

RENDERED: JANUARY 9, 2015; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2013-CA-001746-MR

TEDDY COOPER AND
LORI COOPER

APPELLANTS

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE ANGELA MCCORMICK BISIG, JUDGE
ACTION NO. 13-CI-001115

AJITH NAIR, M.D.;
KENTUCKIANA PAIN SPECIALISTS, P.S.C.;
AND METRO SPECIALTY SURGERY CENTER, LLC

APPELLEES

OPINION
AFFIRMING IN PART,
VACATING IN PART, AND REMANDING

** ** * * * * *

BEFORE: CLAYTON, COMBS, AND STUMBO, JUDGES.

COMBS, JUDGE: Teddy Cooper and Lori Cooper, his wife, appeal from the order of the Jefferson Circuit Court dismissing their negligence action against Dr. Ajith Nair; Kentuckiana Pain Specialists, P.S.C.; and Metro Specialty Surgery Center,

L.L.C. On appeal, the Coopers argue that the trial court erred in determining that Jefferson County was not the proper venue for their claims and that the court lacked *in personam* jurisdiction over Metro Specialty Surgery Center, a business entity organized under the laws of Indiana and domiciled there. Having reviewed the record and the arguments of counsel, we affirm in part, vacate in part, and remand.

The Coopers are residents of Hardin County, Kentucky. Based upon a recommendation from his family physician, Teddy Cooper sought treatment with Dr. Ajith Nair for low back pain. Nair practices with Kentuckiana Pain Specialists, a Kentucky professional service corporation having an office on Hurstbourne Parkway in Louisville.

Between May 24, 2011, and February 27, 2012, Nair saw Cooper for twenty-two (22) separate appointments at his office in Louisville. On March 6, 2012, Teddy Cooper underwent a surgical procedure at Metro Specialty Surgery Center in Jeffersonville, Indiana. The procedure was performed by Dr. Nair.

On March 5, 2013, the Coopers filed a complaint in Jefferson Circuit Court alleging that Dr. Nair “deviated from the accepted standard of medical care in the performance of his medical responsibilities” as he performed the surgical procedure undertaken on March 6, 2012, in Indiana. The Coopers alleged that Kentuckiana Pain Specialists and Metro Specialty Surgery Center -- through their agents and employees -- were also negligent in their care and treatment of Teddy Cooper on this date in Indiana.

The Coopers alleged that Dr. Nair is a resident of Jefferson County and that Kentuckiana Pain Specialists is a business entity existing under the laws of the Commonwealth. However, the Coopers did not allege how Metro Specialty Surgery Center, a nonresident defendant, became subject to the jurisdiction of the Jefferson Circuit Court.

Metro Specialty Surgery Center filed an answer on April 1, 2013. As an affirmative defense, it asserted the court's lack of personal jurisdiction. On April 5, 2013, Dr. Nair and Kentuckiana Pain Specialists answered the complaint. Among other defenses, they pled improper venue.

On June 26, 2013, Metro Specialty Surgery Center filed a motion to dismiss the action based upon the court's lack of personal jurisdiction. On July 3, 2013, Dr. Nair and Kentuckiana Pain Specialists filed a motion to dismiss the complaint upon the basis that Jefferson County was not a proper venue for the proceedings.

On August 13, 2013, the trial court heard oral arguments with respect to both motions. During this hearing, the Coopers did not dispute the assertions of the defendants that their complaint alleged that Teddy was injured as a result of the negligence that occurred on March 6, 2012, in Clark County, Indiana.

On August 29, 2013, the Jefferson Circuit Court granted the motion of Metro Specialty Surgery Center to dismiss based upon its lack of personal jurisdiction. On September 16, 2013, the court granted the motion of Dr. Nair and Kentuckiana Pain Specialists to dismiss based upon improper venue. The Coopers appeal from the two separate orders dismissing. Because these are both issues of

law, our review is *de novo*. *Appalachian Regional Healthcare, Inc. v. Coleman*, 239 S.W.3d 49 (Ky.2007).

The arguments advanced by Dr. Nair and Kentuckiana Pain Specialists concern choice of law issues and the doctrine of *forum non conveniens*. We note at the threshold that these issues are irrelevant to a determination of venue pursuant to our statutes. Kentucky Revised Statute[s] (KRS) 452.460(1) provides that the proper venue for an action based “upon an injury to the person or property of the plaintiff against a defendant residing in this state, must be brought in the county in which the defendant resides, or in which the injury is done.” KRS 452.450 provides, in part, that an action against a corporation which has an office or place of business in this state must be brought in the county in which the office or place of business is situated. There is no dispute that Dr. Nair resides in Jefferson County. Likewise, there is no dispute that Kentuckiana Pain Specialists has an office in Jefferson County. Consequently, the Coopers met both statutory requirements by filing the action in Jefferson Circuit Court. Dismissal of the action with respect to these two defendants was not warranted. Thus, we vacate and remand on this issue.

As plaintiffs, the Coopers bore the burden of establishing jurisdiction over Metro Specialty Surgery Center, a nonresident defendant. *Hinnners v. Robey*, 336 S.W.3d 891(Ky.2011). In *Caesars Riverboat Casino, LLC v. Beach*, 336 S.W.3d 51 (Ky.2011), the Supreme Court of Kentucky reviewed the requirements for the proper exercise of jurisdiction by our courts over nonresident defendants.

The court observed that the analysis involves a two-step process. Initially, we must determine whether jurisdiction is authorized by the provisions of KRS 454.210, our long-arm statute. If the exercise of jurisdiction is permitted under the provisions of KRS 454.210, then we must determine whether our exercise of personal jurisdiction over a nonresident comports with federal due process standards involving “traditional notions of fair play and substantial justice.” *Id.* citing *International Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S.Ct. 154, 158, 90 L.Ed. 95 (1945).

The provisions of KRS 454.210(2)(a) enumerate nine specific circumstances under which Kentucky courts may exercise specific, personal jurisdiction over a nonresident defendant. They are as follows:

1. Transacting any business in this Commonwealth;
2. Contracting to supply services or goods in this Commonwealth;
3. Causing tortious injury by an act or omission in this Commonwealth;
4. Causing tortious injury in this Commonwealth by an act or omission outside this Commonwealth if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this Commonwealth, provided that the tortious injury occurring in this Commonwealth arises out of the doing or soliciting of business or a persistent course of conduct or derivation of substantial revenue within the Commonwealth;
5. Causing injury in this Commonwealth to any person by breach of warranty expressly or impliedly made in

the sale of goods outside this Commonwealth when the seller knew such person would use, consume, or be affected by, the goods in this Commonwealth, if he also regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this Commonwealth;

6. Having an interest in, using, or possessing real property in this Commonwealth, providing the claim arises from the interest in, use of, or possession of the real property, provided, however, that such in personam jurisdiction shall not be imposed on a nonresident who did not himself voluntarily institute the relationship, and did not knowingly perform, or fail to perform, the act or acts upon which jurisdiction is predicated;
7. Contracting to insure any person, property, or risk located within this Commonwealth at the time of contracting;
8. Committing sexual intercourse in this state which intercourse causes the birth of a child when:
 - a. The father or mother or both are domiciled in this state;
 - b. There is a repeated pattern of intercourse between the father and mother in this state; or
 - c. Said intercourse is a tort or a crime in this state; or
9. Making a telephone solicitation, as defined in KRS 367.46951, into the Commonwealth.

While the Coopers are required to set forth the necessary facts supporting a finding of jurisdiction, they failed to identify to the trial court which of these circumstances was relevant to its determination. Nor have they offered

any basis for the exercise of personal jurisdiction in their brief on appeal. Instead, the Coopers argue that they are entitled to an opportunity to conduct further discovery since they adduced evidence sufficient to show: that Dr. Nair is an agent of Metro Specialty Surgery Center; that other Kentucky doctors have a relationship with the surgery center; and that the surgery center maintains contact and does business with Kentucky patients. The Coopers contend that the trial court erred by denying them the opportunity to conduct further discovery with respect to these issues.

Metro Specialty Surgery Center argues that the trial court did not err by dismissing the action since the Coopers failed to allege a sufficient basis for the court's exercise of personal jurisdiction. It also contends that the Coopers had a reasonable opportunity to conduct discovery before the court's hearing and that they failed to offer any explanation for their failure or inability to do so. Finally, the surgery center argues that no amount of discovery would reveal a proper basis for the exercise of jurisdiction under the circumstances of this case. We agree with each of the surgery center's assertions.

Our long-arm statute authorizes the exercise of specific, *in personam* jurisdiction over a nonresident defendant where the conduct of the defendant or its agent matches one of the activities enumerated in the statute and the claim asserted "arises from" that statutory activity. A claim "arises from" certain conduct only where there is a "reasonable and direct nexus" between the conduct causing injury and the defendant's activities in the state. *Caesars*, 336 S.W.3d at 59. The

provisions of our long-arm statute are to be “liberally construed in favor of long-arm jurisdiction,” but “their limits upon jurisdiction must be observed as defined.” *Id.* at 56. Having considered each of the activities identified in the statute, we note that none of the surgery center’s conduct in this case justifies the exercise of our long-arm jurisdiction.

It is undisputed that Metro Specialty Surgery Center is an Indiana business entity with its principal place of business in Jeffersonville, Indiana. It is not registered with the Kentucky Secretary of State, and it is not authorized to conduct business in the Commonwealth. In fact, given the breadth of services that it offers on an outpatient basis, it is specifically prohibited from conducting business here. It is undisputed that the surgery center was not involved with the care and treatment that Teddy Cooper was offered or provided in the Commonwealth. The surgery center provided care to him only in Indiana. The surgery center does not supply goods nor does it contract to supply goods in the Commonwealth. It has no agents or employees working on its behalf in Kentucky. It maintains no office in Kentucky; it does not insure any party in the Commonwealth; it does not own property here; and the Coopers have never alleged that it caused tortious injury here. Under these circumstances, we conclude that the requirements of our long-arm statute have not been satisfied.

Even if we were to conclude otherwise, federal due process standards would nevertheless prevent the exercise of our long-arm jurisdiction over Metro Specialty Surgery Center. “[D]ue process requires . . . that in order to subject a

defendant to a judgment *in personam*, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’ ”

International Shoe Co. v. Washington, 326 U.S. at 316, 66 S.Ct. at 158.

Fundamental principles of due process protect an individual's liberty interest in not being subject to the binding judgments of a forum within which he has not established meaningful “contacts, ties, or relations.” *Id.* at 319, 66 S.Ct. 154.

Under the circumstances of this case, we conclude that the Coopers cannot meet their burden to establish jurisdiction under this standard since Metro Specialty Surgery Center has established no meaningful contacts or ties to the Commonwealth. In light of the undisputed facts, we are not persuaded that additional discovery would have proven useful. The trial court did not err by dismissing the claims asserted against Metro Specialty Surgery Center.

Consequently, we vacate the order of the Jefferson Circuit Court dismissing the claims asserted by the Coopers against Dr. Nair and Kentuckiana Pain Specialists and remand for further proceedings. However, based upon the foregoing analysis, we affirm the order of the court dismissing the claims asserted by the Coopers against Metro Specialty Surgery Center.

ALL CONCUR.

BRIEF FOR APPELLANT:

Larry D. Ashlock
Elizabethtown, KY

BRIEF FOR APPELLEE:

Daniel G. Brown
Louisville, KY

Richard P. Schiller
Louisville, KY