

SUPREME COURT OF NEBRASKA

Central States Development, LLC, and Saint James Apartment
Partners, LLC v. Elizabeth Friedgut and DLA Piper, LLP

Central States Dev. v. Friedgut, 312 Neb. 909 (2022) · No. No. S-21-818 · Decided November 18, 2022

SUMMARY

The Nebraska Supreme Court affirmed dismissal of a legal malpractice action against an out-of-state attorney and law firm for lack of personal jurisdiction. The court held that the defendants’ representation of Nebraska clients concerning a federal housing program, without solicitation of Nebraska clients or other meaningful forum-directed conduct, did not establish sufficient minimum contacts. The location of the clients’ property and alleged injury in Nebraska was insufficient to support specific personal jurisdiction.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Funke, J.; Heavican, C.J.; Cassel, J.; Stacy, J.; Papik, J.; Freudenberg, J.
JURISDICTION	Nebraska
DECIDED	November 18, 2022
DOCKET	No. S-21-818
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiffs appealed the Douglas County District Court's dismissal of their legal malpractice complaint against an Illinois attorney and her law firm for lack of personal jurisdiction. The Nebraska Supreme Court moved the appeal to its docket and affirmed.
STANDARD OF REVIEW	When a trial court relies solely on pleadings and supporting affidavits in deciding personal jurisdiction, the plaintiff need only make a prima facie showing. When the court holds an evidentiary hearing or decides the issue after trial, the plaintiff bears the burden of proving jurisdiction by a preponderance of the evidence. Because the jurisdictional hearing involved affidavits and accompanying exhibits, the Supreme Court reviewed de novo whether plaintiffs established a prima facie case and viewed the facts favorably to the nonmoving party.

PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential
PARTIES	Central States Development, LLC, Saint James Apartment Partners, LLC v. Elizabeth Friedgut, DLA Piper, LLP

TOPICS

personal jurisdiction motions to dismiss due process appellate procedure civil procedure

PRACTICE AREAS

civil procedure constitutional law appellate procedure legal malpractice

QUESTIONS PRESENTED

1. Whether the Nebraska courts had specific personal jurisdiction over an Illinois attorney and Maryland law firm based on their representation of Nebraska clients in a federal HUD matter.
2. Whether the defendants' communications, billing, and work related to a Nebraska property established purposeful availment and sufficient minimum contacts with Nebraska.
3. Whether the location of the alleged injury and the Nebraska clients' residence supplied the necessary connection for specific personal jurisdiction.

HOLDINGS

1. When a personal-jurisdiction hearing is limited to affidavits and accompanying exhibits, the appellate court reviews de novo whether the plaintiff established a prima facie case of personal jurisdiction and views factual conflicts in the plaintiff's favor.
2. A Nebraska-based client does not, by itself, establish specific personal jurisdiction over a nonresident attorney or law firm. Absent solicitation of Nebraska clients or another meaningful connection linking the attorney or firm to Nebraska, providing out-of-state legal representation concerning federal law is insufficient to constitute purposeful availment.

KEY QUOTATIONS

“However, the existence of a contract with a party in a forum state does not, in and of itself, provide the necessary contacts for personal jurisdiction.” (918-919)

“a Nebraska-based client will not provide a sufficient basis for specific personal jurisdiction over a nonresident attorney absent the solicitation of Nebraska-based clients or something else linking the attorney to the state.” (919-920)

“The proper question is not where the plaintiff experienced a particular injury or effect but whether the defendant’s conduct connects him to the forum State in a meaningful way.” (922-923)

FACTUAL BACKGROUND

Central States and Saint James Apartment Partners were Nebraska entities involved in developing and operating a Nebraska apartment complex subject to a federal HUD housing assistance payment contract. They retained Illinois attorney Elizabeth Friedgut, through DLA Piper, to assist with HUD-related issues, after a third party recommended her; Friedgut performed the work from Illinois, communicated with the clients and Nebraska-based parties, and billed the clients in Nebraska. Friedgut was not licensed in Nebraska, never traveled there or appeared in a Nebraska court, and neither she nor DLA Piper maintained a Nebraska office or solicited Nebraska business. Plaintiffs later alleged that Friedgut negligently failed to pursue review of HUD's refusal to approve an assignment of the HAP contract, causing financial losses and foreclosure of the property.

PROCEDURAL HISTORY

In December 2020, Central States and Saint James Apartment Partners filed a legal malpractice action in the Douglas County District Court against Elizabeth Friedgut and DLA Piper. Defendants moved to dismiss for lack of personal jurisdiction. After holding a jurisdictional hearing and receiving affidavits and exhibits, the district court dismissed the complaint on September 13, 2021. The Nebraska Supreme Court accepted the appeal on its docket and affirmed.

DISPOSITION

affirmed

CASES CITED

- Yeransian v. Willkie Farr, 305 Neb. 693, 942 N.W.2d 226 (2020)
- RFD-TV v. WildOpenWest Finance, 288 Neb. 318, 849 N.W.2d 107 (2014)
- Hand Cut Steaks Acquisitions v. Lone Star Steakhouse, 298 Neb. 705, 905 N.W.2d 644 (2018)
- Nimmer v. Giga Entertainment Media, 298 Neb. 630, 905 N.W.2d 523 (2018)
- World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297, 100 S. Ct. 559, 62 L. Ed. 2d 490 (1980)
- Williams v. Gould, Inc., 232 Neb. 862, 443 N.W.2d 577 (1989)
- Cape v. von Maur, 932 F. Supp. 124, 128 (D. Md. 1996)
- Sher v. Johnson, 911 F.2d 1357 (9th Cir. 1990)
- Kowalski v. Doherty, Wallace, Pillsbury & Murphy, 787 F.2d 7 (1st Cir. 1986)
- Mayes v. Leipziger, 674 F.2d 178 (2d Cir. 1982)
- Companion Property and Cas. Ins. Co. v. Palermo, 723 F.3d 557 (5th Cir. 2013)
- Boyer v. Smith, 42 N.E.3d 505 (Ind. 2015)
- Fulbright & Jaworski v. Eighth Jud. Dist., 131 Nev. 30, 342 P.3d 997 (2015)
- Cerberus Partners v. Gadsby & Hannah, LLP, 836 A.2d 1113 (R.I. 2003)
- Sawtelle v. Farrell, 70 F.3d 1381 (1st Cir. 1995)
- Porter v. Berall, 142 F. Supp. 2d 1145 (W.D. Mo. 2001), affirmed 293 F.3d 1073 (8th Cir. 2002)
- Ex parte Dill, Dill, Carr, Stonbraker, 866 So. 2d 519 (Ala. 2003)
- Helicopteros Nacionales de Colombia v. Hall, 466 U.S. 408, 104 S. Ct. 1868, 80 L. Ed. 2d 404 (1984)

- *Austad Co. v. Pennie & Edmonds*, 823 F.2d 223 (8th Cir. 1987)
- *Federal Deposit Ins. Corp. v. Malmo*, 939 F.2d 535 (8th Cir. 1991)
- *Wright v. Yackley*, 459 F.2d 287 (9th Cir. 1972)
- *Poole v. Sasson*, 122 F. Supp. 2d 556 (E.D. Pa. 2000)
- *State ex rel. Sperandio v. Clymer*, 581 S.W.2d 377 (Mo. 1979)

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