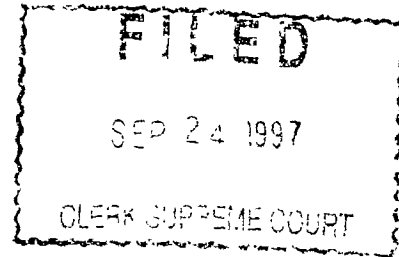


**IN THE COURT OF APPEALS OF IOWA**

No. 7-233 / 96-1092  
Filed September 24, 1997

000329



**ROBERT WARNER,**  
Plaintiff-Appellant,

vs.

**GEORGE TREMBLAY and the**  
**ESTATE OF JUDITH TREMBLAY,**  
Defendants-Appellees.

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Appeal from the Iowa District Court for Pottawattamie County, Leo F.  
Connolly, Judge.

The plaintiff appeals from the district court's ruling dismissing his action to  
recover money his deceased wife purportedly loaned to her parents from their joint  
account. **REVERSED IN PART AND AFFIRMED IN PART.**

J. Campbell Helton and Thomas Henderson of Whitfield & Eddy, P.L.C., Des  
Moines, for appellant.

Scott M. Peters of Peters Law Firm, Council Bluffs, for appellee.

Heard by Cady, P.J., Streit, J., and Habhab, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1997).

**STREIT, J.**

Plaintiff appeals from the district court's ruling dismissing his action to recover money he and his deceased wife purportedly loaned to her parents. Plaintiff claims the district court erred in dismissing his action for lack of standing and lack of personal jurisdiction over the out-of-state defendants.

In August 1992, Theresa and Robert Warner, husband and wife, purportedly loaned \$10,000 to her parents, defendants George Tremblay and Judith Tremblay of Massachusetts. Theresa drew the check on a joint account she owned with Robert. The loan was made after a telephone conversation between Theresa and the Tremblays. Less than six months later, Theresa Warner died. Judith Tremblay died in September 1994.

In August 1995, Robert Warner filed a petition in Iowa against George Tremblay and the estate of Judith Tremblay to recover the \$10,000 loaned to the Tremblays. Defendants filed a motion to dismiss asserting lack of personal jurisdiction and forum non conveniens. Warner resisted the motion.

In granting the motion to dismiss, the district court determined Robert lacked standing to seek recovery of the money loaned by his deceased wife to her parents unless he alleged the action on behalf of his wife's estate or as an obligee of the loan. The court also determined there was no evidence of contacts between Warner and the

defendants. Thus, he failed to show sufficient minimum contacts to establish personal jurisdiction. Warner appeals.

***I. Standing.*** The district court is bound by the four corners of the petition in determining a motion to dismiss. *Tate v. Derifield*, 510 N.W.2d 885, 887 (Iowa 1994). The court found “plaintiff failed to plead any facts sufficient to give him standing to complain of a transfer of funds, whether loan, gift, or otherwise, from his deceased wife to her parents.” We disagree.

Incorporated into plaintiff’s petition was plaintiff’s check (Exhibit A). The check is drawn on the joint account of Robert Warner and Theresa Warner. Each joint tenant is presumed to own an equal share in a joint bank account; however, this presumption is rebuttable. *Anderson v. Iowa Dept’ of Human Serv.*, 368 N.W.2d 104, 109 (Iowa 1985); 48A C.J.S. Joint Tenancy § 23 (1981). The intent of the parties in making a transfer to the account is considered. *Id.*

The plaintiff stated in his petition he loaned the money to the defendants. Assuming the facts pleaded are true, *see Martin v. Ju-Li Corp.*, 332 N.W.2d 871, 873 (Iowa 1983) (allegations of the petition which go to the merits of the claim are taken as true), we conclude the trial court in its motion to dismiss erred as a matter of law in finding Robert Warner did not have standing to file this lawsuit. The district court did not consider the intent of the parties in creating the joint tenancy account or in writing out the check. The establishment of a joint tenancy account created a

rebuttable presumption that both Robert and Theresa Warner owned the account, but the presumption may be overcome by a showing that Robert Warner did not intend to give Theresa ownership of the account. *See Anderson v. Iowa Dept. of Human Services*, 368 N.W.2d 104, 110 (Iowa 1985). Also, a joint tenant could very well loan someone money by directing the co-tenant to physically write out the check. It is not our law that the only party to a personal loan is the person signing the check.

**II. Personal Jurisdiction. A. Scope of Review.** Our scope of review of a motion to dismiss for lack of personal jurisdiction is: “The trial court's findings of fact have the effect of a jury verdict and are subject to challenge only if not supported by substantial evidence in the record; we are not bound, however, by the trial court's application of legal principles or its conclusions of law.” *Hagan v. Val-Hi, Inc.*, 484 N.W.2d 173, 175 (Iowa 1992) (quoting *Meyers v. Kallestead*, 476 N.W.2d 65, 66 (Iowa 1991), *cert. denied*, 503 U.S. 920 (1992)).

The Plaintiff has the burden to sustain the requisite jurisdiction. *Taylor v. Trans-Action Associates, Inc.*, 509 N.W.2d 501, 503 (Iowa App. 1993); *Bankers Trust Co. v. Fidata Trust Co.*, 452 N.W.2d 411, 414 (Iowa 1990). When resolving jurisdictional questions regarding nonresidents, the allegations of the petition which go to the merits of the claim are taken as true; other allegations in the petition may be contradicted by affidavits, testimony, and other evidence. *Martin*, 332 N.W.2d at 873.

**B. Minimum Contacts Test.** It is well settled that “a state’s exercise of personal jurisdiction over a nonresident defendant satisfies due process only if the defendant has “certain minimum contacts with [the forum state] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.” *In re Marriage of Crew*, 549 N.W.2d 527, 528 (citing *International Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S.Ct. 154, 158, 90 L.Ed. 95, 102 (1945)). The constitutional “minimum contacts” test is applied by Iowa courts on a case-by-case basis. *Heslinga v. Bollman*, 482 N.W.2d 921, 922 (Iowa 1992) (citing *International Shoe Co.*, 326 U.S. at 316, 66 S.Ct. at 158, 90 L.Ed. at 102).

Requiring minimum contacts with the forum state is meant to insure the fairness and reasonableness of requiring a nonresident to defend a lawsuit there. *International Shoe Co.*, 326 U.S. at 317, 66 S.Ct. at 158, 90 L.Ed. at 102. A litigant's conduct with the forum state must be such that the litigant ““reasonably anticipate[s] being haled into court there.”” *Heslinga*, 482 N.W.2d at 922 (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297, 100 S.Ct. 559, 567, 62 L.Ed.2d 490, 501 (1980)). A defendant can anticipate defending a lawsuit in an Iowa court if the defendant has purposefully availed itself of the privilege of conducting activities in Iowa, thereby invoking the benefits and protections of its laws. *See Hager v. Doubletree*, 440 N.W.2d 603, 607 (Iowa), cert. denied, 493 U.S. 934, 110 S.Ct. 325,

107 L.Ed.2d 315 (1989) (citing *Hanson v. Denckla*, 357 U.S. 235, 255, 78 S.Ct. 1228, 1239, 2 L.Ed.2d 1283, 1298 (1958)).

The critical focus of the minimum contacts test is on the relationship among the defendant, the forum, and the litigation. *Id.* at 67 (citing *Rush v. Savchuk*, 444 U.S. 320, 327, 100 S.Ct. 571, 576, 62 L.Ed.2d 516, 524 (1980)). This relationship is defined by the defendant's contacts with the forum state, not by the defendant's contacts with the state's residents. *Meyers*, 476 N.W.2d at 67 (citing *Hanson*, 357 U.S. at 250-55, 78 S.Ct. at 1237-40, 2 L.Ed.2d at 1295-98). In applying the test, we consider: (1) the quantity of the contacts; (2) the nature and quality of the contacts; (3) the source and connection of the cause of action with these contacts; (4) the interest of the forum state; and (5) the convenience of the parties. *Id.* at 922 (citing *Bankers Trust Co.*, 452 N.W.2d at 413).

In this case, the bank account from which the \$10,000 check was drawn is located in Iowa. By cashing the check, the Tremblays caused funds from an Iowa bank to be transferred to Massachusetts. Iowa does not have a long-arm statute which encompasses this activity. *Cf. Kennecorp Mortgage & Equities, Inc. v. First Nat'l Bank of Fairbanks*, 685 P.2d 1232, 1238 (Alaska 1984). Thus, the focus is solely on whether the Tremblays had minimum contacts with Iowa.

The Tremblay's daughter, Theresa, and their grandchildren lived in Iowa. The Tremblays traveled to Iowa a number of times for visits. They also made telephone

calls to Theresa in Iowa. On one occasion, after visiting on the telephone with her parents, Theresa wrote a check for \$10,000 from an Iowa bank account she held jointly with her husband. She mailed the check to her parents in Massachusetts and they cashed it there. The Tremblays have not conducted any financial activities in Iowa, generally or particularly, involving the \$10,000.

We first look at the Tremblay's visits and phone calls to Iowa. These family contacts were not the quality or nature of contacts upon which personal jurisdiction is based. Iowa's supreme court has held that family contacts unrelated to the cause of action at hand are not sufficient to establish personal jurisdiction. *See In re Marriage of Crew*, 549 N.W.2d 527, 530 (Iowa 1996)(holding father's correspondence with children, calling them, and furnishing airline tickets insufficient to confer Iowa jurisdiction over him). The Tremblay's family contacts show a connection with their daughter and grandchildren, not a connection to the litigation as required to establish personal jurisdiction. *See id.* (citing *Mountaire Feeds, Inc. v. Agro Impex*, 677 F.2d 651, 654-55 (8th Cir. 1982)).

We next look at the particular phone conversation between the Tremblays and Theresa which allegedly prompted Theresa to send them a check for \$10,000. In a commercial context, personal jurisdiction has been upheld based on a single phone call. *Norton v. Local Loan*, 251 N.W.2d 520, 522 (Iowa 1977). In *Norton* the telephone call was directly part of the cause of action because the plaintiff was

alleging emotional distress caused by the creditor's telephone conversation with the plaintiff. *Id.* at 520. However, in cases outside the commercial context, even series of phone calls have not constituted minimum contacts with the forum state. *See i.e. In re Crew*, 549 N.W.2d at 529 (Iowa 1996). The phone call between Theresa and her parents did not constitute part of the cause of action like the phone call in *Norton*. There is no evidence the Tremblay's purpose in making the phone call was to solicit money from Theresa or that they did solicit money from her during the call. The call was not in a commercial context.

We next examine whether cashing a check from an Iowa bank in Massachusetts was sufficient to constitute minimum contacts with Iowa. The nature and quality of this contact is insufficient to establish minimum contacts. The Tremblays have never had physical contact with the state of Iowa to conduct financial activities, generally or particularly, involving the \$10,000. They have no history of financial activities in Iowa by phone or by mail. *See Bankers Trust Co. v. Fidata Trust Co.*, 452 N.W.2d 411, 414 (Iowa 1990). A Massachusetts resident who cashes a check from an Iowa bank in Massachusetts would not expect that act alone to hale them into an Iowa court.

Because the defendants did not have sufficient contacts with the State of Iowa to establish personal jurisdiction, the trial court was correct in dismissing the plaintiff's claim. This court makes no explicit finding whether the \$10,000 was a loan

or a gift made by Theresa Warner. The determination should be left to a trial court in the proper jurisdiction. *See id.*

**REVERSED IN PART AND AFFIRMED IN PART.**