



## Healy v. Phillips

1992 | Cited 0 times | Ninth Circuit | March 9, 1992

### MEMORANDUM

Lee Healy appeals pro se the district court's order quashing service of summons and dismissing her complaint for lack of personal jurisdiction. The district court had jurisdiction pursuant to 28 U.S.C. § 1332, and we have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo, *Teledyne, Inc. v. Kone Corp.*, 892 F.2d 1404, 1406 (9th Cir. 1989), and reverse and remand.

Healy brought an action in the district court for Nevada against the executrix, beneficiaries, attorneys and business associates of her late husband, alleging that they committed fraud, intentional interference with contract, breach of covenant of good faith and fair dealing, and conspiracy in taking control of Richard Healy's assets for their own use. Healy further alleged that this was done with the intent of depriving her of her interest in Richard Healy's estate and her right to support under a separation agreement she and Richard Healy had executed in 1982. Lee Healy is a resident of Nevada, and had been receiving monthly support checks from Richard Healy in Nevada until two months prior to his death. Richard Healy was a resident of California at the time of his death, and his will has been admitted to probate in California. All the other defendants are residents of California, all acts were committed in California, and the defendants have no other contacts with Nevada.

The courts have adopted a two-tiered analysis in determining whether personal jurisdiction exists. *Greenspun v. Del E. Webb Corp.*, 634 F.2d 1204, 1207 (9th Cir. 1980). First, Nevada's long-arm statute must confer jurisdiction over the non-resident defendant. Second, the exercise of jurisdiction must comport with federal constitutional principles of due process. *Id.*

Nevada Revised Statute section 14.065 provides in pertinent part:

2. Any person who, in person or through an agent or instrumentality, does any of the acts enumerated in this subsection thereby submits himself and, if a natural person, his personal representative to the jurisdiction of the courts of this state as to any cause of action which arises from:

- (a) Transacting any business or negotiating any commercial paper within this state;
- (b) Committing a tortious act within this state;
- (c) Owning, using or possessing any real property situated in this state;



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(d) Contracting to insure any person, property or risk located within this state at the time of contracting;

(e) Living in the marital relationship within this state notwithstanding subsequent departure from this state, as to all obligations arising for alimony, child support or property settlement, if the other party to the marital relationship continues to reside in this state; or

(f) Violating NRS 207.400.

The Nevada Supreme Court has interpreted Nevada's long-arm statute to reach the limits of federal constitutional due process. *Judas Priest v. Second Judicial Dist. Court of Nev.*, 104 Nev. 424, 426, 760 P.2d 137, 138, (1988). The Nevada Supreme Court also has concluded that under the long-arm statute it "has power to exercise judicial jurisdiction over an individual who causes effects in the state by an omission or act done elsewhere with respect to causes of action arising from these effects." *Davis v. Eighth Judicial Dist. of Nev.*, 97 Nev. 332, 338, 629 P.2d 1209, 1213 (quoting *Quattrone v. Superior Court for County of Los Angeles*, 44 Cal. App. 3d 296, 118 Cal. Rptr. 548, 552 (1975)), appeal dismissed, cert. denied, 454 U.S. 1049, cert. denied, 454 U.S. 1055 (1981).

In *Davis*, the Nevada Supreme Court found that out-of-state defendants were subject to personal jurisdiction in Nevada where the complaint alleged that the defendants had conspired out of the state to cause injury to plaintiff's property located in Nevada. See 97 Nev. at 338. In *Davis*, the plaintiffs were the administrators of the estate of Howard Hughes and the defendants were a group of aides, physicians, attorneys, and business executives who allegedly conspired to seize control of the Hughes' empire for their own financial gain. See *id.* at 334.

Here, Healy alleges that the defendants conspired out of state to commit fraudulent conveyances with the intent of depriving her of her interest in Richard Healy's assets under their separation agreement. She alleges further that the support provision in the separation agreement already had been partially executed in that Richard Healy sent her monthly checks in Nevada, and the defendants were aware of this. Given the factual similarity, we conclude that the Nevada long-arm statute subjects the defendants to personal jurisdiction in Nevada. Further, both this court and the Supreme Court have held that personal jurisdiction is constitutional where an out-of-state defendant intentionally directs his conduct into the forum and causes harm within the forum. See *Calder v. Jones*, 465 U.S. 783, 789-90 (1984); *Brainerd v. Governors of the University of Alberta*, 873 F.2d 1257, 1259 (9th Cir. 1989). Thus, the defendants are subject to personal jurisdiction in Nevada. Accordingly, we reverse the district court's order quashing summons and complaint.

REVERSED AND REMANDED.<sup>1</sup>

Disposition



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REVERSED AND REMANDED.

\* The panel unanimously finds this case suitable for decision without oral argument. Fed. R. App. P. 34(a); 9th Cir. R. 34-4.

1. In remanding, we note that while the district court may lack subject matter jurisdiction to hear some of Healy's claims under the federal probate exception, the district court does have jurisdiction to adjudicate Healy's rights in the estate "so long as the federal court does not interfere with the probate proceedings or assume general jurisdiction of the probate or control of the property in the custody of the state court." *Hilton v. Mumaw*, 522 F.2d 588, 593 (9th Cir. 1975) (quoting *Markham v. Allen*, 326 U.S. 490, 494 (1946)).

