

No: 18A728

FILED
JAN 09 2019

OFFICE OF THE CLERK
SUPREME COURT, U.S.

In The
Supreme Court of the United States

Eric Drake
Applicant,
v.

Murphy, Austin, Adams et al.
Respondent,

**APPLICATION TO EXTEND TIME TO FILE A PETITION
FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE FIFTH CIRCUIT**

**PETITIONERS' APPLICATION TO EXTEND TIME
AND REQUEST TO STAY
TO FILE A PETITION FOR WRIT OF CERTIORARI**

Respectfully submitted by,

Eric Drake
Pro-Se
10455 North Central Expressway
Suite 109
Dallas, Texas 75231
903-453-7880

No: _____

In the
Supreme Court of the United States

Eric Drake
Applicant,
v.

Murphy, Austin, Adams *et al.*
Respondent,

**PETITIONERS' APPLICATION TO EXTEND TIME
AND APPLICANT'S REQUESTS FOR A STAY
TO FILE A PETITION FOR WRIT OF CERTIORARI**

Applicant, Eric Drake, respectfully requests an extension of time and or to Stay filing of his petition for writ of certiorari until September of 2019. The Applicant will be asking this Court to review the judgments of the United States Court of Appeals for the Fifth Circuit filed on December 4, 2018. Mandate was issued on December 4, 2018 (**App. A**). The Court's jurisdiction to review the Fifth Circuit's judgment rests on 28 U.S.C. §1254.

Applicant is also requesting the Court to review the Fifth Circuit order of the Fifth Circuit denial of Drake's motion to stay issuance filed November 6, 2018, which is Applicant's Motion for Rehearing (**App. B**).

Applicant, Eric Drake, request this extension of time for the following reasons:

1. The Applicant was involved in an accident with a semi-truck on July 12, 2018. Applicant sustained severe injuries to his cervical spine and traumatic brain damage. However, the brain damage brings on severe headaches, dizziness, confusion, and extreme fatigue. Applicant refers the Court to annexed **Exhibits C, D, and E**. Exhibit E is a doctor note from Drake's brain specialist, therefore, these medical documents have been redacted because it contained personal information about Drake. Applicant has been administered other tests but the results are not ready.

2. Since the Applicant has no assistants or helpers to assist him in drafting his writ to this Court, or to type any documents, he is requesting an extension of time to file his writ. The Applicant believes that this Court would be interested in this case because Drake's First Amendment Rights to speech has been violated and other constitutional rights. The Circuit Court was not only biased, but also hostile towards the Applicant. The Court refused oral arguments and as a result, the Court made some rather important errors regarding facts of the case that this Court most likely will reverse and remand.

3. This case present substantial and important questions of constitutional law, and infringement on basis constitutional rights as a citizen of this nation. This case also presents questions regarding jurisdiction and contacts, which should be addressed.

4. Further, the Mandate that the Circuit Court issued has many false and misleading statements in it, which was the result of the Circuit Court refusal to have oral arguments. But in this case, the Circuit Court simply wanted to rule against the Applicant and used every untrue, false, and misleading statements made by the Appellees as being true.

For these reasons, Applicant, Eric Drake respectfully requests an extension of time to file its certiorari petition, up to and including September 12, 2019 and or Stay the proceeding until the Applicant recovers from his injuries.

Respectfully submitted,

A handwritten signature of Eric Drake, consisting of a stylized 'E' and 'D' within an oval shape, with a horizontal line extending to the right.

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**Additional material
from this filing is
available in the
Clerk's Office.**

APPENDIX “A”

**December 4, 2018 Judgment Order from the
Fifth Circuit Court of Appeals**

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 18-20064
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

October 18, 2018

E. DRAKE,

Lyle W. Cayce
Clerk

Plaintiff - Appellant

v.

MURPHY, AUSTIN, ADAMS, SCHOENFELD; NIELLO PERFORMANCE MOTORS, INCORPORATED; RICHARD SEEBORG; GARLAND E. BURRELL, JR.; EDWARD J. GARCIA; LAWRENCE K. KARLTON; JOHN A. MENDEZ; KIMBERLY J. MUELLER; TROY L. NUNLEY; WILLIAM B. SHUBB; LAWRENCE J. O'NEILL; EDMUND F. BRENNAN; ALLISON CLAIRE; CRAIG M. KELLISON; MICHAEL J. SENG; JENNIFER L. THURSTON,

Defendants - Appellees

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:17-CV-1826

Before SMITH, WIENER, and WILLETT, Circuit Judges.

PER CURIAM:*

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Plaintiff-Appellant Eric Drake, proceeding pro se, sued Defendant-Appellees (1) Murphy, Austin, Adams, Schoenfeld (“Murphy Austin”), a California law firm, and (2) Niello Performance Motors, Inc. (“Niello”), a California automobile dealership, asserting numerous claims, including fraud and violations of the federal odometer laws. This is the fourth suit Drake has filed against Niello relating to the 2014 sale of a 2003 Mercedes Benz Model C-32.¹ Murphy Austin represented Defendant-Appellee Niello in the previous lawsuits.

In 2013, Drake saw Niello’s Cars.com advertisement for a 2003 Mercedes Benz Model C-32. He contacted Niello about purchasing the car, but they were not able to reach an agreement about the terms and conditions of the sale. When negotiations faltered, Drake sued Niello in the Southern District of Texas, McAllen Division. The parties settled, and Drake voluntarily dismissed that case.

Drake traveled to Sacramento, California to sign the settlement agreement. One of the terms of that agreement was that Niello would sell the car to Drake. Under the agreement’s terms, Niello delivered the car to Shipping Experts, a California shipping company and a nonparty to this suit, to ship the car from California to Drake in Texas.

Drake then filed three more lawsuits based on the sale and transportation of the car: one in the Northern District of Texas; another in the Northern District of California; and the third, the instant case, in the Southern District of Texas, Houston Division. Drake’s primary claim is that the mileage on the car’s odometer differed from the mileage set out in the settlement

¹ This court has recently acknowledged that “Drake has been declared a vexatious litigant in Texas state courts” *Drake v. Costume Armour, Inc.*, No. 17-20671, 2018 WL 4261989, at *1 (5th Cir. Sept. 6, 2018).

agreement. Niello had not appeared, answered, or filed any responsive pleadings in the earlier suits filed in Texas.

In the instant case, Murphy Austin and Niello specially appeared and moved to dismiss for lack of personal jurisdiction, improper venue, and failure to state a claim. The district court held a hearing at which it considered the settlement agreement and declarations from Niello's general counsel and a Murphy Austin representative that set out the jurisdictional facts for each entity. The district court granted the motions to dismiss at the hearing. The district court then entered an order confirming that it had granted Murphy Austin's and Niello's motions to dismiss for lack of personal jurisdiction, "as explained on the record."

Drake moved for reconsideration, and the district court denied the motion. On appeal, Drake did not provide a transcript of the hearing at which the district court dismissed the case for lack of jurisdiction.

We review a district court's dismissal of a complaint for lack of personal jurisdiction *de novo*.² We apply a three-step analysis for our specific personal jurisdiction inquiry:

(1) whether the defendant has minimum contacts with the forum state, i.e., whether it purposely directed its activities toward the forum state or purposefully availed itself of the privileges of conducting activities there; (2) whether the plaintiff's cause of action arises out of or results from the defendant's forum-related contacts; and (3) whether the exercise of personal jurisdiction is fair and reasonable.³

We have now reviewed in detail the entire record on appeal, including the parties' briefs and the record excerpts. We note that Murphy Austin is a

² *Monkton Ins. Servs., Ltd. v. Ritter*, 768 F.3d 429, 431 (5th Cir. 2014).

³ *Id.* at 433 (quoting *Seiferth v. Helicopteros Atuneros, Inc.*, 472 F.3d 266, 271 (5th Cir. 2006)).

law firm organized under the laws of California, has no offices in Texas, does not advertise in Texas, and has no attorney licensed to practice law in Texas. Similarly, Niello is a California company, has no offices, dealerships, bank accounts, or a registered agent in Texas, and does not regularly conduct business in Texas or directly target its advertisements to Texas residents. Drake signed the settlement agreement in California and agreed to purchase the car there. Niello's only relevant contact with Texas was its Cars.com advertisement, which was not specifically directed at Texas.

We agree with the district court that neither Murphy Austin nor Niello has sufficient minimum contacts with Texas to give rise to specific personal jurisdiction there. "We have consistently held that 'merely contracting with a resident of [a] forum state' does not create minimum contacts sufficient to establish personal jurisdiction over a nonresident defendant."⁴ This is particularly true when, as here, "an out-of-state defendant has no physical presence in the forum, conducts no business there, and the contract at issue 'was not signed in the state and did not call for performance in the state.'"⁵ Neither are Defendants' contacts with Texas sufficiently "substantial, continuous and systematic" to render them "essentially at home" in Texas.⁶

We conclude that the district court's analysis and conclusions are correct in all respects and are free of reversible error. We therefore affirm that court's dismissal of this action.

AFFIRMED.

⁴ *Blakes v. DynCorp Int'l, L.L.C.*, 732 F. App'x 346, 347 (5th Cir. 2018) (quoting *Holt Oil & Gas Corp. v. Harvey*, 801 F.2d 773, 778 (5th Cir. 1986)).

⁵ *Id.* (quoting *Monkton*, 768 F.3d at 433).

⁶ *Sangha v. Navig8 ShipManagement Private Ltd.*, 882 F.3d 96, 101–02 (5th Cir. 2018) (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011)).