

A New Look at Personal Jurisdiction

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At first glance, the issue of personal jurisdiction seems fairly cut-and-dry, as courts have long ago decided the appropriate factors and tests to use when determining proper venue. However, with social media expanding people's horizons across the country, the boundaries of personal jurisdiction have become more of a gray area. The courts have recently picked up on this confusion and have begun to lay new foundation on top of the traditional notions of personal jurisdiction.

This was demonstrated in the recently published case *Burdick v. Superior Court* (Cal. Ct. App., Jan. 14, 2015) 15 Cal. Daily Op. Serv. 478, in which the Fourth Appellate District of the California Court of Appeal held that an Illinois resident who posted allegedly defamatory statements on his public Facebook page about Orange County residents was not subject to specific personal jurisdiction in California state court.

John Sanderson and George Taylor ("Plaintiffs"), residents of California, sued Douglas Burdick ("Burdick"), an Illinois resident,

alleging that Burdick published defamatory statements on his Facebook page. Burdick was a consultant for a skin care product company, Nerium International. Plaintiffs were bloggers who questioned the science behind Nerium's products in various blog articles regarding Nerium's products and marketing. In response, Burdick posted material on his public Facebook page, allegedly describing one of the Plaintiffs by calling him a "Blogging Scorpion," and mentioning he had lost his medical license, used multiple social security numbers, and had been charged with domestic violence. Thereafter, Plaintiffs filed suit in California state court for defamation.

Burdick filed a motion to quash service of the summons based on a lack of personal jurisdiction. Burdick claimed that he was a resident of Illinois and that he "has never lived in California; maintained an office or been employed in California; had a bank account, safe deposit box, or mailing address in California; owned or leased real property in California; had employees in California; been a party to a contract with a person or entity in California; or held any licenses or certifications issued by any governmental agency or unit in California." In opposition to this motion, Plaintiffs claimed that the internet post was on a "publicly-available Facebook wall."

The case made its way up to the California Supreme Court, which transferred the matter back to the Court of Appeal to reconsider its initial ruling denying Burdick's motion to quash service. After further review of case law, the Court of Appeal reversed its decision, holding that even though the Facebook post revealed that Burdick knew that Plaintiffs resided in California, there was no evidence that the post targeted California, as opposed to just the Plaintiffs.

The Court's reasoning focused on whether Burdick's out of state intentional conduct created the necessary "minimum contacts" with California so as to justify jurisdiction. In making its decision, the Court relied on three influential cases interpreting the "effects" test: (1) *Calder v. Jones* (1984) 465 U.S. 783, 789; (2) *Pavlovich v. Superior Court* (2002) 29 Cal.4th 262; and (3) *Walden v. Fiore*, 134 S.Ct. 1115 (2014).

In *Calder*, the United States Supreme Court held that jurisdiction in California was proper because the "effects" of the libelous story were felt in California. (*Calder* at p. 789.) The *Calder* court stated that the intentional acts "were expressly aimed at California," and that the defendants "knew that the brunt of that injury" would be felt by respondent in the State in which the respondent lives and works. (*Id.* at pp. 788-789.) Distinguishing *Calder*, the Burdick court held the Facebook post at

issue did not substantially connect Burdick to California.

The Court also relied on *Pavlovich*, a California Supreme Court case decided after *Calder*, in which the Court narrowed *Calder*'s scope and required that intentional acts be "expressly aimed" at the forum state. Although *Pavlovich* was not a defamation case, the Burdick court found that its reasoning was applicable to the issue of whether Burdick's Facebook post was expressly aimed at California. The Court stated that a mere Internet post does not confer nationwide personal jurisdiction without something more connecting the post to the forum state.

Finally, the Court relied on the recent United States Supreme Court case *Walden*, where although the defendant police officer knew that his actions harmed Nevada residents, the United States Supreme Court held that minimum contacts must be with the forum state itself, and not the persons who reside there.

Relying on these three cases above (*Calder*, *Pavlovich*, and *Walden*), the Burdick court established that the proper analysis for personal jurisdiction assesses the following two factors: 1) the defendant's contacts with the forum, not with the plaintiff, and 2) whether the contacts form a meaningful relationship between the defendant, the forum, and the litigation. The Court stated that the "effects" test is not concerned with the location where plaintiff experienced an

injury, but whether defendants' actions connect defendant to the forum. Simply posting negative comments about a plaintiff on the internet, knowing that the plaintiff is *from* the forum state is not enough. The conduct has to be expressly aimed or intentionally targeted...at the forum state.

Thus, Burdick's act of posting defamatory comments on his Facebook page while in Illinois did not have a "California focus." Although Burdick's Facebook wall was "publicly-available," as Plaintiffs claimed, there was no evidence that it targeted California because the post was accessible not just from California, but from every state in the country.

As a side note, the Burdick Court held that on remand, Plaintiffs should be given the opportunity to conduct jurisdictional discovery to see if they could obtain evidence that the defendant's activity was targeted at California.

As *Burdick v. Superior Court* illustrates, the traditional black and white law giving personal jurisdiction in particular state venues is now under continuous changes in light of the far reaches of social media today. We can expect future litigation in this area, as the internet continues to evolve and expand. The *Burdick* case represents an important step forward in clarifying concepts of personal jurisdiction in the modern social media age.

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