Reversed and Rendered and Opinion Filed March 11, 2025

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-24-00560-CV

MPI INDUSTRIES CAROLINAS, LLC AND TODD NELSON, Appellants
V.
CTE NETWORKS, LLC AND ANTONIO ZAPATA, Appellees

On Appeal from the County Court at Law No. 3
Dallas County, Texas
Trial Court Cause No. CC-23-02767-C

MEMORANDUM OPINION

Before Justices Miskel, Breedlove, and Barbare
Opinion by Justice Barbare

Appellants MPI Industries Carolinas, LLC and Todd Nelson appeal the trial court's order denying their special appearance. They argue their contacts with Texas are insufficient to confer specific or general jurisdiction and exercising jurisdiction over them offends the traditional notions of fair play and substantial justice. We reverse the trial court's April 18, 2024 order denying appellants' special appearance and render judgment dismissing appellees' claims for want of personal jurisdiction.

Background

CTE Networks, LLC is a business entity licensed in Texas, with its principal office located in Dallas County, Texas. MPI is a North Carolina domestic limited liability company specializing in construction services and support for certain communications equipment, including fiber installation and cell tower construction. MPI is not and never has been registered to do business in Texas.

Nelson worked for CTE as a project manager for approximately three years.[1] During Nelson's employment, he permanently resided in Colorado, but he spent nine months living in an RV park in South Carolina while working on site on a CTE project.

In 2022, MPI and CTE began a business relationship because of Nelson's relationship with MPI's owner, David Ristick. Nelson, while in Colorado, engaged in verbal negotiations with Antonio Zapata, the owner of CTE, regarding MPI and CTE working together to provide telecommunication construction services primarily in North Carolina and in South Carolina. Nelson never came to Texas during the negotiations. MPI and CTE subsequently entered into an agreement, with CTE as a subcontractor for MPI, to install equipment for Dish Network. It is undisputed the agreement was not reduced to writing.

[1] The record does not indicate exact dates, but it appears he worked for CTE from 2020 to February 14, 2023.

On December 16, 2022, CTE entered into a subcontract with Zoe Tower Communications to provide crews for installation in North Carolina and South Carolina. CTE appointed Nelson to serve as "team lead" for CTE's crews in North Carolina and South Carolina and to oversee the Zoe Tower and MPI teams.

On or about February 14, 2023, MPI hired Nelson to assist it in carrying out its services in North Carolina and South Carolina. Nelson maintained the same role he previously held with CTE.

On May 8, 2023, CTE and Zapata sued MPI and Nelson for (1) conversion/intentional trespass, (2) tortious interference with contract, (3) quantum meruit, and (4) defamation/business disparagement. MPI and Nelson filed a special appearance arguing Texas lacked personal jurisdiction over them because appellees' jurisdictional facts were not true. Even if they were, the facts failed, as a matter of law, to confer jurisdiction in Texas because neither MPI nor Nelson directed any activities related to the suit to Texas. Still, they performed the work in North Carolina and/or South Carolina instead. Nelson also attached an affidavit stating he did not reside in Texas.

CTE and Zapata filed a response in which they argued that "three distinct activities" were sufficient to invoke specific jurisdiction:

> a. Defendants MPI and Nelson specifically solicited business from Plaintiffs, knowing that Plaintiff Zapata resided in Dallas County, and that Plaintiff CTE Networks' principal office was located in Dallas County;

b. Defendant MPI made all its payments for the work performed by the crews to Plaintiffs in Dallas County; and

c. By specific request, Defendant MPI caused Plaintiffs to send three of its best crews from Texas to the Carolinas.

Other than Zapata's response verification, appellees did not attach any evidence to their response.

On February 15, 2024, the trial court held a hearing. The judge indicated the special appearance would be denied because another defendant had conceded jurisdiction, and "That's all it takes."[2] She also stated, "There's also apparently a big argument over Todd Nelson having worked here in Texas. . . . I haven't heard that refuted." Nelson's attorney argued that although Nelson traveled to Texas during his CTE employment, he never resided in Texas. However, based on his two-year previous employment with CTE, the trial court believed Nelson "did business in Texas extensively. . . . He came to Texas to develop a business connection" and "that's all it takes" for jurisdiction. Nelson disputed the trial court's characterization

[2] Appellees sued United Capital Funding, LLC, and United Capital Funding filed its special exceptions, original answer, and affirmative defenses on January 19, 2024. Appellees argue in their brief that "United Capital Funding has now admitted jurisdiction . . . when it filed its answer and did not specifically except to jurisdiction in Texas." They contend that "where one plaintiff has established proper venue against one defendant, the court also has venue as to all defendants in all claims or actions arising out of the same transaction, occurrence, or series of transactions and occurrences." *See* TEX. CIV. PRAC. & REM. CODE ANN. § 15.005.

Venue and personal jurisdiction are distinct legal concepts. *See Radenovich v. Eric D. Fein, P.C. & Assocs.*, 198 S.W.3d 858, 860 (Tex. App.—Dallas 2006, no pet.) (explaining jurisdiction refers to a court's power to decide a case, and venue "is a distinct concept simply describing the proper or possible place for a lawsuit"). Accordingly, whether United Capital Funding conceded to personal jurisdiction in Texas has no bearing on our jurisdictional analysis for Nelson and MPI.

of his contacts with Texas. The trial court postponed ruling on the special appearance and allowed thirty days for the parties to depose Nelson.

On March 18, 2024, Nelson appeared virtually from Colorado for his deposition. Nelson testified, among other things, that he lived in Golden, Colorado and had resided at the same address for approximately five years. His Colorado address was his permanent legal address.

He never lived in Texas but recalled spending one night in Zapata's Texas home on a personal trip and working in Texas "briefly" performing some of his CTE job duties. He explained he traveled to Texas in 2022 at the direction of Zapata for a project in Texas. He stayed in hotels for about four to six weeks but lived in Colorado. He was never in Texas during the relevant time of the alleged causes of actions (December 16, 2022, to February 14, 2023). Nelson never owned property in Texas, possessed a Texas driver's license, paid taxes in Texas, received mail in Texas, registered to vote in Texas, opened a Texas bank account, or maintained a Texas phone number.

On April 18, 2024, the trial court resumed the special appearance hearing. CTE's counsel indicated the deposition occurred "but didn't particularly help." Counsel stated, "The deposition revealed [Nelson] did live in Colorado the entire time . . . he was the secretary of CTE Corporation and was paid by the Texas company and worked that whole time. He travels apparently because of the nature of his business." The court stated, "Okay. That's enough. So that locks him into CTE

and Colorado and, therefore, there's jurisdiction here." The trial court signed an order denying MPI and Nelson's special appearance on the same day.

This appeal followed.

Standard of Review

Whether a trial court has personal jurisdiction over a nonresident defendant is a question of law we review de novo. *Old Republic Nat'l Title Ins. Co. v. Bell*, 549 S.W.3d 550, 558 (Tex. 2018). If, as in this case, the trial court does not issue findings of fact and conclusions of law with its special appearance ruling, we imply all findings of fact necessary to support its ruling that are supported by the evidence. *BMC Software Belgium, N.V. v. Marchand*, 83 S.W.3d 789, 795 (Tex. 2002). These implied findings may be challenged for legal and factual sufficiency when the appellate record includes the reporter's and clerk's records. *Chen v. Razberi Techs., Inc.*, No. 05-19-01551-CV, 2022 WL 16757346, at *2 (Tex. App.—Dallas Nov. 8, 2022, pet. denied) (mem. op.). When jurisdictional facts are undisputed, whether those facts establish jurisdiction is a question of law. *Old Republic*, 549 S.W.3d at 558.

Personal Jurisdiction

Texas courts may assert personal jurisdiction over a nonresident defendant if (1) the Texas long-arm statute authorizes the exercise of jurisdiction and (2) the exercise of jurisdiction is consistent with federal and state constitutional due process guarantees. *Moki Mac River Expeditions v. Drugg*, 221 S.W.3d 569, 574 (Tex.

2007). The Texas long-arm statute is satisfied when a nonresident defendant does business in Texas, which includes "contract[ing] by mail or otherwise with a Texas resident and either party is to perform the contract in whole or in part in this state" or "commit[ing] a tort in whole or in part" in Texas. TEX. CIV. PRAC. & REM. CODE ANN. § 17.042(1), (2); *Luciano v. SprayFoamPolymers.com, LLC*, 625 S.W.3d 1, 8 (Tex. 2021); *Moki Mac*, 221 S.W.3d at 574. The exercise of personal jurisdiction over the nonresident defendant is constitutional when (1) the nonresident defendant has established minimum contacts with the forum state and (2) the exercise of jurisdiction comports with traditional notions of fair play and substantial justice. *BMC Software*, 83 S.W.3d at 795.

A nonresident defendant's contacts with the forum state can give rise to general or specific jurisdiction. *Luciano*, 625 S.W.3d at 8. General jurisdiction is established when the defendant has continuous and systematic contacts with the forum, rendering it essentially at home in the forum state, regardless of whether the defendant's alleged liability arises from those contacts. *TV Azteca v. Ruiz*, 490 S.W.3d 29, 37 (Tex. 2016). Specific jurisdiction is established when the nonresident defendant's alleged liability arises from or is related to the defendant's activity conducted within the forum state. *BMC Software*, 83 S.W.3d at 796.

The plaintiff bears the initial burden to plead sufficient allegations to bring a nonresident defendant within the provisions of the Texas long-arm statute. *Kelly v. Gen. Interior Constr., Inc.*, 301 S.W.3d 653, 658 (Tex. 2010). Once the plaintiff has

met the initial burden of pleading sufficient jurisdictional allegations, the defendant bears the burden of negating all bases of personal jurisdiction alleged by the plaintiff. *Id.* "Because the plaintiff defines the scope and nature of the lawsuit, the defendant's corresponding burden to negate jurisdiction is tied to the allegations in the plaintiff's pleading." *Id.* If the defendant presents evidence in its special appearance disproving the plaintiff's jurisdictional allegations, the burden shifts back to the plaintiff to establish the court has personal jurisdiction. *Id.* at 659. The plaintiff should amend the petition if it lacks sufficient allegations to bring the defendant under the Texas long-arm statute or if the plaintiff presents evidence that supports a different basis for jurisdiction in the special appearance response. *Id.* at 659 n.6. Raising jurisdictional allegations for the first time in a response to the special appearance is insufficient. *Steward Health Care Sys. LLC v. Saidara*, 633 S.W.3d 120, 128–29 (Tex. App.—Dallas 2021, no pet.) (en banc); *see also Kelly*, 301 S.W.3d at 658 n.4 ("additional evidence merely supports or undermines the allegations in the pleadings").

A. Jurisdictional Allegations Supporting Specific Jurisdiction Against Nelson in Original Petition[3]

We begin our analysis by considering the jurisdictional facts appellees pleaded in their original petition against Nelson. *See Kelly*, 301 S.W.3d at 658

[3] In appellees' response to Nelson's special appearance, they stated, "Plaintiffs do not dispute that at issue is whether specific jurisdiction is conferred upon the parties." They likewise indicated during the special appearance hearing that they were relying on specific jurisdiction. Accordingly, we limit our analysis to specific jurisdiction.

(stating the plaintiff bears the initial burden to plead sufficient allegations to bring a nonresident defendant within the provisions of the Texas long-arm statute). Appellees alleged Nelson, "Ex-CTE Director," is "an individual, whose permanent residence is in Dallas County, Texas" and could be served at "603 Scuffletown Rd., Simpsonville, SC 29681" where he "temporarily" resides.

The record conclusively negates appellees' contention that Nelson has a permanent residence in Dallas County, Texas. Nelson's affidavit attached to his special appearance states he resided in Simpsonville, South Carolina, and never lived in Texas. During his deposition, he clarified he lived in Simpsonville, South Carolina, for nine months in an RV. Still, his permanent legal residence was in Golden, Colorado, where he had resided for approximately five years. The discrepancy in Nelson's evidence does not alter the fact he never lived in Texas, and appellees presented no evidence to the contrary.

Because Nelson is a nonresident defendant, we must consider whether the appellees met their burden of pleading sufficient allegations to bring Nelson within the provisions of the Texas long-arm statute. *Steward Health Care Sys.*, 633 S.W.3d at 129. A plaintiff's petition satisfies the Texas long-arm statute when it alleges the defendant "did business" in Texas. *Id.* A nonresident defendant "does business" in this state if the nonresident "contracts by mail or otherwise with a Texas resident and either party is to perform the contract in whole or in part in this state," or a

nonresident defendant "commits a tort in whole or in part in this state." TEX. CIV. PRAC. & REM. CODE ANN. § 17.042 (1), (2).

Appellees did not specifically allege that Nelson had committed a tort in Texas or entered into a contract with a Texas resident and either party was to perform the contract in Texas, in whole or in part. Instead, under the "Jurisdiction" heading in their original petition, appellees generally allege jurisdiction in Texas is proper because "actions giving rise to the *formation* of the contract" occurred in Dallas County, and Nelson knowingly availed himself of the personal jurisdiction of Texas "by *engaging* Plaintiffs in a contractual or quasi-contractual relationship knowing Plaintiffs were *located* in DALLAS County, Texas" (emphasis added).

Although the preferred practice is to include specific jurisdictional facts under the "Jurisdiction" heading, we may look to other alleged facts within the original petition to determine if the appellees pleaded sufficient facts to satisfy the Texas long-arm statute. *See Concord Energy, LLC v. VR4-Grizzly, LP*, No. 05-21-01126-CV, 2022 WL 17101034, at *4 (Tex. App.—Dallas Nov. 22, 2022, no pet.) (noting appellate court may consider allegations anywhere in the petition, including the fact section, for the basis of jurisdiction). Accordingly, we consider whether the appellees allege facts elsewhere in their petition showing Nelson was "doing business" or committed a tort in Texas. TEX. CIV. PRAC. & REM. CODE ANN. § 17.042(1), (2).

Appellees brought four causes of action against Nelson and alleged the following facts as to each cause:

1. Conversion/Intentional Trespass

Appellees allege they secured contracts and obtained specialized equipment, motor vehicles, and trailers to execute the installation contracts. On or about February 14, 2023, Nelson converted the equipment and motor vehicles/trailers, began exerting ownership over the equipment and vehicles, and subsequently abandoned the equipment at "Scuffletown RV Park/Storage," which resulted in liens on the property. Nelson wrongfully deprived appellees of the use or possession of the equipment and motor vehicles/trailers, intentionally acted to obtain or retain possession of appellees' property, and purposely refused to return it. They further allege Nelson's intentional trespass caused damages.

Appellees did not plead that any of Nelson's alleged wrongdoing occurred in Texas. The original petition does not specify that any of the contracts involving the allegedly converted property were entered into in Texas, involved Nelson, or that the converted property was in Texas. Further, the original petition wholly fails to provide the location of "Scuffletown RV Park/Storage," in which Nelson allegedly abandoned the property and intentionally trespassed. However, evidence attached to Nelson's special appearance indicated the RV park was in Simpsonville, South Carolina, and appellees provided no evidence to the contrary. Thus, although appellees allege a claim of wrongdoing, they have not alleged that any of the acts

giving rise to the conversion/intentional trespass occurred in Texas. *See, e.g.*, *Kelly*, 301 S.W.3d at 660. *But cf Atiq v. CoTechno Grp., Inc.*, No. 03-13-00762-CV, 2015 WL 6871219, at *7 (Tex. App.—Austin Nov. 4, 2015, pet. denied) (mem. op.) (concluding personal jurisdiction existed for conversion claim when "conversion tort as alleged by [plaintiff] occurred in Texas"). Accordingly, appellees failed to plead facts within the reach of the Texas long-arm statute. *Kelly*, 301 S.W.3d at 660. Because appellees failed to plead such jurisdictional facts, Nelson met his burden to negate all bases of jurisdiction on this cause of action by proving he has never resided in Texas. *Id.*

2. Tortious Interference with Contract

Appellees allege that Nelson tortiously interfered with their exclusive contract with Zoe Tower because CTE and Zapata had a non-compete agreement with Zoe Tower. They claim that on or about December 16, 2022, Nelson acted as "team lead for CTE Network crews in North Carolina, and overs[aw] Zoe Tower and MPI Industries teams." Appellees allege that on or about February 14, 2023, MPI began working with Nelson and Zoe Tower directly and eventually hired Nelson as a manager for MPI to oversee the crews. "Nelson [was aware] of the existence of the agreements and continued exercising control over the jobs and property and utilizing Zoe Tower to execute the jobs, in violation of the exclusive subcontractor agreement."

Appellees' original petition fails to plead facts within the reach of the Texas long-arm statute because they do not allege Nelson committed any tortious act in Texas. *Id.*; *see also Mandalapu v. Vasu Techs., LLC*, No. 02-23-00242-CV, 2023 WL 8820384, at *7 (Tex. App.—Fort Worth Dec. 21, 2023, no pet.) (mem. op.) (concluding plaintiff failed to satisfy long-arm statute because the live pleadings contained no allegations that any tortious conduct occurred in Texas). Instead, appellees pleaded Nelson violated the subcontractor agreement when MPI hired him, and he continued exercising control over the jobs and property in North Carolina in his role as "team lead" in North Carolina. Thus, any alleged tortious interference occurred in North Carolina. Moreover, Nelson confirmed any services he provided while employed with CTE and MPI occurred in North Carolina and South Carolina, not Texas.

Accordingly, the appellees failed to plead facts within the reach of the Texas long-arm statute with respect to their tortious interference with contract claim. *Kelly*, 301 S.W.3d at 660; *see also Moncrief Oil Int'l, Inc. v. OAO Gazprom*, 414 S.W.3d 142, 157 (Tex. 2013) (concluding nonresident defendant was not subject to jurisdiction for tortious interference claim when alleged acts of interference occurred outside of Texas). Because appellees failed to plead such jurisdictional facts, Nelson met his burden to negate all bases of jurisdiction on this cause of action by proving he has never resided in Texas. *Id.*

3. Quantum Meruit

Appellees allege they provided Nelson with valuable services or materials, he accepted the services or materials, and he had reasonable notice of the appellees' expectation of payment for the services or materials. Because there was no express contract covering the services or materials provided, appellees allege that quantum meruit allows them to recover damages.

Appellees' original petition provides no factual allegations satisfying the Texas long-arm statute for a quantum meruit claim against Nelson. They did not allege any facts regarding negotiations between the parties for the valuable services or materials CTE agreed to provide, that any alleged negotiations occurred in Texas, or that Nelson accepted the services or materials in Texas. Instead, Nelson's affidavit confirmed that any services CTE provided and he accepted occurred in North Carolina and South Carolina.

Accordingly, appellees failed to plead facts within the reach of the Texas long-arm statute. *Kelly*, 301 S.W.3d at 660; *see also Pakistan Petroleum Ltd. v. Specialty Process Equip. Corp.*, No. 01-21-00341-CV, 2023 WL 402209, at *8 (Tex. App.—Houston [1st Dist.] Jan. 26, 2023, no pet.) (mem. op.) (concluding pleadings insufficient when allegations underlying quantum meruit claim failed to identify where alleged actions occurred). Because appellees failed to plead such jurisdictional facts, Nelson met his burden to negate all bases of jurisdiction on this cause of action by proving he has never resided in Texas. *Kelly*, 301 S.W.3d at 660.

4. Defamation/Business Disparagement

Appellees allege Nelson disparaged them by stating Zapata "is stealing money from accounts" and "other false claims."[4] Appellees contended Nelson used these false statements as a tool to divert funds owed to them, take away contract jobs, and steer contracts towards MPI. They allege Nelson's defamatory false statements and published disparaging words caused monetary damages and induced others not to do business with them.

Appellees have again failed to plead any allegations of tortious conduct occurring in Texas. They do not allege any specific statements occurred in, were published in, or directed at Texas. *See, e.g.*, *Vinmar Overseas Singapore PTE Ltd. v. PTT Int'l Trading PTE Ltd.*, 538 S.W.3d 126, 133 (Tex. App.—Houston [14th Dist.] 2017, pet. denied) (concluding original petition did not support business disparagement cause of action in Texas when petition failed to state any alleged tortious conduct occurred in Texas or to any of its Texas customers); *see also Kelly*, 301 S.W.3d at 660 (concluding plaintiff failed to plead or provide any evidence of where alleged tortious conduct occurred).

Appellees failed to plead facts within the reach of the Texas long-arm statute. *Kelly*, 301 S.W.3d at 660. Because appellees failed to plead such jurisdictional facts, Nelson met his burden to negate all bases of jurisdiction on this cause of action by proving he has never resided in Texas. *Id.*

[4] Appellees' original petition does not expand on the alleged "other false claims."

B. Jurisdictional Allegations Supporting Specific Jurisdiction Against MPI in Original Petition[5]

In their original petition, appellees allege MPI is "a foreign business entity not properly registered in Texas." Thus, we must consider whether appellees met their burden of pleading sufficient allegations to bring MPI within the provisions of the Texas long-arm statute. *Steward Health Care Sys. LLC*, 633 S.W.3d at 129.

Like Nelson, appellees did not allege MPI committed a tort in Texas or entered into a contract with a Texas resident and either party was to perform the contract in whole or in part in Texas.[6] TEX. CIV. PRAC. & REM. CODE ANN. § 17.042 (1), (2). Accordingly, we consider whether appellees alleged facts elsewhere in their petition showing MPI was "doing business" or committed a tort in Texas. *See Concord Energy, LLC*, 2022 WL 17101034, at *4; TEX. CIV. PRAC. & REM. CODE ANN. § 17.042(1), (2).

Appellees brought the same four causes of action against MPI and allege the following facts as to each cause of action:

1. Conversion/Intentional Trespass

[5] Appellees did not allege in their original petition that the trial court had general jurisdiction over MPI or that MPI consented to jurisdiction through a forum-selection clause entered into by the parties. *See Chen*, 2022 WL 16757346, at *4. Further, in appellees' response to MPI's special appearance, they stated, "Plaintiffs do not dispute that at issue is whether specific jurisdiction is conferred upon the parties." And, at the special appearance hearing, appellees indicated they were relying on the number of "specific contacts, not general," for jurisdiction. Thus, the trial court could not have relied on general jurisdiction to support a finding of personal jurisdiction over MPI. We therefore limit our analysis to specific jurisdiction. *See id.*

[6] In the "Factual Background" of their original petition, they alleged MPI "entered into a general contracting agreement with MPI Industries Carolinas, a foreign business entity, to provide services for the installation of equipment for Dish Networks," but they did not allege either party was to perform the contract in whole or in part in Texas.

Appellees allege they secured contracts and obtained specialized equipment, motor vehicles, and trailers to execute the installation contracts. On or about February 14, 2023, MPI "converted to [its] individual use equipment and motor vehicles" owned by appellees, and MPI began exerting ownership over appellees' property. Appellees allege MPI wrongfully deprived them of use or possession of the equipment and motor vehicles/trailers, wrongfully exceeded the scope of authority for any lawful possession of the equipment or motor vehicles/trailers, intentionally acted to obtain or retain possession of their property and refused to return it. They further plead that MPI's intentional trespass caused damages.

Appellees failed to plead that any of MPI's alleged wrongdoing occurred in Texas. The original petition does not specify any of the contracts involving the allegedly converted property were entered into in Texas, involved MPI, or that the converted property was in Texas. The original petition also fails to identify where the conversion or intentional trespass occurred; however, based on Nelson's testimony, it happened in South Carolina. Thus, although appellees allege a claim of wrongdoing, they do not allege any of the acts giving rise to the conversion/intentional trespass occurred in Texas. *See, e.g.*, *Kelly*, 301 S.W.3d at 660. Accordingly, appellees failed to plead facts within the reach of the Texas long-arm statute. *Id.* Because appellees failed to plead such jurisdictional facts, MPI met

its burden to negate all bases of jurisdiction on this cause of action by proving it was not a Texas resident.[7] *Id.*

2. Tortious Interference with Contract

Appellees allege MPI tortiously interfered with their exclusive contract with Zoe Tower because CTE and Zapata have a non-compete agreement with Zoe Tower. They claim that on or about February 14, 2023, MPI began using Nelson and Zoe Tower directly and eventually hired Nelson as a manager for MPI to oversee the crews. MPI "was aware of the existence of the agreements and continued exercising control over the jobs and property and utilizing Zoe Tower to execute the jobs, in violation of the exclusive subcontractor agreement."

Appellees' original petition failed to plead facts within the reach of the Texas long-arm statute because they do not allege MPI committed any tortious act in Texas. *Id.*; *see also Mandalapu*, 2023 WL 8820384, at *7 (concluding plaintiff failed to satisfy long-arm statute because the live pleadings contained no allegations that any tortious conduct occurred in Texas). Instead, appellees plead that MPI exercised control over the jobs and property, thereby interfering with the exclusive subcontractor agreement, which, as explained above, did not occur in Texas.

[7] MPI attached the affidavit of David Ristick, the sole member of MPI, to its special appearance. He stated MPI is a limited liability company formed under the laws of North Carolina with its registered office in Raleigh, North Carolina. MPI is not registered to do business in Texas and has never been registered to do so. MPI also attached its Articles of Organization from the North Carolina Secretary of State.

Accordingly, appellees failed to plead facts within the reach of the Texas long-arm statute. *Kelly*, 301 S.W.3d at 660. Because appellees failed to plead such jurisdictional facts, MPI met its burden to negate all bases of jurisdiction on this cause of action by proving it is not a Texas resident. *Id.*; *see also Moncrief Oil Int'l, Inc*, 414 S.W.3d at 157 (concluding nonresident defendant was not subject to jurisdiction for tortious interference claim when alleged acts of interference occurred outside of Texas).

3. Quantum Meruit

Appellees allege they provided valuable services or materials to MPI, MPI accepted them, and MPI had reasonable notice of appellees' expectation of payment for the services or materials. Because there is no express contract covering the services or materials provided, appellees allege that quantum meruit allows them to recover damages.

Appellees original petition provides no factual allegations satisfying the Texas long-arm statute for a quantum meruit claim against MPI. Although CTE alleges it entered into "a general contracting agreement with MPI . . . to provide services for the installation of equipment for Dish Networks," it is undisputed any alleged agreement was not reduced to writing. There are no facts regarding any of the alleged negotiations between the parties regarding the valuable services or materials provided, that any alleged negotiations occurred in Texas, or that MPI accepted any of the services or materials in Texas. Instead, Ristick explained in his affidavit that

any work was intended to be performed in North Carolina and South Carolina, and Nelson confirmed any materials and services CTE provided were in North Carolina and South Carolina.

Appellees failed to plead facts within the reach of the Texas long-arm statute. *Kelly*, 301 S.W.3d at 660; *see also Pakistan Petroleum Ltd*, 2023 WL 402209, at *8 (concluding pleadings insufficient when allegations underlying quantum meruit claim failed to identify where alleged actions occurred). Because appellees failed to plead such jurisdictional facts, MPI met its burden to negate all bases of jurisdiction on this cause of action by proving it is not a Texas resident. *Id.*

4. Defamation/Business Disparagement

Appellees allege MPI disparaged them by stating Zapata "is stealing money from accounts" and other "false claims." Appellees contend MPI used these false statements as a tool to divert funds owed to them, to take away contract jobs, and to steer contracts towards MPI. Appellees alleged MPI's defamatory false statements and published disparaging words caused monetary damages and induced others to not do business with them.

Appellees have again failed to plead any allegations of tortious conduct occurring in Texas. They have not alleged any specific statements were made in, published in, or directed at Texas. *See, e.g.*, *Vinmar Overseas Singapore PTE Ltd.*, 538 S.W.3d at 133 (concluding original petition did not support business disparagement cause of action in Texas when it failed to state any alleged tortious

conduct occurred in Texas or to any of its Texas customers); *see also Kelly*, 301 S.W.3d at 660 (concluding plaintiff failed to plead or provide any evidence of where alleged tortious conduct occurred). Because appellees failed to plead such jurisdictional facts, MPI met its burden to negate all bases of jurisdiction on this cause of action by proving it is not a Texas resident. *Kelly*, 301 S.W.3d at 660.

C. Appellees' Special Appearance Response and Evidence Considered at the Special Appearance Hearing

In addition to a plaintiff's original petition, Texas Rule of Civil Procedure 120a allows a trial court to determine a special appearance based on affidavits, attachments, the results of the discovery process, and any oral testimony. *See* TEX. R. CIV. P. 120a(3). Appellees' response to Nelson and MPI's special appearance included additional significant jurisdictional allegations. They alleged that before their longstanding relationship with Nelson, MPI had a longstanding relationship with Nelson. When MPI needed crews to work specific jobs in North Carolina and South Carolina or risk losing a lucrative contract, MPI and CTE discussed the need. "MPI and Nelson purposely came to [CTE] with this business opportunity knowing that [CTE was] located in Dallas County." For the first time in their response, appellees allege "the oral contract was solicited, negotiated, and consummated in Texas."

Appellees also contend the following "three distinct activities" were sufficient to invoke specific jurisdiction:

a. Defendants MPI and Nelson specifically solicited business from Plaintiffs, knowing that Plaintiff Zapata resided in Dallas County, and that Plaintiff CTE Networks' principal office was located in Dallas County;

b. Defendant MPI made all of its payments for the work performed by the crews to Plaintiffs in Dallas County; and

c. By specific request, Defendant MPI caused Plaintiffs to send three of its best crews from Texas to the Carolinas.

Appellees did not attach any evidence to their response supporting these new allegations.

In *Steward Health Care System, LLC v. Saidara*, this Court concluded that raising jurisdictional allegations for the first time in response to a special appearance is insufficient. 633 S.W.3d at 128–29. "[T]he plaintiff must meet its initial burden on a special appearance by pleading, *in its petition*, sufficient jurisdictional allegations to invoke jurisdiction under the Texas long-arm statute." *Id.* at 129. The plaintiff may present evidence supporting its petition in a response. Still, if the evidence differs from the allegations in the original petition, "then the plaintiff should amend the petition for consistency." *Id.* (quoting *Kelly*, 301 S.W.3d at 659 n.6). Accordingly, we may not consider any of the allegations in the appellees' response to determine if they satisfied the Texas long-arm statute and to the extent that the trial court did, it erred. *Id.*

We may, however, consider whether the five exhibits appellees submitted to the trial court as part of the evidentiary hearings support the factual allegations in their original petition. *Id.*; TEX. R. CIV. P. 120a(c). These exhibits are (1) a June 1,

2021 email from Nelson to Zapata referencing Nelson's account application and credit reference with those documents attached; (2) MPI's bills and applied payments from January 1, 2022, to October 12, 2022; (3) the invoices CTE sent to MPI from June 2, 2022, through February 3, 2023; (4) an inventory of items, with monetary values, that MPI and Nelson allegedly stole; and (5) the "Contract Employee Non-Solicitation Agreement" between CTE and Zoe Tower executed on December 21, 2022.

Appellees relied heavily on the twenty-two invoices they sent to MPI from June 2022 to February 2023 for work allegedly performed pursuant to the parties' agreement. However, it is undisputed any work performed occurred in North Carolina and South Carolina, not Texas.

The fact that CTE sent invoices from Texas is of no consequence for purposes of determining specific jurisdiction. To exercise specific jurisdiction over a nonresident defendant, the defendant's contacts with the forum state must be purposeful and the cause of action must arise from or relate to those contacts. *Moki Mac*, 221 S.W.3d at 575–76. We focus on the relationship between the forum, the defendant, and the litigation. *Id.* The relevant inquiry is the defendant's contact with the forum state, not the unilateral activity of the plaintiff or a third party. *Id.* at 575. Thus, CTE sending invoices from Texas is irrelevant to the analysis. Likewise, MPI paying the invoices to a Texas bank account cannot satisfy minimum contacts for specific jurisdiction. *See, e.g., Internet Advert. Grp., Inc. v. Accudata, Inc.*, 301

S.W.3d 383, 389 (Tex. App.—Dallas 2009, no pet.) ("IAG did transmit payments to Texas, but contracting with a Texas company and requiring payments in Texas do not alone necessarily establish sufficient minimum contacts to demonstrate specific jurisdiction."); *see also Fountain v. Burkland*, No. 03-01-00380-CV, 2001 WL 1584011, at *5 (Tex. App.—Austin Dec. 13, 2001, pet. denied) (concluding wire transfer sent to Texas, without more, was insufficient under Texas and federal law to satisfy minimum contacts); *3-D Elec. Co. v. Barnett Const. Co.*, 706 S.W.2d 135, 142 (Tex. App.—Dallas 1986, writ ref'd n.r.e.) ("Clearly, the making of payments in Texas is not sufficient to establish minimum contacts."). Appellees have not explained how their other four exhibits relate to or support their jurisdictional argument, and we do not believe that they do.

We acknowledge that during Nelson's deposition, he testified that while in Colorado and employed by CTE, he verbally negotiated with Zapata regarding MPI and CTE working together to provide telecommunication construction services in mostly North Carolina and some in South Carolina. However, he never came to Texas for any of the negotiations and was unaware of Zapata's location during the negotiations. David Ristick's affidavit confirms that MPI never sought to do business in Texas or solicited business in Texas. Appellees provided no evidence to the contrary. Although appellees maintained in their response that "the oral contract was solicited, negotiated, and consummated in Texas," we may not consider

allegations in the response not included in the original petition. *Steward Health Care System*, 633 S.W.3d at 129.

Regardless, standing alone, contracting with a Texas resident does not necessarily establish minimum contacts sufficient to support personal jurisdiction. *Hoagland v. Butcher*, 474 S.W.3d 802, 815 (Tex. App.—Houston [14th Dist.] 2014, no pet.); *Citrin Holdings, LLC v. Minnis*, 305 S.W.3d 269, 281 (Tex. App.—Houston [14th Dist.] 2009, no pet.). The contract's place of performance is an important consideration. *Hoagland*, 474 S.W.3d at 815. It is reasonable to subject a nonresident defendant to personal jurisdiction in Texas in connection with litigation arising from a contract specifically designed to benefit from the skills of a Texas resident who performs contractual obligations in Texas. *Id.* It is undisputed no part of the contract was performed in Texas.

Because appellees failed to establish jurisdiction based on the allegations in their original petition or the documents admitted into evidence at the special appearance hearing, appellants had only to prove that they did not live in Texas to negate personal jurisdiction. *Kelly*, 301 S.W.3d at 658–59. MPI and Nelson met their burdens. Based on our conclusion that appellees failed to establish personal jurisdiction, we need not consider whether exercising jurisdiction would comport with traditional notions of fair play and substantial justice. TEX. R. APP. P. 47.1. Accordingly, the trial court erred by denying their special appearance.

Conclusion

We reverse the trial court's April 18, 2024 order denying appellants' special appearance and render judgment dismissing appellees' claims against appellants for want of personal jurisdiction.

/Cynthia Barbare/
CYNTHIA BARBARE
JUSTICE

Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

MPI INDUSTRIES CAROLINAS, LLC AND TODD NELSON, Appellants	On Appeal from the County Court at Law No. 3, Dallas County, Texas Trial Court Cause No. CC-23-02767-C.
No. 05-24-00560-CV V.	Opinion delivered by Justice Barbare. Justices Miskel and Breedlove participating.
CTE NETWORKS, LLC AND ANTONIO ZAPATA, Appellees	

In accordance with this Court's opinion of this date, the April 18, 2024 order denying appellants MPI INDUSTRIES CAROLINAS, LLC'S AND TODD NELSON'S special appearance is **REVERSED** and judgment is **RENDERED** dismissing appellees CTE NETWORKS, LLC's AND ANTONIO ZAPATA's claims for want of personal jurisdiction.

It is **ORDERED** that appellants MPI INDUSTRIES CAROLINAS, LLC AND TODD NELSON recover their costs of this appeal from appellees CTE NETWORKS, LLC AND ANTONIO ZAPATA.

Judgment entered this 11th day of March, 2025.