

## **APPENDIX TABLE OF CONTENTS**

Order of the California Supreme Court Denying Review and Publication	
(January 23, 2019) .....	a1
Order of the California Court of Appeal Denying Publication and Rehearing	
(November 30, 2018) .....	a2
Opinion of the California Court of Appeal	
(November 7, 2018) .....	a3
One-page excerpt from Modell's Opposition Brief	
(January 23, 2018) .....	a17

a1

Court of Appeal, First Appellate District, Division Four - No. A149771

**S252839**

**IN THE SUPREME COURT OF CALIFORNIA**

**En Banc**

---

JOHN BERMAN, Plaintiff and Appellant,

v.

DAVID MODELL, Defendant and Respondent.

---

The petition for review is denied.

The request for an order directing publication of the opinion is denied.

**SUPREME COURT  
FILED**

**JAN 23 2019**

**Jorge Navarrete Clerk**

---

**Deputy**

**CANTIL-SAKAUYE**

---

*Chief Justice*

---

COPY

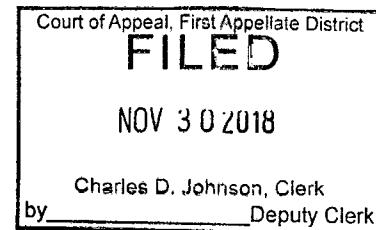
**CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION FOUR**

JOHN BERMAN,  
Plaintiff and Appellant,

v.

DAVID MODELL,  
Defendant and Respondent.

A149771  
Alameda County  
Sup. Ct. No. RG15778231



BY THE COURT:

Since this court's November 7, 2018 opinion does not meet the standard for publication as set forth in rule 8.1105(c) of the California Rules of Court, the request for publication is denied.

Pursuant to rule 8.1120(b) of the California Rules of Court, the Clerk is directed to forward to the Clerk of the Supreme Court the request for publication and copies of the opinion and this order.

The petition for rehearing is denied.

(Lee J.\*<sup>1</sup>, Streeter, Acting P.J., and Tucher, J. joined in the decisions.)

NOV 29 2018  
Date: \_\_\_\_\_ STREETER, ACTING P.J. P.J.

<sup>1</sup>Judge of the Superior Court, City and County of San Mateo, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

## IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

## FIRST APPELLATE DISTRICT

## DIVISION FOUR

JOHN BERMAN,  
Plaintiff and Appellant,  
v.  
DAVID MODELL,  
Defendant and Respondent.

A149771  
(Alameda County  
Super. Ct. No. RG15778231)

Propria persona plaintiff John Berman filed the underlying action against the State of Maryland and three individuals who allegedly interfered with Berman's efforts to provide appropriate care for his elderly mother, Bella Berman (Bella). Defendant David Modell, a Maryland attorney who previously served as a court appointed guardian of Bella's property, filed a motion to quash service of Berman's summons for lack of personal jurisdiction. (Code Civ. Proc., § 418.10.) The trial court granted the motion to quash and dismissed Modell from this case. We affirm.

**I. BACKGROUND****A. Berman's Pleadings**

In November 2014, Berman filed a complaint in Yolo County in which he attempted to allege causes of action for conversion, breach of fiduciary duty, civil rights violations, and intentional infliction of emotional distress. The named defendants were the State of Maryland and the following individuals: (1) Modell, "a resident of the state of Maryland and trustee of [Bella's] trusts"; (2) the Honorable Robert Greenberg, "a

resident of the state of Maryland and a judge of the Circuit Court of Montgomery County, Maryland”; and (3) “Sheldon Skolnick, Esq., . . . a resident of the state of Maryland.”

In his complaint, Berman alleged the following facts: Berman brought his mother, Bella, to California in 2012 so he could “supervise her care directly and indirectly” because he was concerned about the quality of care she had received in Maryland. After Bella moved to California, each defendant interfered with Berman’s relationship with Bella. In 2013, Modell allegedly attempted to coerce Berman to establish a guardianship for Bella in California by (1) refusing to reimburse Berman for “loans” he made to Bella so that she could obtain needed care and services in California, and (2) filing a March 2013 motion to transfer Bella’s guardianship case to California. In 2014, the Honorable Robert Greenberg allegedly violated Berman’s rights by ordering that Bella was to return to Maryland and that she be seen by a doctor to determine whether it was safe for her to fly. Finally, defendant Skolnick allegedly violated Berman’s rights by acting “ex parte” to facilitate communications between the Maryland court and California doctors who were involved in Bella’s care.

Berman alleged that California was the proper forum for his case because Bella, who was now 92, had been legally present in the state since July 2012, and the defendants had “purposefully-directed” their actions into California “or intended to coerce results within the State of California.” He further alleged that venue was proper in Yolo County because Bella had spent significant time there while under his care, and the defendants had “directed actions into [Yolo] County.”

In May 2015, Berman filed a motion to transfer his case to Alameda County. Berman alleged that a transfer was appropriate because (1) he had “brought his mother, already a California resident, to Alameda County for socialization, consultation, and safety with friends,” (2) the defendants were all “out-of-state and not yet served,” and (3) the transfer would not cause any prejudice. This unopposed motion was granted, and the case was transferred to Alameda County as of June 12, 2015.

In September 2015, Berman filed a first amended complaint (FAC), naming only Modell as a defendant. Berman alleged that California has jurisdiction over Modell

because Bella is a California resident and Modell has taken “coercive” actions with intended consequences in this state. Berman did not allege that he is a California resident. Rather, according to the FAC, Berman is “a traveling engineer and researcher and who travels the majority of the year and has no fixed habitation or abode in a particular place.”

In his FAC, Berman alleged that Modell abused his authority as the court appointed guardian of Bella’s Maryland property and as trustee of her trusts to commit tortious acts in an attempt to force Berman to establish a conservatorship for Bella in California. Specifically, Berman alleged that Modell was liable to him for (1) conversion, because he refused to reimburse Berman for California expenses incurred to provide care and lodging for Bella; (2) breach of fiduciary duty, because he failed to treat Berman with impartiality by favoring Bella’s other son over Berman; (3) fraud, because he favored his own interests over the best interests of Berman, who is a beneficiary of Bella’s trusts; (4) civil rights violations, because his “intermeddling” violated Berman’s right to privacy and to have a personal relationship with his mother; and (5) intentional infliction of emotional distress, because he used his power to cause anguish, embarrassment, and severe distress. As relief, Berman prayed for damages “no greater than \$74,900,” unspecified declaratory and injunctive relief, an accounting, and attorney fees.

On October 6, 2015, Modell was served with a summons and a copy of the FAC at his office in Bethesda, Maryland.

### **B. The Temporary Removal to Federal Court**

On October 23, 2015, Modell filed a notice of removal of this action to the federal district court for the Northern District of California on the grounds that the parties are of diverse citizenship, and the amount in controversy exceeds \$75,000. Modell stated that Berman conceded these facts in a substantively identical action that he filed against Modell in 2013 in the Eastern District of California (the 2013 federal action). According to Modell, after Berman’s 2013 federal action was dismissed, he attempted to relitigate

his dispute with Modell by filing the present case in state court in California and intentionally understating the damages he would seek to recover.

In April 2016, the district court for the Northern District of California remanded this action to Alameda County superior court for lack of subject matter jurisdiction, finding that Berman had “validly capped his requested relief below the diversity jurisdictional threshold.”

### **C. Modell’s Motion to Quash and Evidence**

In June 2016, Modell filed a motion to quash service of Berman’s summons for lack of personal jurisdiction. Modell argued that California’s long arm statute does not reach Modell, who is a resident of the State of Maryland and “has never conducted any legally cognizable business” in California. He also argued that this precise issue was litigated and resolved in his favor in Berman’s 2013 federal action. Modell supported his motion with a request for judicial notice and his own declaration.

Modell requested that the court take notice of the first amended complaint in Berman’s 2013 federal action. That evidence showed, among other things, that (1) the 2013 federal action and the present case pertain to the same factual dispute; (2) in the 2013 federal action Berman alleged that he was a “citizen of the state of Nevada and also [had] residences in the State of Washington,” whereas in the present case, Berman alleged that he is a travelling man with no fixed residence; and (3) in the 2013 federal action Berman sought damages in excess of the federal court’s “jurisdictional amount,” whereas in this case he seeks damages that do not exceed that amount.

Modell also requested that the court take judicial notice of several orders that were filed in the 2013 federal action, including a December 2013 order transferring venue of the case from the Eastern District of California to the District of Maryland, and a November 2014 order by the federal district court in Maryland granting Modell’s motion to dismiss Berman’s case for failure to state a claim.

In his declaration, Modell stated that he is an attorney licensed to practice law in Maryland, and he resides and works in Montgomery County, Maryland. He has never lived in California, does not own property or maintain an office in California, is not

licensed to practice law in California and does not direct any of his business specifically to California. In February 2010, he was appointed by the circuit court of Montgomery County, Maryland to serve as the guardian of Bella's property. He resigned that position in October 2014 but continued to act as trustee of her revocable trust. All his activities in connection with Bella's guardianship proceeding were performed in Maryland, and most of Bella's assets and accounts are contained in her revocable trust, which is also located in Maryland.

According to the Modell declaration, when Berman took Bella to California in the summer of 2012, Modell thought it was a short vacation, but to his knowledge Bella had not been back to Maryland since. In 2013, Berman submitted requests to Modell's office for reimbursement of expenses he incurred on behalf of Bella, including expenses for travel and rent for Bella's California residence. Modell stated that he reimbursed Berman for all expenditures that were supported with receipts, and that he sent checks to Berman's Maryland attorney as Berman had requested.

Finally, Modell stated that it would be "inconvenient, unduly burdensome, and prejudicial" for him to be forced to defend himself against Berman's claims in California, explaining: "I reside and work in Maryland. I am a sole practitioner with a large roster of clients in Maryland and the Washington D.C. metropolitan areas, and due to my demanding schedule I am unable to regularly travel to California to participate in this litigation." Modell also opined that there was a risk that a California court could make rulings in this case that would be inconsistent with rulings previously made in Bella's Maryland guardianship proceeding.

#### **D. Berman's Opposition and Evidence**

Berman argued that Modell opened himself to a suit in California by threatening to "prosecute a conservatorship action" if Berman refused to establish a conservatorship for Bella in California. According to Berman, this alleged threat was integral to Modell's plan to force Berman to replace Modell with a guardian in California.

As support for his claim that California has jurisdiction over Modell, Berman filed a brief declaration, which contained vague allegations that witnesses "to the turmoil in

California" are located in this state and that he intended to submit evidence of e-mail communications between himself and Modell. Berman also attached as Exhibit A to his declaration a copy of the March 2013 Motion to Transfer Guardianship to California that Modell allegedly filed in Bella's Maryland guardianship case (the Transfer Motion). Berman stated that he received this evidence from his Maryland attorney.

The Transfer Motion was fashioned as a petition in which Modell stated the following facts: In July 2012, Berman took Bella to California ostensibly for a short vacation, but then extended her stay so she could get medical tests. Thereafter, Modell learned that Berman enrolled Bella in a California medical plan and rented a residence for her. Modell made multiple inquiries about whether Bella would return to Maryland or her guardianship would be transferred to California. Bella's estate was wasting resources by maintaining her real property in Maryland if she was not going to return. In February 2013, a California attorney representing Berman sent Modell an e-mail stating that Berman would make decisions for Bella on his own timetable.

In his Transfer Motion, Modell reminded the court that he had made prior requests to be removed as Bella's guardian due to "lack of cooperation and communication by [Berman]." Modell also opined that Maryland no longer had personal jurisdiction over Bella. Accordingly, he requested that the court transfer her guardianship to California. Modell attached copies of his e-mail exchange with Berman's attorney as an exhibit to his motion. He also submitted a proposed order that directed Berman to initiate a guardianship proceeding for Bella in California, and authorized Modell to retain a California attorney to initiate the proceeding if Berman refused to do so.

#### **E. Trial Court Orders and the Present Appeal**

On August 8, 2016, the trial court granted Modell's motion to quash service of Berman's summons for lack of personal jurisdiction (the August 8 order). The court found that undisputed evidence before the court established that Modell was not subject to general jurisdiction or specific jurisdiction in California. He was not subject to the court's general jurisdiction because he did not have "substantial, continuous, and systematic contacts with the forum state." (Citing *Vons Companies, Inc. v. Seabest*

*Foods, Inc.* (1996) 14 Cal.4th 434, 445 (*Vons*).) Nor was he subject to specific jurisdiction in California “based on the claims alleged in Plaintiff’s [FAC.]” In reaching these decisions, the court granted Modell’s request for judicial notice and credited his declaration. The court also found that Berman’s evidence, which consisted only of the Transfer Motion and the e-mail attachments, was inadequate to meet his burden of proof. At the end of the August 8 order, the court stated, “Defendant David Modell is DISMISSED from this action, WITH PREJUDICE.”

On August 15, 2016, the trial court held a case management conference at which no party appeared. The court minutes noted that Modell had been dismissed from the action on August 8. The court also observed that Berman had named other defendants in his original complaint that were not named in the FAC and ordered that those other defendants were dismissed with prejudice, and that Berman’s case was to be dismissed with prejudice. That same day, the court issued a case management order stating that “defendants State of Maryland, Robert Greenberg, Sheldon Skolnick are DISMISSED WITH PREJUDICE,” and an Order of Dismissal, which stated “Case dismissed by Court with Prejudice – Pursuant to Court order.”

On October 14, 2016, Berman filed his notice of appeal, which stated that he was appealing from a “Dismissal for lack of personal jurisdiction.” A handwritten note on the notice stated, “final judgment 8/15/16.”

## II. DISCUSSION

### A. Preliminary Matters

The issue on appeal is whether the trial court erred by concluding that California does not have personal jurisdiction over Modell. Berman, as the appellant, has the burden of overcoming a presumption that the judgment is correct by affirmatively demonstrating prejudicial error. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564–565.) Unfortunately, many of Berman’s appellate arguments are either irrelevant or incomprehensible. We are cognizant that Berman is representing himself, but his status as a *propria persona* litigant does not exempt him from the rules of appellate procedure or relieve his burden on appeal. (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1247.) We

afford propria persona litigants “ ‘the same, but no greater consideration than other litigants and attorneys.’ ” (*Ibid.*) Thus, to the extent Berman complains to this court that certain errors occurred below but fails to offer pertinent or intelligible argument to support his position, we are not required to address the alleged errors and hereby deem them waived. (See *Berger v. Godden* (1985) 163 Cal.App.3d 1113, 1119–1120; *Dabney v. Dabney* (2002) 104 Cal.App.4th 379, 384.) By the same token, we will not address many issues Berman discusses in his appellate briefs that have no bearing on the disposition of this appeal.

In his Respondent’s Brief, Modell contends this appeal must be dismissed because Berman’s notice of appeal was untimely under rule 8.104(a)(1) of the California Rules of Court (rule 8.104(a)(1)). According to Modell, the 60-day period for filing an appeal began to run on August 8, 2016 because (1) the August 8 order dismissing Modell from this case was appealable; and (2) the superior court clerk served Berman with a copy of the August 8 order the same day it was issued. Modell fails to mention that he made this precise argument in a motion to dismiss this appeal, which was denied before the parties filed their appellate briefs. Nevertheless, we briefly address the matter because it was not discussed in our prior order and it goes to the court’s appellate jurisdiction. (See generally Eisenberg et al., *Cal. Practice Guide: Civil Appeals and Writs* (The Rutter Group 2016) ¶ 3:1 et seq.) The 60-day deadline Modell attempts to invoke does not apply because the August 8 order was not “a document entitled ‘Notice of Entry’ of judgment or a filed-endorsed copy of the judgment . . . .” (Cal. Rules of Court, rule 8.104(a)(1)(A).) Thus, although the August 8 order was appealable, Berman had 180 days after its entry to file his appeal. (Cal. Rules of Court, rule 8.104(a)(1)(C).)

## **B. Guiding Principles and Standards of Review**

“California’s long-arm statute authorizes California courts to exercise jurisdiction on any basis not inconsistent with the Constitution of the United States or the Constitution of California. (Code Civ. Proc., § 410.10.) A state court’s assertion of personal jurisdiction over a nonresident defendant who has not been served with process within the state comports with the requirements of the due process clause of the federal

Constitution if the defendant has such minimum contacts with the state that the assertion of jurisdiction does not violate ‘“traditional notions of fair play and substantial justice.”’ [Citations.]” (*Vons, supra*, 14 Cal.4th at pp. 444–445.)

“Personal jurisdiction may be either general or specific. A nonresident defendant may be subject to the general jurisdiction of the forum if his or her contacts in the forum state are ‘substantial . . . continuous and systematic.’ [Citations.] In such a case, ‘it is not necessary that the specific cause of action alleged be connected with the defendant’s business relationship to the forum.’ [Citations.] Such a defendant’s contacts with the forum are so wide-ranging that they take the place of physical presence in the forum as a basis for jurisdiction.” (*Vons, supra*, 14 Cal.4th at pp. 445–446, italics omitted.)

“If the nonresident defendant does not have substantial and systematic contacts in the forum sufficient to establish general jurisdiction, he or she still may be subject to the specific jurisdiction of the forum . . . .” (*Vons, supra*, 14 Cal.4th at p. 446, italics omitted.) “A court may exercise specific jurisdiction over a nonresident defendant only if: (1) ‘the defendant has purposefully availed himself or herself of forum benefits’ [citation]; (2) ‘the “controversy is related to or ‘arises out of’ [the] defendant’s contacts with the forum”’ [citations]; and (3) ‘“the assertion of personal jurisdiction would comport with ‘fair play and substantial justice’”’ [Citations].” (*Pavlovich v. Superior Court* (2002) 29 Cal.4th 262, 269 (*Pavlovich*)).

“On a challenge to personal jurisdiction by a motion to quash, the plaintiff has the burden of proving, by a preponderance of the evidence, the factual bases justifying the exercise of jurisdiction. [Citation.] The plaintiff must come forward with affidavits and other competent evidence to carry this burden and cannot simply rely on allegations in an unverified complaint. [Citation.] If the plaintiff meets this burden, ‘it becomes the defendant’s burden to demonstrate that the exercise of jurisdiction would be unreasonable.’ [Citation.]” (*Buchanan v. Soto* (2015) 241 Cal.App.4th 1353, 1362.)

“On review, the question of jurisdiction is, in essence, one of law. When the facts giving rise to jurisdiction are conflicting, the trial court’s factual determinations are reviewed for substantial evidence. [Citation.] Even then, we review independently the

trial court's conclusions as to the legal significance of the facts. [Citations.] When the jurisdictional facts are not in dispute, the question of whether the defendant is subject to personal jurisdiction is purely a legal question that we review *de novo*. [Citation.]” (*Dorel Industries, Inc. v. Superior Court* (2005) 134 Cal.App.4th 1267, 1273.)

### C. Analysis

Berman does not articulate any ground for reversing the trial court's finding that California lacks general personal jurisdiction over Modell. Instead, he prefaces his arguments with the statement that this appeal addresses the “question of specific jurisdiction over a Maryland trustee/attorney.” Thus, we limit our analysis to a consideration of the specific jurisdiction test outlined above.

The first prong of the specific jurisdiction test asks whether the defendant purposefully availed himself of forum benefits. (*Pavlovich, supra*, 29 Cal.4th at p. 269.) “ ‘The purposeful availment inquiry . . . focuses on the defendant’s intentionality. [Citation.] This prong is only satisfied when the defendant purposefully and voluntarily directs his activities toward the forum so that he should expect, by virtue of the benefit he receives, to be subject to the court’s jurisdiction based on’ his contacts with the forum. [Citation.] Thus, the ‘ “purposeful availment” requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of “random,” “fortuitous,” or “attenuated” contacts [citations], or of the “unilateral activity of another party or a third person.” [Citations.]’ [Citation.] ‘When a [defendant] “purposefully avails itself of the privilege of conducting activities within the forum State,” [citation], it has clear notice that it is subject to suit there, and can act to alleviate the risk of burdensome litigation by procuring insurance, passing the expected costs on to customers, or, if the risks are too great, severing its connection with the State.’ [Citation.]” (*Ibid.*)

In this case, the trial court found that Modell’s declaration constitutes undisputed evidence that he has not purposefully availed himself of the privileges of conducting activities in California. We agree. Modell does not practice law, conduct any business, or own any property in this state, and he does not regularly travel to California. By contrast, Berman did purposefully avail himself of benefits available in California by

making the decision to move his mother to this state. Attenuated contact Modell may have had with California as a consequence of Berman's unilateral activity does not establish that Modell purposefully availed himself of forum benefits. (*Pavlovich, supra*, 29 Cal.4th at p. 269.)

On appeal, Berman contends Modell's declaration is not substantial evidence as a matter of law because it includes the statement that his "contact with plaintiff was primarily limited to the approval of expenditures . . . ." According to Berman, because the word "primarily" is a "quintessential qualifier," Modell's declaration cannot support a finding that California lacks specific jurisdiction. This argument is fundamentally unsound. The question is not whether Modell had contacts with Berman, who is not a resident of California, but whether his forum contacts constitute purposeful availment. They do not.

Berman takes the position that the Transfer Motion Modell filed in the Maryland guardianship case, which was attached as Exhibit A to Berman's opposition to the motion to quash, compels the conclusion that Modell purposefully availed himself of the privileges of conducting activities in California. We disagree with Berman's unreasonable interpretation of this evidence, which actually reinforces the trial court's ruling. The Transfer Motion was filed in Maryland by a Maryland attorney who was appointed by a Maryland court to protect a ward's Maryland property. Filing that motion was not purposeful availment of this state's forum, but rather an attempt to avoid having to access this forum in order to fulfill responsibilities Modell owed to Bella under Maryland law.

Berman focuses on the proposed order that was submitted with the Transfer Motion, arguing that a provision in that order that would have authorized Modell to retain a California attorney if Berman refused to initiate a guardianship for Bella constitutes purposeful availment of a forum benefit. Again, this reasoning is unsound. On its face, the proposed order was for the benefit and protection of a ward of the Maryland court, i.e., Bella; it was not an attempt by Modell to gain anything for himself. Furthermore, and in any event, undisputed evidence that the Transfer Motion was withdrawn before it

was ruled upon demonstrates conclusively that Modell did not actually engage a California lawyer to represent Bella.

Berman also contends that the e-mails attached to the Transfer Motion are evidence that Modell purposefully availed himself of a forum benefit. Instead of articulating any way this is so, Berman devotes several pages of his briefs to arguing that this e-mail exchange was admissible evidence and Modell waived the right to object to it. This argument is not fruitful because the e-mails attached to Modell's Transfer Motion are simply not relevant to the issue at hand. These e-mails demonstrate that Berman hired a California attorney who corresponded with Modell by e-mail about issues pertaining to the administration of Bella's Maryland guardianship, and that Modell responded to such e-mails. This evidence does not demonstrate that Modell purposefully availed himself of a forum benefit.<sup>1</sup>

Berman quotes from *Hall v. LaRonde* (1997) 56 Cal.App.4th 1342, 1344 for the proposition that "the use of electronic mail and the telephone by a party in another state may establish sufficient minimum contacts with California to support personal jurisdiction." *Hall* was a breach of contract case arising out of a dispute over the development and marketing of a computer software product. The parties to the contract were a California resident and a New York resident whose interactions with each other were conducted over the internet and telephone. (*Id.* at pp. 1344–1345.) The "uncontroverted" evidence showed that the plaintiff "reached out to New York in search for business," and the defendant "reached back to California." (*Id.* at p. 1347.) Nothing remotely comparable happened here, where Modell was appointed by a Maryland court

---

<sup>1</sup> Berman has filed a request for judicial notice of evidence allegedly supportive of his appellate argument that these e-mails are *per se* admissible in this case because they were admitted without objection in his 2013 federal action against Modell. We deny Berman's request because the matters he asks us to take judicial notice of are not relevant to a material issue in this appeal. (See *People ex rel. Lockyer v. Shamrock Foods Co.* (2000) 24 Cal.4th 415, 422, fn. 2 ["any matter to be judicially noticed must be relevant to a material issue"].)

to protect Bella and his only e-mail communications with Berman's attorney pertained to his administration of Bella's Maryland guardianship case.

Because the record shows that Modell did not purposefully avail himself of forum benefits, "it is unnecessary to address the other prerequisites for the exercise of specific jurisdiction over a nonresident defendant, i.e., whether the controversy is related to or arises out of the defendant's contacts with the forum, and whether the assertion of personal jurisdiction would comport with fair play and substantial justice. [Citation.]" (*Elkman v. National States Ins. Co.* (2009) 173 Cal.App.4th 1305, 1321.) However, we think it is important the record reflect that these other prerequisites are not satisfied either. Berman's dispute with Modell arose out of the administration of a Maryland guardianship proceeding. The fact that Berman decided to move Bella to California does not change the substantive nature of his ongoing dispute with Bella's Maryland guardian. Furthermore, it would be fundamentally unfair to force Modell to have to travel to California to defend actions and decisions he made as the Maryland court appointed guardian of Bella's property.

### **III. DISPOSITION**

The judgment is affirmed. Costs on appeal are awarded to Modell.

---

LEE, J.\*

We concur:

---

STREETER, Acting P. J.

---

TUCHER, J.

\* Judge of the Superior Court of California, County of San Mateo, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

A149771, *Berman v. Modell*

**\*\*One-page excerpt from Modell's Opposition Brief\*\***

a17

simply writes that he hopes Berman can transfer the case to California. (2 CT 00357.) While Berman interpreted this as Modell refusing to reimburse him for expenses incurred related to Bella's care and likens it to coercion, Modell, acting as Bella's court-appointed guardian, was putting Bella's interest first by demanding receipts before issuing payment.

Berman fails to demonstrate that Modell engaged in any forum-related activities or that he maintains such wide-ranging forum contacts as to warrant exercise of specific jurisdiction. Berman's reliance on the inadmissible emails, which Modell sent from his office in Maryland to Berman, a self-proclaimed "traveling engineer" who "travels the majority of the year and has no fixed habitation or abode", do not establish that he had substantial connections with California. (1 CT 0038: ¶2.)

**3. Exercise of Jurisdiction Over Modell Would Not Comport with Fair Play and Substantial Justice**

Berman argues that Modell's Maryland motion to transfer (which was again, withdrawn) and willingness to petition in the "Superior Court" satisfy the third prong which requires the exercise of personal jurisdiction to be reasonable and in accord with fair play and substantial justice. (AOB 37.) In cases where the first two prongs are met, the burden is on defendants to "present a compelling case that the presence of some other considerations would render jurisdiction unreasonable." (*Burger King, supra*, 471 U.S. at 477.) Because Berman failed to establish the first two