

Commonwealth of Kentucky

Court of Appeals

NO. 2008-CA-000334-MR

LOUIE E. CHILDERS

APPELLANT

v.

APPEAL FROM HARLAN CIRCUIT COURT
HONORABLE RUSSELL D. ALRED, JUDGE
ACTION NO. 06-CI-00639

EVANS MANAGEMENT, INC.

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: ACREE, DIXON, AND STUMBO, JUDGES.

STUMBO, JUDGE: In the case before us, Louie Childers is appealing an order of the Harlan Circuit Court which set aside a previous order of the same court enforcing a judgment from Tennessee against Evans Management. The trial court found that the Tennessee court did not have jurisdiction over Evans Management. Childers argues that Tennessee had jurisdiction over Evans Management, that the

Tennessee judgment is entitled to full faith and credit and should be enforced in Kentucky. Evans Management argues that it has never done any business in Tennessee and there were not sufficient contacts with the state for it to have jurisdiction. We agree with the trial court's finding that Tennessee did not have jurisdiction over Evans Management and affirm the trial court's order.

Childers is a resident of Harrogate, Tennessee. He was employed by Evans Management as a heavy equipment operator when he was injured on the job on November 14, 1997. The injury occurred in Middlesboro, Kentucky. Evans Management is a Kentucky corporation that does no business in Tennessee. After the injury occurred, an injury report was filed and Childers began receiving temporary total disability benefits from Evans Management's workers' compensation insurance carrier, Kentucky Employers Mutual Insurance (KEMI). Evans Management claims Childers filed the injury report, but Childers states it was filed by someone else at the job site.

After the temporary benefits were terminated in 1998, Childers initiated a workers' compensation proceeding in his home state of Tennessee. KEMI employed counsel in Tennessee to represent it and Evans Management. The record is not clear, but at some point, KEMI was dismissed from the case and Evans Management retained separate counsel. On September 29, 2005, judgment was entered against Evans Management and awarded Childers \$76,800 workers' compensation benefits in a lump sum payment.

On September 6, 2006, Childers sought to enforce this judgment in the Harlan Circuit Court. Evans Management objected to the registration of the Tennessee judgment against it claiming the Tennessee court did not have proper jurisdiction to enter a judgment against the company. On May 11, 2007, the trial court entered an order enforcing the Tennessee judgment. On May 24, 2007, Evans Management filed a motion asking the court to set aside the order. On January 28, 2008, the trial court set aside the order and declined to enforce the Tennessee judgment finding that Evans Management did not have sufficient contacts with Tennessee for the Tennessee court to have personal jurisdiction. This appeal followed.

It should be noted that in Tennessee, the Tennessee Workers' Compensation Act can extend to injuries outside of the state of Tennessee if the contract for hire was made in Tennessee. Tenn. Code Ann. § 50-6-115(2). This includes a telephone conversation where an employer offers a job to a Tennessee resident and the job is accepted. *Matthews v. St. Paul Property and Liability Insurance*, 845 S.W.2d 737 (Tenn. 1992). In the case at hand, Childers was called by someone from Evans Management and accepted the job over the phone.

“The law in Kentucky is that a sister state’s judgment is entitled to full faith and credit and to registration if the judgment is valid under that state’s own laws.” *Sunrise Turquoise, Inc. v. Chemical Design Co., Inc.*, 899 S.W.2d 856, 858 (Ky. App. 1995). If Tennessee statutes allow for Tennessee jurisdiction,

Kentucky courts must then look to see if there are sufficient *minimum contacts* to satisfy constitutional due process. *Id.*

The three-pronged test for minimum contacts, as set forth in [*International Shoe Co. v. Washington*, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945)], requires that: (1) defendant has purposely availed itself of the privilege of acting within the state; (2) the cause of action must arise from defendant's activities; and (3) enough connections to the state must exist so that jurisdiction would be reasonable. In terms of a due process analysis, the defendant's connection must be such "that he should reasonably anticipate being haled into court there." (Citations omitted).

Id.

It is clear that the Tennessee court had jurisdiction pursuant to its workers' compensation statute, but the trial court found that Evans Management did not have sufficient minimum contacts to satisfy the three-pronged test of *International Shoe*. Specifically, it found that prong three was lacking. We agree.

Aside from the telephone conversation mentioned above, the evidence indicates that the only other contact Evans Management had with Tennessee was that the employment application was given to Childers in Tennessee and another telephone conversation took place between Evans Management in Kentucky and Childers in Tennessee. Based on this very limited contact with Tennessee, we believe that the Tennessee court did not have personal jurisdiction over Evans Management. Evans Management does not and has never done any work in Tennessee, all work performed by Childers was done in Kentucky, and the injury occurred in Kentucky. It would be unreasonable for Evans Management to

anticipate being sued in a Tennessee court. The Tennessee judgment is not entitled to full faith and credit in Kentucky.

Childers does make the argument that if the jurisdictional issue had been fully adjudicated in the Tennessee court, then *res judicata* applies and Evans Management cannot argue lack of jurisdiction again. This is true, but we cannot determine if the issue was fully litigated in Tennessee. We are in possession of the entire Kentucky record for this case, but very little of the Tennessee record was filed in this action. From what we are able to piece together, the issue of whether there was jurisdiction pursuant to the workers' compensation statute was argued, but there is no evidence as to whether or not the *International Shoe* minimum contacts issue was argued. Because of the scant Tennessee record before us, we cannot say *res judicata* applies.

Based on the above, we affirm the order of the trial court.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

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