

No. 23-1129

IN THE

Supreme Court of the United States

RICHARD ROCHE,

Petitioner,

v.

LARC, INC. (A/K/A LEE ASSOCIATION OF REMARKABLE CITIZENS, INC., AND A/K/A LEE ASSOCIATION OF RETARDED CITIZENS, INC.),

(Caption Continued on the Reverse)

*On Petition for a Writ of Certiorari to the
Supreme Court of New Jersey*

BRIEF OF RESPONDENTS LARC, INC., KEVIN LEWIS, VICKIE CHAPMAN, JANE MARSHALL AND DANIELLE JACOBS IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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May 20, 2024

PYHSICIANS' PRIMARY CARE OF SOUTHWEST FLORIDA, P.L. (D/B/A
KEVIN LEWIS, VICKIE CHAPMAN, JANE MARSHALL, DANIELLE JACOBS,
PYHSICIANS' PRIMARY CARE), JEANNE A. ABDOU, APRN, ROGER
O'HALLORAN, ESQ., GULF COAST MEDICAL CENTER, LEE MEMO-
RIAL HEALTH SYSTEM AND CARLY HALLER, R.N.,

Respondents.

QUESTIONS PRESENTED

1. Whether the Petitioner has set forth any legally cognizable basis upon which this Court should grant Writ of Certiorari, where the New Jersey State Courts properly found that there are no minimum contacts sufficient to confer specific personal jurisdiction over the defendants, entirely consistent with this Court's long-standing principles under the Due Process Clause of the Constitution of the United States.

RULE 29.6 STATEMENT

LARC, INC. is not a publicly held corporation and is not owned by any publicly held corporation owning 10% or more of its stock.

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INTRODUCTION

Defendants-Respondents LARC, Inc., Kevin Lewis, Danielle Jacobs, Jane Marshall, and Vickie Chapman (hereinafter collectively “Defendants”), respectfully submit this opposition to the Petition for Writ of Certiorari submitted by Petitioner, Richard Roche, acting *pro se*. It is submitted that the Petition for Writ of Certiorari must be denied.

Richard Roche’s Petition for Writ of Certiorari seeks this Court’s review of the order of the Superior Court of the State of New Jersey, which dismissed the action for lack of personal jurisdiction in New Jersey over the Florida-resident defendants, as well as the order of the Appellate Division of New Jersey, affirming the dismissal, and the order of the Supreme Court of the State of New Jersey denying Petitioner’s Petition for Writ to that court.

In his Petition, Mr. Roche has failed to demonstrate any cognizable basis upon which New Jersey courts could exercise personal jurisdiction over Defendants in relation to the allegations that form the basis of Mr. Roche’s claims.

Petitioner asserts claims surrounding the different defendants’ care, including medical and residential care, provided to Petitioner’s decedent, his late sister Laura Susan Roche (hereinafter “Ms. Roche”), all within the State of Florida. The entirety of the alleged acts and/or omissions relate solely to Ms. Roche’s care in Florida, while she was a

Florida resident. Defendants are Florida residents and no aspect of their alleged acts and/or omissions occurred outside the State of Florida. Specifically, Petitioner's Complaint alleges that Ms. Roche was a client and resident of a group home for individuals with developmental disabilities, operated by defendant LARC, Inc., located in Cape Coral, Florida. It is further alleged that Ms. Roche was admitted to Gulf Coast Medical Center, in Fort Myers, Florida, on September 18, 2019. Petitioner claims that Ms. Roche passed away on October 17, 2019, and that Petitioner is either the personal representative or executor of the estate of Laura Susan Roche.

It is not contested Defendants are residents of the State of Florida and that all of the alleged acts or omissions that form the basis of the allegations took place in Florida.

Petitioner has failed to put forth any alleged fact, conduct, transaction, or event sufficient to establish minimum contacts for purposes of conferring personal jurisdiction over Defendants. In the Complaint, Mr. Roche asserts claims for fraud, tortious interference, undue influence, alienation of affection, intentional infliction of emotional harm, invasion of privacy, stalking, and breach of contract, all in relation to the care provided to Ms. Roche in Florida. All of these allegations, however, revolve solely and exclusively around the medical and residential care of Ms. Roche within the State of Florida.

All of the defendants moved to dismiss the Complaint based upon the absence of any fact sufficient to impose personal jurisdiction in New Jersey courts, over the Florida-resident defendants. In opposition, Petitioner argued that personal jurisdiction was proper based on minimum contacts. Specifically, Petitioner alleged that he had several telephone conversations and/or text messages with the Florida defendants for the purpose of being apprised of his sister's condition and/or treatment. According to Petitioner, he may have been in New Jersey during some of those communications. However, under well-settled jurisprudence, this is not sufficient minimum contacts to establish personal jurisdiction.

There is no allegation that Defendants initiated any calls to Petitioner for the purpose of soliciting his business or to enter into any type of transaction. Petitioner has cited to no precedent that supports a finding of minimum contacts sufficient to support personal jurisdiction, based upon the type of telephone communications relied upon.

The law on personal jurisdiction is well-settled, establishing that minimum contacts must exist for New Jersey Courts to exercise long-arm specific personal jurisdiction over out-of-state defendants. The New Jersey Courts dismissal of the Complaint is in keeping with well-settled body of law. Therefore, the Petition for Writ of Certiorari must be denied.

STATEMENT OF THE CASE

On September 22, 2021, Petitioner commenced by filing a Complaint in the Superior Court of New Jersey, Law Division of Morris County, against Defendants LARC, Inc., Kevin Lewis, Danielle Jacobs, Jane Marshall, and Vickie Chapman, among others.

On December 7, 2021, Defendants LARC, Inc., Kevin Lewis, Danielle Jacobs, Jane Marshall, and Vickie Chapman, filed a motion to dismiss the Complaint for lack of personal jurisdiction over the Defendants in the state of New Jersey. The motions were fully briefed and orally argued on January 21, 2022, before the Honorable Stephen C. Hansbury, Justice of the Superior Court of New Jersey, Law Division of Morris County. Following the oral arguments, and on the record on the same day, Judge Hansbury granted Defendants and co-defendants respective motions to dismiss for lack of personal jurisdiction.

Justice Hansbury's dismissal was affirmed by the New Jersey Appellate Division on March 31, 2023. Petitioner's application for certification from the Supreme Court of New Jersey was denied on November 17, 2023.

The within Petition for Writ of Certiorari followed.

ARGUMENTS

POINT I

THERE ARE NO GROUNDS SUPPORTING A GRANT OF WRIT OF CERTIORARI

Pursuant to Rule 10 of this Court, whether to grant Writ of Certiorari is a matter of Court discretion. Among the factors to be considered in making a determination of whether to grant Writ of Certiorari are: (a) whether the underlying Court of Appeals decision is in conflict with other circuit Court of Appeals on an important matter; (b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals; (c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

In fact, this Court has held that a principal purpose for which Certiorari jurisdiction is used by this Court is to resolve conflicts among the United States Courts of Appeals, and that of state courts. *Braxton v. United States*, 500 U.S. 344 (1991). Moreover, Certiorari is not granted unless the matter involves principles that are of public importance. *Rice v. Sioux City Memorial Park Cemetery*, 75 S. Ct. 614 (1954).

Here, Petitioner has not raised an issue that presents any of the above factors. The proposed question does not pose a situation where the courts of appeals are in conflict, nor an important federal question which was decided by the Supreme Court of New Jersey in a manner that conflicts with the decision of another state court of last resort, or with a United States court of appeals. Nor does Petitioner present any federal question which has been decided by the State Court of New Jersey and conflicts with relevant decisions of this Court. In fact, the New Jersey State courts have decided the issue of whether the Petitioner has alleged facts sufficient to confer personal jurisdiction over the Florida-resident defendants in New Jersey courts in a manner that is fully consistent with this Court's precedent, as required under the Due Process clause of the Constitution of the United States.

The Complaint includes limited factual allegations against Defendants related to the care of Petitioner's now-deceased sister, Laura Susan Roche, in Florida. Ms. Roche and Defendants were residents of Florida during all relevant times, and the complained-of activities occurred solely within the State of Florida. The sole connection to New Jersey is Petitioner's residence, and alleged phone calls and/or text messages with Petitioner, while he was allegedly located in New Jersey.

As was found by the New Jersey State courts, New Jersey Court's personal jurisdiction statute is consistent and in compliance with the Due Process rights afforded by the United States Constitution.

New Jersey Rule 4:4-4 governs the acquisition of *in personam* jurisdiction, or personal jurisdiction, and subsection (b)(1) of same specifically governs long-arm jurisdiction over a non-resident, or person not present in New Jersey. Rule 4:4-4(b)(1).

Under this statute, long-arm jurisdiction in New Jersey over non-resident defendants extends to the outermost permissible limits under the United States Constitution. *Lebel v. Everglades Marina, Inc.*, 115 N.J. 317, 322 (1989); *Avdel Corp. v. Mecure*, 58 N.J. 264, 268 (1971). A New Jersey court may exercise personal jurisdiction over a non-resident defendant “consistent with due process of law.” Rule 4:4-4(b)(1).

In determining whether a state’s long-arm jurisdiction statute meets the Due Process requirements, this Court must discern whether the defendants have at least certain minimum contacts with the state. *Helicopteros Nacionales de Colombia v. Hall*, 466 U.S. 408, 414 (1984). As this Court asserted in *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), a state court’s assertion of personal jurisdiction satisfies the Due Process Clause if it does not violate “traditional notions of fair play and substantial justice.” *Id.*, at 316, quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940).

In *Red Wing Shoe Co. v. Hockerson-Halbertstadt, Inc.*, 148 F.3d 1355, the Federal Circuit Court of Appeals described the standard used by this Court to discern the limits of Due Process on the extra-terrestrial reach of a state long-arm statute. It

found that a court must first examine whether the defendant had established “minimum contacts” with the forum state “such that [it] should reasonably anticipate being haled into court there.” *Id.* at 1359, quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980). As a second part of the analysis, “[o]nce it has been decided that a defendant purposefully established minimum contacts within the forum state, these contacts may be considered in light of other factors to determine whether the assertion of personal jurisdiction would comport with “fair play and substantial justice.” *Red Wing Shoe Co. v. Hockerson-Halbertstadt, Inc.*, *supra* at 1359, quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476 (1985). The Federal Circuit Court of Appeals went further to note that there may be factors that “establish a ‘compelling case’ that would render jurisdiction unreasonable even though ‘minimum contacts’ are present.” *Red Wing Shoe Co. v. Hockerson-Halbertstadt, Inc.*, *supra* at 1359, quoting *Asahi Metal Indus. Co. v. Superior Ct. of Cal.* 480 U.S. 102 (1987) (Stevens, J. concurring in judgment).

Here, New Jersey’s long-arm statute, and New Jersey court’s application of same, is entirely consistent with the Due Process requirements set forth by the United States Constitution.

The Due Process Clause permits a state to exercise jurisdiction over an out-of-state defendant only where “. . . the defendant purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protec-

tions of its laws.” *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474 (1985).

Petitioner’s alleged facts do not satisfy the requisite inquiry. There is no claim that Defendants were ever present in the State of New Jersey during the relevant times, nor in relation to the allegations in the Complaint. There is also no allegation that Defendants engaged in any activity that reached the State of New Jersey.

Rather, Petitioner’s entire argument is alleged telephone communications, either via voice calls or text messages, where Defendants were in Florida and Petitioner was in New Jersey. Petitioner provided Certifications of purported witnesses: Miriam Cusack, Matthew Popp, and Joseph Petrulo, each of which demonstrate that Petitioner initiated telephone calls to Defendants from his workplace located in New York.

Such communications do not amount to minimum contacts within the requirements of Due Process. The Fourteenth Amendment requires contacts to be “purposefully directed” at the forum state. *See, Burger King*, 471 U.S. at 472. Unilateral activities by the plaintiff, or contacts that could be characterized as random, isolated, or fortuitous are insufficient to satisfy minimum contacts. *See Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770; *World-Wide Volkswagen v. Woodson*, 444 U.S. 286, 297-98 (1980). (emphasis added).

Randon, isolated telephone conversations and/or text messages to apprise Petitioner of the status of Ms. Roche's health, potentially at times while Mr. Roche was in New Jersey, does not involve any activity that could be interpreted as "purposefully directed" at New Jersey, where it was not even clear whether Defendants knew Mr. Roche was located in that state. Moreover, any such purported telephone communications were admittedly isolated and random.

This Court has held that when intentional torts are alleged, it is still insufficient for a plaintiff to rely on defendant's "random, fortuitous, or attenuated contacts" or on the "unilateral activity" of a plaintiff. *Walden v. Fiore*, 571 U.S. 277 (2014). In *Walden v. Fiore, supra*, this Court found that Due Process did not permit a Nevada state court to exercise personal jurisdiction over the Georgia-resident defendant. The plaintiffs in *Walden v. Fiore, supra*, Nevada residents, sought to impose personal jurisdiction in Nevada over the Georgia defendant based upon calls from plaintiffs' attorney in Nevada, to the defendants in Georgia. The plaintiffs claimed that the Georgia defendant, a police officer working in Georgia, violated their constitutional rights by illegally confiscating their funds while at the Georgia airport. The plaintiffs argued that the Georgia defendant intentionally caused harm to them while knowing that they lived in Nevada. This Court found that this was insufficient to create personal jurisdiction over the Georgia defendants in Nevada.

Even assuming that Petitioner was physically in New Jersey when the purported telephone communications took place, a fact that has not been set forth by the papers submitted, Petitioner does not contest that the sole and exclusive nature of the telephone communications was the medical care provided to Ms. Roche, a Florida resident, while in Florida. Petitioner does not cite to any intentional contact or tort targeted to New Jersey or even the Petitioner as a New Jersey resident. Whether Defendants knew that Petitioner was a New Jersey resident is irrelevant and insufficient to confer personal jurisdiction in New Jersey over events that transpire in Florida. *See, e.g. Walden v. Fiore, supra.*

Petitioner cites to *Hanson v. Denckla*, 357 U.S. 235 (1958), but offers to argument or explanation as to what aspect of that decision applies to the facts of this case. To the extent Petitioner argues that the purported minimum contacts must somehow be given a heightened weight because of his allegations of “intentionally tortious acts,” no support is cited for this proposition. Likewise, to the extent Petitioner seems to argue that New Jersey’s taxation of foreign entities based on sales and/or communications with a foreign entity is sufficient basis for a finding of personal jurisdiction here, same is equally disconnected, as there is no business transaction by Defendants that would involve New Jersey, let alone a taxable one, alleged in the Complaint.

The New Jersey courts, therefore, properly dismissed the Complaint for lack of personal jurisdiction over Defendants.

Contrary to Petitioner's arguments, exercising personal jurisdiction over the Defendants would offend traditional notions of fair play and substantial justice. Among the factors articulated before the New Jersey Courts was the fact that Defendants are located over 1,000 miles from New Jersey, and all of the events and circumstances alleged in the Complaint occurred within the State of Florida, and would be governed by Florida law.

CONCLUSION

For all of the reasons set forth above, the Petition for Writ of Certiorari must be denied.

Dated: May 20, 2024

Respectfully submitted,

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