

Reverse and Render and Opinion Filed October 5, 2026



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-26-00028-CV

**INFOTEK CONSULTING, LLC, Appellant
V.
GLENN MICHAEL DUNN, Appellee**

**On Appeal from the County Court at Law No. 2
Dallas County, Texas
Trial Court Cause No. CC-24-09309-B**

MEMORANDUM OPINION

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

Infotek Consulting, LLC appeals the trial court's denial of its special appearance. The company asserts the evidence it submitted conclusively negated the jurisdictional allegations made against it and its prayer for relief did not constitute a general appearance. For the reasons that follow, we reverse the trial court's order denying Infotek's special appearance and render judgment dismissing the claims against Infotek for want of jurisdiction.

Background

This suit arises out of an accident in which Susan Ann Lombardi allegedly struck Glenn Michael Dunn with her car. Dunn sued Lombardi asserting claims for negligence and gross negligence.

Eight months later, Dunn filed a supplemental petition adding Infotek as a defendant. The petition states a claim against Infotek under the doctrine of respondeat superior. In support of this claim, the petition alleges that Lombardi “was in the course and scope of her employment with Infotek when she caused the wreck and Plaintiff’s injuries.”

Infotek filed a verified special appearance contesting both general and specific jurisdiction over it. With respect to Dunn’s respondeat superior claim, Infotek argued the evidence showed “the collision in question did not arise out of any acts performed by Lombardi while she was in the course and scope of her employment and, as a result, Dunn’s respondeat superior allegations are not sufficient to confer specific jurisdiction [over] Infotek.” Attached to the special appearance was an affidavit by Gautam Mehndiratta, the CEO of Infotek, and excerpts from Lombardi’s deposition.

In his affidavit, Mehndiratta testified to the following facts:

- Infotek is a Delaware LLC with its headquarters in Virginia.
- No member of the LLC resides in Texas.
- None of Infotek’s officers work in or from Texas.

- Infotek does not own or rent any real property in Texas.
- Infotek is not registered to do business in Texas.
- At the time of the accident, Infotek had only two employees, including Lombardi, who worked remotely from Texas.
- No employee working from Texas was required to live in Texas or perform tasks that could only be accomplished from or in the state.
- Lombardi's job did not require her to drive a car or meet Infotek clients in person.
- Infotek did not provide Lombardi with a car.
- Lombardi billed time to Infotek's clients in thirty-minute increments even if she spent less than thirty minutes doing work for the client.
- Infotek employee timesheets reflect time billed to clients and not the actual time worked.

Lombardi testified as follows:

- On the day of the accident, she worked from home from 8:00 a.m. to 3:45 p.m.
- Her job required use of a computer.
- She did no work for Infotek after 3:45 p.m., at which time she left to meet a friend at a coffee shop.
- The accident at issue occurred while she was driving to meet her friend.
- She was not in the course and scope of her employment when the accident occurred.

Dunn filed a response to the special appearance asserting two arguments: (1) Infotek waived its jurisdictional challenge by requesting “such further relief” to which it may show itself to be entitled in the prayer section of its special appearance, and (2) Infotek’s employment records show Lombardi worked for eight hours on the day of the accident and, because Lombardi testified she began working at 8:00 a.m., she must have been in the course and scope of her employment when the accident occurred at 3:54 p.m. In support of the latter argument, Dunn submitted the police report showing the time of the accident and Lombardi’s timesheet which listed the client’s with whom she worked that day and how much time was billed to each client.

At the hearing on the special appearance, Dunn’s counsel conceded there was no general jurisdiction over Infotek, but argued the evidence did not negate specific jurisdiction based on the possibility that Lombardi was in the course and scope of her employment when she struck Dunn with her car. Because Lombardi’s timesheet showed she billed eight hours that day, Dunn’s counsel argued it was possible Lombardi was attending a Zoom meeting or finishing a conference call while she was driving. The trial court denied the special appearance and Infotek brought this appeal.

Analysis

Whether a court can exercise personal jurisdiction over a nonresident defendant is a question of law we review de novo. *Kelly v. Gen. Interior Const., Inc.*, 301 S.W.3d 653, 657 (Tex. 2010). “A nonresident defendant is subject to the

personal jurisdiction of Texas courts if (1) the Texas long-arm statute authorizes the exercise of jurisdiction, and (2) the exercise of jurisdiction does not violate federal and state constitutional due process guarantees.” *Id.* The Texas long-arm statute is satisfied when a nonresident defendant conducts business in Texas including committing a tort in whole or in part in Texas. TEX. CIV. PRAC. & REM. CODE ANN. § 17.042(2). The jurisdictional requirement respecting commission of a tort is satisfied when the defendant, either personally or through an agent, commits an act or omission within the forum state and the petition states a cause of action in tort arising from such conduct. *Bruno’s Inc. v. Arty Imps., Inc.*, 119 S.W.3d 893, 897 (Tex. App.—Dallas 2003, no pet.).

The plaintiff bears the initial burden to plead sufficient factual allegations to bring a nonresident defendant within the provisions of the Texas long-arm statute. *Kelly*, 301 S.W.3d at 658. Once the plaintiff has met that burden, the defendant bears the burden of negating the bases of personal jurisdiction alleged by the plaintiff. *Id.* Because the plaintiff defines the scope and nature of the lawsuit, a defendant has no duty to negate jurisdictional allegations that are not raised in the plaintiff’s petition. *Id.*; *FedEx Corp. v. Contreras*, No. 04-19-00757-CV, 2020 WL 4808721, at *5 (Tex. App.—San Antonio Aug. 19, 2020, no pet.) (mem. op.). 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. *Kelly*, 301 S.W.2d at 659.

The only jurisdictional fact alleged by Dunn with respect to Infotek was that Lombadi was in the course and scope of her employment with the company when the accident occurred. An employer may be held vicariously liable for an employee's tortious actions if the actions were committed within the course and scope of their employment. *Painter v. Amerimex Drilling I, Ltd.*, 561 S.W.3d 125, 131 (Tex. 2018). Consequently, if an employee was acting as an agent of her employer while committing a tort in Texas, the Texas long-arm statute may authorize the exercise of jurisdiction over the employer. *Bruno*, 119 S.W.3d at 897.

To be in the course and scope of employment means, at a minimum, the employee's conduct was within the scope of her general authority, in furtherance of the employer's business, and for the accomplishment of the object for which she was hired. *EAN Holdings, LLC v. Arce*, 636 S.W.3d 290, 295 (Tex. App.—Fort Worth 2021, pet. denied). An employer is not generally liable for the acts of its employees while traveling to and from work unless the employee has undertaken a special mission at the direction of her employer or is otherwise performing a service in furtherance of her employer's business with the express or implied approval of the employer. *Painter*, 561 S.W.3d at 136. "This rule is based on the premise that an injury occurring while travelling to and from work has nothing to do with the risks associated with the place of employment." *Wilie v. Signature Geophysical Servs., Inc.*, 65 S.W.3d 355, 359 (Tex. App.—Houston [14th Dist.] 2001, pet. denied).

In this case, Infotek negated Dunn’s jurisdictional allegation by presenting evidence showing that, at the time of the accident, Lombardi had ceased working for the day and was driving to an engagement unrelated to her job. The burden then shifted to Dunn to at least create a fact issue regarding whether Lombardi was acting within the course and scope of her employment with Infotek when the accident occurred. Dunn relies on Lombardi’s timesheet to argue that, because Lombardi recorded eight hours of work beginning at 8:00 a.m. on the day of the accident, she must have still been working when she struck Dunn at 3:54 p.m. But, as shown by the testimony of Infotek’s CEO, Lombardi’s timesheet does not establish the number of hours she actually worked, but the number of thirty-minute increments she billed to clients. Accordingly, the timesheet showing Lombardi billed clients for eight hours of work on the day of accident does not contradict her testimony that she stopped working at 3:45 p.m., nine minutes before the accident occurred. *See Arce*, 636 S.W.3d at 297 (evidence that accident occurred during “normal business hours” not enough to create fact issue on course and scope).

Dunn argues that, because Lombardi worked remotely, she “*could have* still been working at the time of the crash.” This is pure speculation unsupported by any evidence. Lombardi specifically stated that she had stopped working for the day before the crash occurred. Dunn presented no evidence to contradict this testimony. Self-serving speculation will not create a fact issue to defeat a special appearance. *City of Dallas v. Rowe*, No. 05-25-01362-CV, 2026 WL 2519529, at *11 (Tex.

App.—Dallas Aug. 26, 2026, no pet. h.) (mem. op.); *Cnty of El Paso v. Flores*, 677 S.W.3d 31, 43 (Tex. App.—El Paso 2023, pet. denied).

Finally, we address Dunn’s contention that Infotek waived its special appearance by requesting “such further relief” to which it may be entitled in its prayer for relief at the conclusion of the special appearance. A party enters a general appearance and waives a special appearance by (1) invoking the jurisdiction of the court on any question other than the court’s jurisdiction, (2) recognizing by its acts that an action is properly pending, or (3) seeking affirmative action from the court. *I-90 Cold Storage, Inc. v. Stellar Restoration Servs., LLC*, No. 05-20-01050-CV, 2021 WL 2282004, at *2 (Tex. App.—Dallas June 4, 2021, no pet.) (mem. op.). “The test for a general appearance is whether a party requests affirmative relief inconsistent with an assertion that the trial court lacks jurisdiction.” *Id.*

The only filing Infotek made in this case was its special appearance. In its conclusion and prayer, Infotek stated it “respectfully prays that the Court sustain this Special Appearance, enter a final order dismissing it from the instant suit for lack of personal jurisdiction, and for such further relief to which this Defendant may show itself to be entitled.” Dunn conceded at the special appearance hearing that he had no case authority to support his argument that the boiler-plate request for “further relief” constituted a general appearance.¹ Nor have we found any. Because the

¹ Dunn did not address this issue in his response brief on appeal.

request for “further relief” was made solely in conjunction with Infotek’s special appearance, Infotek did not make a request for relief that was inconsistent with its assertion that the trial court lacked jurisdiction. Infotek did not, therefore, waive its special appearance.

Based on the foregoing, we conclude the trial court erred in denying Infotek’s special appearance. Accordingly, we reverse the trial court’s order and render judgment dismissing Dunn’s claims against Infotek for lack of jurisdiction.

/Earl N. Jackson/

EARL N. JACKSON
JUSTICE