

1993

Valerie Bryant v. Lon Morton, Michael Landau,
Morton Capital Management, The Morton
Comapny Inc. and California Capital Services Inc. :
Brief of Appellant

Utah Court of Appeals

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VALERIE BRYANT,
Plaintiff and Appellant,

LON MORTON, MICHAEL LANDAU,
MORTON CAPITAL MANAGEMENT,
THE MORTON COMPANY, INC., and
CALIFORNIA CAPITAL SERVICES,
INC.,

Case No. 930052-CA

Priority Category ~~16~~
15

APPEAL FROM A FINAL JUDGMENT
OF THE THIRD DISTRICT COURT,
JAMES S. SAWAYA, DISTRICT JUDGE

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ant **FILED**
Utah Court of Appeals

FEB 17 1993

Mary T Noonan
Clerk of the Court

IN THE UTAH COURT OF APPEALS

VALERIE BRYANT,	:	
	:	
Plaintiff and Appellant,	:	
	:	Case No. 930052-CA
v.	:	
	:	
LON MORTON, MICHAEL LANDAU,	:	Priority Category 16
MORTON CAPITAL MANAGEMENT,	:	
THE MORTON COMPANY, INC., and	:	
CALIFORNIA CAPITAL SERVICES,	:	
INC.,	:	
	:	
Defendants and Appellees.	:	

BRIEF OF APPELLANT

APPEAL FROM A FINAL JUDGMENT
OF THE THIRD DISTRICT COURT,
JAMES S. SAWAYA, DISTRICT JUDGE

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TABLE OF CONTENTS

	<u>Page</u>
STATEMENT OF JURISDICTION	1
STATEMENT OF ISSUE PRESENTED AND STANDARD OF REVIEW	1
DETERMINATIVE CONSTITUTIONAL AND STATUTORY PROVISIONS	1
STATEMENT OF THE CASE	1
STATEMENT OF FACTS	1
SUMMARY OF ARGUMENT	2
ARGUMENT	3
CONCLUSION	9
ADDENDUM	

TABLE OF AUTHORITIES

Page

CASES CITED

<u>Anderson v. American Soc. of Plastic Surgeons,</u> 807 P.2d 825 (Utah 1990)	1
<u>Berret v. Life Ins. Co. of the Southwest,</u> 623 F.Supp. 946 (D. Utah 1985)	6
<u>Brainerd v. Governors of University of Alberta,</u> 873 F.2d 1257 (9th Cir. 1989)	8
<u>Burt v. Board of Regents of University of Nebraska,</u> 757 F.2d 242 (10th Cir. 1985)	5
<u>Calder v. Jones,</u> 465 U.S. 783 (1984)	4
<u>Coblentz GMC/Freightliner v. General Motors Corp.,</u> 724 F.Supp. 1364 (M.D. Ala. 1989)	7
<u>Duke v. Young,</u> 496 So.2d 37 (Ala. 1986)	8
<u>Frontier Federal Savings & Loan v. Nat'l Hotel Corp.,</u> 675 F.Supp. 1293 (D. Utah 1987)	7
<u>Keeton v. Hustler Magazine,</u> 465 U.S. 770 (1984)	6
<u>Lake v Lake,</u> 817 F.2d 1416 (9th Cir. 1987)	8
<u>Simon v. United States,</u> 644 F.2d 490 (5th Cir. 1981)	8
<u>Synergistics v. Marathon Ranching Co., Ltd.,</u> 701 P.2d 1106 (Utah 1985)	3

STATUTES & RULES

Fourteenth Amendment to the United States Constitution ..	1
<u>Utah Code Ann.</u> § 78-2a-3(2)(k) (Supp. 1992)	1
<u>Utah Code Ann.</u> §§ 78-27-22 and 24 (Rep. Vol. 9 1992)	1, 3
<u>Utah Code Ann.</u> § 78-27-24(3) (Rep. Vol. 9 1992)	3

STATEMENT OF JURISDICTION

Jurisdiction over this appeal is conferred by Utah Code Ann. § 78-2a-3(2)(k) (Supp. 1992).

STATEMENT OF ISSUE PRESENTED AND STANDARD OF REVIEW

The sole issue presented for review in this appeal is whether the court below erred in holding that out-of-state defendants who had no contact with Utah except to cause intentional injury to a Utah resident are not subject to personal jurisdiction in this state. The trial court's ruling on this issue represents a conclusion of law subjected to de novo review on appeal. Anderson v. American Soc. of Plastic Surgeons, 807 P.2d 825 (Utah 1990).

DETERMINATIVE CONSTITUTIONAL AND STATUTORY PROVISIONS

This appeal is controlled by the provisions of Utah Code Ann. §§ 78-27-22 and 24 (Rep. Vol. 9 1992) and the due process clause of the Fourteenth Amendment to the United States Constitution, which provisions are set forth in their entirety in the addendum to this Brief.

STATEMENT OF THE CASE

This is an appeal from an order of the Third District Court dismissing plaintiff's complaint for lack of personal jurisdiction over the defendants.

STATEMENT OF FACTS

Plaintiff is a Utah resident who alleged that the defendants, all California residents, made false allegations to

California law enforcement authorities with the intent to cause injury to plaintiff at a time when defendants knew plaintiff was living in Utah. The complaint further alleged that as a result of defendants' false statements, plaintiff was wrongfully arrested in Utah and incurred economic and emotional damages, including injury to her reputation.

All of the defendants' conduct complained of by plaintiff occurred in California, and defendants are not subject in general jurisdiction in the Courts of Utah.

SUMMARY OF ARGUMENT

Utah's long-arm statute provides that an individual submits himself to jurisdiction in Utah's courts by causing an injury within this state. The Act further provides that it is to be interpreted and applied so as to permit exercise of jurisdiction over nonresidents to the fullest extent permitted by the United States Constitution. The United States Supreme Court has previously recognized that a defendant who intentionally causes injury in a foreign state has no legitimate constitutional objection to the exercise of jurisdiction over him by that foreign state even if all his wrongful conduct occurred outside of that state. Accordingly, defendants' objection to the exercise of jurisdiction in this action should have been rejected, and the court below erred in granting the motion to dismiss.

ARGUMENT

ONE WHO INTENTIONALLY CAUSES INJURY TO A
RESIDENT OF UTAH IS SUBJECT TO JURISDICTION
IN UTAH COURTS FOR REDRESS OF THAT INJURY.

In the present action, plaintiff's complaint alleged that the defendants made intentionally false accusations to California law enforcement authorities of criminal conduct on her part, knowing she was residing in Utah, for the purpose of subjecting her to arrest in Utah and prosecution in California. After the California criminal charges were dismissed, plaintiff brought this action for malicious prosecution and defamation. The court below dismissed for lack of personal jurisdiction.

Utah Code Ann. § 78-27-24(3) (Rep.Vol. 9 1992) provides that nonresidents submit themselves to the jurisdiction of Utah's courts by "the causing of any injury within this state . . .". The legislature has provided that Utah's long-arm statute "should be applied so as to assert jurisdiction over non-resident defendants to the fullest extent permitted by the due process clause of the Fourteenth Amendment to the United States Constitution." Utah Code Ann. § 78-27-22 (Rep. Vol. 9 1992). Our Supreme Court has emphasized that in accordance with the legislature's policy declaration, "the protection afforded by Utah courts must be extended to the fullest extent allowed by due process of law." Synergistics v. Marathon Ranching Co., Ltd., 701 P.2d 1106, (Utah 1985).

In this case, the defendants intentionally fabricated a false accusation of criminal conduct on the part of the plaintiff, intending that she be prosecuted in California. At the time they did so, they knew she was a Utah resident and that their false allegations would, of necessity, cause her damage here and involve Utah authorities in the process of having her arrested and returned to California to face the charges. This conduct is more than sufficient to establish the defendants' minimum contacts with Utah necessary to support personal jurisdiction.

The United States Supreme Court has held, unequivocally, that a non-resident of the forum state who intentionally acts to cause injury in the forum state to a resident of that state has acted in a manner which warrants the exercise of jurisdiction by the forum. In Calder v. Jones, 465 U.S. 783 (1984), the court held that defendants who resided in and acted in Florida, but whose conduct was intended to injure the plaintiff in California, were subject to jurisdiction in California. While defendants in this action suggested below that the Court relied on other matters in reaching its decision in Calder, the Court itself made its holding very clear.

We hold that jurisdiction over petitioners in California is proper because of their intentional conduct in Florida calculated to cause injury to respondent in California.

465 U.S. at 791.

The court rejected the notion that a defendant could avoid jurisdiction of the courts of the very state where he had intended to inflict a tortious injury.

An individual injured in California need not go to Florida to seek redress from persons who, though remaining in Florida, knowingly cause the injury in California.

465 U.S. at 790.

The Tenth Circuit Court of Appeals, in interpreting Colorado's long-arm provision, relied upon Calder in holding that a defendant who has no contacts with the forum state except the commission of an intentional tort which causes injury in that state, has no due process objection to the exercise of jurisdiction by the forum. In Burt v. Board of Regents of University of Nebraska, 757 F.2d 242 (10th Cir. 1985), the plaintiff alleged that he was libeled when the Chairman of the Department of Orthopedic Surgery at the University of Nebraska, a Dr. Connolly, wrote an unfavorable letter to a Colorado hospital in response to its inquiry about Dr. Burt, the plaintiff. Dr. Connolly filed a motion to dismiss with an affidavit asserting that he essentially had no contacts with Colorado whatsoever. In reversing the District Court, the Court of Appeals held that the intentional injury inflicted in Colorado was sufficient for the assertion of personal jurisdiction.

Taking Dr. Burt's allegations as true, which we must do on a motion to dismiss, we hold no due process notions of fairness are

violated by requiring one who intentionally libels another to answer for the truth of his statements in any state where the libel causes harm to the victim.

757 F.2d at 245.

Utah's long-arm statute has been held to permit exercise of personal jurisdiction for intentional torts when injury is caused in Utah. In Berret v. Life Ins. Co. of the Southwest, 623 F.Supp. 946 (D. Utah 1985), Judge Greene noted that Utah's statute applied to injuries which occur in the state, without regard to where the tortious act occurs, and that due process provides no bar to the exercise of jurisdiction when the defendant intended injury to a forum resident. Judge Greene noted that the Supreme Court has repeatedly acknowledged that a minimum contacts analysis "properly focuses on the relationship among the defendant, the forum and the litigation." 623 F.Supp. at 951 (quoting Keeton v. Hustler Magazine, 465 U.S. 770 [1984]). In referring to this analysis as undertaken by the Supreme Court, Judge Greene stated that:

In Keeton, the Court further indicated that the "fairness" of requiring a defendant who is not a resident of the forum state to appear in the forum depends in part on the expressed public policy interest of the forum state, noting the particular interest of a forum state in connection with tort claims;

A state has an especial interest in exercising judicial jurisdiction over those who commit torts within its territory. This is because torts

involve wrongful conduct which a state seeks to deter, and against which it attempts to afford protection, by providing that a tortfeasor shall be liable for damages which are the proximate result of his tort.

.
In this case, a strong public policy of the state of Utah is embodied in its long-arm statute for redress of tortious acts which cause injury in this state.

623 F.Supp. at 951 (citations omitted).

The forum's interest in having its tort laws given effect, coupled with the defendants' acts of intentionally causing injury to a forum resident, are sufficient to permit exercise of jurisdiction in litigation arising directly from the injurious acts. In Frontier Federal Savings & Loan v. Nat'l Hotel Corp., 675 F.Supp. 1293 (D. Utah 1987), Judge Greene reiterated that in an intentional tort case arising from an injury suffered in the forum state, the defendant must reasonably anticipate being called to respond in the forum, and due process considerations are satisfied when the forum exercises jurisdiction. This reasoning has been repeatedly adopted by both state and federal courts across the nation. As stated in Coblentz GMC/Freightliner v. General Motors Corp., 724 F.Supp. 1364 (M.D. Ala. 1989),

when the origin of a deliberate, nonfortuitous tort is in one state (or, as in the case at hand, a foreign country) and the intended injury to a recognized victim is in another state, the tortfeasor has affirmatively established minimum contacts with the state in which the injury occurred,

if the tortfeasor knew at the time it committed the alleged tort that the victim would be injured in that state.

724 F.Supp. at 1369. See also, Brainerd v. Governors of University of Alberta, 873 F.2d 1257 (9th Cir. 1989); Duke v. Young, 496 So.2d 37 (Ala. 1986).

Abuse of the judicial system of one state, such as that engaged in by the defendants in this case, can subject a party to jurisdiction in a different state if the party intends his actions to have consequences in the other state. For example, in Lake v Lake, 817 F.2d 1416 (9th Cir. 1987), an attorney who improperly obtained an ex-parte child custody order in California, knowing and intending that it would be used by authorities in Idaho to remove a child from his father's custody, was held to have subjected himself to personal jurisdiction in Idaho. The Court held that

Idaho could properly exercise jurisdiction over the defendant "whose only 'contact' with the forum state is the 'purposeful direction of a foreign act having effect in the forum state."

817 F.2d at 1423 (citations omitted; emphasis in original).

Even before the Supreme Court's decision in Calder, supra, it had been held that a resident of one state who improperly initiates legal proceedings which ultimately result in damage to a resident of a different state has no due process objection to having to defend his actions in the state where the injured party resides. In Simon v. United States, 644 F.2d

490 (5th Cir. 1981), the Court held that a Georgia lawyer who improperly caused courts in both Georgia and Louisiana to issue process against a Louisiana resident which ultimately led to the arrest and detention of the Louisiana resident was subject to personal jurisdiction in Louisiana. The "defendant-directed conduct" occurring in Louisiana which he was responsible for initiating in Georgia was held to be a sufficient contact with the forum to overcome any due process concerns.

While the defendants have previously characterized Ms. Bryant's presence in Utah as a "fortuitous" circumstance, the simple fact is that when they made their false and malicious charges against her, they knew she was a Utah resident and knew that if they were successful in causing her injury, that injury would be suffered in Utah.

CONCLUSION

The activity in which defendants engaged which subjects them to personal jurisdiction in Utah is very simply stated--they chose to intentionally injure a Utah resident. It has been universally recognized that such intentional conduct towards a known and intended victim is a sufficient contact with the victim's state of residence to make it a proper forum for the redress of the victim's injury, and due process is fully satisfied by making the tortfeasor defend his actions in the location where they caused the very injury intended.

Accordingly, the judgment below should be reversed and the case remanded for disposition on the merits.

DATED this 17th day of February, 1993.

PRINCE, YEATES & GELDZAHLER

By M. David Eckersley
M. David Eckersley
Attorneys for Appellant

MAILING CERTIFICATE

I hereby certify that, on the 17th day of February, 1993, I caused the original and seven copies of the foregoing BRIEF OF APPELLANT to be hand delivered to the Utah Court of Appeals and four copies to be mailed, postage prepaid, to the following:

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A D D E N D U M

Utah Code Ann., § 78-27-22:

It is declared, as a matter of legislative determination, that the public interest demands the state provide its citizens with an effective means of redress against nonresident persons, who, through certain significant minimal contacts with this state, incur obligations to citizens entitled to the state's protection. This legislative action is deemed necessary because of technological progress which has substantially increased the flow of commerce between the several states resulting in increased interaction between persons of this state and persons of other states.

The provisions of this act, to ensure maximum protection to citizens of this state, should be applied so as to assert jurisdiction over nonresident defendants to the fullest extent permitted by the due process clause of the Fourteenth Amendment to the United States Constitution.

Utah Code Ann. § 78-27-24:

Any person, notwithstanding Section 16-10-102, whether or not a citizen or resident of this state, who in person or through an agent does any of the following enumerated acts, submits himself, and if an individual, his personal representative to the jurisdiction of the courts of this state as to any claim arising from:

- (1) the transaction of any business within this state;
- (2) contracting to supply services or goods in this state;
- (3) the causing of any injury within this state whether tortious or by breach of warranty;
- (4) the ownership, use, or possession of any real estate situated in this state;
- (5) contracting to insure any person, property, or risk located within this state at the time of contracting;
- (6) with respect to actions of divorce, separate maintenance, or child support, having resided, in the marital relationship, within this state notwithstanding subsequent departure from the state; or the commission in this state of the act giving rise to the claim, so long as that act is not a mere omission, failure to act, or occurrence over which the defendant had no control; or
- (7) the commission of sexual intercourse within this state which gives rise to a paternity suit under Title 78, Chapter 45a, to determine paternity for the purpose of establishing responsibility for child support.

AMENDMENT XIV
UNITED STATES CONSTITUTION

SECTION 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.