

IN THE
Supreme Court of the United States

RICHARD ROCHE,

Petitioner,

v.

LARC, INC., AKA LEE ASSOCIATION
FOR REMARKABLE CITIZENS, INC., *et al.*,

Respondents.

**ON PETITION FOR A WRIT OF CERTIORARI TO THE
SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION**

**BRIEF IN OPPOSITION TO PETITION
FOR A WRIT OF CERTIORARI ON
BEHALF OF GULF COAST MEDICAL
CENTER, LEE MEMORIAL HEALTH
SYSTEM, AND CARLY HALLER, R.N.**

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QUESTION PRESENTED

1. Whether the New Jersey Supreme Court complied with constitutional due process when it properly found that New Jersey Courts lack specific personal jurisdiction over Respondents.

**PARTIES TO THE PROCEEDING
AND RULE 29.6 STATEMENT**

The parties before this Court are petitioner Richard Roche, who was plaintiff/appellant in the courts below, Respondents Gulf Coast Medical Center, Lee Memorial Health System, Carly Haller, R.N., who were defendants/appellees in the courts below, as well as LARC, Inc. (a/k/a Lee Association for Remarkable Citizens, Inc., and a/k/a Lee Association of Retarded Citizens, Inc.), Kevin Lewis, Vickie Chapman, Jane Marshall, Danielle Jacobs, Physicians Primary Care of Southwest Florida, P.L. (d/b/a Physicians' Primary Care) Jeanne A. Abdou, APRN, and Roger O'Halloran, Esq., who were co-defendants/co-appellees in the courts below.

Lee Memorial Health System is not a publicly held company and is not owned by any publicly held company owning 10% or more of its stock.

Gulf Coast Medical Center is not a publicly held company and is not owned by any publicly held company owning 10% or more of its stock.

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The order of the New Jersey Supreme Court on the issue of lack of Personal Jurisdiction is reported as 255 N.J. 521 (2023). The order of the New Jersey Supreme Court denying Plaintiff's motion for leave to file a supplemental brief in support of Mr. Roche's petition for certification is reported as 255 N.J. 514 (2023). The order and opinion of the New Jersey Superior Court, Appellate Division finding a lack of personal jurisdiction is unpublished, reported as 2023 N.J. Super. Unpub. LEXIS 488, 2023 WL 2721254 (App. Div. 2023). The order and opinion of the New Jersey Superior Court, Law Division finding a lack of personal jurisdiction is unpublished and unreported.

JURISDICTION

Petitioners assert that this Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

STATUTES OR OTHER PROVISIONS INVOLVED

The Personal Jurisdiction Petition involves the New Jersey common law of specific personal jurisdiction. The Fourteenth Amendment to the United States Constitution provides in relevant part: "No State shall. . . . deprive any person of life, liberty, or property, without due process of law."

STATEMENT OF THE CASE

Petitioner Mr. Roche's complaint alleges that petitioner's sister, Laura Susan Roche, was a client and resident of a group home for developmentally

disabled individuals, LARC, Inc., located in Cape Coral, Florida. On or about September 18, 2019, Ms. Roche was admitted for medical treatment to Gulf Coast Medical Center (“GCMC”), which is affiliated with Lee Memorial Health System (“LMHS”), in Fort Myers, Florida. Mr. Roche’s complaint alleges that Carly Haller, R.N., an employee of GCMC and LMHS, met with Petitioner in a conference room at GCMC on September 30, 2019. The complaint alleges that Ms. Roche passed away on October 17, 2019, and that Petitioner Mr. Roche is the personal representative or executor of Ms. Roche’s estate. Petitioner’s complaint asserts putative claims of fraud, tortious interference, undue influence and alienation of affection, breach of contract, intentional infliction of emotional harm, invasion of privacy, and stalking solely on his behalf, and does not assert any claims on behalf of his deceased developmentally disabled sister Ms. Roche. Plaintiff’s complaint lacks any facts that GCMC, LMHS or Ms. Haller engaged in any activity with any connection to New Jersey.

On December 3, 2021 defendants GCMC, LMHS, and Ms. Haller filed a motion to dismiss Mr. Roche’s complaint for lack of personal jurisdiction. Mr. Roche’s opposition brief described several telephone communications with GCMC, including one with Ms. Haller, between September 30, 2019 and October 4, 2019, which Mr. Roche initiated from Georgia, New York and New Jersey to GCMC and Ms. Haller in Florida. Mr. Roche did not describe these communications, only generally alleging that he was not provided information regarding a medical procedure for his sister, that ultimately was never performed. Mr. Roche’s complaint and opposition to defendants’ motion to dismiss is devoid of any facts to support a finding of

sufficient minimum contacts with New Jersey to establish personal jurisdiction over the defendants. In granting defendants' motion to dismiss for lack of personal jurisdiction, the trial court correctly found that the only alleged connection between defendants and New Jersey were alleged phone calls Mr. Roche initiated while he was potentially located in New Jersey, and that those were insufficient for New Jersey Courts to exercise personal jurisdiction over the Florida defendants. Mr. Roche appealed to the appellate division, which affirmed the trial court's dismissal on the ground that Mr. Roche failed to present competent evidence establishing any facts to support New Jersey Courts exercising jurisdiction over GCMC, LMHS or Ms. Haller.

New Jersey courts can exercise specific personal jurisdiction over a non-resident defendant if the defendant has certain minimum contacts with the forum state such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice. New Jersey law further provides that minimum contacts can be established where there is a relationship among the defendant, the forum, and the litigation that would give rise to the minimum contacts necessary to satisfy due process. The New Jersey Appellate Division properly found that GCMC, LMHS, and Ms. Haller lacked sufficient minimum contacts to justify jurisdiction over these defendants in New Jersey.

REASONS FOR DENYING THE PETITION

I. PETITIONER'S PERSONAL JURISDICTION PETITION SHOULD BE DENIED.

This matter is not appropriate for Certiorari review by the Supreme Court. The New Jersey Courts have fully considered and correctly decided the issues presented in the Petition. Petitioner's arguments lack merit and the issues presented are not sufficiently significant to warrant review. This case and issues will have no broader implications for the New Jersey Courts or the courts of any other jurisdiction. This matter involves no conflicting decisions and no conflicting law requiring review. The decisions below follow an unbroken line of authority, where the New Jersey courts properly applied New Jersey state law and constitutional due process considerations to the facts to reach their conclusions that New Jersey courts lack personal jurisdiction over the defendants, and it is only through misstatement and misunderstanding of the facts, law, and the findings of the courts below that Petitioner asserts meritless arguments in seeking review.

Petitioner argues that the New Jersey Courts made incorrect legal determinations and improperly failed to consider certain arguments and law. The New Jersey Courts did not misapply the law. In fact, the New Jersey Courts properly applied the facts to well-settled law in finding that New Jersey Courts lacked personal jurisdiction over the Florida resident Respondents with regard to activities that solely occurred in and were solely directed to the State of Florida and a Florida resident.

The facts presented here are not unique, and have no broader significance to society as a whole,

further demonstrating that review by this Court is not warranted. The key facts for the jurisdictional analysis are that Petitioner's sister, Laura Susan Roche, a Florida resident, was a client and resident of a group home for developmentally disabled individuals, LARC, Inc., located at 902 Southeast 30th Street, Cape Coral, Florida 33904 before she passed away on October 17, 2019. Petitioner's complaint contains limited allegations as to Defendants Respondents GCMC, LMHS and Ms. Haller, only asserting allegations of physical presence and interaction between Respondents, Petitioner and decedent Ms. Roche within the State of Florida. Petitioner alleges that decedent Ms. Roche had been admitted to GCMC, affiliated with LMHS, on or about September 18, 2019, during which time Ms. Haller was employed by GCMC and/or LMHS. Petitioner alleged that he spoke to Ms. Haller within GCMC's office in Florida. Petitioner also alleged in an opposition brief to a Respondents' motion to dismiss that he telephoned GCMC from New York, Georgia and New Jersey to inquire about decedent Ms. Roche's condition and care.

Respondents GCMC, LMHS, and Ms. Haller are all Florida residents, solely located in the State of Florida; do not engage in business in New Jersey; are not registered to perform services within New Jersey; and do not maintain or operate facilities in New Jersey. Respondents GCMC, LMHS, and Ms. Haller were allegedly involved to some degree in the care of decedent and Florida resident Ms. Roche within Florida. The Respondents lack any connection to New Jersey.

Respondents' actions in providing medical care to decedent and Florida resident Ms. Roche in Florida are

not directed to the State of New Jersey, and therefore do not constitute sufficient minimum contacts to establish jurisdiction in New Jersey.

Petitioner fails to cite the appropriate law in its Petition, and the factual and legal arguments do not support the reversal of the New Jersey Courts' findings. The New Jersey Courts appropriately applied the law to the facts to find that jurisdiction was inappropriate in New Jersey.

The New Jersey Courts weighed the arguments and law presented and correctly determined that the defendants lacked the minimum contacts required for New Jersey Courts to exercise personal jurisdiction over them. The Appellate Division's well-reasoned opinion sets forth the relevant arguments and law. There was no misapplication of law which might merit review from this Court. As is apparent from its opinion, the Appellate Division of the Superior Court of New Jersey analyzed specific personal jurisdiction and the Due Process Clause of the Fourteenth Amendment to find that New Jersey courts do not have jurisdiction over Respondents and that Respondents lack sufficient minimum contacts with New Jersey such that proceeding in New Jersey would offend traditional notions of fair play and substantial justice, having never purposefully availed themselves of the laws of New Jersey. The New Jersey Appellate Division applied the law to the facts in the record to reach this outcome. That Petitioner is dissatisfied with that outcome does not render review appropriate.

Plaintiff bears the burden of proof of demonstrating that a non-resident defendant has sufficient contacts to

support specific long-arm personal jurisdiction. *Citibank, N.A. v. Simpson*, 290 N.J. Super. 519, 526-27 (1996). To establish specific jurisdiction over a non-resident defendant, the plaintiff must allege and prove that the claims arose from the non-resident defendant's activities within New Jersey, such that there was some "relationship among the defendant, the forum, and the litigation" that would give rise to the minimum contacts necessary to satisfy due process. *Waste Mgmt., Inc. v. Admiral Ins. Co.*, 138 N.J. 106, 119-20 (1994); *Lebel v. Everglades Marina, Inc.*, 115 N.J. 317, 323 (1989). Minimum contacts are sufficient to justify jurisdiction only if those contacts arise out of purposeful conduct within the state by the non-resident defendant "and not the unilateral activities of the plaintiff." *Lebel*, 115 N.J. at 323 (citing *World-Wide Volkswagen v. Woodson*, 444 U.S. 286, 297-98 (1980)).

Petitioner had no relationship with Respondents GCMC, LMHS or Ms. Haller. The allegations against Defendants solely relate to medical services allegedly provided to Plaintiff's deceased sister, Ms. Roche, by Florida medical institutions and a Florida nurse within the State of Florida. As stated above, GCMC, Lee Memorial and Ms. Haller are all Florida entities and individuals solely residing, located, licensed, employed and operating within Florida, and have no connections to New Jersey. The limited information offered by Plaintiff does not satisfy the minimum contacts test necessary for New Jersey Courts to exercise specific long-arm personal jurisdiction over the non-resident Defendants.

The purported telephone calls between Plaintiff and Defendants are the sole alleged connection to New Jersey, however, these calls were initiated by Plaintiff from

outside the State of New Jersey. Mr. Roche's initiation of these telephone calls, which by Mr. Roche's own admission did not take place in New Jersey, dictate that Defendants did not purposefully avail themselves of New Jersey law, and did not direct or target Plaintiff or New Jersey.

New Jersey permits the exercise of personal jurisdiction over a non-resident defendant if that party had sufficient minimum contacts with New Jersey. Respondents engaged in no actions within New Jersey, and therefore, New Jersey Courts were correct in declining to exercise jurisdiction. Any alleged contact between Petitioner and Respondents was initiated by Petitioner, primarily outside of the State of New Jersey. Even if a telephone call occurred while Petitioner was physically present within New Jersey, the minimum contacts analysis is not satisfied.

In an attempt to find specific personal jurisdiction in New Jersey, Petitioner raises vague, unfounded, and logically flawed allegations of intentional torts committed against him. Petitioner's argument that New Jersey Courts should exercise personal jurisdiction over Respondents based upon telephone calls initiated by Plaintiff while in New Jersey to Florida, and vague arguments of intentional torts, do not justify New Jersey Courts exercising personal jurisdiction, as they are legally and factually insufficient. The substance of these telephone calls, even if initiated from New Jersey, solely relate to alleged medical care provided by Florida-based defendants to a Florida resident within the State of Florida, and evidence no intentional contact or tort targeted to New Jersey or Petitioner.

It would offend traditional due process if New Jersey Courts were to exercise personal jurisdiction over these Florida-based medical providers for alleged medical treatment and care provided to a Florida resident within Florida solely because they may have communicated via telephone with a member of the Florida resident's family who happened to reside in New Jersey.

The Fourteenth Amendment's Due Process Clause permits a court to exercise personal jurisdiction over a defendant only when the defendant has sufficient contacts with the forum "such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (internal quotation marks omitted). In cases where the jurisdictional analysis is of specific jurisdiction, due process requires the defendant to have purposefully directed conduct at the forum state, which "ensures that a defendant will not be haled into a jurisdiction solely as a result of random, fortuitous, or attenuated contacts." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985) (internal quotation marks omitted).

In the context of intentional tort claims, this Court analyzed jurisdictional issues in the intentional tort context in *Calder v. Jones*, 465 U.S. 783 (1984). The plaintiff in *Calder* was a California resident, whose career was similarly located in California. Plaintiff alleged that the Florida-based reporter and editor defendants had published libelous statements in an article. In holding that California courts could exercise jurisdiction over the Florida-based defendants, the Court found that "[t]he allegedly libelous story concerned the California activities of a California resident"; it "was drawn from

California sources”; and “the brunt of the harm, in terms both of [defendant’s] emotional distress and the injury to her professional reputation, was suffered in California.” *Id.* at 788-89. Applying these facts, the Court held that “California [was] the focal point both of the story and of the harm suffered.” *Id.* at 789.

The Court emphasized that the defendants were “not charged with mere untargeted negligence. Rather, their intentional, and allegedly tortious, actions were expressly aimed at California.” *Id.* The defendants “knew [their conduct] would have a potentially devastating impact upon respondent. And they knew that the brunt of that injury would be felt by respondent in the State in which she lives and works and in which the publisher *National Enquirer* has its largest circulation.” *Id.* at 789-90.

The *Calder* holding has been followed as a three-part test. Personal jurisdiction over out of state defendants based upon intentional torts requires that plaintiff allege that the defendant committed “(a) an intentional action . . . that was (b) expressly aimed at the forum state . . . with (c) knowledge that the brunt of the injury would be felt in the forum state.” *Dudnikov v. Chalk & Vermilion Fine Arts, Inc.*, 514 F.3d 1063, 1072 (10th Cir. 2008).

Many jurisdictions, including the Third Circuit, recognize the *Calder* test, having applied it in *Imo Industries, Inc. v. Kiekert AG*, 155 F.3d 254, 256 (3d Cir. 1998). In *Imo*, the plaintiff alleged that the defendant intentionally interfered with the plaintiff’s business activities, expressly aware that plaintiff was based in New Jersey. The Third Circuit concluded that “[s]imply asserting that the defendant knew that the plaintiff’s

principal place of business was located in the forum [is] insufficient in itself to meet [*Calder*'s express-aiming] requirement." *Id.* at 265. "While knowledge that the plaintiff is located in the forum is necessary," the Third Circuit explained that "it alone is insufficient to satisfy the targeting prong of the effects test." *Id.* at 265 n.8, 266. *Calder* requires that the forum be "the focal point of the harm suffered by the plaintiff," and the defendant to have "expressly aimed his tortious conduct at the forum such that the forum can be said to be the focal point of the tortious activity." *Id.* at 266. The Third Circuit concluded that it would be improper for New Jersey to exercise personal jurisdiction over the defendants because "Imo cannot demonstrate that Kiekert expressly aimed its tortious conduct at New Jersey." *Id.* at 268; *see also Remick v. Manfreddy*, 238 F.3d 248, 258-59 (3d Cir. 2001) (relying on *Imo* in holding that defendants had not expressly aimed their conduct at Pennsylvania despite allegations that they intentionally defamed a Pennsylvania resident).

The Third Circuit, as well as the Fourth, Fifth, Seventh, Eighth, and Tenth Circuits have held that allegations of intentional torts directed at a known forum resident are insufficient to satisfy *Calder*'s express-aiming requirement. For personal jurisdiction to result from intentional torts, the forum state itself must be the focal point of the defendant's conduct.

Here, Petitioner fails to allege any of the elements of the *Calder* test. First, there is no intentional action. Telephone calls, of unknown content and origin, which may have been initiated by Plaintiff in or outside of New Jersey, solely to discuss medical care of a Florida resident within

the State of Florida by Florida-based medical institutions and professionals, do not satisfy the intentional action element.

The purported telephone calls clearly fail to satisfy the second element as well; that they were expressly aimed at New Jersey. Mr. Roche's complaint fails to put Mr. Roche in New Jersey during any communication with GCMC, LMHS or Ms. Haller. If we assume Mr. Roche's brief in opposition to the motion to dismiss to be true, it is possible that there may have been a telephone call between Mr. Roche and GCMC, LMHS or Ms. Haller, and it may have related to care provided to decedent Ms. Roche. However, any such telephone call cannot be interpreted to be directed at the forum of New Jersey. In fact, providing as much deference to Mr. Roche's arguments as possible, despite not being asserted within his complaint, still fails to satisfy this element. Any telephone communications between Mr. Roche and defendants were, at most, related to the care provided by Florida-based medical institutions and professionals to a Florida resident within Florida. Mr. Roche makes no cognizable claim of intentional tort that is directed to New Jersey.

Finally, there is no allegation that GCMC, LMHS, and Ms. Haller had any knowledge that the brunt of any injury (which there are none) would be felt in New Jersey. Even if there was such an allegation, it would lack merit, as GCMC, LMHS and Ms. Haller lacked any duty to Mr. Roche, and did not target any activity, communication, let alone tortious, to him or New Jersey. Significantly, Plaintiff Richard Roche has not asserted any cognizable cause of action, so even if jurisdiction were permitted in

New Jersey, the case would inevitably be dismissed for failure to state a claim.

Here, Respondents' conduct and connection with the forum state were such that they should not have reasonably anticipated being haled into New Jersey courts. *World-Wide Volkswagen v. Woodson*, 444 U.S. 286, 297 (1980) (citations omitted).

Contrary to Petitioner's position, and as is clear from reading the New Jersey Appellate Division's opinion, the New Jersey courts did not ignore the applicable law or facts. Instead, the courts analyzed the actions and contacts of the Respondents and properly rejected jurisdiction. As is clear from the Appellate Division's well-reasoned opinion, the judges carefully weighed the facts in the record and applied the controlling law to find that Respondents lacked sufficient contacts to subject them to jurisdiction in New Jersey. Telephone calls alone, especially those initiated by Petitioner to Respondents, do not amount to knowingly and intentionally communicating with Mr. Roche, targeting New Jersey, or availing themselves of New Jersey law.

Accordingly, because the New Jersey Courts' application of the specific in personam jurisdiction does not offend constitutional due process, the Petition should be denied.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

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