

RENDERED: May 6, 2005; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-001559-MR

WALTON R. HADDIX; and
CLEARFORK CONSTRUCTION CO., INC.

APPELLANTS

v. APPEAL FROM CLINTON CIRCUIT COURT
HONORABLE EDDIE C. LOVELACE, JUDGE
ACTION NO. 99-CI-00144

TIM HULL, D/B/A
HULL BROS. CONSTRUCTION CO.

APPELLEE

OPINION
VACATING AND REMANDING

** ** *

BEFORE: HENRY AND VANMETER, JUDGES; MILLER, SENIOR JUDGE.¹

VANMETER, JUDGE: This is an appeal from an order entered by the Clinton Circuit Court sustaining appellee Tim Hull's motion to dismiss the underlying action for lack of personal jurisdiction. For the reasons stated hereafter, we vacate the trial court's order and remand this matter for further proceedings.

¹ Senior Judge John D. Miller sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes 21.580.

The underlying facts were well summarized by the trial court as follows:

1. [Appellants Walton R.] Haddix and Clearfork [Construction Co., Inc.] filed their complaint in this action on September 15, 1999. Haddix is the director and sole officer of Clearfork, and is a resident of Clinton County, Kentucky. Hull [d/b/a Hull Construction Co.] is a resident of Fentress County, Tennessee.
2. In their complaint, Haddix and Clearfork allege that Hull breached an oral contract wherein he agreed to repay Haddix and Clearfork for certain expenses associated with the construction of a natural gas pipeline. The pipeline in question originated in Monroe County, Kentucky, near the city of Gamaliel, and spanned the state border into Clay County, Tennessee.
3. Haddix and Clearfork assert that they were never reimbursed \$4,000.00 they paid as a down payment on a tractor purchased in Crossville, Tennessee. Haddix and Clearfork also assert they were never repaid the sums of \$4,700.00 and \$9,000.00 for expenses incurred in the various phases of construction of the pipeline. In addition, Haddix and Clearfork complain that they were never reimbursed \$1,000.00 for a Craftsman generator purportedly stolen from Hull's shop in Allardt, Tennessee, and \$1,000.00 for a Barton gas meter which was borrowed by Hull for use on a gas well in Campbell County, Tennessee, but never returned.
4. Haddix and Clearfork were initially represented by counsel when the Complaint was filed. On October 28, 1999, Hull filed a motion to dismiss the

action, due to a lack of personal jurisdiction and lack of jurisdiction over the subject matter of the action. Hull's motion was not accompanied by a brief or an affidavit. This initial "barebones" motion was overruled by this Court on December 3, 1999. Hull and Haddix were deposed on February 2, 2000.

5. No activity occurred in this case for a year following the depositions of the parties. On June 18, 2001, counsel for Haddix and Clearfork made an oral motion to amend the Complaint, and the motion was granted. Haddix and Clearfork were given 90 days to file their amended Complaint. In addition, this Court ordered all proof to be taken in this action by September 18, 2001. On October 1, 2001, this Court gave the parties an extension of time to November 1, 2001 for the taking of proof. The action was then to stand submitted for entry of a decision by this Court.
6. No amended Complaint was filed for over a year. Counsel for Haddix and Clearfork moved to withdraw from his representation, on the ground that his employment had been terminated. Counsel for Haddix and Clearfork was permitted to withdraw from the case on May 20, 2002. Haddix filed a *pro se* amended Complaint on May 24, 2002.
7. Haddix and Clearfork make several additional allegations in their amended Complaint. They assert that Hull failed to reimburse them for \$2,000.00 worth of gas pipe that was sold by Hull to another party; \$3,700.00 for copper wire; \$17,600.00 in labor expenses paid by Haddix and Clearfork to Hull's employees; \$2,250.00 in rent paid by Haddix and Clearfork for a home in Celina, Tennessee to house Hull's employees during the construction of the

pipeline; and an additional \$25,000.00 in various labor and expenses for which Hull wrote Haddix and Clearfork a "cold check." The labor in question was allegedly performed in both Kentucky and Tennessee. Haddix and Clearfork also demanded the return of a Case plow purportedly retained by Hull at his shop in Allardt, Tennessee.

8. On July 5, 2002, Haddix filed a *pro se* request for the production of documents. On September 28, 2002, Haddix moved to compel answers to his requests for the production of documents. Hull was given 30 days to answer the discovery requests by this Court on October 7, 2002. On November 27, 2002, Haddix once more moved to compel answers to his discovery requests. Haddix's motion was continued for compliance by Hull, and this Court noted that the motion would be redocketed if Hull failed to answer Haddix's discovery requests.
9. On March 26, 2003, Hon. Luther C. Conner, Jr., an attorney, filed a motion for default judgment and motion for contempt of court on Haddix's behalf, on the ground that his discovery requests had never been answered. Some nine (9) months had elapsed since Haddix filed his *pro se* discovery requests. A response to Haddix's discovery requests was filed on April 21, 2003. On that date, this Court continued Haddix's motions for contempt of court and for default judgment, to allow counsel for Haddix an opportunity to review the discovery responses filed by Hull's counsel. On May 3, 2003, Hull's counsel filed a second motion to dismiss the action, based on a lack of personal jurisdiction over Hull.

(Footnotes omitted.) Relying on the Kentucky Supreme Court's recent opinion in *Wilson v. Case*,² the trial court dismissed the matter for lack of personal jurisdiction over Hull. This appeal followed.

Wilson addressed a situation in which an agreement was reached concerning the sale of an airplane by a Kentucky seller (Wilson) to a Maryland purchaser. A pilot (Case) traveled to Kentucky, tendered the purchaser's check to Wilson, and took possession of the plane. The sale fell through after the plane crashed while landing in Maryland. Wilson repossessed the plane and filed a negligence action against Case, but the Jefferson Circuit Court dismissed the action for lack of personal jurisdiction over Case. This court affirmed on appeal, and the supreme court accepted the matter for discretionary review.

In affirming the lower courts' decisions, the supreme court described the development of the personal jurisdiction doctrine during the last sixty years as follows:

In the landmark case of *International Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S.Ct. 154, 158, 90 L.Ed. 95 (1945), the Court departed from long-standing literal "presence" requirements and determined that a nonresident defendant can be subject to a judgment *in personam* if he has "certain minimum contacts with [the forum] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" (quoting *Milliken v.*

² 85 S.W.3d 589 (Ky. 2002).

Meyer, 311 U.S. 457, 463, 61 S.Ct. 339, 85 L.Ed. 278 (1940)).

Though the Court refrained from defining "minimum contacts," it suggested several factors to consider in determining whether the minimum contacts requirement was met. Among those factors are the following: the quantity and quality of the activities; whether the activities of the defendant were continuous and systematic; whether the defendant availed himself of the benefits and protections of the laws of the forum state; and whether the defendant's activities in the state gave rise to the cause of action. *International Shoe Co., supra*.

The Court later decided another important jurisdictional case, *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980), basing its analysis on *International Shoe's* minimum contacts test. In *World-Wide Volkswagen*, the Court noted,

The concept of minimum contacts . . . can be seen to perform two related, but distinguishable, functions. It protects the defendant against the burdens of litigating in a distant or inconvenient forum. And it acts to ensure that the States, through their courts, do not reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system.

444 U.S. at 291-292, 100 S.Ct. at 564.

The Court, acknowledging that the minimum contacts test was not dispositive of jurisdiction, proposed additional factors for courts to consider before exercising or refusing to exercise personal jurisdiction. These factors include the plaintiff's interest in obtaining relief, the state's interest in adjudicating the dispute, the burden of the litigation on an out-of-state

defendant, and most importantly, the defendant's ability to foresee being haled into court in a given state.

These and other cases, while not establishing a hard and fast rule, provide a road map for judicial bodies, including Kentucky courts, trying to determine the reach of their personal jurisdiction. Although this Court has not yet applied the minimum contacts test in depth, the Kentucky Court of Appeals has done so on numerous occasions. Faced with the challenge of reconciling so many factors and considerations with the cases before it, the Court of Appeals in *Tube Turns Div. of Chemetron Corp. v. Patterson Co., Inc.*, *supra*, adopted the three-part test established previously by the Sixth Circuit in *Southern Machine Co. v. Mohasco Indus., Inc.*, 401 F.2d 374, 381 (6th Cir. 1968). This test synthesized the relevant factors set forth by *International Shoe* and its progeny into a more succinct and workable three-pronged analysis to determine the outer limits of personal jurisdiction based upon a single act. Since *Tube Turns*, Kentucky courts have successfully applied the same jurisdictional test. See *Tennessee Farmers Mutual Ins. Co. v. Harris*, Ky.App., 833 S.W.2d 850 (1992); *Pierce v. Serafin*, Ky.App., 787 S.W.2d 705 (1990); *Mohler v. Dorado Wings, Inc.*, *supra*.

The first prong of the test asks whether the defendant purposefully availed himself of the privilege of acting within the forum state or causing a consequence in the forum state. The second prong considers whether the cause of action arises from the alleged in-state activities. The final prong requires such connections to the state as to make jurisdiction reasonable. *Tube Turns*, *supra*, at 100. Each of these three criteria represents a separate requirement, and jurisdiction will lie only where all three are satisfied. *LAK, Inc. v. Deer*

Creek Enterprises, 885 F.2d 1293, 1303 (6th Cir. 1989).³

Applying the three-pronged analysis to the specific facts before it, the *Wilson* court concluded that Case's one-time "activities in Kentucky were short-lived, random and merely incidental to his delivery assignment, and do not warrant the exercise of jurisdiction,"⁴ that the "alleged negligent behavior in Maryland did not arise from Case's activities in Kentucky,"⁵ and that in light of his overall limited connection to Kentucky, exercising jurisdiction over Case "would be unreasonable and inconsistent with due process goals."⁶ After determining that Case lacked the minimum contacts with Kentucky which would warrant the court's exercise of jurisdiction over him, the court also rejected the claim that it nevertheless should exercise jurisdiction over Case in accordance with "'traditional notions of fair play and substantial justice.'"⁷ Concluding that due process does not permit the "arbitrary assertion of power to bind nonresident defendants with little or no connection to the forum state," the court held that its exercise of jurisdiction

³ *Id.* at 592-93.

⁴ *Id.* at 594-95.

⁵ *Id.* at 595.

⁶ *Id.* at 596.

⁷ *Id.* at 597 (quoting *International Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S.Ct. 154, 158, 90 L.Ed. 95 (1945)).

would “offend the ideals of fair play and substantial justice and cannot stand under the 14th Amendment.”⁸

Here, in contrast to the single fleeting contacts with Kentucky described in *Wilson* or in cases such as *Tube Turns Division of Chemetron Corp. v. Patterson Co., Inc.*,⁹ *Pierce v. Serafin*,¹⁰ and *Franklin Roofing, Inc. v. Eagle Roofing and Sheet Metal, Inc.*,¹¹ the record showed and Hull admitted that he has done business in Kentucky since the 1980’s. Further, the record clearly supports the trial court’s conclusion that the first prong of the test was met because

[a]side from his connection with Haddix, Hull has regular and systematic contacts with the state of Kentucky, through his work on the installation of various pipelines. At the time of his deposition, Hull appears to have been engaged in an unrelated construction project in Clinton County, Kentucky. This Court concludes as a matter

⁸ *Id.* at 597.

⁹ 562 S.W.2d 99 (Ky.App. 1978) (single sale of goods by Kentucky seller to Colorado buyer, where goods were not specially manufactured, was insufficient to support extension of long-arm jurisdiction over buyer).

¹⁰ 787 S.W.2d 705 (Ky.App. 1990) (single letter sent by North Carolina physician to Kentucky physician, which was the alleged tortfeasor’s only connection with Kentucky, was insufficient to confer personal jurisdiction over the North Carolina physician under Kentucky long-arm statute).

¹¹ 61 S.W.3d 239 (Ky.App. 2001) (single agreement by Kentucky roofing company to work on a single project in Ohio, where representatives of the Ohio company did not solicit business in Kentucky and never entered Kentucky for any reasons related to the contract, was insufficient to support personal jurisdiction against Ohio company under Kentucky’s long-arm statute).

of law that Hull could reasonably anticipate being haled into a Kentucky court as a result of his activities in this state, and that he has purposefully availed himself of the privilege of performing construction work in Kentucky.

This conclusion is consistent with *Mohler v. Dorado Wings, Inc.*,¹² in which this court found that sufficient minimum contacts existed to support Kentucky long-arm jurisdiction where the defendant airline's Kentucky contacts occurred only "through the contract with other airlines which allow[ed] their [Kentucky] travel agencies to sell tickets aboard its carriers, collect the fares, and transmit the fares - minus a commission - to a settlement bank," which in turn paid the airlines which reimbursed the defendant airline. Thus, the court did not err by finding that the first prong of the test was satisfied.

The trial court next determined that the second prong of the test was not met because although "construction of the pipeline in question originated in Monroe County, Kentucky, the vast majority of the acts and omissions complained of by Haddix and Clearfork occurred in Tennessee," with the result that Hull's Kentucky activities had "very little to do with his alleged failure to reimburse Haddix and Clearfork." (Footnote omitted.) The record, however, shows that the job contract described the job as constructing a "Gas Supply line &

¹² 675 S.W.2d 404, 405 (Ky.App. 1984).

Distribution system" in "Monroe County, KY & Clay County, TN." Moreover, Hull admitted during his deposition that although the project was undertaken to provide gas service to a Tennessee location and "the majority of the work was in Tennessee," the "work began in Kentucky." Further, it was undisputed that the job included tapping into an existing gas line located four miles north of Gamaliel, Kentucky, and running the new line from that point to a Tennessee location. Contrary to the trial court's conclusion, it is clear that the work in Kentucky was an integral part of the overall job which necessarily created more than a passing contact with this state. Given the evidence that the claim arose in part from Hull's Kentucky activities, we must conclude that the trial court erred by finding that the second prong of the test was not met.

Finally, we are not persuaded by the trial court's conclusion that the third prong of the test was not met. Although the court concluded that Hull's Tennessee activities were the "primary" source of appellant's claim, the question before the court was whether Hull had such minimum contacts with Kentucky as to make the exercise of jurisdiction in this state reasonable, rather than whether jurisdiction would more reasonably be exercised in one forum rather than in the other. Given the evidence of work performed in Kentucky, coupled with the absence of probative evidence to contradict appellant's

claim that many of the activities leading to the claim against Hull occurred in Kentucky rather than in Tennessee, we must conclude that the trial court erred by finding that there were insufficient contacts to make jurisdiction in Kentucky reasonable. The trial court therefore erred by finding that the third prong of the test was not met, and by dismissing the action below for lack of personal jurisdiction over Hull.

The court's judgment is vacated and remanded for reinstatement of the action and further proceedings on the claim.

ALL CONCUR.

BRIEF FOR APPELLANT CLEARFORK
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BRIEF FOR APPELLEE:

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