Co.* (1992), 65 Ohio St.3d 621, 629, citing *Harless v. Willis Day Warehousing Co.* (1978), 54 Ohio St.2d 64, 65-66. "[T]he moving party bears the

initial responsibility of informing the trial court of the basis for the motion, and identifying those portions of the record * * * which demonstrate the absence of a genuine issue of fact on a material element of the nonmoving party's claim." *Dresher v. Burt*, 75 Ohio St.3d 280, 292, 1996-Ohio-107. Once the moving party meets its initial burden, the non-moving party must then produce competent evidence showing that there is a genuine issue for trial. *Id.* Summary judgment is a procedural device to terminate litigation, so it must be awarded cautiously with any doubts resolved in favor of the non-moving party. *Murphy v. Reynoldsburg*, 65 Ohio St.3d 356, 358-59, 1992-Ohio-95.

{¶10} Appellate review of summary judgments is de novo. *Koos v. Cent. Ohio Cellular, Inc.* (1994), 94 Ohio App.3d 579, 588; *Midwest Specialties, Inc. v. Firestone Tire & Rubber Co.* (1988), 42 Ohio App.3d 6, 8. We stand in the shoes of the trial court and conduct an independent review of the record. As such, we must affirm the trial court's judgment if any of the grounds raised by the moving party, at the trial court, are found to support it, even if the trial court failed to consider those grounds. See *Dresher, Coventry Twp. v. Ecker* (1995), 101 Ohio App.3d 38, 41-42.

{¶11} In determining whether an Ohio court has personal jurisdiction over a nonresident defendant, the court must determine the following: (1) whether Ohio's long-arm statute, R.C. 2307.382(A), and the applicable civil rule, Civ.R. 4.3, permit it to assert personal jurisdiction; and, if so, (2) whether bringing the defendant within the jurisdiction of the Ohio courts would violate traditional notions of fair play and substantial justice under the Fourteenth Amendment to the United States

Constitution, Due Process Clause. *Goldstein v. Christiansen*, 70 Ohio St.3d 232, 235, 1994-Ohio-229. Courts must engage in this two-step analysis because the long-arm statute does not give Ohio courts jurisdiction to the limits of the Due Process Clause. *Id.* at 238.

{¶12} Ohio's long-arm statute, R.C. 2307.382, outlines specific activities that will allow Ohio courts to exert personal jurisdiction over a non-resident defendant. *Joffe v. Cable Tech, Inc.*, 163 Ohio App.3d 479, 2005-Ohio-4930, ¶12. Civ.R. 4.3(A) permits out-of-state service of process on a defendant to confer personal jurisdiction. *Kentucky Oaks Mall Co. v. Mitchell's Formal Wear, Inc.* (1990), 53 Ohio St.3d 73, 75. Essentially, R.C. 2307.382 and Civ.R. 4.3(A) are coextensive and "complement each other." *U.S. Sprint Communications Co., Ltd. Partnership v. Mr. K's Foods, Inc.*, 68 Ohio St.3d 181, 184, 1994-Ohio-504.

{¶13} When deciding whether a defendant is within the reach of the long-arm statute, the court should consider the following three factors: (1) the defendant must purposefully avail itself of the privilege of acting in the forum state or causing a consequence in the forum state; (2) the cause of action must arise from the defendant's activities there; and (3) the acts or consequence of the defendant must have a substantial enough connection with the forum state to make the exercise of jurisdiction over the defendant reasonable. *Parshall v. PAID, Inc.*, 10th Dist. No. 07AP-1019, 2008-Ohio-3171, ¶11.

{¶14} The parties do not dispute that there are no genuine issues of material fact in this case.

{¶15} Villarreal argues that Smith is subject to the long-arm statute because: he contacted Villarreal's agent and Villarreal to solicit an agreement; he entered into an agreement that was to be governed by Ohio law; Villarreal mailed out the agreement and check from Ohio; and Villarreal's reliance on that agreement gave rise to the Arkansas judgment, the allegedly false statement that caused harm to her in Ohio.

{¶16} Smith is a resident of Arkansas and argues that he never transacted any business in Ohio and has never caused anyone harm by any actions and/or omissions in Ohio. Smith argues that Villarreal and her agent, at the time of the transaction, were residents of Texas not Ohio and the subjects of the agreement, the two horses, were located in Texas. Smith also argues: that the mailing of a check and contract from Ohio do not begin to approach the contact necessary to establish jurisdiction; that the written agreement purporting to be governed by Ohio law has never been produced by Villarreal; and that the Arkansas judgment was a result of a case that Villarreal filed and lost.

{¶17} The common pleas court found that Smith is a resident of Arkansas and that Villarreal, at the time of the transaction, was a resident of Texas. The court also found that Villarreal, in her September 2003 verified complaint in the Arkansas Circuit Court, stated that she was, at all times, a resident in the state of Texas, and that she owned land and properties in Texas. Nowhere in her verified complaint did Villarreal state that she was an Ohio resident during the time period relevant to her Arkansas action. Villarreal's agent is a resident of Texas and at no time conducted any business with Smith from Ohio. As a result, the trial court

found that Villarreal failed to establish that Ohio's long-arm statute or Civ.R. 4.3's parallel language permits assertion of personal jurisdiction over Smith.

{¶18} This court agrees with the findings of the Franklin County Court of Common Pleas. We find that a review of the record shows that Smith does not have a substantial enough connection with Ohio to make the exercise of personal jurisdiction reasonable. Nor did Smith purposefully avail himself of the privilege of acting in Ohio. Smith is not subject to Ohio's jurisdiction under R.C. 2307.382 or Civ.R. 4.3(A).

{¶19} Having not found jurisdiction under Ohio's long-arm statute, and Civ.R. 4.3(A), an evaluation of the Fourteenth Amendment to the United States Constitution, Due Process Clause, is unnecessary.

{¶20} The first assignment of error is overruled.

{¶21} Having agreed with the trial court that Ohio lacks personal jurisdiction over Smith, Villarreal's motion for summary judgment must fail. The second assignment of error is overruled.

{¶22} Having overruled both assignments of error, the decision of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

BRYANT, P.J., and KLATT, J., concur.
