

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Pete Harding Brown and Mott's Inc. of Mississippi v. Flowers Industries, Inc., Jerry Kralis, and Kralis Brothers Foods, Inc.

688 F.2d 328 (5th Cir. 1982) · No. No. 81-4451 · Decided September 22, 1982

SUMMARY

The Fifth Circuit held that Mississippi could exercise personal jurisdiction over a nonresident defendant based on a single allegedly defamatory telephone call made from Indiana to Mississippi. The court concluded that the alleged intentional tort caused foreseeable injury in Mississippi and satisfied both the Mississippi long-arm statute and federal due process requirements. The dismissal for lack of personal jurisdiction was reversed and the case was remanded.

CASE DETAILS

COURT	United States Court of Appeals for the Fifth Circuit
WRITING FOR THE COURT	Alvin B. Rubin; Robert A. Ainsworth, Jr. (Brown); Thomas M. Reavley
JURISDICTION	Federal
DECIDED	September 22, 1982
DOCKET	No. 81-4451
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Plaintiffs appealed the dismissal of their action for lack of personal jurisdiction over nonresident defendants.
STANDARD OF REVIEW	On a motion to dismiss for lack of personal jurisdiction decided solely on affidavits, the plaintiff need only establish a prima facie case. The complaint's allegations, except as controverted by the defendants' affidavits, are taken as true, and factual conflicts are resolved in the plaintiff's favor.
PRECEDENTIAL VALUE	published precedential Fifth Circuit decision
PARTIES	Pete Harding Brown, Mott's Inc. of Mississippi v. Flowers Industries, Inc., Jerry Kralis, Kralis Brothers Foods, Inc.

TOPICS

- personal jurisdiction
- service of process
- defamation
- civil procedure
- commercial litigation

PRACTICE AREAS

civil procedure

constitutional law

torts

commercial litigation

QUESTIONS PRESENTED

1. Whether Mississippi's long-arm statute authorizes service on a nonresident defendant who allegedly commits a tort in whole or in part in Mississippi through a single interstate telephone call.
2. Whether exercising personal jurisdiction over nonresident defendants based on a single allegedly defamatory telephone call comports with the Due Process Clause of the Fourteenth Amendment.
3. Whether plaintiffs established a prima facie case of personal jurisdiction when the jurisdictional motion was decided solely on affidavits.

HOLDINGS

1. Mississippi's long-arm statute encompasses a nonresident who commits a single tort in whole or in part in Mississippi, even if the alleged tortfeasor was not physically present in the state, when the defendant causes injury there.
2. Due process permits Mississippi to exercise personal jurisdiction over a nonresident who allegedly commits, in whole or in part, a single intentional tort in Mississippi through an interstate telephone call, where the defendant initiated the call, the injury in Mississippi was foreseeable, and the plaintiff and material witnesses were located in Mississippi.
3. Plaintiffs established a prima facie case of personal jurisdiction by alleging in the complaint and affidavits facts supporting their claim that Kralis defamed them and caused injury in Mississippi.

KEY QUOTATIONS

"Concluding that, under the facts presented, due process permits invocation of jurisdiction over a nonresident who commits in whole or in part a single tort in a state, we reverse." (¶ 1)

"The number of contacts with the forum state is not, by itself, determinative." (¶ 9)

"We intimate no opinion concerning the sufficiency of the evidence against the defendants to survive a motion for summary judgment." (¶ 13)

FACTUAL BACKGROUND

Pete Harding Brown, a Mississippi resident, and Mott's Inc. of Mississippi, a Mississippi corporation, alleged that the defendants conspired to injure them economically and that Jerry Kralis made a defamatory telephone call from Indiana to the United States Attorney in Mississippi. Plaintiffs alleged that the call caused them to lose the opportunity to obtain a \$4 million Farmers Home Administration loan. Kralis admitted making the call and acting as an officer of Kralis Brothers, while the defendants disputed that the message was defamatory and denied that Kralis acted as an agent of Flowers Industries.

PROCEDURAL HISTORY

Plaintiffs sued the nonresident defendants in the United States District Court for the Northern District of Mississippi, alleging that a defamatory telephone call from Indiana to Mississippi caused economic injury. The district court granted the defendants' Rule 12(b)(2) motion, concluding that the single telephone call was insufficient to support in personam jurisdiction. The Fifth Circuit reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The case was remanded for further proceedings consistent with the opinion after the district court determines the merits and any other issues now that personal jurisdiction is established.

CASES CITED

- Quasha v. Shale Dev. Corp., 667 F.2d 483, 485-86, 488 (5th Cir. 1982)
- Moore v. Lindsey, 662 F.2d 354, 357-58 (5th Cir. 1981)
- Southwest Offset, Inc. v. Hudco Publishing Co., 622 F.2d 149, 152 (5th Cir. 1980) (per curiam)
- Thorington v. Cash, 494 F.2d 582, 584 n.4 (5th Cir. 1974)
- Marine Midland Bank, N.A. v. Miller, 664 F.2d 899, 904 (2d Cir. 1981)
- Data Disc, Inc. v. Systems Technology Assocs., 557 F.2d 1280, 1285 (9th Cir. 1977)
- Black v. Acme Mkts., Inc., 564 F.2d 681, 683 n.3 (5th Cir. 1977)
- United States Ry. Equip. Co. v. Port Huron & Detroit R.R., 495 F.2d 1127, 1128 (7th Cir. 1974)
- Smith v. Temco, Inc., 252 So. 2d 212, 216 (Miss. 1971)
- International Shoe Co. v. State of Washington, International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945)
- Hanson, Executrix, et al. v. Denckla et al., Hanson v. Denckla, 357 U.S. 235, 253 (1958)
- Mississippi Interstate Express, Inc. v. Transpo, Inc., 681 F.2d 1003, 1007 (5th Cir. 1982)
- Product Promotions, Inc. v. Cousteau, 495 F.2d 483, 494 n.17, 495, 498 (5th Cir. 1974)
- Standard Fittings Co. v. Sapang, S.A., 625 F.2d 630, 643 (5th Cir. 1980), cert. denied, 451 U.S. 910 (1981)
- Austin v. North American Forest Products, Inc., 656 F.2d 1076, 1090 (5th Cir. 1981)
- Rusack v. Harsha, 470 F. Supp. 285, 291 (M.D. Pa. 1978)
- World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 292, 297 (1980)
- Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 508 (1947)
- Walker v. Newgent, 583 F.2d 163, 166 (5th Cir. 1978), cert. denied, 441 U.S. 906 (1979)
- Terry v. Raymond Int'l, Inc., 658 F.2d 398, 401 (5th Cir. 1981), cert. denied, 102 S. Ct. 1975 (1982)
- Oswalt v. Scripto, Inc., 616 F.2d 191, 196 (5th Cir. 1980)
- Benjamin v. Western Boat Bldg. Corp., 472 F.2d 723, 726 (5th Cir. 1973), cert. denied, 414 U.S. 830 (1973)
- State ex rel. Advanced Dictating Supply, Inc. v. Dale, 269 Or. 242, 246-48, 524 P.2d 1404, 1406-07 (1974)

- Myers v. John Deere Ltd., 683 F.2d 270, 271-72 (8th Cir. 1982)
- National Egg Co. v. Bank Leumi le-Israel B.M., 504 F. Supp. 305, 309-12 (N.D. Ga. 1980)
- J.E.M. Corp. v. McClellan, 462 F. Supp. 1246, 1247 (D. Kan. 1978)
- Murphy v. Erwin-Wasey, Inc., 460 F.2d 661, 664 (1st Cir. 1972)
- Margoles v. Johns, 483 F.2d 1212, 1216, 1220 (D.C. Cir. 1973)

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