

No. 24-573

TENTH JUDICIAL DISTRICT

NORTH CAROLINA COURT OF APPEALS

\*\*\*\*\*

KENNETH BRYANT,  
BRYANT ENTERPRISES,  
LLC

Plaintiffs - Appellants,

v.

BRYAN DONALD FIELDS,

Defendant

and

CARSTEN JASON GALLINI,

Defendant – Appellee.

From Wake County

22-CVS-14854

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**DEFENDANT – APPELLEE’S BRIEF**

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## INTRODUCTION

This appeal arises from an order of the Wake County Superior Court which granted Defendant-Appellee Carsten Jason Gallini's (hereinafter "Gallini") motion to dismiss and accompanying affidavit for lack of personal jurisdiction under Rule 12(b)(2) of the North Carolina Rules of Civil Procedure.

Although I am *pro se* in this appeal matter, I advance this brief written in third person tense for ease of understanding and consistency.

The parties to the litigation matter are all radio enthusiasts, involved in the two-way radio communication industry and community.

Gallini is a citizen and resident of the State of Texas and at the time of the event complained about by Plaintiffs, he was 18 years old. The only contacts he had with the North Carolina was driving through the state on the way to Washington D.C. with his family for vacation and through a purchase transaction with Plaintiff-Appellant Bryant Enterprises, LLC (hereinafter "BE, LLC") in or about July 2020 when Gallini, a minor at the time, purchased a product that BE, LLC was marketing to foreign jurisdictions online. Gallini subsequently returned the item to BE, LLC via mail service to North Carolina in or about May

2021. The purchase event was one-time only and unrelated to the current case matter, except for minimum contacts analysis.

In or about June 2022, Gallini made certain postings on Facebook.com, which included a link to a publicly available website that contained information and statements about Plaintiffs that Gallini had come across while searching for BE, LLC's contact information (to see if BE, LLC was selling a particular item). The online postings on the restricted Facebook group were intended for the general audience, which consisted of members from various states and countries. No statement was directed to a resident of or audience in North Carolina. Although Plaintiffs attempt to convolute the matter, the only matter at hand is jurisdiction.

The trial court rightfully found insufficient contacts with the State of North Carolina to meet even the minimum threshold for *in personam* jurisdiction over Gallini.

### **STATEMENT OF PROCEDURAL HISTORY**

Plaintiff-Appellant Kenneth Bryant (hereinafter "Bryant") filed suit against Defendant Bryan Donald Fields (hereinafter "Fields") and Defendant-Appellee Gallini. Bryant had alleged in the original filed complaint libel *per se*; libel *per quod* (in the alternative); wrongful

interference with contract; tortious interference with prospective economic advantage; intentional infliction of emotional distress; unreasonable intrusion upon the seclusion of another; appropriation of another's name and likeness; and unfair and deceptive trade practice violations. (R pp 15 – 39) Defendant-Appellee Gallini, through Notice of Special and Limited Appearance, responded by challenging the court's jurisdiction over him, asserting that he lacks the requisite minimum contacts with the State of North Carolina. (R pp 102 – 110) Plaintiff-Appellant BE, LLC was added as a plaintiff in the case by Amended Verified Complaint filed by right on 26 April 2023. (R p 128) Plaintiffs then filed a Motion for Leave to File Supplemental Pleading on 21 June 2023. (R p 184) Gallini filed a renewed Motion to Dismiss and affidavit in support thereof on 8 August 2023. (R p 202 – 214) Defendant Gallini's Motion to Dismiss and Plaintiffs' Motion for Leave to File Supplemental Pleading were set for hearing on 29 August 2023, but Defendant Fields' motion to dismiss was not; however, all three motions were heard that same day. (R p 283, Transcript) The determinative outcomes were orally stated on the record by Hon. Winston Rozier, Jr., Superior Court Judge, at the hearing. (R p 283, Transcript) On 22 January 2024, the court entered an Order allowing Plaintiffs' Motion for Leave to File



Supplemental Pleading against Defendant Fields and denying Defendant Fields' Motion to Dismiss. (R p 256). On 27 February 2024, Judge Rozier entered an order granting Defendant-Appellee Gallini's Motion to Dismiss pursuant to Rule 12(b)(2), finding insufficient contacts to subject Defendant-Appellee to personal jurisdiction in North Carolina. (R p 266 – 267)

Defendant Fields filed a Notice of Appeal for the denial of his motion to dismiss on 21 February 2024<sup>1</sup>. Plaintiffs Bryant and BE, LLC filed a Notice of Appeal on the granting of Defendant Gallini's Motion to Dismiss on 27 March 2024 without a properly signed certificate of service.<sup>2</sup> (R p 272 – 273)

Defendant-Appellee Gallini filed a Motion for Extension of Time to File Brief on 15 November 2024 and was allowed an extension to 2 December 2024.

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<sup>1</sup> Defendant Fields' appeal case is docketed at COA 24-610 and is mentioned for reference only since Plaintiffs-Appellants claim that this appeal case somehow runs concurrent with Defendant Fields' case.

<sup>2</sup> On 15 October 2024, Defendant-Appellee Gallini filed before this Court a Motion to Dismiss regarding Plaintiffs-Appellants' deficient Notice of Appeal and the Motion was referred to the panel assigned to hear the appeal on 4 November 2024. At the time of filing of this brief, the Motion was still pending.

## STATEMENT OF FACTS

Defendant resides in Round Rock, Williamson County, State of Texas, and has resided in Texas his entire life. Gallini is a citizen of Texas of which Plaintiffs agree. (R pp 202, ¶ 1 – 2; R p 130, ¶ 12). Gallini has never resided in North Carolina, never traveled to North Carolina for business, leisure or any other purpose other than merely driving through North Carolina on interstate highway 85 on vacation with his family to Washington, D.C. in or about 2014. (R pp 202, ¶ 3 – 4) Gallini operated a sole proprietorship business (doing business as) at the time of the event in question on a less than part-time basis and was limited to con, Gallini did not conduct any business with any residents or entities in North Carolina. (R pp 202 – 204) Gallini has not advertised, marketed or solicited business within the State of North Carolina or specifically directed towards North Carolina residents. (R pp 202 – 204) Gallini's only form of marketing consisted predominately of postings of services and goods on Ebay and his own website for general access via the world-wide web internet for individuals or businesses to locate. (R pp 202; ¶ 6) Gallini's business website is passive in that it provided information and prospective customers would then have to contact Mr. Gallini to initiate services. (R pp 202, ¶ 6) Defendant Gallini would occasionally receive

customer referrals through word-of-mouth from past customers and contacts, but does not recall any customers in North Carolina. (R pp 202, ¶ 6)

Defendant Gallini was employed full-time for an airline contract service for providing ramp operations logistics and support at Austin Bergstrom International Airport in Austin, Travis County, Texas. (R pp 202, ¶ 7) Gallini did not travel for work purposes and although Gallini has traveled via air, Gallini had never visited any airport in North Carolina, except to attend the hearing on his Motion to Dismiss this case under Rule 12(b)(2). (R pp 202 – 203, ¶ 7 – 8)

Gallini had contact with Plaintiff-Appellant, Bryant Enterprises, LLC, in or about July of 2020 where Gallini purchased a certain product online from BE, LLC which BE, LLC marketed to foreign jurisdictions, including Texas. (R pp 203, ¶ 9) The product was delivered to Mr. Gallini's Texas residence and at no time did Gallini travel to North Carolina to engage in the transaction. (R pp 203, ¶ 9) The product later had an issue and Mr. Gallini returned it via postal service to BE, LLC in or about May 2021. (R pp 203, ¶ 9) To Defendant Gallini's recollection, the experience with BE, LLC was pleasant and is completely unrelated to the event(s) raised in Plaintiffs' Complaint. (R pp 203, ¶ 9)

The primary event in question on 11 June 2022 relates to an online social media post on Facebook.com by Gallini made for a world-wide general audience and was not directed to anyone in particular; Gallini specifically made the information on the post since he “Figured might as well share it so folks can stay informed.” (R p 52, ¶ 1; R p 54, ¶ 3)<sup>3</sup> (R p 203, ¶11) The content of the post was regarding disturbing information on a specific website about Plaintiffs that Gallini had discovered on the internet. (R p 50 – 57)<sup>4</sup> The information Gallini read on the website about Plaintiff Bryant and BE, LLC included information about possible devious business practices regarding collecting payments in possible violation of PayPal and bank policies. (R p 71). The website also included that in or about October 1984, Plaintiff Kenneth Bryant was indicted and booked by the United States Marshal Service in the Southern District of Florida for “knowingly and willingly falsely” assuming and pretending to be a special agent for the Department of Justice working with the FBI in Miami, Florida. (R p 74 – 85) Bryant was placed on parole and ordered to

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<sup>3</sup> Exhibits to Plaintiffs’ Amended Complaint were omitted from the Record on Appeal and for this reason Defendant Gallini is referencing to the Exhibits to Plaintiff Kenneth Bryant’s Original Complaint. (R p 172)

<sup>4</sup> Defendant Fields created a wiki website that contains a more legible version to the exhibits to the initial complaint filed by Plaintiff found in the Record, which is accessible here: [https://wiki.w9cr.net/index.php/Ken\\_Bryant](https://wiki.w9cr.net/index.php/Ken_Bryant)

get counseling and to not possess a gun as a result of his guilty plea entered on 21 February 1985 to “falsely impersonating a special agent of the federal government and acting as such, in violation of Title 18, U.S. Code, § 912, as charged in Count I of the Indictment.” (R p 82) Mr. Bryant was later able, according to the website and posted federal order, to obtain vacation of the conviction on 4 September 1987 after serving some probation. (R p 83)

Mr. Gallini used his personal computer which was located at his residence in Round Rock, Williamson County, Texas, in order to write and post the statements which were intended for general distribution via the internet and not targeted or directed to a North Carolina audience or anyone in particular. (R p 203, ¶ 12, 13) Gallini has never been friends, associates, partners, or anything else other than accidental online acquaintances with Defendant Fields. (R p 203, p 14)

The only action complained against Defendant Gallini specifically by Plaintiffs is social media posts although Plaintiffs make many general statements regarding “defendants” without specifically noting which defendant allegedly did what. (R p 128 – 144) The

At all times during the pendency of the underlying case and this appeal, Mr. Gallini has maintained proper decorum and respect for the

parties and court, has not engaged in any activity of harassment or intimidation as complained by Plaintiffs. (R pp 203, ¶ 15)

## ARGUMENT

### Standard of Review

“When this Court reviews a decision as to personal jurisdiction, it considers only whether the findings of fact by the trial court are supported by competent evidence in the record; if so, this Court must affirm the order of the trial court.” *Banc of America Securities LLC v. Evergreen Intern. Aviation, Inc.*, 169 N.C. App. 690, 694, 611 S.E.2d 179, 183 (2005). “Competent evidence is evidence that a reasonable mind might accept as adequate to support the finding.” *City of Asheville v. Aly*, 233 N.C. App. 620, 625, 757 S.E.2d 494, 499 (2014). Plaintiffs have the burden of proof to establish by prima facie evidence personal jurisdiction in this case. *See Brown v. Refuel America, Inc.*, 652 S.E.2d 389, N.C. App. (2007).

“A plaintiff bears the burden of establishing that some ground exists for the exercise of personal jurisdiction over a defendant.” *Jaeger v. Applied Analytical Indus. Deutschland GMBH*, 159 N.C. App. 167, 170, 582 S.E.2d 640, 643-44 (2003). “The trial court may conduct an evidentiary hearing

including testimony or depositions, but the plaintiff maintains the ultimate burden of proving personal jurisdiction by a preponderance of the evidence at the evidentiary hearing or at trial.” *Id.* at 170, 582 S.E.2d at 644. Moreover, “[w]hen the parties submit ‘dueling affidavits’ under the third category, the trial court may decide the matter from review of the affidavits, or the court may direct that the matter be heard wholly or partly on oral testimony or depositions.” *Bauer v. Douglas Aquatics, Inc.*, 207 N.C. App. 65, 68, 698 S.E.2d 757, 761 (2010) (quotation omitted). “In either case, the plaintiff bears the burden of proving, by a preponderance of the evidence, grounds for exercising personal jurisdiction over a defendant.” *Id.* (citation omitted).

*Miller v. Szilagyi*, 221 N.C. App. 79, 84-85, 726 S.E.2d 873, 878-879

(2012)

**I. THE TRIAL COURT CORRECTLY DISMISSED THE CASE FOR LACK OF PERSONAL JURISDICTION UNDER RULE 12(B)(2) BECAUSE DEFENDANT GALLINI DOES NOT HAVE SUFFICIENT MINIMUM CONTACTS WITH NORTH CAROLINA.**

When applying the requirements of N.C. Gen. Stat. § 1-75.4(3) (the long-arm statute) and the Fourteenth Amendment to the U.S.

Constitution (Due Process Clause) for personal jurisdiction, Defendant Gallini has not had sufficient minimum contact with the State of North Carolina. Gallini has had very little contact with North Carolina in his lifetime (merely driving through the state and an interstate commercial transaction which was directed to Texas from North Carolina) and the event for which Plaintiffs complain occurred solely over the internet and from the State of Texas without anyone in North Carolina as the specific intended recipient. It is Defendant Gallini's contention that extending personal jurisdiction in this matter would violate the due process clause of the 14<sup>th</sup> Amendment.

As for specific personal jurisdiction, the court must review what constitutes "minimum contacts" which depends on the quality and nature of the defendant's contacts on a case-by-case basis, but, regardless of the circumstances, there must be "some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State.'" *Dailey v. Popma*, 662 S.E.2d 12 (N.C. Ct. App. 2008), *Chadbourn, Inc. v. Katz*, 285 N.C. 700, 705, 208 S.E.2d 676, 679 (1974) (quoting *Hanson v. Denckla*, 357 U.S. 235, 253, 78 S.Ct. 1228, 1240, 2 L.Ed.2d 1283, 1298 (1958)).



The most relevant case that is directly on point here is the case of *Dailey v. Popma*, 662 S.E.2d 12 (N.C. Ct. App. 2008), which establishes a multi-step test for determining personal jurisdiction in cases involving internet activities. In the *Dailey* case, very direct and clear questions must be addressed by a court, which are:

a. Whether or not defendant, through his internet activities, manifested an intent to target and focus on North Carolina citizens?

b. Whether or not sufficient minimum contact was established if some of the other internet forum participants were North Carolinians?

c. Whether or not it constitutes sufficient contact if defendant's posting(s) on the internet affected plaintiff in North Carolina?

*See Dailey v. Popma*, 662 S.E.2d 12 (N.C. Ct. App. 2008)

In *Dailey*, the trial court dismissed the case for lack of personal jurisdiction and the Court of Appeals determined “No” to each of the above questions, thus upholding and affirming the trial court's proper decision. *See Id.* Further, the defendant in *Dailey*, who was a North Carolina resident prior to moving to Georgia in the less than one year prior to the event, admitted to posting on internet bulletin board

discussions about shooting camps conducted by the plaintiff; that at least one of the camps was in North Carolina; that those attending the camps were from across the southeastern United States; and that at least some of the participants in the bulletin boards were outside North Carolina. *Id at 14.*

Here, Gallini made no specific or purposeful contact with North Carolina that would warrant an exercise of personal jurisdiction over him. Although the website link of information, which Mr. Gallini took from a publicly available domain, and reposted on Facebook was concerning Plaintiffs, at no time was Gallini specifically directing or targeting the information at Plaintiffs. The audience was a general audience of Facebook users from all over the country, and perhaps further.

The *Dailey v. Popma* case itself is pivotal for understanding how North Carolina courts approach the issue of personal jurisdiction in the context of internet postings. The court emphasized the importance of the defendant's intent to target and focus on North Carolina readers as a key factor for establishing personal jurisdiction. This focus on the defendant's manifested intent aligns with the broader legal framework for determining personal jurisdiction in internet-related

cases, underscoring that merely posting information on the internet, accessible globally, does not automatically subject an individual to personal jurisdiction in every location where the information might be accessed.

The *Dailey* Court further found that even though the defendant was posting about a North Carolina resident and businessman and that his posting may have reached North Carolina residents, those facts were insufficient to establish that the defendant intended target those North Carolina participants. *Dailey*, 662 S.E.2d at 15-16. Plaintiffs have not provided any evidence that indicates that North Carolina residents were in-fact targeted or focused on and it is immaterial that Plaintiff Bryant is a member of the group where the social media post was shared since the post was made for general information by Defendant Gallini.

Furthermore, Plaintiffs-Appellants complain about events that allegedly occurred outside of the State of North Carolina, such as Hamfest in the State of Ohio, which Defendant Gallini vehemently denies and asserts has no relevancy to personal jurisdiction in North Carolina. Plaintiffs-Appellants attempt to convolute the facts of this matter by intertwining Defendant Fields with Defendant Gallini of

which there is no basis or support. Personal jurisdiction is just that, personal in nature to each defendant independently.

Thus, personal jurisdiction is not vested in North Carolina over Defendant Gallini.

## II. EXERCISING PERSONAL JURISDICTION OVER DEFENDANT GALLINI WOULD NOT COMPORT WITH TRADITIONAL NOTIONS OF FAIR PLAY AND SUBSTANTIAL JUSTICE

Defendant Gallini had no expectation of being subject to the jurisdiction of North Carolina when, as a Texas resident, he made statements on social media that were released to the general public.

In *Parker v. Pfeffer*, 272 N.C. App. 18, 850 S.E.2d 615 (2020), this Court reviewed a trial court's dismissal of an action for want of personal jurisdiction. There, the parties were involved in a motor vehicle accident in Texas and the plaintiff was from North Carolina and the defendant was from Texas. The trial court made several findings about the defendants' contacts with North Carolina including six prior visits to the state, an intent to return for a wedding, some social media posts, twelve texts messages exchanged between the parties and one telephone call between them. *Id.*, 272 N.C. App. at 25, 850 S.E. 2d at 620. The Court affirmed the trial court's conclusion that the defendant's contacts with

North Carolina were insufficient to establish that the defendant would expect to be brought into court and subject to jurisdiction in North Carolina.

Defendant Gallini has had very minimal contact with the State of North Carolina at no time was in the State of North Carolina, targeting an audience in North Carolina, or engaging in a large number of contacts in North Carolina that would rise to specific personal jurisdiction over him by North Carolina.

### CONCLUSION

The trial court did not err in its findings of no personal jurisdiction. The order of the trial court should be upheld and Mr. Gallini dismissed from this action.

Respectfully Submitted, this 2nd day of December  
2024.

*/s/ Carsten Jason Gallini*

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**CERTIFICATE OF COMPLIANCE**

Pursuant to Rule 28(j) of the North Carolina Rules of Appellate Procedure, counsel for Defendant certifies that the foregoing brief, which is prepared using a 14-point proportionally spaced font with serifs, is fewer than 8,750 words (excluding covers, captions, indexes, tables of authorities, signature block, certificates of service, this certificate of compliance, and appendixes) as reported by the word-processing software.

*/s/ Carsten Jason Gallini*

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing Appellee's Brief was served upon all parties by depositing a copy with the United States Postal Service, first class postage prepaid, addressed on the 2<sup>nd</sup> day of December 2024 to:

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