Affirmed and Opinion filed February 1, 2001.

In The

Fourteenth Court of Appeals

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NO. 14-00-00537-CV

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CARDINAL STATES GATHERING COMPANY, POCAHONTAS GAS PARTNERSHIP, AND MCNIC CSG PIPELINE COMPANY, Appellants

V.

CONOCO, INC., Appellee

On Appeal from the 270th District Court
Harris County, Texas
Trial Court Cause No. 99-63481

O P I N I O N

Appellants, Cardinal States Gathering Company, Pocahontas Gas Partnership, and MCNIC CSG Pipeline Company, bring this interlocutory appeal[1] from the trial court's denial of their special appearances. We affirm.

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[1] TEX. CIV. PRAC. & REM. CODE ANN. § 51.014(a)(7) (Vernon Supp. 1998).

I. Factual and Procedural Background

The underlying dispute involves Conoco's attempt to recover certain cost overruns for a pipeline it built in Virginia and West Virginia. According to the testimony and evidence adduced for the limited purpose of determining whether the trial court had personal jurisdiction over appellants, Pocahontas was formed in 1990 as a general partnership under the laws of Virginia by the general partners Conoco and Consol, Inc.[2] Pocahontas's principal place of business is Pittsburgh, Pennsylvania. Because Pocahontas does not have any employees, all of its activities are carried out by the employees of either Conoco or Consol. Shortly after it was formed, Pocahontas, through Conoco and Consol, approached Oakwood Gathering, Inc., the purpose of which was to form Cardinal States.[3] Under the Cardinal States partnership agreement, Cardinal States would build, maintain, and own the pipeline, and the partners could use the pipeline for the purpose of transporting to market the methane they extracted from the ground. Appellants concede that Pocahontas signed the Cardinal States partnership agreement in Texas.[4]

Pocahontas and Oakwood designated Conoco, a Houston-based corporation, as the operator of the Cardinal States pipeline ("the first pipeline")[5] under the Operating Agreement that forms the basis of the underlying action. The Operating Agreement provides that it will be governed by Texas law and certain disputes not directly related to the issues involved in this action would be subject to arbitration in Houston, Texas. By 1996 and after the first pipeline was completed, MCNIC acquired Oakwood's entire interest in Cardinal States. Thus, Cardinal States was now a partnership of MCNIC and Pocahontas, with the latter partner itself a partnership of Conoco and Consol. At the following Cardinal States partnership

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[2] Consol is not a party to the underlying action.

[3] Oakwood is not a party to the underlying action; however, in 1996, MCNIC acquired Oakwood's interests in Cardinal States.

[4] Although Cardinal States is a Virginia partnership, its principal place of business, as designated in the partnership agreement, is Houston, Texas. It, like Pocahontas, has no employees. Accordingly, all of its business is conducted by and through its partners. The Cardinal States partnership agreement also provides that annual meetings are to be held in Houston. These partnership meetings are attended by one representative of each partner, *i.e.*, a representative from Pocahontas and one from MCNIC.

[5] This pipeline stretches from Kentucky through West Virginia and into Virginia.

meeting, held in Houston, MCNIC was introduced as a new partner.

After MCNIC succeeded to Oakwood's rights and obligations to Cardinal States, the Cardinal States partners began discussing the possibility that the first pipeline's capacity might be exceeded. Various options, including whether all of the Cardinal States partners would participate in the expansion, were discussed. During these negotiations, Pocahontas's representatives called Conoco in Houston, and Conoco, MCNIC, and Pocahontas exchanged facsimiles, e-mails, and written communications regarding how to resolve the capacity problem with the first pipeline. In the end, the parties agreed to construct an additional pipeline in Virginia and West Virginia ("the second pipeline"), which would be located about thirty miles east of—and incorporated into—the first pipeline. Representatives for Pocahontas traveled to Houston to finalize the agreement. A few days after this meeting, MCNIC representatives, including its Vice President, came to Houston to further meet with Conoco and discuss the second pipeline. Within ten days of this last trip, Pocahontas and MCNIC each signed an authorization for expenditure (AFE) to build the second pipeline. Immediately after the AFE was signed, Conoco began preliminary design and engineering work for both the pipelines.

As it turned out, tough terrain and bad weather caused difficulties with the second pipeline which ultimately led to huge cost overruns. During this period, the parties kept an open line of communication, including the directing of correspondence into Conoco's Houston headquarters. Conoco has now brought suit against appellants seeking to recover what it believes is appellants' fair share of the cost overruns. After two months of discovery on the issue of whether appellants had contacts with Texas sufficient to confer personal jurisdiction, the trial court denied appellants' special appearance.

II. Standard of Review

The plaintiff has the initial burden of pleading sufficient allegations to bring the nonresident defendant within the provisions of the Texas long-arm statute. *Hotel Partners v. KPMG Peat Marwick*, 847 S.W.2d 630, 633 (Tex. App.—Dallas 1993, writ denied). At the special appearance hearing, the burden shifts to the nonresident defendant to negate all bases of personal jurisdiction. *National Indus. Sand Ass'n v. Gibson*, 897 S.W.2d 769, 772 (Tex. 1995).

Whether a court has personal jurisdiction over a nonresident defendant is a question of law, but the proper exercise of such jurisdiction is sometimes predicated upon a resolution of underlying factual disputes. *Conner v. ContiCarriers & Terminals, Inc.*, 944 S.W.2d 405, 411 (Tex. App.—Houston [14th Dist.] 1997, no writ). The standard of review for determining the appropriateness of the resolution of disputed facts is factual sufficiency. *Id*. (citing *Hotel Partners*, 847 S.W.2d at 632). If, however, the special appearance is based upon undisputed and established facts, as here, the reviewing court shall conduct a *de novo* review of the trial court's order either granting or denying a special appearance. *Id*. The reviewing court considers all evidence in the record. *Id*.

Where, as here, no findings of fact or conclusions of law are filed, the trial court's judgment implies all necessary findings in support of its judgment. *Goodyear Tire & Rubber Co. v. Jefferson Const. Co.*, 565 S.W.2d 916, 918 (Tex. 1978), *overruled on other grounds, Dresser Indus., Inc. v. Page Petroleum, Inc.*, 853 S.W.2d 505 (Tex. 1993); *Carlin v. 3V Inc.*, 928 S.W.2d 291, 294 (Tex. App.—Houston [14th Dist.] 1996, no writ).[6] Furthermore, this Court must affirm the judgment of the trial court on any legal theory finding support in the evidence. *Temperature Sys., Inc. v. Bill Pepper, Inc.*, 854 S.W.2d 669, 673 (Tex. App.—Dallas 1993, writ dism'd by agr.).

III. Texas Long-Arm Statute

A Texas court may exercise jurisdiction over a nonresident if two conditions are satisfied. First, the Texas long-arm statute must authorize the exercise of jurisdiction. Second, the exercise of jurisdiction must be consistent with federal and state constitutional guarantees of due process. *Schlobohm v. Schapiro*, 784 S.W.2d 355, 356 (Tex. 1990).

The Texas long-arm statute authorizes the exercise of jurisdiction over a nonresident defendant who

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[6] Appellants claim they initially made a request for findings of fact and conclusions of law and filed a notice of past due findings of fact and conclusions of law. However, the notice of past due findings is not in the record before this court. The failure to file a reminder constitutes waiver. *See* TEX. R. CIV. P. 297. In any event, findings of facts and conclusions of law are not required to be filed by a trial court in an accelerated appeal. *Smith Barney Shearson, Inc. v. Finstad*, 888 S.W.2d 111, 114 (Tex. App.—Houston [14th Dist.] 1994, no writ).

does business in Texas. TEX. CIV. PRAC. & REM. CODE ANN. § 17.042 (Vernon 1997). While the statute enumerates several specific acts that constitute "doing business" in Texas, it also includes any "other acts that may constitute doing business." *Schlobohm*, 784 S.W.2d at 357.[7] The "doing business" requirement permits the statute to reach as far as the federal constitutional requirements of due process will allow. *Guardian Royal Exch. Assur., Ltd. v. English China Clays, P.L.C.*, 815 S.W.2d 223, 226 (Tex. 1991). Therefore, we need only consider whether the assertion of personal jurisdiction over appellants is consistent with the requirements of due process. *Id.*; *Reyes v. Marine Drilling Cos.*, 944 S.W.2d 401, 403 (Tex. App.—Houston [14th Dist.] 1997, no writ).

IV. Due Process

Due process consists of two components: (1) whether the nonresident defendant has purposefully established "minimum contacts" with the forum state and (2) if so, whether the exercise of jurisdiction would comport with "fair play and substantial justice." *Guardian Royal Exch.*, 815 S.W.2d at 226 (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475–76, (1985)). Although due process is a two-part inquiry, the parties agree that this Court need not resolve whether an assertion of jurisdiction would violate traditional notions of fair play and substantial justice. Therefore, we need only resolve whether appellants have minimum contacts with Texas.

Under the minimum contacts analysis, we must determine whether the nonresident defendant has purposefully availed itself of the privilege of conducting activities within the forum state, thereby invoking the benefits and protections of Texas law. *Reyes*, 944 S.W.2d at 404 (citing *Burger King Corp.*, 471 U.S. at 474–75). A nonresident defendant who has purposefully availed itself of the privileges and benefits of conducting business in the forum state will have sufficient contacts with the forum to confer personal

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[7] The Texas long-arm statute reads, in relevant part:

> In addition to other acts that may constitute doing business, a nonresident does business in this state if the nonresident . . . 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 . . . .

TEX. CIV. PRAC. & REM. CODE ANN. § 17.042.

jurisdiction on the court. *CSR Ltd. v. Link*, 925 S.W.2d 591, 594 (Tex. 1996). The requirement of purposeful availment, in turn, ensures that the nonresident defendant's contact results from *its* purposeful acts and not the unilateral activity of the plaintiff or a third party. *Guardian Royal Exch.*, 815 S.W.2d at 226.

In determining whether a nonresident defendant has purposefully established minimum contacts with the forum state, "foreseeability" is a significant consideration. *Memorial Hosp. Sys. v. Fisher Ins.*, 835 S.W.2d 645, 650 (Tex. App.—Houston [14th Dist.] 1992, no writ). Although not an independent component of the minimum contacts analysis, foreseeability is implicit in determining whether there is a "substantial connection" between the defendant and the forum state. If a nonresident, by its actions or conduct, has purposefully availed itself of a state's benefits and the protections of its laws, then it has established a substantial connection with the state and subjected itself to the state's jurisdiction. *Conner*, 944 S.W.2d at 410 (citing *Guardian Royal Exch.*, 815 S.W.2d at 226–27).

The nonresident defendant's contacts can give rise to two types of jurisdiction, specific or general. Specific jurisdiction is established when the plaintiff's cause of action arises out of, or relates to, the defendant's contacts with the forum state. *Guardian Royal Exch.*, 815 S.W.2d at 227. The defendant's activities must have been purposefully directed toward the forum state. *Id.* at 228. Under specific jurisdiction, the minimum contacts analysis focuses on the relationship among the defendant, the forum, and the litigation. *Id.*

General jurisdiction, on the other hand, is established by a defendant's continuous and systematic contacts with the forum. Such contacts permit the forum to exercise personal jurisdiction over the defendant, even though the cause of action did not arise out of, or relate to, the defendant's activities conducted within the forum state. *CSR Ltd.*, 925 S.W.2d at 595. Under general jurisdiction, the minimum contacts analysis is more demanding, requiring a showing of substantial activities within the forum state. *Schlobohm*, 784 S.W.2d at 357.

V. General Jurisdiction

Conoco argues that the court had general jurisdiction over Cardinal States because the Partnership Agreement identifies Houston as Cardinal States' place of business, even though it is registered as a Virginia partnership. Although Cardinal States does not argue with this fact, it nevertheless asserts that its only activities relate to the single gas gathering system on the East Coast. Cardinal States cites no authority for the proposition that, even though the Partnership Agreement plainly states its principal place of business is Texas, it is not subject to jurisdiction in Texas.

Under Texas law, venue is proper against a partnership wherever its principal office is located. TEX. CIV. PRAC. & REM. CODE ANN. § 15.002 (Vernon 1999). Although a particular court may have jurisdiction over a defendant even though the county in which that court is situated is not proper for venue purposes, the converse is not true, at least not where venue is based upon the defendant's presence in the county. Physical presence is sufficient to vest a court with jurisdiction over a defendant. *Burnham v. Superior Court*, 495 U.S. 604, 619 (1990). By designating Houston as Cardinal States' place of business, Cardinal States is present in Texas regardless of where it actually carries on the partnership business, and therefore, we hold that the trial court did not err in finding Cardinal States is amenable to jurisdiction in Texas.

Conoco further argues that defendants Pocahontas and MCNIC are also subject to the court's general jurisdiction because: (1) they have repeatedly contracted with Conoco, a Texas resident; (2) MCNIC and Pocahontas expressly agreed that the Operating Agreement upon which Conoco has brought this action will be governed by Texas law; and (3) several agreements by the parties designate Houston as the preferred location to arbitrate contractual disputes not at issue here.[8]

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[8] Conoco relies on two cases in support of this argument. Both cases, however, are distinguishable upon their facts. In *Thorpe v. Volkert*, the court found that the defendant had a continuous and systematic presence in Texas because, in addition to the specific contacts he had with the plaintiff, he was also a director of another Texas corporation and routinely visited this state and maintained a regular line of communications with Texas residents. 882 S.W.2d 592, 597 (Tex. App.—Houston [1st Dist.] 1994, no writ). Similarly, in *Project Eng'g USA Corp. v. Gator Hawk, Inc.*, the court found that one defendant had failed to negate all bases of jurisdiction and the other had a business relationship with three Texas (continued...)

In assessing general jurisdiction, all contacts must be carefully compiled and analyzed for a pattern of continuing and systematic activity. *Schlobohm*, 784 S.W.2d at 359. Accordingly, we hold that, because all of Pocahontas's and MCNIC's contacts are with Conoco and because those contacts create no more than an attenuated affiliation with Texas and are, therefore, insubstantial, neither Pocahontas nor MCNIC is subject to general jurisdiction in Texas.

VI. Specific Jurisdiction

Nevertheless, Pocahontas and MCNIC's contacts with Texas may be sufficient to support a finding of specific jurisdiction. Before turning to this question, however, we note that appellants have cited a string of authority which holds that a particular contact, standing alone, is insufficient to confer jurisdiction upon a court. *See, e.g., Magnolia Gas Co. v. Knight Equip. & Mfg. Corp.*, 994 S.W.2d 684, 691 (Tex. App.—San Antonio 1998, no pet.) (contracting with Texas resident); *Preussag A.G. v. Coleman*, 16 S.W.3d 110, 123 (Tex. App.—Houston [1st Dist.] 2000, pet. filed) (same); *Televentures, Inc. v. International Game Tech.*, 12 S.W.3d 900, 910 (Tex. App.—Austin 2000, pet. denied) (engaging in communications with Texas corporation during performance of contract); *Holt Oil & Gas Corp. v. Harvey*, 801 F.2d 773, 777–78 (5th Cir. 1986) (same). Of course, as appellants' counsel conceded, these cases turned on whether an *isolated* contact with the forum could withstand constitutional scrutiny of due process. As set forth below, however, appellants' contacts with Texas were more than just an isolated occurrence.

Jurisdiction over appellants in this case is proper because appellants have had minimum contacts with Texas, and this suit arises out of those very contacts. *See, e.g., Fish v. Tandy Corp.*, 948 S.W.2d 886 (Tex. App.—Fort Worth 1997, writ denied).[9] Thus, there is a substantial connection among the

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[8] (...continued)
corporations. 833 S.W.2d 716, 722 (Tex. App.—Houston [1st Dist.] 1992, no writ). Moreover, the contracts with the various Texas companies required it "to keep in regular communication with the Texas companies it represented." *Id.*

[9] In *Fish*, Tandy sued Fish, a nonresident defendant, for declaratory relief. The court found (continued...)

litigation, the parties, and the forum. *Guardian Royal Exch.*, 815 S.W.2d at 228. Pocahontas and MCNIC, citing to Conoco's response to the special appearance, suggest that Conoco's argument is weakened because (1) "Conoco admits that [appellants'] communications with it in Texas related to the pipeline," (2) because possible expansion of the disputed pipeline was negotiated in Texas and (3) appellants traveled to Houston to finalize the agreement to build the pipeline. These contacts represent the strength—not the weakness—of Conoco's argument, particularly in light of the other factors surrounding this transaction. For instance, MCNIC places great weight on the fact that MCNIC was not formed until after the first pipeline was completed. But, as the facts show, Conoco's suit is not based on what happened with the first pipeline, but the cost overruns associated with the AFE for the second pipeline. Also, the Operating Agreement, to which the appellants are bound, provides that Texas law governs.

A choice of law provision in a contract is not the *sine quo non* of personal jurisdiction. *TeleVentures, Inc.*, 12 S.W.2d at 908–09 (citing *Magnolia Gas Co.*, 994 U.S. at 692). Nevertheless, it is one of the most important factors courts consider[10] in applying a

'highly realistic' approach that recognizes that a 'contract . . . [is] ordinarily but an

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[9] (...continued)
that Fish had negotiated a contract with a Texas corporation for a distributorship in Russia.. *Id.* at 894–95. These bilateral negotiations were conducted by telephone, mail, and facsimile. Fish paid $60,000 in Texas upon returning the distributorship, and he also visited Texas three times.

While appellants argue that the Fort Worth court "did not cite a single case in support of its analysis or conclusion" that Fish had purposefully established minimum contacts, appellants implicitly concede that the contacts outlined by the court are those traditionally analyzed in determining whether a nonresident defendant has established minimum contacts. Moreover, a minimum contacts analysis almost necessarily turns on the particular facts of each case. Finally, minimum contacts are just that. It is only after minimum contacts have been established that a court must determine "whether there is a substantial connection between the forum and the defendant that arises from his action or conduct purposefully directed towards Texas." *Fish*, 948 S.W.2d at 895 (citing *Guardian Royal Exch.*, 815 S.W.2d at 230 and *Nikolai v. Strate*, 922 S.W.2d 229, 235 (Tex. App.—Fort Worth 1996, writ denied)).

[10] *See, e.g., Berg v. AMF, Inc.*, 29 S.W.3d 212, 218–19 (Tex. App.—Houston [14th Dist.] 2000, no pet. h.) (finding choice of law provision militated strongly in favor of Canada in *forum non conveniens* context); *Billingsley Parts & Equip., Inc. v. Vose*, 881 S.W.2d 165, 170 (Tex. App.—Houston [1st Dist.] 1994, writ denied) (considering Texas choice of law provision in finding nonresident amenable to personal jurisdiction here).

> intermediate step serving to tie up prior business negotiations with future consequences which themselves are the real object of the business transaction.' Prior negotiations, contemplated future consequences, the terms of the contract, and the parties' actual course of dealing must be evaluated in determining whether the defendant purposefully established minimum contacts within the forum.

Burger King, 471 U.S. at 478 (citations omitted).

Finally, Conoco partially performed the contract in Texas by doing the preliminary design and engineering work at its headquarters in Houston. As discussed above, the Texas long-arm statute defines "doing business" in Texas to include the partial performance of a contract here, even if that performance is done by the plaintiff, so long as the parties contemplated or bargained for the performance here. *Billingsley Parts & Equip., Inc.*, 881 S.W.2d at 169 (holding nonresident defendant subject to personal jurisdiction where she contracted with Texas resident, was to perform contract in Texas, and contract was governed by Texas law); *Pizza Inn, Inc. v. Lumar*, 513 S.W.2d 251, 254 (Tex. Civ. App.—Eastland 1974, writ ref'd n.r.e.) (defendant was "doing business" in Texas when it entered into contract by mail with Texas corporation and contract was to be partially performed in Texas); *Castle v. Berg*, 415 S.W.2d at 525 (Tex. Civ. App.—Dallas 1967, no writ) (finding personal jurisdiction where contract was made in Texas and appellant consented to partial performance in Texas). Thus, under the commonsense approach commanded by the Supreme Court in *Burger King*,[11] it should have been reasonably foreseeable to Pocahontas that Conoco would pursue any claims it had in Texas, particularly in view of the facts that Pocahontas signed the Operating Agreement in Texas; the Operating Agreement contemplated partial performance in Texas; Pocahontas contracted with Conoco, a Texas resident; negotiated the AFE, upon which the underlying suit is based, in Texas; and the Operating Agreement is governed by Texas law. Similarly, MCNIC should have reasonably anticipated being haled into a Texas court, given that it succeeded to all of Oakwood's rights and obligations under the Operating Agreement and it, too, negotiated the AFE in Texas, having sent its Vice President to Conoco's headquarters just days before it was signed.

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[11] 471 U.S. at 478.

Accordingly, we find appellants' contacts with Texas were sufficient to confer personal jurisdiction on the trial court and we affirm the denial of appellants' special appearances.

Affirmed.

/s/ Leslie Brock Yates
Justice

Judgment rendered and Opinion filed February 1, 2001.

Panel consists of Justices Yates, Fowler, and Frost.

Do Not Publish — TEX. R. APP. P. 47.3(b).