

IN THE SUPREME COURT OF THE STATE OF NEVADA

LISA BRESLAW,
Appellant,
vs.
PETER COOPER,
Respondent.

Case No.: 84072 Electronically Filed
Eighth Judicial District Court Mar 07 2022 10:43 a.m.
Elizabeth A. Brown
Clerk of Supreme Court
Case No.: A-21-837948-C

PETER COOPER'S ANSWERING BRIEF TO APPEAL

SAGAR RAICH, ESQ.
Nevada Bar No.: 13379
BRIAN SCHNEIDER, ESQ.
Nevada Bar No.: 15458
RAICH LAW PLLC
6785 Eastern Ave., Suite 5
Las Vegas, NV 89119
Telephone: (702) 758-4240
Email: sraich@raichattorneys.com
bschneider@raichattorneys.com
ATTORNEYS FOR RESPONDENT

NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that there are no persons or entities described in NRAP 26.1(a) who must be disclosed.

/s/ Sagar Raich
SAGAR RAICH, ESQ.
Nevada Bar No.: 13379
RAICH LAW PLLC
6785 Eastern Ave., Suite 5
Las Vegas, NV 89119
Telephone: (702) 758-4240
Email: sraich@raichattorneys.com

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STATEMENT REGARDING APPENDIX

Citations to Appellant's Appendix are designated by [vol.] AA. [pp.]. Citations to Respondent's Appendix are designated by [vol.] RA. [pp.].

I. FACTS AND PROCEDURAL HISTORY

Respondent does not concede the facts stated in this section which are taken directly from the Complaint and stated as though presumed true for the purposes of the motion to dismiss and this Court's *de novo* review of the declination of the district court to assert specific jurisdiction in this matter.

Appellant Lisa Breslaw is a UNLV graduate residing in the Las Vegas area.¹ Respondent Peter Cooper is a U.S. citizen who resided in Sheffield, UK and Reading, UK at the times relevant hereto.² Appellant got into a kerfuffle with a UNLV professor regarding a formal complaint lodged with the school's administration regarding a professor.³ Between October and December of 2019, Plaintiff wrote about the situation on Reddit, an online forum freely available to anyone that can access it via the internet.⁴ Plaintiff avers that she did not identify any of the individuals in her online discussions.⁵ Appellant also avers that

¹ 1 AA. 1.

² *Id.*

³ 1 AA. 2-3.

⁴ 1 AA. 3.

⁵ *Id.*

Respondent was “following her” and preserving her posts.⁶ However, it is understood that Respondent “followed her” only in terms of reading the content that Appellant herself had posted.

On December 16, 2019, Respondent created a post on a second online forum called r/subredditdrama, with alleged readership of nearly one million people.⁷ In Respondent’s post entitled “*University student makes a dumb decision regarding her professor when applying to grad school, descends over the course of three months into an obsessive stalker who’s turned an entire faculty against her.*”⁸ The Complaint characterizes the false statement as follows: “This post alleges that Plaintiff ‘told her professor that they would collaborate on the project,’ tried to get the entire university administration, the faculty senate, and the Board of Regents involved in having both Dr. Kirk and Dean Keene demoted, and then stalked Dr. Gallo even after she had retired. Defendant also mocked Plaintiff’s anxiety disorder and germ phobia in this post as well as mocked her in the comment section.”⁹ Appellant alleges that she is easily identifiable by the combination of facts presented in this post.¹⁰

⁶ *Id.*

⁷ *Id.*

⁸ 1 AA. 4.

⁹ *Id.*

¹⁰ *Id.*

Respondent's post is reproduced at 1 AA. 13-16. Respondent's post contains the advisement to readers that "I would suggest that you just read the posts in the [Appellant's] userpage from old to new."¹¹

Appellant alleges that Respondent continued to "harass" her across Reddit from different accounts, including taunting and provoking her, condescendingly telling her to "stop", and responding "lol" when she accused him of bullying her and mentioned reporting Respondent's harassment to law enforcement.¹² Appellant alleges that she was "additionally subjected to significant online harassment by numerous users because of the subredditdrama post."¹³

In April of 2019, Appellant learned Respondent's identity and made a report to the South Yorkshire police for harassment and malicious communications.¹⁴ Appellant alleges that "Because Plaintiff resided in the US, [UK police] would not formally prosecute Defendant, but they warned them over Facebook to stop harassing her." *Id.* The email from the UK police officer, Stephen Robinson, to Appellant is reproduced at 1 AA. 30. The officer's email states his assessment that "Given the circumstances there is no risk to your safety...]"¹⁵ And further, that the

¹¹ 1 AA. 13.

¹² 1 AA. 4.

¹³ *Id.*

¹⁴ 1 AA. 4.

¹⁵ 1 AA. 30.

reason for the declination to prosecute was “given the complexities of the global nature of the crime.”¹⁶

Appellant alleged that “In February of 2020, during a phone conversation with Plaintiff, UNLV's assistant general counsel, Debra Pieruschka, inform[ed] Plaintiff that she has ‘seen her social media activity.’”¹⁷ And furthermore that “[Appellant] has become distrustful of people because of the harassment [Respondent] incited against her. For example, she always wonders whether anyone she meets or interacts with in real life could have been one of her online harassers.”¹⁸

As a further indication of the statements that Appellant is alleging to be tortious, Appellant seeks injunctive relief ordering Respondent “to publicly retract his allegations and admit that he fabricated the parts about Plaintiff stalking her professor, trying to have the dean demoted, and telling her professor that "they will collaborate on the project.”¹⁹

At the hearing on Respondent’s motion to dismiss, Appellant argued that Respondent’s characterization of Appellant as stalking a UNLV professor was directed at Nevada for the reason that “implicit in that is that UNLV was allowing

¹⁶ *Id.*

¹⁷ 1 AA. 5.

¹⁸ *Id.*

¹⁹ 1 AA. 6.

this professor to be stalked. And I feel that's target---that is targeting, not just to me, but the state.”²⁰

II. ARGUMENT

Appellant Lisa Breslaw appeals from a district court order granting respondents' motion to dismiss for lack of personal jurisdiction pursuant to NRCP 12(b)(2). The Court reviews a district court order dismissing a complaint for lack of personal jurisdiction de novo. *Baker v. Eighth Judicial Dist. Court*, 116 Nev. 527, 531, 999 P.2d 1020, 1023 (2000).

"The Due Process Clause of the Fourteenth Amendment constrains a State's authority to bind a nonresident defendant to a judgment of its courts." *Walden v. Fiore*, 571 U.S. 277, 283, 134 S. Ct. 1115, 188 L. Ed. 2d 12 (2014). In order for a Nevada court to exercise personal jurisdiction over a nonresident defendant, a plaintiff must show that Nevada's long-arm statute, NRS 14.065, has been satisfied, and that the exercise of jurisdiction does not offend due process. *Catholic Diocese of Green Bay, Inc. v. Doe*, 131 Nev. 246, 249, 349 P.3d 518, 520 (2015). Since Nevada's long-arm statute reaches the limits of due process established by the United States Constitution, the analysis is the same for both. *Id.*; *see also Baker*, 116 Nev. at 531, 999 P.2d at 1023. To establish personal jurisdiction over a

²⁰ 2 AA. 468-469.

nonresident defendant, a plaintiff must show that the requirements of Nevada's long-arm statute, NRS 14.065, have been satisfied and that the exercise of jurisdiction does not abridge due process. *Arbella Mut. Ins. Co. v. Eighth Judicial Dist. Court*, 122 Nev. 509, 512, 134 P.3d 710, 712 (2006). Due process requires a nonresident defendant to have "minimum contacts with the forum state sufficient to ensure that exercising personal jurisdiction over him would not offend traditional notions of fair play and substantial justice." *Id.* (internal quotation marks omitted); see also *Burger King Corp. v. Rudzewicz*; 471 U.S. 462, 472, 476, 105 S. Ct. 2174, 85 L. Ed. 2d 528 (1985). The defendant must have contacts with the forum sufficient for the defendant to "reasonably anticipate being haled into court there." *Arbella Mut. Ins. Co.*, 122 Nev. at 512, 134 P.3d at 712 (internal quotation marks omitted). The contacts with the forum state satisfy due process if either general or specific personal jurisdiction is present, *id.*, and Appellant argues only that specific personal jurisdiction applies.

The district court has specific personal jurisdiction over a nonresident defendant only where (1) the defendant purposefully avails itself of the privilege of acting in Nevada, enjoying the protection of Nevada's laws, or affirmatively directing conduct toward Nevada; (2) the cause of action arises from the defendant's deliberate conduct toward Nevada; and (3) exercising jurisdiction would be reasonable. *Id.* at 513, 134 P.3d at 712-13.

A. Appellant Makes No Effect to Present Relevant Authority

Appellant generally objects to the district court's application of *Calder v. Jones*, 465 U.S. 783, 788, 104 S. Ct. 1482, 1486 (1984), for which this Court has significant jurisprudence. Appellant nevertheless cites no authority (binding or otherwise) in support of her arguments. Thus, Appellant has not met her appellate burden to present relevant authority in support of her appellate concerns. *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006).

B. The Effects Test Still Requires that Respondent Has Minimum Contacts with the Jurisdiction, Which Cannot Be Solely Those Contacts with the Appellant.

When analyzing whether specific personal jurisdiction exists in a tort action, this court applies the "effects test." *Tricarichi v. Coöperative Rabobank, U.A.*, 135 Nev. Adv. Rep. 11, 440 P.3d 645, 650 (2019)(citing generally *Calder v. Jones*, 465 U.S. 783 (1984)). Nonetheless, the same minimum contacts principles remain applicable. *Walden*, 571 U.S. at 286. In other words, the "effects test" does *not* consider the plaintiff's contacts with the forum state; instead, the inquiry focuses on the defendant's relationship with the forum. *Id.* Specifically, the test "considers whether 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." *Tricarichi*, 440 P.3d at 650 (quoting *Picot v. Weston*, 780 F.3d 1206, 1213-14 (9th Cir. 2015) (internal quotation marks omitted).

The minimum contacts inquiry "focuses on the relationship among the *defendant*, the forum, and the litigation." *Walden*, 571 U.S. at 284 (emphasis added). Thus, "the defendant's suit-related conduct must create a substantial connection with the forum State." *Id.* Two factors are particularly relevant in minimum contacts analysis. "First, the relationship must arise out of contacts that the 'defendant *himself* creates with the forum State." *Id.* (quoting *Burger King Corp.*, 471 U.S. at 475). And second, the analysis "looks to the defendant's contacts with the forum State itself, *not* the defendant's contacts with persons who reside there." *Walden*, 571 U.S. at 285 (emphasis added). Accordingly, "the plaintiff cannot be the only link between the defendant and the forum." *Id.* Because Appellant is the *sole* link between Respondent and the forum, personal jurisdiction will not lie.

C. Calder Is Distinguishable from the Instant Appeal Because Respondent Did not Source the Topic of His Writing from Sources in Nevada as Respondent’s “Source” Was Appellant’s Online Writings.

In *Calder*, the allegedly libelous story concerned the California activities of a California resident. *Calder*, 465 U.S. at 788-789. It impugned her professionalism by alleging she drank so much that it affected her ability to perform as an entertainer. *Id.* The article was drawn from California sources and

the brunt of the harm, emotional distress and damage to reputation, was felt in California. *Id.*

The fundamental difference between the exercise of jurisdiction in Calder v. Jones and the court's declination to find personal jurisdiction in this matter boils down to the fact that Appellant provided the content for Respondent's posts herself. In Respondent's original post, he advises the reader to read Appellant's posts for themselves.²¹ Respondent has only one Nevada source and that is the Appellant. As the inquiry is irrespective of the *plaintiff's* contacts, personal jurisdiction will not lie and Appellant's argument fails the effect's test.

III. CONCLUSION

Appellant's assertion of error is incorrect. As Appellant is both the source of all information comments upon by the Respondent and is Respondent's sole connection with the jurisdiction, the District Court's analysis and order under NRCP 12(b)(2) should be affirmed.

Dated this 1st day of March, 2022.

RAICH LAW PLLC

/s/ Sagar Raich
SAGAR RAICH, ESQ.
Nevada Bar No. 13329
6785 Eastern Ave., Suite 5
Las Vegas, NV 89119
Telephone: (702) 758-4240
Email: sraich@raichattorneys.com

²¹ 1 AA. 13.

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because: This brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point font Times New Roman.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 21(d) and NRAP 28.1(e)(1)–(2) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

[] Proportionately spaced, has a Times New Roman typeface of 14 points or more, and contains 2,563 words; or
[X] Does not exceed 15 pages.

3. Finally, I hereby certify that I have read this brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(3)(1), which requires every assertion in the brief regarding matters in the record to be support by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to

sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 1st day of March, 2022.

RAICH LAW PLLC

/s/ Sagar Raich

SAGAR RAICH, ESQ.
Nevada Bar No. 13329
6785 Eastern Ave., Suite 5
Las Vegas, NV 89119
Telephone: (702) 758-4240
Email: sraich@raichattorneys.com

CERTIFICATE OF SERVICE

Pursuant to NRAP 25(c)(1), I certify that I am an employee of RAICH LAW PLLC and that on March 1, 2022 I caused to be served via First Class mail with a courtesy copy sent via email a true copy of the **PETER COOPER'S ANSWERING BRIEF TO APPEAL** addressed to:

Lisa Breslaw, in pro per
7050 Shady Palms Street
Las Vegas, NV 89131
Email: lisa.breslaw@alumni.unlv.edu

RAICH LAW PLLC

/s/ Elizabeth Hermanny
Employee of RAICH LAW PLLC