IN THE COURT OF APPEALS OF IOWA

FILED
JUN 24 1987
CLERK SUPREME COURT

GORDON MILLER and KAY MILLER)
Plaintiffs-Appellants,)
vs)
PEONY PARK, INC.,)
Defendant-Appellee.)

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7-165
86-1069

Appeal from the Iowa District Court for Pottawattamie County (No. 57146) - Keith E Burgett, Judge.

Plaintiffs in a tort suit appeal from a district court order sustaining the defendant's special appearance. **AFFIRMED.**

Scott H. Hughes and Robert N. Calbi, Council Bluffs, for plaintiffs-appellants.

David F. McCann, of Dippel & McCann, Council Bluffs, for defendant-appellee.

Considered by Oxberger, C.J., and Schlegel, and Sackett, JJ.

PER CURIAM

Plaintiffs Gordon Miller and Kay Miller, sued Defendant Peony Park, Inc., an amusement park located in Omaha, Nebraska. The suit was commenced in Pottawattamie County, Iowa district court. The suit alleged Gordon Miller was injured on a water slide at the park's facility in Omaha. On filing the suit plaintiffs directed the clerk to deliver to the sheriff of Douglas County, Nebraska, an original notice of suit. Such original notice notified defendant the suit was on file and directed service within 20 days on Joseph Malec, Jr., the registered agent for Peony Park, Inc., in Omaha. The Douglas County sheriff's sworn return was filed showing service was made on Malec in Omaha. Defendant appeared specially contending the negligence on which the tort action was based occurred in Nebraska, and defendant was not served with an original notice in the State of Iowa. Plaintiffs resisted by affidavit claiming they visited Peony Park in response to radio and television ads and in response to advertisement in the Omaha World Herald which was delivered to them. While the affidavit indicates the plaintiffs heard and read the ads, there is no statement in this affidavit this occurred in Iowa.

The trial court sustained defendant's special appearance. Plaintiffs appeal from that order. Plaintiffs contend the advertisements made by defendant constitute doing business with the statute providing for service of process on a foreign corporation. They argue they have obtained service under Iowa Code §617.3 (1985) and Iowa Rule of Civil Procedure 56.2. We disagree.

First, plaintiffs did not comply with the requirement for service of process on a nonresident corporation under §617.3. Section 617.3 must be strictly construed. See Cross v. Lightolier, Inc., 395 N.W.2d 844, 848 (Iowa 1986); Creative

Communication Consultants, Inc., 229 N.W.2d 267, 268 (Iowa 1975). Section 617.3, provides in relevant part:

> If a foreign corporation . . . resident of Iowa to be performed in whole or in part by either party in Iowa, or *if such foreign corporation* commits a tort in whole or in part in Iowa against a resident of Iowa, such acts shall be deemed to be doing business *in Iowa* by such foreign corporation for the purpose of service of process or original notice on such foreign corporation under this section . . . .

There is not any evidence the tort in whole or in part was committed in Iowa. See Cross, 395 N.W.2d at 848 (Court rejected service under 617.3 where resident failed to establish contract was to be performed in whole or in part in Iowa); Gravelie v. TBS Pacific, Inc., 256 N.W.2d 230, 232-33 (Iowa 1977) (Fact travel agent negotiated from Iowa for Hawaiian accommodations and may have paid for them by check which may have been honored when presented in Iowa did not amount to contract performed in whole or in part in Iowa).

In addition, we do not find jurisdiction under Iowa R. of Civ. P. 56.2. Rule 56.2 expands Iowa's jurisdictional reach to the widest due process parameters of the federal constitution. Larsen v. Schall, 296 N.W.2d 785, 788 (Iowa 1980). However, it requires necessary minimum contacts with the State of Iowa.

The tort did not occur in whole or in part in Iowa. Plaintiffs contend the fact defendant used advertising to induce prospective customers in the metropolitan area to come and use the facilities gave Iowa minimum contacts. Without determining whether advertisements are minimum contacts, we have carefully examined the petition and affidavit filed by plaintiffs. Nowhere are there statements or allegations that plaintiffs heard, read or saw advertisement of defendant while plaintiffs were present in Iowa. Nor do the plaintiffs claim in their petition or affidavit to be residents of Iowa. We find no evidence of minimum contacts with the State of Iowa. We therefore affirm the trial court.

AFFIRMED.