

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

| | | |
|-------------------------------|---|----------------------|
| WILLIAM C. BLOOMQUIST, |) | |
| |) | |
| Plaintiff |) | |
| |) | |
| v. |) | Civil No. 03-276-P-S |
| |) | |
| JUSTICE PAMELA ALBEE, et al., |) | |
| |) | |
| Defendants |) | |

AMENDED¹
RECOMMENDED DECISION ON MOTION TO DISMISS
FOR LACK OF PERSONAL JURISDICTION

In this action William Bloomquist is suing a wide array of defendants in Maine and New Hampshire over their alleged involvement in the issuance of a New Hampshire protection from stalking order filed and prosecuted by a private party, Susan Benfield,² which impacted Bloomquist's firearm rights. In this recommended decision I address a motion to dismiss for lack of personal jurisdiction filed by defendants Justice Pamela Albee, Justice James Patten, and Chief Clerk Jean Huntoon, all of whom are employees of the New Hampshire judiciary and are hereinafter referred to as the New Hampshire Judicial Defendants. (Docket No. 35.) Bloomquist has filed a memorandum in opposition (Docket No. 51) to which the defendants have replied (Docket No. 55). I recommend that the Court **GRANT** the motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(2) for the following reasons.

¹ This amendment merely corrects the caption, nothing in the body of the recommendation has been altered.

² Defendant Scott Floccher, who had an association with Benfield, also filed a petition for a temporary restraining order against Bloomquist contemporaneous with Benfield's. I refer for the most part only to Benfield's proceedings against Bloomquist as, as far as I can tell, she was the only one of the two to pursue a permanent order and a motion for contempt which are also at issue in this case, nothing turns on Floccher's petition in particular, and sidetracking the immaterial twists and turns makes the pertinent events a little simpler to follow.

Discussion

There is no possibility based on Bloomquist's complaint and his response to this motion to dismiss that this court has general, as opposed to specific, personal jurisdiction over these defendants. See Foster-Miller, Inc. v. Babcock & Wilcox Canada, 46 F.3d 138, 144 (1st Cir. 1995); see generally Donatelli v. Nat'l Hockey League, 893 F.2d 459, 462-63 (1st Cir.1990) (outlining and distinguishing the contours of general and specific personal jurisdiction).³

Accordingly, the court must determine if it has specific personal jurisdiction over these defendants. In Foster-Miller, Inc., the Court explained:

The existence of specific personal jurisdiction depends upon the plaintiff's ability to satisfy two cornerstone conditions: "first, that the forum in which the federal district court sits has a long-arm statute that purports to grant jurisdiction over the defendant; and second, that the exercise of jurisdiction pursuant to that statute comports with the strictures of the Constitution." Pritzker v. Yari, 42 F.3d 53, 60 (1st Cir.1994); see also Ticketmaster-New York, Inc. v. Alioto, 26 F.3d 201, 204 (1st Cir.1994); Hahn v. Vermont Law Sch., 698 F.2d 48, 51 (1st Cir.1983).

Although we deem the first of the cornerstone conditions to be self-explanatory, the second condition requires amplification. This condition implicates three distinct components, namely, relatedness, purposeful availment (sometimes called "minimum contacts"), and reasonableness:

First, the claim underlying the litigation must directly arise out of, or relate to, the defendant's forum-state activities. Second, the defendant's in-state contacts must represent a purposeful availment of the privilege of conducting activities in the forum state, thereby invoking the benefits and protections of that state's laws and making the defendant's involuntary presence before the state's courts foreseeable. Third, the exercise of jurisdiction must, in light of the Gestalt factors, be reasonable.

46 F.3d at 144 (quoting United Elec. Workers v. 163 Pleasant St. Corp., 960 F.2d 1080, 1089 (1st Cir.1992)).

³ For instance, in the motion to dismiss the defendants represent that not one of these defendants is a resident of Maine, a representation that Bloomquist does not dispute.

Maine's Long Arm statute "is coextensive with the due process clause of the United States Constitution," Murphy v. Kennan, 667 A.2d 591, 593 (Me. 1995), and so this "court need only consider whether due process requirements have been satisfied." Suttie v. Sloan Sales, Inc., 1998 ME 121, ¶ 4, 711 A.2d 1285, 1286 (citing Mahon v. East Moline Metal Prods., 579 A.2d 255, 256 (Me.1990)).

As postured, this case requires me to assess whether Bloomquist has made a prima facie showing of personal jurisdiction in response to the Albee/Patten/Huntoon motion to dismiss. "To defeat a motion to dismiss when the court uses [the prima facie] method," Bloomquist,

must make the showing as to every fact required to satisfy "both the forum's long-arm statute and the due process clause of the Constitution." U.S.S. Yachts, Inc. v. Ocean Yachts, Inc., 894 F.2d 9, 11 (1st Cir.1990); accord Dakota Industries, Inc. v. Dakota Sportswear, Inc., 946 F.2d 1384, 1389 (8th Cir.1991); American Express International, Inc. v. Mendez-Capellan, 889 F.2d 1175, 1178 (1st Cir.1989); CutCo Indus., Inc. v. Naughton, 806 F.2d 361, 364-65 (2d Cir.1986). This standard for deciding a motion to dismiss is commonly referred to as the "prima facie" standard or a standard requiring a "prima facie" showing. ...

The prima facie showing of personal jurisdiction must be based on evidence of specific facts set forth in the record. Kowalski v. Doherty, Wallace, Pillsbury & Murphy, 787 F.2d 7, 9 (1st Cir.1986). The "plaintiff must go beyond the pleadings and make affirmative proof." Chlebda v. H.E. Fortna & Bro. Inc., 609 F.2d 1022, 1024 (1st Cir.1979); see also Serras v. First Tennessee Bank Nat'l Ass'n, 875 F.2d 1212, 1214 (6th Cir.1989) (noting that plaintiffs may not rest on their pleadings to make the prima facie showing).

Boit v. Gar-Tec Prods., Inc., 967 F.2d 671, 675 (1st Cir. 1992) (footnote omitted).

The thrust of the defendants' motion is simple. All the acts of these defendants alleged by Bloomquist occurred in the course of protection from stalking proceedings, and subsequent related proceedings, that took place in the Northern Carroll County

District Court in New Hampshire; not one of their alleged actions took place in Maine. Bloomquist's arguments in response, in contrast, are scattershot and I take them in turn.

First, Bloomquist argues that these defendants should be estopped from arguing that the District of Maine does not have personal jurisdiction over them because when Bloomquist filed a motion to dismiss based on a lack of personal jurisdiction over him in the New Hampshire stalking proceedings Justice Patten ruled that the New Hampshire Court did have jurisdiction over Bloomquist for purposes of taking action on the petition filed by a New Hampshire residence. This estoppel argument is entirely illogical, utterly without merit, and not worthy of further discussion.⁴

In his second and third arguments Bloomquist argues that this court has jurisdiction pursuant to 18 U.S.C. § 922, § 923, § 924, § 925A, and § 2265. At most⁵ these provisions might give a court federal subject matter jurisdiction but this does nothing to forward Bloomquist's argument that this court has specific personal jurisdiction over these defendants.

Next Bloomquist argues, in his fourth, fifth, and sixth sections, that with respect to the orders issued in the New Hampshire proceeding it was foreseeable, indeed intended, by these defendants that the orders would have an impact outside of New Hampshire. Bloomquist asserts that the fact that these defendants knew, or should have known, that the orders issuing from the New Hampshire proceedings might be enforced

⁴ Bloomquist also goes on to attack the propriety of Justice Patten's personal jurisdiction determination but he cannot use this action as a vehicle to challenge the validity of that New Hampshire order. See, e.g., Reppert v. Marvin Lumber & Cedar Co., Inc., 359 F.3d 53, 57 & n.3 (1st Cir. 2004) (observing that a state court's conclusion that the notice procedures used vis-à-vis certified class members in a state proceeding met the requirements of the applicable state rule of civil procedure and comported with due process requirements would be entitled to full faith and credit and not subject to collateral attack in the federal court, citing 28 U.S.C. § 1257, D.C. Court of Appeals v Feldman, 60 U.S. 462 (1983) and Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923)).

⁵ I am not in anyway intimating that these firearm-related provisions in the criminal statutory title would in fact provide a basis for a private cause of action in federal court.

out-of-state means they "purposefully availed themselves of federal and Maine jurisdiction." Bloomquist points out that it is not necessary for a defendant to have a physical location in Maine to justify personal jurisdiction in this court.

Vis-à-vis Justice Albee, he states that Albee directed Clerk Huntoon to send the temporary stalking order to the Maine State Police for service on Bloomquist, ordered Bloomquist to appear in the Northern Carroll County Court, and ordered Bloomquist to surrender his firearms, ammunition, and deadly weapons to a Carroll County Sheriff Scott Carr. Bloomquist states that Albee had clear notice that she was asserting her court's limited jurisdiction over a non-New Hampshire resident because Bloomquist's Maine address was on the face of the stalking petition.

With respect to Justice Patten's proceedings, Bloomquist sets forth a similar array of contentions regarding Patten's issuance of a final stalking order on February 15, 2002, claiming that "he should not be surprised to be dragged into Court in another jurisdiction to answer for his intentional violations of Due Process." (Pl.'s Opp'n Mot. Dismiss at 8.) Patten, Bloomquist alleges, also ordered Bloomquist not to possess firearms in Maine and to turn over his federally licensed firearms business to Bloomquist's partners. Bloomquist claims that Huntoon then contacted the National Crime Information Computer System stating that Bloomquist was subject to a domestic violence stalking order, even though, in Bloomquist's opinion, the stranger stalking order did not meet that definition.

Bloomquist also points to Patten's actions with respect to a contempt motion brought on the final stalking order. When Benfield filed a motion for contempt of the stalking order (based on an incident that Bloomquist contends was orchestrated by

Benfield) Patten noticed a hearing, had notice sent to Bloomquist in Maine, and convened a hearing on September 26, 2002. Bloomquist did not attend this hearing after speaking with a person in the clerk's office on Monday, September 20, seeking clarification of the nature of the proceedings.⁶ After the hearing Patten entered an order accepting Benfield's allegations of contempt but -- without Bloomquist being present and having the benefit of counsel -- stopped short of entering a finding of contempt in view of the potential of incarceration. (Bloomquist Ex. 12 at 1-2, Attach. 13.) The court deferred a finding on Bloomquist's motion and entered an order for arrest to secure Bloomquist's appearance to answer the motion. Clerk Huntoon faxed this bench warrant to the Bridgeton, Maine courthouse in a failed attempt to have Bloomquist served.⁷

On February 11, 2003, Benfield filed a motion to extend the final protection order. On March 7, 2003, Patten convened a hearing on Benfield's February 11, 2003, motion to extend the final protection order. This hearing was held ex parte "solely due to [Bloomquist's] refusal to leave Maine and again subject himself to New Hampshire jurisdiction for Defendant Patten threatened prosecution for criminal and for contempt." (Pl.'s Opp'n Mot. Dismiss at 13.)⁸ Patten's resulting order extended the final protection

⁶ Bloomquist provides a self-prepared transcript of this conversation which is not cognizable as competent evidence. It also, in my view, does not support Bloomquist's contention that he was in some way misled by this information into believing his presence was not necessary.

⁷ Bloomquist also states that when Bloomquist later requested of Huntoon a transcript of the September 26, 2002, hearing Huntoon made no response. I fail to see how this allegation pertains in anyway to the jurisdictional question.

He also alleges that Benfield had a notice of registration of foreign protection order filed in the Bridgton District Court which made the order enforceable in Maine. This action on Benfield's part is not relevant to the inquiry concerning these defendants' contacts with Maine.

⁸ Bloomquist asserts that Huntoon intentionally failed to mail a copy of this motion to Bloomquist until March 7, 2003, and in support of this assertion Bloomquist cites to the attached motion, signed February 11, 2003, by Benfield. (Pl.'s Opp'n Mot. Dismiss at 12; Bloomquist Ex. 14, attach. 15.) In his motion in opposition to the motion to dismiss Bloomquist makes it sound as though he made a conscience choice not to attend the proceeding. On this record I cannot see how this sways the court's determination vis-à-vis this personal jurisdiction controversy. Once again, this is certainly not the venue for challenging the legitimacy of the order entered on Benfield's February 11, 2003, motion. See footnote 3.

order for a further year.⁹ On September 24, 2003, Bloomquist received a letter notifying him that the Bureau of Alcohol, Tobacco, and Firearms (ATF) was moving to revoke his federal firearms license, an action that Bloomquist contends was principally based on Patten's stalking order.¹⁰

Bloomquist's argument that these allegations and his supporting documentation substantiate a purposeful availment on the part of the New Hampshire Judicial Defendants of the benefits and protections of Maine law is logically flawed and not supported by the governing law. Most fundamentally there is an utter lack of any conceivable benefit or protection from Maine's laws running to any of the New Hampshire Judicial Defendants who were simply fulfilling their official duties in New Hampshire with respect to Benfield's request for the protective order.¹¹ Bloomquist has presented no evidence in support of his allegations that these defendants somehow, whether unilaterally or as part of a conspiracy, willfully interfered with his rights under Maine law. And, despite Bloomquist's ardent contention to the contrary, the fact that they could foresee that a New Hampshire order would have some effect in Maine is not

⁹ Bloomquist describes this order as threatening criminal and contempt prosecution. The cited order however states with respect to future consequences:

The Defendant shall be given notice of Plaintiff's request and this Order. If the Defendant objects to the extension, he/she shall file a timely written request with the Court and a hearing shall be conducted within 30 days of this Order. At such hearing, ...the Court may ... reaffirm, modify or vacate this extension order. If a hearing is scheduled, both parties shall appear.

(Bloomquist Ex. 16, Attach 17.)

¹⁰ Bloomquist alleges that he was forced to "successfully appeal" this revocation and the Boston Bureau of the ATF was "unwilling to put the New Hampshire Protection from Stalking Final Order to any legal test due to the numerous facial fatal defects." (Pl.'s Opp'n Mot. Dismiss at 14.) He states that his Federal Firearms license was renewed on April 20, 2004. (Id.) However, in support of this assertion Bloomquist cites to record support that evidences only that he received his notice of denial and that he requested a hearing. (Bloomquist Ex. 19, Attach. 20.) There is no record evidence as to what stance or action the Bureau took on his appeal.

¹¹ Bloomquist also alleges that he served Benfield via Huntoon with a motion to stay the foreign protection order and that he filed this motion in the Bridgton District Court. Bloomquist's using Huntoon as a vehicle of service for a motion filed in a Maine proceeding can hardly be construed as an action by Huntoon availing herself of the benefits and protections of Maine laws.

sufficient to establish personal jurisdiction. See Burger King Corp. v. Rudzewicz, 471 U.S. 462, 474 (1985) ("Although it has been argued that foreseeability of causing injury in another State should be sufficient to establish such contacts there when policy considerations so require, the Court has consistently held that this kind of foreseeability is not a "sufficient benchmark" for exercising personal jurisdiction.")(citing World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 295 (1980)). Once more, as stated in Foster-Miller, Inc., "the in-state contacts must represent a purposeful availment of the privilege of conducting activities in the forum state, thereby invoking the benefits and protections of that state's laws and making the defendant's involuntary presence before the state's courts foreseeable." 46 F.3d at 144 (quoting United Elec. Workers, 960 F.2d at 1089) (emphasis added). That this court could assert personal jurisdiction over these defendants based on their issuance of these orders is also squarely countered by the case law cited by the defendants. See Pyle v. Hatley, 239 F.Supp.2d 970, 981 (C. D. Cal. 2002); Schroll v. Plunkett, 760 F.Supp.1385, 1388-89 (D.Or. 1991); Fuller v. Harding, 699 F.Supp. 64, 69 (E.D.Pa.1988). I am confident that in responding to this motion to dismiss Bloomquist has not met his burden of making a prima facie showing that personal jurisdiction exists. See Boit, 967 F.2d at 675.

Conclusion

For the reasons given above I recommend that the Court **GRANT** the New Hampshire Judicial Defendants' motion to dismiss (Docket No. 35) on the ground that the Court does not have personal jurisdiction over these defendants.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions

entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

/s/ Margaret J. Kravchuk
U.S. Magistrate Judge

August 26, 2004

BLOOMQUIST v. ALBEE et al

Assigned to: JUDGE GEORGE Z. SINGAL

Referred to: MAG. JUDGE MARGARET J.
KRAVCHUK

Demand: \$

Lead Docket: None

Related Cases: None

Case in other court: None

Cause: 42:1983 Civil Rights Act

Date Filed: 12/01/03

Jury Demand: None

Nature of Suit: 440 Civil Rights:
Other

Jurisdiction: Federal Question

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