Affirmed and Opinion filed October 26, 2000.

In The

Fourteenth Court of Appeals

NO. 14-00-00122-CV

VARIETY CHILDREN'S HOSPITAL, INC. d/b/a Miami Children's Hospital, Appellant

V.

THE ESTATE OF MEGAN ASHLEY RIFENBURGH, Deceased; ACE RIFENBURGH, Individually and as Personal Representative of the Estate of Megan Ashley Rifenburgh, Deceased; and LINDA RIFENBURGH, Individually and as Next Friend of Erin Rifenburgh, a Minor, Appellees

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On Appeal from the 11th District Court
Harris County, Texas
Trial Court Cause No. 98-47763

O P I N I O N

In this interlocutory appeal, Variety Children's Hospital, Inc. d/b/a Miami Children's Hospital ("MCH") challenges the denial of its special appearance on the grounds that: (1) it does not have sufficient contacts with the State of Texas to establish specific or general jurisdiction over it; and (2) a Texas court's exercise of jurisdiction over MCH offends traditional notions of fair play and substantial justice. We affirm.

Background

This is a wrongful death suit brought by The Estate of Megan Ashley Rifenburgh, Deceased; Ace Rifenburgh, Individually and as Personal Representative of the Estate of Megan Ashley Rifenburgh, Deceased; and Linda Rifenburgh, Individually and as Next Friend of Erin Rifenburgh, a Minor (collectively, "appellees") against MCH and others. MCH is a Florida not-for-profit corporation with its principal place of business in Florida. In addition to operating a hospital in Miami, Florida, MCH owns an air ambulance business registered under the name "LifeFlight." Appellees filed suit against MCH in connection with its emergency medical transport of Megan Ashley Rifenburgh ("Megan") from Trinidad, South America, to MCH in February of 1998. Appellees' complaint alleged, among other things, that MCH's negligence in transporting Megan in an untimely manner and an inadequately equipped air ambulance caused her death. MCH filed a special appearance which was denied by the trial court.

Standard of Review

We have found no case in which the Texas Supreme Court has articulated whether the appropriate standard for reviewing a decision on personal jurisdiction is abuse of discretion, sufficiency of the evidence, *de novo* review, a combination of these, or otherwise. However, appeals courts have generally reviewed trial courts' challenged findings of fact on the existence or lack of personal jurisdiction for sufficiency of the evidence, and their conclusions of law on that issue, *de novo*.[1]

In this case, although requested to do so by the parties, the trial court made no findings of fact or conclusions of law, and neither party assigned error to the trial court's failure to do so. Therefore, all questions of fact are presumed to have been found in support of the judgment, and we must affirm the

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[1] *See, e.g.*, *Cartlidge v. Hernandez*, 9 S.W.3d 341, 346 (Tex. App.—Houston [14th Dist.] 1999, no pet.); *C-Loc Retention Sys., Inc. v. Hendrix*, 993 S.W.2d 473, 476 (Tex. App.—Houston [14th Dist.] 1999, no pet.); *Conner v. ContiCarriers and Terminals, Inc.*, 944 S.W.2d 405, 411 (Tex. App.—Houston [14th Dist.] 1997, no writ); *Linton v. Airbus Industrie*, 934 S.W.2d 754, 757 (Tex. App.—Houston [14th Dist.] 1996, writ denied); *Hotel Partners v. KPMG Peat* Marwick 847, S.W.2d 630, 632 (Tex. App.—Dallas 1993, writ denied); *see generally Anderson v. City of Seven Points*, 806 S.W.2d 791, 794 (Tex. 1991) (noting that a trial court's findings of fact are reviewed for legal and factual sufficiency of the evidence); W. Wendell Hall, *Standards of Review in Texas*, 29 ST. MARY'S L.J. 351 (1998).

judgment on any legal theory supported by the pleadings and evidence. *See IKB Industries (Nigeria) Ltd. v. Pro-Line Corp.*, 938 S.W.2d 440, 445 (Tex. 1997).

A Texas court may exercise jurisdiction over a nonresident if it is: (1) authorized by the Texas long-arm statute;[2] and (2) consistent with federal and state constitutional due process guarantees. *See CSR Ltd. v. Link*, 925 S.W.2d 591, 594 (Tex. 1996). The Texas long-arm statute authorizes the exercise of jurisdiction over nonresidents "doing business" in Texas. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 17.042 (Vernon 1997). In addition to the acts it specifies, the long-arm statute provides that other, unspecified acts by a nonresident may also constitute doing business. *See id.*[3] However, the broad language of this doing business requirement permits the statute to reach as far as federal constitutional requirements of due process will allow. *See CSR*, 925 S.W.2d at 594. Because the doing business concept extends as far as due process will allow, it follows that any activity or contact which satisfies due process also constitutes doing business, and that any activity or contact which does not satisfy due process cannot constitute doing business. *See id.* As a practical matter, therefore, we need not analyze the doing business requirement apart from the due process requirement since the scope of each is coextensive. *See id.*

In order for a court's assertion of jurisdiction over a nonresident defendant to comport with due process, (1) the defendant must have purposefully established minimum contacts with the forum state such that it could reasonably anticipate being sued in that state; and (2) the exercise of jurisdiction must comport with fair play and substantial justice. *See Dawson-Austin v. Austin*, 968 S.W.2d 319, 326 (Tex. 1998). A defendant's contacts with a forum state can give rise to either specific or general jurisdiction. *See CSR*, 925 S.W.2d at 595. Specific jurisdiction is established where the alleged liability arises from activity

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2 *See* TEX. CIV. PRAC. & REM. CODE ANN. § 17.041-.093 (Vernon 1997 & Supp. 1999).

3 The statute provides that in addition to other, unspecified acts, a nonresident does business in this state if the nonresident: (1) contracts by mail or otherwise with a Texas resident and either party is to perform the contract in whole or in part in this state; (2) commits a tort in whole or in part in this state; or (3) recruits Texas residents, directly or through an intermediary located in this state, for employment inside or outside this state. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 17.042 (Vernon 1997).

conducted within, or "purposefully directed" toward, the forum state. *See CSR*, 925 S.W.2d at 595; *CMMC v. Salinas*, 929 S.W.2d 435, 439 (Tex. 1996).

Conversely, general jurisdiction exists where the defendant has had continuous and systematic contacts with the forum state, even if the cause of action did not arise from the defendant's purposeful conduct in that state. *See CSR*, 925 S.W.2d at 595. It is not the number of contacts with the forum state that is important, but their quality and nature. *See In re S.A.V.*, 837 S.W.2d 80, 86 (Tex. 1992). Thus, single or even occasional acts are not sufficient to support jurisdiction if their nature and quality and the circumstances of their commission create only an attenuated affiliation with the forum. *See CMMC*, 929 S.W.2d at 439. In assessing general jurisdiction, all contacts should be carefully compiled and analyzed for a pattern of continuing and systematic activity.[4] *See Schlobohm v. Schapiro*, 784 S.W.2d 355, 359 (Tex. 1990).[5]

To invoke the fair play and substantial justice prong of due process, a nonresident defendant must present a compelling case that the exercise of jurisdiction over it would be unreasonable.[6] *See In re S.A.V.*, 837 S.W.2d 80, 85 (Tex. 1992). However, once minimum contacts are established, the exercise of jurisdiction will rarely fail to comport with fair play and substantial justice. *See id.* at 86.

Exercise of Jurisdiction

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4 Court opinions have differed as to whether the relevant contacts are those existing only up to the date of the injury or, alternatively, those also existing up to the date of filing suit. *See Preussag Aktiengesellschaft v. Coleman*, 16 S.W.3d 110, 126 (Tex. App.—Houston [1st Dist.] 2000, pet. filed) (discussing the disparity between federal and state authority on this issue). Because the disposition of this case is not affected by the date at which contacts cease to be considered, we do not address it.

5 To prevail in a special appearance, a nonresident defendant must negate all bases of personal jurisdiction by demonstrating that it: (1) had no systematic and continuous contacts with Texas; (2) did not purposefully direct any act toward Texas; and (3) took no action within Texas that gave rise to the plaintiff's cause of action. *See CSR*, 925 S.W.2d at 596.

6 The factors to be considered include: (1) the burden on the defendant; (2) the interests of the forum state in adjudicating the dispute; (3) the plaintiff's interest in obtaining convenient and effective relief; (4) the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and (5) the shared interest of the several states in furthering fundamental social policies. *See In re S.A.V.*, 837 S.W.2d at 86.

In this case, MCH contends that the trial court had no basis to assert specific jurisdiction because the events giving rise to the cause of action occurred entirely outside the state of Texas. MCH further asserts that it does not have the continuous and systematic contacts with Texas required to support a finding of general jurisdiction. MCH also argues that a Texas court's exercise of jurisdiction over it would offend traditional notions of fair play and substantial justice. Because the issue of general jurisdiction is dispositive, we address it first.

The record in this case reflects that MCH had the following contacts with the State of Texas, among others, during the period preceding Megan's death: (1) MCH solicited Hermann Hospital in Texas for permission to use the name "LifeFlight," and entered into a ten year contract for that purpose, which contemplated the availability of assistance, and thus, ongoing contacts between MCH and Hermann Hospital; (2) MCH employees participated in joint medical research projects with at least five different Texas institutions; (3) sixty-two MCH employees attended thirty-one seminars in Texas; (4) MCH advertised in a "LifeFlight" brochure that it could provide emergency medical air services throughout the United States, including within the State of Texas; (5) MCH employees placed thousands of phone calls to Texas; (6) MCH utilized six Texas testing and reference labs for various purposes, including DNA testing; (7) from November of 1996 to December of 1997, MCH made 148 purchases from Texas vendors totaling $1,359,378.86; (8) MCH published a medical journal which was sold in Texas and utilized Texas authors; and (9) MCH hosted a post-graduate course and a symposium for which it solicited attendees, speakers, and faculty members from Texas.

These contacts were sufficiently continuous and systematic that MCH could reasonably anticipate being called into court in Texas. Moreover, contrary to MCH's attempt to minimize or negate each of these contacts with Texas on an individual basis, general jurisdiction is determined by the *combination* of such contacts.[7]

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[7] *See Allred v. Moore & Peterson*, 117 F.3d 278, 287 (5th Cir. 1997); *Mieczkowski v. Masco Corp.*, 997 F. Supp. 782, 788 (E.D. Tex. 1998); *Daimler-Benz Aktiengesellschaft v. Olson*, 21 S.W.3d 707, 725 (Tex. App.—Austin 2000, no pet.); *Conner v. ContiCarriers and Terminals, Inc.*, 944 S.W.2d 405, 414 (Tex. App.—Houston [14th Dist.] 1997, no pet.).

MCH also argues that the exercise of jurisdiction by a Texas court fails to comport with traditional notions of fair play and substantial justice because: (1) the majority of witnesses and documents are in Florida; (2) Texas residents' access to medical services will be diminished if Texas insists on adjudicating disputes concerning the rendition of medical services outside the State; (3) appellees' complaint against MCH based on the transport to Miami should be litigated separately from their complaint against other parties regarding unrelated activities occurring prior to Megan's transport; and (4) forcing litigation in Texas could have an effect on the willingness of out-of-state doctors to treat Texas patients. Although such concerns may be legitimate and potentially subject to relief on other grounds, they are not so compelling as to demonstrate that the exercise of jurisdiction over MCH in this case would be unreasonable. *See Guardian Royal*, 815 S.W.2d at 228. Accordingly, the judgment of the trial court denying MCH's special appearance is affirmed.

/s/ Richard H. Edelman
Justice

Judgment rendered and Opinion filed October 26, 2000.
Panel consists of Justices Anderson, Fowler, and Edelman.
Do not publish — TEX. R. APP. P. 47.3(b).