

SPERIDIAN TECHNOLOGIES, LLC V. AMSOL, INC.

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**SPERIDIAN TECHNOLOGIES, LLC,
a/k/a Karma Consulting Services, LLC,**
Plaintiff-Appellant,

v.

**AMSOL, INC., a Wyoming Corporation and
SHAILENDER KOLIPAKA, an individual,**
Defendants-Appellees.

No. 31,458

COURT OF APPEALS OF NEW MEXICO

December 12, 2013

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY, Nan G. Nash,
District Judge

COUNSEL

Sutin, Thayer & Browne, P.C., Susan G. Chappell, Timothy J. Adler, Albuquerque, NM,
for Appellants

AMSOL, Inc., Pro Se, Newark, DE, Shailender Kolipaka, Pro Se, Exton, PA, Appellees

JUDGES

J. MILES HANISEE, Judge. WE CONCUR: RODERICK T. KENNEDY, Chief Judge,
TIMOTHY L. GARCIA, Judge

AUTHOR: J. MILES HANISEE

MEMORANDUM OPINION

HANISEE, Judge.

{1} Plaintiff Speridian Technologies, LLC (Speridian) brought suit against Defendants Shailender Kolipaka (Kolipaka) and his employer Amsol, Inc. (Amsol) for breach of contract, intentional interference with contractual relations, and defamation. Amsol did not challenge New Mexico’s exercise of jurisdiction; however, Kolipaka filed a motion to dismiss the complaint for lack of personal jurisdiction pursuant to Rule 1-012(B)(2) NMRA. Kolipaka asserted that he lacked the minimum contacts necessary for the state of New Mexico to exercise personal jurisdiction over him. Based on the parties’ pleadings and affidavits, the district court agreed with Kolipaka and granted his motion.

{2} On appeal, Speridian argues that the district court erred in granting the motion to dismiss because Kolipaka established sufficient minimum contacts to support personal jurisdiction. Further, Speridian asserts that New Mexico jurisdiction is proper because Kolipaka could reasonably anticipate being sued in New Mexico based on his actions in this case, and therefore, New Mexico’s assertion of jurisdiction over Kolipaka would not offend traditional notions of fair play and substantial justice. Neither Amsol nor Kolipaka submitted a brief to this Court for the purposes of this appeal. Accordingly, the argument on appeal is confined to Speridian’s brief-in-chief. See Rule 12-312(B) NMRA; *Mannick v. Wakeland*, 2005-NMCA-098, ¶ 39, 138 N.M. 113, 117 P.3d 919 (noting that “an appellee does not even have to file a brief, and the appellate court will review the case in accordance with the same favorable view of the proceedings below”). Based on our review of the issue presented and the district court record, we conclude that Kolipaka’s communications with Speridian employees and clients and his independent contract work on a Speridian project based in Pennsylvania were insufficient to establish a basis for personal jurisdiction. Thus, we affirm the district court’s ruling.

BACKGROUND

{3} Speridian is an information technology company incorporated in Delaware, with its principal place of business in New Mexico. On certain projects, Speridian uses contract workers to provide services for their clients in certain fields of expertise where Speridian employees may lack the requisite training or experience. Speridian contracted with Amsol, a company incorporated in Wyoming, creating a Master Contractor Agreement (MCA) for this purpose. A Pennsylvania corporation then retained Speridian to provide it with services related to its customer relations management. Pursuant to the MCA, Amsol designated its employee, Kolipaka, to provide consultation services to Speridian’s Pennsylvania based client. Despite never being directly employed by Speridian, Kolipaka was assigned an email address on the Speridian server that he used during the project to communicate with Speridian employees for “Speridian work-related issues and concerning his performance of Speridian’s work.” Kolipaka performed all work on the project in the state of Pennsylvania. He was a resident of Pennsylvania and never visited New Mexico.

{4} In its civil complaint, Speridian alleged that after beginning work on the project, “Kolipaka sent a rude, unprofessional[,] and unproductive email to Speridian’s client[.]” In response to the incident, Kolipaka and the on-site Speridian project manager agreed that any future emails that Kolipaka wished to send would first need to be submitted to

and approved by the project manager. Speridian then claimed that after a series of “unauthorized, rude, demeaning, unprofessional, and unproductive emails” to the Pennsylvania based client, Kolipaka sent a subsequent email to Speridian and the client, making false accusations. As a result of Kolipaka’s conduct, Speridian alleged that the client was seeking to discontinue its contractual relations with Speridian, and Speridian was forced to hire a replacement for Kolipaka at its own expense. Lastly, Speridian asserted that Kolipaka’s “defamatory statements ...caused actual injury to [its] business and reputation.

DISCUSSION

{5} Whether the district court has jurisdiction over a non-resident party to a lawsuit is a question of law that we review de novo. See *Santa Fe Techs., Inc. v. Argus Networks, Inc.*, 2002-NMCA-030, ¶ 12, 131 N.M. 772, 42 P.3d 1221. When the district court issues a ruling, without an evidentiary hearing, based solely on the pleadings and affidavits, we review those documents “in the light most favorable to the party asserting jurisdiction.” *Id.* Thus, “the party asserting jurisdiction need only make a prima facie showing that personal jurisdiction exists.” *Id.* (internal quotation marks and citation omitted).

{6} In the past, in order to establish personal jurisdiction over a non-resident defendant through the long-arm statute, NMSA 1978, § 38-1-16 (1971), the party asserting jurisdiction was first required to show that the non-resident defendant committed one of the enumerated acts contained in the long-arm statute. See *Zavala v. El Paso Cnty. Hosp. Dist.*, 2007-NMCA-149, ¶ 10, 143 N.M. 36, 172 P.3d 173; *Telephonic, Inc. v. Rosenblum*, 1975-NMSC-067, ¶ 4, 88 N.M. 532, 543 P.2d 825. However, we no longer adhere to such a technical statutory determination. See *Zavala*, 2007-NMCA-149, ¶ 10. Instead, we now focus our inquiry on whether the collectively considered contacts alleged by the party asserting jurisdiction supply the requisite level of connections with New Mexico to satisfy due process. See *id.*

{7} “Due process requires that [a non-resident] defendant have minimum contacts with the forum state such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.” *Santa Fe Techs., Inc.*, 2002-NMCA-030, ¶ 16 (internal quotation marks and citation omitted). “A defendant will be found to have sufficient minimum contacts to satisfy due process where the defendant has a connection with the forum state and has acted in the state in such a manner that the defendant should reasonably anticipate being haled into court there.” *DeVenzeio v. Rucker, Clarkson & McCashin*, 1996-NMCA-064, ¶ 9, 121 N.M. 807, 918 P.2d 723 (internal quotation marks and citation omitted). “There must be some act by which the defendant purposefully avail[ed himself] of the privilege of conducting activities [in New Mexico,] thus invoking the benefits and protections of its laws[.]” *Santa Fe Techs., Inc.*, 2002-NMCA-030, ¶ 16 (internal quotation marks and citation omitted). In determining whether a defendant has engaged in “purposeful availment,” we examine whether the defendant purposefully initiated any activity within the state and whether the actions of the defendant were directed toward New Mexico. See *Zavala*, 2007-NMCA-149, ¶ 11 (internal quotation marks and citation omitted). Accordingly, “personal jurisdiction

cannot be based on random, isolated, or fortuitous contacts[.]” with the state. *Santa Fe Techs., Inc.*, 2002-NMCA-030, ¶ 17 (internal quotation marks and citation omitted).

{8} Speridian asserts the following points regarding Kolipaka’s activities in New Mexico: (1) although he was not employed by Speridian, Kolipaka worked as part of the Speridian team and was integrated into its business model; (2) he was assigned an email account on the Speridian server; (3) he used that email account to communicate daily with Speridian employees; and (4) he knowingly and intentionally engaged in conduct that would harm Speridian in New Mexico. Speridian contends that these activities established minimum contacts with New Mexico sufficient for personal jurisdiction because Kolipaka purposefully established contact with New Mexico and purposefully acted in a way that was intended to harm Speridian in New Mexico. Further, Speridian alleges that these contacts with New Mexico gave rise to the cause of action and were not isolated, random, or fortuitous.

{9} At the outset, assuming that Speridian is able to prove that Kolipaka engaged in tortious conduct that harmed Speridian in New Mexico, we agree that the tort was committed here in New Mexico. Our Supreme Court has previously recognized the “place-of-the-wrong” rule, stating that for the purposes of personal jurisdiction, a tort “can occur in New Mexico when the actual harmful act originates outside the state, but the injury itself occurs inside New Mexico.” *Id.* ¶ 15 (internal quotation marks and citation omitted). However, this is not the deciding factor in determining whether New Mexico may exercise personal jurisdiction over a non-resident defendant. See *M.R. v. SereniCare Funeral Home, L.L.C.*, 2013-NMCA-022, ¶ 12, 296 P.3d 492. The essential determination remains whether Kolipaka established minimum contacts with New Mexico such that due process is satisfied. See *id.* We conclude that Kolipaka lacked the minimum contacts necessary to establish personal jurisdiction in New Mexico in a manner that comports with due process under our caselaw.

{10} Speridian alleges that Kolipaka’s conduct in the context of his work for the Pennsylvania project was “purposefully directed toward residents of New Mexico[.]” thereby creating sufficient minimum contacts with the state to establish personal jurisdiction in New Mexico. Although, in the course of his work on Speridian’s Pennsylvania based project, Kolipaka communicated with Speridian personnel via Speridian’s email server, we have repeatedly recognized that the use of communications is typically insufficient to establish the “purposeful availment’ prong of a minimum-contacts analysis.” *DeVenzeio*, 1996-NMCA-064, ¶ 11; see *Sanchez v. Church of Scientology*, 1993-NMSC-034, ¶ 15, 115 N.M. 660, 857 P.2d 771. Further, New Mexico caselaw indicates that in cases involving the provision of personal services by a non-resident defendant, the “focus must be on the place where the services are rendered, since this is the place of the receiver’s need.” *SereniCare*, 2013-NMCA-022, ¶ 18 (alteration, internal quotation marks, and citation omitted).

{11} Here, Kolipaka’s performance of personal services were provided solely to a single client in Pennsylvania, and his contacts with New Mexico were wholly limited to the emails that he exchanged within the Speridian server “regarding Speridian work-

related issues and concerning his performance of Speridian's work." Speridian provides no indication that Kolipaka ever solicited work from Speridian or otherwise reached into the state in any other way. Under these circumstances, Kolipaka's actions that were directed toward New Mexico were strictly administrative communications, non-forum directed, and merely ancillary to his primary function in working on the Pennsylvania project. See *DeVenzeio*, 1996-NMCA-064, ¶ 13. Thus, Kolipaka's actions do not rise to the level of minimum contacts such that he purposefully availed himself of the benefits and protections of New Mexico law. See *id.* ¶ 16 (determining that where the non-resident defendant's only contacts with New Mexico were communications related to the performance of services outside of New Mexico, the defendant did not purposefully avail himself of opportunities in New Mexico); *SereniCare*, 2013-NMCA-022, ¶ 18 (holding that the rendering of personal services, where the defendant did not reach into the forum state to attract business, did not amount to purposeful availment sufficient to satisfy due process).

{12} Even instances where New Mexico courts have found personal jurisdiction over a non-resident defendant are factually distinguishable. Where New Mexico courts have previously found that an exercise of jurisdiction over a non-resident defendant was appropriate, the non-resident defendant reached out into New Mexico in order to derive some benefit from the state. For example, in *Santa Fe Techs.*, the non-resident defendant corporation and its president reached out and initiated contact with the plaintiff, a New Mexico based corporation. 2002-NMCA-030, ¶ 23. This contact ultimately resulted in the intermingling of funds between the two companies, payment to a defendant from the plaintiff's payroll, loan extensions, and plans for a future merger. *Id.* ¶ 24. The court noted that this conduct indicated "an intent [by the defendants] to do business themselves in New Mexico and with a New Mexico company." *Id.* Consequently, these contacts indicated purposeful availment on the part of the defendants sufficient to establish minimum contacts. *Id.* ¶ 29. Thus, in order to find that the non-resident defendant established minimum contacts, New Mexico courts look for activities where the defendant purposefully engaged in contact with the state in order to derive a benefit from those contacts. See *Kathrein v. Parkview Meadows, Inc.* 1984-NMSC-117, ¶¶ 2, 8, 102 N.M. 75, 691 P.2d 462 (holding that the non-resident defendant could have foreseen being subjected to New Mexico jurisdiction where the defendant initiated contact in the state through the advertisement of its business in the yellow pages, in contacting an organization in the state to solicit business, and in inviting a New Mexico resident to an event at its out-of-state facility); *Winward v. Holly Creek Mills, Inc.*, 1972-NMSC-009, ¶ 5, 83 N.M 469, 493 P.2d 954 (holding that the non-resident defendant established minimum contacts with New Mexico when it used the plaintiff to solicit business, advertise, and deliver orders in the state and when it paid the plaintiff's wages and commissions in New Mexico). The level of contacts established by our prior exercise of personal jurisdiction over non-resident defendants is simply not present in the circumstances of this case. Here, Kolipaka did not have minimum contacts sufficient to justify the exercise of jurisdiction in New Mexico.

{13} To the extent that Speridian asserts that New Mexico has personal jurisdiction because Kolipaka established minimum contacts in purposefully directing an intended

harm toward New Mexico residents, our law in New Mexico does not provide for such a jurisdictional basis. Although “[i]t may have been foreseeable to [Kolipaka] that tortious acts committed” in relation to his work on the Pennsylvania project would have economic consequences to Speridian in New Mexico, this is not sufficient to justify the exercise of personal jurisdiction where Kolipaka did not purposefully avail himself of the benefits and protections of New Mexico laws. *DeVenzeio*, 1996-NMCA-064, ¶ 18. See *Santa Fe Techs., Inc.*, 2002-NMCA-030, ¶ 19 (“An intentional tort without minimum contacts does not comport with due process.”) Speridian’s injury occurred when Kolipaka dispatched emails in Pennsylvania to Speridian’s Pennsylvania based client. Thus, any inappropriate or tortious conduct by Kolipaka that resulted in harm to Speridian occurred solely in Pennsylvania. As Speridian concedes, as a result of Kolipaka’s actions, Speridian’s relationship was damaged with its Pennsylvania client, and it suffered economic loss resulting solely from the Pennsylvania project. Despite the nature of the intentional tort alleged, Speridian’s damages are insufficient to establish minimum contacts with New Mexico. See *DeVenzeio*, 1996-NMCA-064, ¶¶ 20-21 (concluding that it would offend traditional notions of fair play and substantial justice to allow New Mexico to exercise personal jurisdiction over a non-resident defendant that provided exclusively out-of-state legal services to New Mexico Plaintiffs and whose only contacts with New Mexico were attorney-client communications with Plaintiffs). Accordingly, the State of New Mexico has no interest in this litigation except to see that its own residents are afforded justice, and we have no reason to believe that Speridian would be unable to seek remediation of its damages in a Pennsylvania court.

{14} Thus, we conclude that Kolipaka did not establish minimum contacts with New Mexico sufficient to satisfy due process such that he purposefully availed himself of the benefits and protections of New Mexico law and could reasonably foresee being haled into a New Mexico court. However, in the event that we affirmed the district court in this regard, Speridian asks us, in the alternative, to adopt the analysis set forth in *Calder v. Jones*, 465 U.S. 783 (1984). We decline to do so. *Calder* is distinct from the present case in two respects. First, purposeful availment was widely apparent in the *Calder* case. See *SereniCare*, 2013-NMCA-022, ¶ 16. In *Calder*, the defendant newspaper company purposefully availed itself of selling approximately 600,000 copies of its newspaper per week in the forum state, a due process element that we have concluded is lacking in this case. 465 U.S. at 785. Second, the *Calder* court employs a basis for jurisdiction distinct from that recognized in New Mexico: jurisdiction premised upon intentional conduct calculated to injure a member of the forum state. This Court has already declined to accept the *Calder* analysis where minimum contacts were lacking, despite the purposeful nature of the intentional tort. See *Santa Fe Techs., Inc.*, 2002-NMCA-030, ¶ 19 (recognizing that personal jurisdiction premised solely upon the commission of a tort does not comport with due process). Because we likewise determine that the requisite minimum contacts to satisfy due process were lacking herein, we decline to apply the *Calder* analysis in this case as well.

CONCLUSION

{15} For the above stated reasons, we affirm the ruling of the district court.

{16} IT IS SO ORDERED.

J. MILES HANISEE, Judge

WE CONCUR:

RODERICK T. KENNEDY, Chief Judge

TIMOTHY L. GARCIA, Judge