

IN THE COURT OF APPEALS OF IOWA

No. 7-065 / 96-0037

DENNIS W. BUSH,

Plaintiff-Appellant,

vs.

**FARMERS INSURANCE GROUP OF
COMPANIES,**

Defendant-Appellee.

Appeal from the Iowa District Court for Black Hawk County, William G.
Klotzbach, Judge.

Plaintiff appeals from the district court's ruling dismissing his arbitration
petition and breach of insurance coverage claim against the defendant on the basis of
forum non conveniens. **AFFIRMED.**

William S. Smith, Waterloo, for appellant.

Christopher S. Wendland, Timothy W. Hamann and Kellyann M. Lekar, of
Clark, Butler, Walsh & Hamann, Waterloo, for appellee.

Heard by Habhab, C.J., and Huitink and Streit, JJ.

HUITINK, J.

Dennis Bush appeals and Farmers Insurance Group of Companies cross-appeals from the district court's ruling granting Farmers' motion to dismiss Bush's claim for arbitration and insurance coverage. We affirm as modified.

I. Background Facts and Proceedings.

Bush initiated these proceedings by filing an "Application to Arbitrate" in Black Hawk County District Court on April 24, 1995. In this application Bush requested the district court order the named defendant, Farmers Insurance Group of Companies, to arbitrate Bush's uninsured motorist claim arising out of a February 1991 automobile accident in California. Bush's application alleged that at the time of the accident he was residing in California and had purchased an insurance policy from Farmers prior to the accident. The application also stated Bush moved from California to Black Hawk County in 1992 and established his residence there. No request for relief other than arbitration was included in the application filed on April 24, 1995.

On May 18, 1995, the defendant Farmers Insurance Group filed a "motion to dismiss for want of jurisdiction and insufficiency of original notice or service." Farmers also moved for a change of venue and filed a "motion to dismiss [sic] to not agree to arbitrate" on the same date. In its combined motion, Farmers alleged that it lacked authority to issue insurance policies in Iowa and denied doing so. It also

alleged Charles Marshall, the person upon whom notice of Bush's application to arbitrate was served, was not its authorized agent to accept service nor was he a general or managing agent authorized by law to receive service of process. Farmers also stated the proper entity to be named a party to Bush's claim was the Farmers Insurance Exchange and Bush was not entitled to mandatory arbitration in Iowa because Farmers did not agree to submit Bush's uninsured motorist claim to arbitration. All the factual contentions made in Farmers' combined motions were supported by an affidavit from the branch claims supervisor from Farmers' Des Moines Branch Claims office. Farmers also included a copy of Bush's automobile policy purchased in California.

Bush's resistance to Farmers' motions filed June 1, 1995, included a reply from the Iowa Secretary of State's office to his inquiry concerning Farmers' legal status and the identity of its registered agent. The Secretary of State's reply indicates neither Farmers Insurance Group of Companies or Farmers Insurance Exchange were Iowa corporations or listed with the Insurance Department.

Bush's resistance also included a copy of the Waterloo area telephone directory listing a number of Farmers' offices in the Waterloo area and identifying Farmers Insurance Exchange as a member of Farmers Insurance Group of Companies. Charles Marshall was identified as Farmers' district manager and representative in Waterloo.

On July 7, 1995, the same date set for hearing on Farmers' motions, Bush filed an amendment to his application for arbitration. In this amendment, Bush added a claim against Farmers for breach of contract for failing to pay a theft loss covered under a separate homeowner's policy purchased in California prior to an alleged August 15, 1991, theft loss. Farmers renewed its earlier pled jurisdictional challenge in its resistance to Bush's amendment.

In its July 18, 1995, ruling the district court summarily overruled Farmers' jurisdictional challenges and denied its motion for change of venue. Farmers' "motion to dismiss [sic] to not agree to arbitrate" was sustained.

On July 29, 1995, Bush filed a second amendment to his application. In this amendment, Bush added a breach of contract count seeking judgment against Farmers for its refusal to perform under the same uninsured motorist provision referred to in his original application to arbitrate.

Farmers filed a rule 179(b) motion seeking enlargement of the district court's July 18, 1995, order overruling its jurisdictional challenge. Farmers also filed a separate motion resisting Bush's second amendment and raising another jurisdictional challenge to the claims asserted in Bush's second amendment. Farmers also included an alternative request for the court to "decline to exercise its jurisdiction in favor of the more convenient forum of the State of California."

After a hearing on November 20, 1995, the district court entered its ruling on Farmers' remaining motions. In this ruling, the district court summarized the factual basis for its July 18, 1995, ruling. The district court cited the telephone listings identifying member companies of the Farmers Insurance Group and the similarity of the logo depicted in Bush's policy to that displayed in the directory. The court declined to reconsider its conclusion that Farmers was a "resident of Iowa and the defendant [was] doing business in Iowa"

The district court, however, went on to note that Iowa was not a convenient forum and Bush's claim should be litigated in California. After considering the record as of the hearing date, the district court found:

. . . California is the situs of both contracts as well as the situs of the incidents alleged to be bases of the breach of contract. The insurance contracts issued to Plaintiff by Farmers Insurance Exchange in California where Plaintiff lived and had lived at the time the policies were purchased, and the state where the automobile was involved in an accident and the personal property were stolen. All of the witnesses as to the automobile accident and evidence in regard to the theft of clothing will all be in California.

The district court concluded based on these findings that California was the more convenient forum to litigate Bush's claim. Bush's application as amended was dismissed on the "grounds of forum non conveniens."

On appeal, Bush argues the district court erred in its absolute and unconditional dismissal of his claims. He contends the dismissal should have

included reasonable time to determine California's willingness to accept jurisdiction of his claims. Farmers cross-appeals, arguing the district court should have dismissed Bush's claims for lack of personal jurisdiction and insufficient service of the original notice.

II. Standard of Review

Our review in this case is for errors of law. Iowa R. App. P. (4). Findings of fact made by the district court in making its jurisdictional determination are binding if supported by substantial evidence. *State ex rel. Miller v. International Energy Management Corp.*, 324 N.W.2d 707, 709-10 (Iowa 1982). The district court's decision to decline jurisdiction based on principles of forum non conveniens is reviewed for an abuse of discretion. *Silversmith v. Kenosha Auto Transport*, 301 N.W.2d 725, 728 (Iowa 1981).

III. Personal Jurisdiction

As noted earlier, Farmers' motion to dismiss was sustained on grounds Iowa was not a convenient forum in which to litigate Bush's claims. Implicit in this determination is the finding that Farmers Mutual Insurance Group of Companies was subject to personal jurisdiction in Iowa. *See Douglas Machine and Engineering Co., Inc., v. Hyflow Blanking Press Corporation*, 229 N.W.2d 784, 791 (Iowa 1975) (although venue and jurisdiction are proper, court may decline to exercise its jurisdiction based on consideration of convenience). We accordingly first consider

the jurisdictional issues raised in this appeal to determine if the jurisdictional predicates are met before turning to the issue of forum non conveniens.

We also initially note Farmers' jurisdictional challenge was properly raised by pretrial motion. *See* Iowa R. Civ. P. 104(a). In this context, Farmers' factual allegations concerning its status as a legal entity or privity to the subject insurance contracts are relevant only to Farmers' relationship to Iowa as a forum state and the validity of service of the original notice. Although these circumstances may well provide Farmers' a factual defense to Bush's contract claims, their relevance for other than jurisdictional issues is beyond the scope of our present consideration.

In reviewing a district court's ruling on a challenge to its personam jurisdiction, we accept the allegations of the petition as true. *Robert Half of Iowa v. Citizens Bank*, 453 N.W.2d 236, 238 (Iowa App. 1990). The plaintiff has the burden to sustain the requisite jurisdiction, but when a prima facie case is established, the defendant has the burden to overcome it. *Id.* A distinction is made between allegations of a petition which go to the merits of a claim and other allegations of a petition. The latter may be contradicted by affidavits, testimony, and other evidence; the former are taken as true for special appearance purposes. *Martins v. Ju-Li Corp.*, 332 N.W.2d 871, 874 (Iowa 1983). When reviewing a jurisdictional issue, the trial court's findings of fact have the force of a jury verdict. *See Robert Half of Iowa*, 453 N.W.2d at 239.

The due process clause of the fourteenth amendment operates to limit the power of a state to assert in personam jurisdiction over a nonresident defendant. *Helicopteros Nacionales De Colombia v. Hall*, 466 U.S. 408, 413-14, 104 S. Ct. 1868, 1872, 80 L. Ed. 2d 404, 410 (1984). It protects an individual's liberty interest in not being subject to the binding judgment of a forum with which he or she has no meaningful contacts, ties, or relations. *Burger King Corp. v. Redzewicz*, 471 U.S. 462, 471-72, 105 S. Ct. 2174, 2181, 85 L. Ed. 2d 528, 540 (1985). The "constitutional touchstone" in determining jurisdiction is whether the defendant has purposefully established minimum contacts in a forum state, and whether the defendant's conduct and connection are such that the defendant should have reasonably anticipated being haled into court in a forum state. *Id.* at 474, 105 S. Ct. at 2183, 85 L. Ed. 2d at 542.

The minimum contacts test requires us to consider five factors, the first three being most important:

- (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 those contacts;
- (4) the interest of the forum state; and
- (5) the convenience of the parties.

See *Omaha Cod Storage Terminals v. Cunningham*, 417 N.W.2d 254, 255 (Iowa App. 1987) (quoting *Larsen v. Scholl*, 296 N.W.2d 785, 788 (Iowa 1980)). Certain

minimum contacts with the state forum must exist in order that the maintenance of the suit does not offend the “traditional notions of fair play and substantial justice.” *International Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S. Ct. 154, 158, 90 L. Ed. 95 (1945).

We, based on our limited review of the record, find the district court should be affirmed on this issue. There is evidence Farmers advertised its presence in Iowa and employed multiple agents to conduct unspecified business activity. The minimum contacts requirement is satisfied if a “nonresident defendant’s activities are sufficiently substantial or continuous and sufficient.” *Bankers Trust Co. v. Fidata Trust Co.*, 452 N.W.2d 411, 415 (Iowa 1990) (citations omitted). If business activity is significant the nonresident corporation’s forum contacts need not be related to the cause of action.” *Id.* Under these circumstances, Farmers because of its general business activity could reasonably anticipate being haled into an Iowa court and the district court was correct in asserting its personal jurisdiction over Farmers.

IV. Sufficiency of Service of Original Notice.

As noted earlier, Farmers argues the district court did not acquire jurisdiction because service of the original notice was invalid. Farmers cites Bush’s service on one of its independent sales representatives rather than serving a general or managing agent as required by Iowa Rule of Civil Procedure 56.1. We disagree.

Under the applicable standard of review, we are bound by the district court's findings of fact on this issue. *Hovey v. Elson*, 303 N.W.2d 132, 135 (Iowa 1981). Because the district court's ruling does not include specific findings of fact concerning the agent's duties, we will presume the district court found facts necessary to support its conclusion that service in this case was valid. *See Brunner v. United Fire and Casualty Co.*, 338 N.W.2d 151, 152 (Iowa 1983).

Iowa Rule of Civil Procedure 56.1(f) provides for personal service of an original notice on a corporation or other entity suable under a common name by serving "any general or managing agent" of the corporation or other entity. A general agent is one who is authorized to transact all of the business of his principal at a particular place or of a particular kind, generally. *Life v. Best Refrigerated Express, Inc.*, 443 N.W.2d 334, 337 (Iowa App. 1989) (citations omitted). A managing agent is one whose contract of employment requires exercise of judgment and discretion in the business affairs of his principal in the locality where he is stationed. *Id.* A person is a managing agent for purposes of service of process "if his position is one of sufficient character and rank to make it reasonably certain that the corporation will be appraised of the service made through the agent." *Id.*

In this case, there was no public record designating Farmers' registered agent for service of process. There is evidence indicating the person served was a district manager with supervisory responsibility. We cannot in view of this evidence say the

district court's determination that service was valid lacks substantial evidentiary support. We affirm on this issue.

V. Forum Non Conveniens.

Forum non conveniens is a facet of venue permitting the court to withhold its authority to proceed even if venue and jurisdiction are proper. *Silversmith v. Kenosha Auto Transport*, 301 N.W.2d 725, 726 (Iowa 1981) (citations omitted). It is applied in circumstances where it is necessary to avoid the "vexatiousness and oppressiveness of a trial away from the defendant's domicile." *Id.* The party seeking the protection of this rule has the burden to show the relative inconvenience necessitates its application. *Douglas Machine & Engineering Co., Inc., v. Hyflow Blanking Press Corp.*, 229 N.W.2d 784, 791 (Iowa 1975). A dismissal based on this rule requires more than a parties' desire to litigate in another forum or that the claim originated in another state. *Silversmith*, 301 N.W.2d at 727.

The record provides solid support for the district court's decision to invoke the doctrine of forum non conveniens. This is, for all practical purposes, a California dispute involving a California contract of insurance and a loss occurring there. The judgment of the district court is therefore affirmed.

AFFIRMED.

Habhab, C.J., concurs; Streit, J., specially concurs.

STREIT, J. (specially concurring)

I join the majority in its affirming the trial court. However, I would reverse the trial court's implicit finding of personal jurisdiction.

Minimum contacts with the State of Iowa is required for our courts to exercise jurisdiction over a corporation. Iowa R. Civ. P. 56.2. In contract actions the contract must have a "substantial connection" with the state asserting jurisdiction. *McGee v. International Life Ins. Co.*, 355 U.S. 200, 233, 78 S. Ct. 199, 201 (1957). There must be a minimum of contacts. *Omaha Cod Storage Terminals v. Cunningham*, 417 N.W.2d 254, 255 (Iowa App. 1987).

In this case the defendant did not write or issue policies of insurance in the State of Iowa. The Farmers Insurance Group is not an entity licensed to do business in the state and is not a company or entity that writes insurance. The only contact with the state is a yellow page listing that enumerates the "Member Companies" of the "FARMERS INSURANCE GROUP." Such an informational listing does not subject the "group" to litigation involving a claim for uninsured motorist coverage for a California automobile accident or a claim for theft damages under a homeowner's policy on a California condominium. The only connection Iowa has to any insurance contract, insurance company, the automobile accident, or property loss is the plaintiff's move here. Lawsuits and jurisdiction do not move with parties, like so much carry-on luggage. Farmers Insurance Group's motion to dismiss for want of jurisdiction should have been granted.