

No. 18-539

In the Supreme Court of the United States

GEORGE T. HAWES,

Petitioner,

v.

DANIEL P. REILLY,

Respondent.

*On Petition for a Writ of Certiorari to the
Supreme Court of Rhode Island*

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Is the issue of personal jurisdiction “fully and fairly litigated” and an order denying the defendant’s motion to dismiss for lack of personal jurisdiction and finding that it has personal jurisdiction over defendant entitled to the full faith and credit under the United States Constitution when the issue of jurisdiction rested solely on the stipulations of the Hawes, rather than a litigation of the jurisdictional issues?
2. Did the Supreme Court of Rhode Island properly conclude that a decision of the Utah court, based on a mere *prima facie* showing of the facts sufficient to establish personal jurisdiction, is not a final decision on the issue of personal jurisdiction?

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BRIEF IN OPPOSITION

Respondent Daniel P. Reilly respectfully submits this brief in opposition to the petition for a writ of certiorari filed by Petitioner George T. Hawes.

STATEMENT

The key events that frame the issues presented by George Hawes goes back in time to March of 2010, when litigation was initiated between Hawes and Daniel Reilly's father, who was providing legal representation to a company in which Hawes had invested in. At that time, Reilly was twenty years old and a student in college in Rhode Island. Reilly has been to the State of Utah once, for a skiing trip, when he was seventeen years old. He has never met Hawes, nor entered into any business agreements or contracts with him, in Utah or in any other state. Yet when a business dispute between Hawes and Reilly's father turned litigious and both were named co-defendants in a separate matter, Reilly was named among other family members in a cross-claim filed in Utah that has now extended for almost a decade.

Reilly has always maintained that the Utah court lacked personal jurisdiction over him in both matters. Initially represented by counsel hired by his father, Reilly began to litigate this issue when counsel withdrew, without Reilly's knowledge, as his father was handling the case and communicating with local counsel in Utah. When personal jurisdiction was contested and a hearing held, neither Reilly nor Reilly's counsel were present, and a default judgment was entered. The hearing justice made no mention of any underlying legal reasoning, and the record contains no

discussion or analysis as to the personal jurisdiction question. In early summer of 2014, Hawes began efforts to enforce this foreign judgment in Rhode Island. In October of 2014, Reilly filed a motion to quash the execution and dismiss the petition for lack of personal jurisdiction in the foreign action. In April of 2015, the Rhode Island Superior Court quashed the execution of the judgment, finding that (1) a final determination of personal jurisdiction was never made by the Utah court, and (2), after reviewing all contacts that Reilly had with the State of Utah and the applicable Utah law, that Utah did not have personal jurisdiction over Reilly at any point. The hearing justice conducted an exhaustive review and analysis of the full faith and credit implications on the issues at bar and found that the issue of personal jurisdiction was never actually litigated and finally resolved in any valid court determination. In May of 2018, after full briefing and oral arguments, the Rhode Island Supreme Court, in a unanimous 5-0 decision, upheld the ruling of the Superior Court, having exhaustively reviewed the issue of full faith and credit and applying applicable Utah law.

No final determination of personal jurisdiction has ever been reached prior to the entry of default judgment in Utah. Having not been fully, and fairly, litigated in Utah, the issue of personal jurisdiction has not been fully decided there. Full faith and credit, therefore, is not due to the order denying the motion to dismiss for lack of personal jurisdiction, and as a result, this Court should deny this petition.

REASONS FOR DENYING THE WRIT

I. The Issue of Personal Jurisdiction was Never Fully and Fairly Litigated, and Therefore is Not Entitled to Full Faith and Credit

When neither Reilly, nor counsel for Reilly, appeared at the hearing on the motion to dismiss, the Utah court issued an order that spans a mere seven sentences. The Utah court set forth no legal reasoning or analysis, and there lacks any evidence of there being any substantive discussion on the issue of personal jurisdiction related to Reilly in the instant case. These were the facts faced by the Rhode Island Supreme Court in determining whether the issue of personal jurisdiction had been fully and fairly litigated in Utah.

A review of that order makes it clear that the legal conclusion spans a mere two sentences; the Utah court did not include any insight into the arguments of the parties or, more importantly, the court's reasoning. In the Utah order at issue in the instant case, there are certainly no reasons announced on the basis of which one could review any analysis on the issue of personal jurisdiction that the Utah court may have engaged in. The order contains no discussion, analysis, or legal reasoning. Consequently, it is obvious to us from the dearth of reasoning in the Utah court's order and from the fact that neither Daniel, nor counsel for Daniel, appeared at the hearing on the motion to dismiss that the issue of personal jurisdiction was not fully and fairly litigated in Utah. *See Durfee*, 375 U.S. at 111; *see, e.g.*, *Bloodworth*,

267 S.E.2d at 98-99 (holding that the issue of jurisdiction was not fully and fairly litigated when the court’s “recitation of jurisdiction rested upon a stipulation of the parties, rather than a litigation of the jurisdictional issues”).

The Utah court never makes clear its reasoning behind their decision. The Utah order also merely references the fact that Hawes had never made more than a simple “*prima facie* showing of sufficient facts to establish the Utah court’s personal jurisdiction over (Reilly).” *Hawes v. Reilly*, 184 A.3d 661, 668-669 (R.I. 2018).

We note additionally that the Utah order denying the motion to dismiss merely referenced the fact that Mr. Hawes had made a *prima facie* showing of sufficient facts to establish the Utah court’s personal jurisdiction over Daniel. It is absolutely clear to this Court that a *prima facie* showing is not a final decision on the issue of personal jurisdiction. The United States Court of Appeals for the Tenth Circuit has stated that “[w]hatever degree of proof is required initially, a plaintiff must have proved by the end of trial the jurisdictional facts by a preponderance of the evidence.” *Federal Deposit Insurance Corp. v. Oaklawn Apartments*, 959 F.2d 170, 174 (10th Cir. 1992) (internal quotation marks omitted); see *Anderson v. American Society of Plastic and Reconstructive Surgeons*, 807 P.2d 825, 827 (Utah 1990) (stating that, in situations where an evidentiary hearing is not held, “the plaintiff must prove jurisdiction at trial by a preponderance of the evidence after making a

prima facie showing before trial"); *see also Neways, Inc. v. McCausland*, 950 P.2d 420, 422 (Utah 1997). No final determination of personal jurisdiction was reached prior to the entry of default judgment in the instant case. Accordingly, in addition to not being fully and fairly litigated in Utah, we are of the opinion that the issue of personal jurisdiction was also not finally decided in Utah. *See Durfee*, 375 U.S. at 111.

II. The Issue of Personal Jurisdiction Was Never Finally Determined Prior to the Entry of Default Judgment, and Should Not Be Afforded Full Faith and Credit

Under Utah law, a ruling on a motion to dismiss does not constitute a final judgment. *See Little v. Mitchell*, 604 P.2d 918, 919 (Utah 1979). As the Rhode Island Superior Court noted, and the Rhode Island Supreme Court unanimously upheld, "the order issued by the Utah state court did not deem this a final judgment. Instead, it states that InnerLight met its low burden to survive a motion to dismiss." *Hawes v. Reilly*, C.A. No. NC-2014-0148, J. Stern Decision Page 7-8 (RI, Newport County Superior Court April 27, 2015). The Superior Court went on to provide the following analysis:

However, by the end of trial, or before the entry of default judgment, "a plaintiff must have proved...the jurisdictional facts by a preponderance of the evidence." *Id.*; *see Dennis Garberg & Associates, Inc. v. Pack-Tech Intern. Corp.*, 115 F.3d 767, 773 (10th Cir. 1997). In this case, only a *prima facie* showing of personal

jurisdiction was made. However, before the entry of default judgment, the court did not expressly find by a preponderance of the evidence signifying that Utah had personal jurisdiction over (Reilly). *See Garberg*, 115 F3d at 771 (stating a court's decision to enter a default judgment "should not be entered without a determination that the court has jurisdiction over the defendant."); *Williams v. Life Savings and Loan*, 802 F.2d 1200, 1203 (10th Cir. 1986). Therefore, with only an order stating a *prima facie* showing was made allowing Utah to invoke personal jurisdiction over (Reilly) – without providing the basis for reaching this determination that can be reviewed by this Court – coupled with the fact that a final determination of personal jurisdiction was not reached prior to entry of the default judgment, this prior order does not preclude this Court from reviewing Utah's jurisdiction over (Reilly). *Taylor v. Sturgell*, 553 U.S. 880, 892 (2008) (quoting *New Hampshire v. Maine*, 532 U.S. 742, 748-49 (2001)) (stating issue preclusion bars litigation of issues of law that had been actually litigated and resolved "in a valid court determination").

Here, there was never a final determination made as to the issue of personal jurisdiction. The trial justice's order, devoid of any analysis or reasoning, makes clear that InnerLight solely made a *prima facie* showing, the bare minimum standard for them to survive the motion to dismiss. However, this does not constitute a full, fair, and final determination of the

issue, and therefore this decision is not subject to full faith and credit.

III. Hawes Retains Remedies at Law in the Instant Case, and No Critical Issue Is Present That Warrants the Court's Attention

It is without question, that for over two years, Hawes sat on his rights and did not attempt to enforce any judgment against Reilly, either in Rhode Island, or in any other jurisdiction. Hawes had ample opportunity to attempt to bring an action against Reilly in Rhode Island, particularly after he was on notice that Rhode Island courts were not finding his arguments persuasive. However, Hawes did nothing but rely upon a limited and incomplete record from the Utah court that made no mention of how, or why, Reilly would be subject to personal jurisdiction there.

Additionally, Hawes suggests in the Petition that he has no remedy at law to litigate the underlying issues, subject to the motion in Utah, since the statute of limitations have run, and he cannot bring a separate action in Rhode Island. Pet. 12. However, this is not the case. Under Rhode Island law and its comparatively lengthy statute of limitations scheme, the allegations contained in the Hawes's original cross-claim would still be actionable, even in 2019. This opportunity notwithstanding, however, Hawes believes it is apparently a better use of this Court's time to consider an issue unanimously decided by the Rhode Island Supreme Court, which applied both the most recent rulings of this court as well as exhaustively applied the recent rulings of the Utah Supreme Court.

CONCLUSION

Hawes' petition for a writ of certiorari should be denied.

Respectfully submitted,

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