

SUPREME COURT OF NEVADA

Matter of Paul D Burgauer Revocable Living Trust

Matter of Paul D Burgauer Revocable Living Trust, 138 Nev. Adv. Op. 79 (Nev. 2022) · No. 80466, 82067

SUMMARY

The Nevada Supreme Court held that the Calder "effects test" for purposeful direction applies when determining specific personal jurisdiction over a nonresident trustee in trust administration cases sounding in intentional tort. The court found that the trustee's letter to a Michigan attorney and alleged failure to make distributions to a Nevada beneficiary did not constitute purposeful direction toward Nevada, as the defendant's suit-related conduct must create a substantial connection with the forum state beyond mere injury to a forum resident. Because the beneficiary failed to establish minimum contacts, the district court lacked personal jurisdiction over the trustee, requiring vacatur of trust administration orders and the contempt order against him.

CASE DETAILS

COURT	Supreme Court of Nevada
WRITING FOR THE COURT	Cadish, J.; Parraguirre, J.; Hardesty, J.; Stiglich, J.; Pickering, J.; Herndon, J.
JURISDICTION	Nevada
DOCKET	80466, 82067
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Consolidated appeal from a district court order granting a petition to distribute trust property (Docket No. 80466) and original petition for a writ of prohibition challenging a contempt order (Docket No. 82067).
STANDARD OF REVIEW	de novo
PRECEDENTIAL VALUE	precedential
PARTIES	Steven Burgauer v. Margaret Burgauer, Premier Trust

TOPICS

- civil procedure
- trusts
- fiduciary duty
- torts

PRACTICE AREAS

- Trusts and Estates
- Civil Procedure

QUESTIONS PRESENTED

1. Whether the Calder effects test or traditional purposeful availment analysis applies in determining specific personal jurisdiction over a nonresident trustee in a trust administration case sounding in intentional tort.
2. Whether Steven Burgauer purposefully directed his activities toward Nevada such that the district court could exercise specific personal jurisdiction over him.

HOLDINGS

1. The Calder effects test, not simple purposeful availment, applies to analyze the purposeful direction prong when the underlying claims sound in intentional tort, as they do here.
2. Steven did not purposefully direct his activities toward Nevada; therefore, the district court lacked specific personal jurisdiction over him.

KEY QUOTATIONS

“Under the effects test, purposeful direction is satisfied when the defendant ‘(1) committed an intentional act, (2) expressly aimed at the forum state, (3) causing harm that the defendant knows is likely to be suffered in the forum state.’” (at *1167)

“mere injury to a forum resident is not a sufficient connection to the forum” (at *1168)

“the plaintiff cannot be the only link between the defendant and the forum.” (at *1167)

FACTUAL BACKGROUND

Paul Burgauer created an estate plan including a marital trust with his son Steven as trustee and his wife Margaret as beneficiary. Paul died in 2003. Steven moved to Florida in 2012; Margaret later moved to Las Vegas. Disputes arose over trust distributions: Steven ceased direct distributions, alleging Margaret had impaired judgment and gambling/addiction issues, and required the trust to pay bills directly. Margaret's Michigan attorney communicated with Steven regarding trust administration. Margaret filed a petition in Nevada district court seeking assumption of jurisdiction over the trust, removal of Steven, appointment of a successor trustee, and other relief, alleging that Steven breached fiduciary duties, defamed her, and committed other torts. Steven challenged personal jurisdiction. The district court found in rem jurisdiction under NRS 164.010 because Margaret resided in Nevada, and later exercised personal jurisdiction over Steven using the Calder effects test, leading to various orders against him.

PROCEDURAL HISTORY

Margaret Burgauer petitioned the district court to assume jurisdiction over a trust, remove Steven Burgauer as trustee, appoint a successor, compel an accounting, and other relief. The district court denied Steven's motion to dismiss for lack of personal jurisdiction, temporarily removed him, appointed Premier Trust as temporary trustee, entered a temporary restraining order, and later held Steven in contempt for violating the order. Steven appealed the distribution order and petitioned for a writ of prohibition regarding the contempt order. The Court of Appeals vacated the distribution order and granted the writ, finding no personal jurisdiction. Margaret petitioned for review, which the Supreme Court granted, and the court consolidated the matters.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

On Docket No. 80466, the district court's jurisdiction order is reversed and the case is remanded to evaluate the extent to which orders must be vacated based on the lack of personal jurisdiction over Steven and to dismiss the petition's claims against him. On Docket No. 82067, the petition for writ of prohibition is granted; the clerk shall issue a writ instructing the district court to vacate the contempt order.

CASES CITED

- *Calder v. Jones*, 465 U.S. 783 (1984)
- *Walden v. Fiore*, *Walden v. Fiore*, 571 U.S. 277 (2014)
- *Burger King Corp. v. Rudzewicz*, *Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985)
- *Ford Motor Co. v. Montana Eighth Judicial District Court*, 141 S. Ct. 1017 (2021)
- *Bristol-Myers Squibb Co. v. Superior Court of California*, 137 S. Ct. 1773 (2017)
- *Hanson, Executrix, et al. v. Denckla et al.*, *Hanson v. Denckla*, 357 U.S. 235 (1958)
- *Fulbright & Jaworski LLP v. Eighth Judicial District Court*, 131 Nev. 30, 342 P.3d 997 (2015)
- *Trump v. Eighth Judicial District Court*, 109 Nev. 687, 857 P.2d 740 (1993)
- *Catholic Diocese of Green Bay, Inc. v. John Doe* 119, 131 Nev. 246, 349 P.3d 518 (2015)
- *Tricarichi v. Cooperative Rabobank, U.A.*, 135 Nev. 87, 440 P.3d 645 (2019)
- *Clark v. Lubritz*, 113 Nev. 1089, 944 P.2d 861 (1997)
- *Whitehead v. Nevada Commission on Judicial Discipline*, 110 Nev. 874, 878 P.2d 913 (1994)
- *Smith v. Zilverberg*, 137 Nev. 65, 481 P.3d 1222 (2021)
- *Arbella Mutual Insurance Co. v. Eighth Judicial District Court*, 122 Nev. 509, 134 P.3d 710 (2006)
- *In re Aboud Inter Vivos Trust*, 129 Nev. 915, 314 P.3d 941 (2013)
- *In re Davis Family Heritage Trust*, 133 Nev. 190, 394 P.3d 1203 (2017)
- *Eighteen Seventy, LP v. Jayson*, 32 F.4th 956 (10th Cir. 2022)
- *Grynberg v. Ivanhoe Energy, Inc.*, 490 F. App'x 86 (10th Cir. 2012)
- *Yahoo! Inc. v. La Ligue Contre le Racisme et l'Antisémitisme*, 433 F.3d 1199 (9th Cir. 2006)
- *Morningside Church, Inc. v. Rutledge*, 9 F.4th 615 (8th Cir. 2021)
- *Freestream Aircraft (Bermuda) Ltd. v. Aero Law Group*, 905 F.3d 597 (9th Cir. 2018)
- *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797 (9th Cir. 2004)
- *Ayla, LLC v. Ayla Skin Pty. Ltd.*, 11 F.4th 972 (9th Cir. 2021)
- *Niemi v. Lasshofer*, 770 F.3d 1331 (10th Cir. 2014)
- *Thomas v. Thomas*, No. SACV-14-1096-JLS (RNBx), 2015 WL 12681311 (C.D. Cal. May 8, 2015)
- *Janney v. Janney*, No. 09-cv-00259-REB-KLM, 2009 WL 1537895 (D. Colo. June 1, 2009)
- *Schneider v. Cate*, 405 F. Supp. 2d 1254 (D. Colo. 2005)

- Dreher v. Smithson, 162 Or. App. 645, 986 P.2d 721 (1999)
- Picot v. Weston, 780 F.3d 1206 (9th Cir. 2015)
- Buskirk v. Buskirk, 53 Cal. App. 5th 523, 267 Cal. Rptr. 3d 655 (2020)
- Soma Medical International v. Standard Chartered Bank, 196 F.3d 1292 (10th Cir. 1999)
- Phillips Exeter Academy v. Howard Phillips Fund, Inc., Phillips Exeter Academy v. Howard Phillips Fund, 196 F.3d 284 (1st Cir. 1999)
- Washington Medical Center v. Holle, 573 A.2d 1269 (D.C. 1990)
- In re Paul D. Burgauer Revocable Living Trust, No. 78872-COA, 2020 WL 3447743 (Nev. Ct. App. June 23, 2020)
- In re Paul D. Burgauer Revocable Living Trust, Nos. 80466-COA & 82067-COA, 2021 WL 4350573 (Nev. Ct. App. Sept. 23, 2021)