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Ohio Supreme Court Finds Personal Jurisdiction over Defendant in Defamation Case Involving Statements Made on the Internet

By Jeffrey T. Cox and Melinda K. Burton

On June 10, 2010, a divided Ohio Supreme Court handed down a potentially significant decision, in Kauffman Racing Equipment, LLC v. Roberts, Slip Opinion No. 2010-Ohio-2551, relating to personal jurisdiction in defamation cases involving the Internet. Beyond the substantial due process concerns raised by the Court's finding of personal jurisdiction over a non-resident defendant where the allegedly defamatory statements were made solely on the Internet, Kauffman Racing highlights challenging, still unanswered (and unsettling) questions regarding First Amendment rights in this digital era.

In Kauffman Racing, the defendant Roberts, a resident of Virginia who had never been to Ohio, purchased an engine block from the plaintiff Kauffman Racing Enterprises ("KRE"), an Ohio corporation. Eight months after the purchase, Roberts telephoned KRE and claimed that the block was defective (although the block was purchased by Roberts "as is."). KRE and Roberts agreed that KRE would inspect the



block and if it was found defective, then KRE would repurchase it from Roberts. KRE inspected the block and discovered that Roberts had made substantial modifications to it and declined to buy it back. Dissatisfied by KRE's refusal to buy back the block, Roberts "posted numerous rancorous criticisms" of KRE on various websites (including eBay Motors). Among his postings included comments such as "Now, I have and have had since the day the block was delivered, a USELESS BLOCK. I didn't say worthless! I plan to get a lot of mileage out of it[.] And when I'm [sic] done Steve Kauffman will be able to attest to its worth"; "What I loose [sic] in dollars I will make up in entertainment at their expence [sic]"; "I have a much bigger and dastardly plan than that and this is the perfect place to start"; "Basically this block is junk. . . . Also the service you would get from Steve Kauffman. . . is less than honorable. I brought the issues to his attention and he basically gave me the middle finger salute"; "I posted facts I can back up 100%".

KRE thereafter brought a defamation claim against Roberts in Ohio. The trial court dismissed the action for lack of personal jurisdiction over Roberts, a Virginia resident who had never been to Ohio. The Court of Appeals reversed. On review, the Ohio Supreme Court agreed with the Court of Appeals, holding that in this case, over this defendant, there was personal jurisdiction.

In finding that an Ohio court could exercise personal jurisdiction over Roberts in this case, the Supreme Court reiterated that the mere fact that allegedly defamatory statements are made on the Internet does not affect the way the Court approaches the personal jurisdiction analysis, which in Ohio involves a two-step examination. Under this approach, the court must determine first that the defendant is

subject to personal jurisdiction under Ohio's long-arm statute and then second, that subjecting the defendant to personal jurisdiction in Ohio comports with due process.

Taking the traditional two-step approach to personal jurisdiction in Ohio, the Court first found that Ohio's long-arm statute conferred personal jurisdiction over Roberts for either of the following reasons: (1) the allegedly defamatory statements posted on the Internet were received and published in Ohio because at least 5 Ohioans saw the posts, or (2) the postings on the Internet were made with the intent to injure an Ohio resident.

The Court then moved to the second step in the analysis -- the due process inquiry. The Court found that due process was met in this case based on the application of the effects test for the purposeful availment requirement in defamation cases set forth by the United States Supreme Court in Calder v. Jones, 464 U.S. 783, 104 S.Ct. 1482 (1984). In Calder, two Florida-resident employees of the National Enquirer were subject to personal jurisdiction in California in a libel action brought against them due to the fact that the plaintiff was a California resident, the employees' wrote and edited an article that they knew would have potentially devastating impact in California because plaintiff resided and worked there, and California was the state in which the National Enquirer had the largest circulation (600,000 copies). Finding the case to be like Calder, the Ohio Supreme Court explained that Roberts blatantly intended to harm KRE's reputation and knew that the brunt of the harm would be suffered in Ohio because he knew that KRE was an Ohio corporation, and because at least 5 Ohioans saw his posts.

Noting that some commentators have criticized using the Calder effects test in Internet cases, because Internet-based activity can cause effects in most jurisdictions, the Ohio Supreme Court nonetheless rejected that criticism: "While the effects of Internet conduct may be felt in many [forums], the intent requirement allows a court to find a particular focal point."

The Ohio Supreme Court's 4-2 decision¹ appears to be, and should be, limited to the particular facts of the case and this particular defendant (indeed, there is no particularly broad holding in this case). However, the Court's concluding statement bears cautious consideration: "We decline to allow a nonresident defendant to take advantage of the conveniences that modern technology affords and simultaneously be shielded from the consequences of his intentionally tortious conduct."

Indeed, the dissent warned of the potential breadth of the majority's decision. "Today, the majority has extended the personal jurisdiction of Ohio courts to cover any individual in any state who purchases a product from an Ohio company and posts a criticism of it on the Internet with the intent to damage the seller." The dissent noted "Roberts posted his comments on three general auto racing websites and an auction site, none of which have any specific connection to Ohio or are more likely to be viewed by a resident of Ohio than by a resident of any other state." The dissent deemed Roberts'

¹ Chief Justice Thomas Moyer passed away unexpectedly on April 2, 2010, days before this case was argued and submitted. Newly-appointed Chief Justice Eric Brown joined the Court on May 3, 2010, but did not participate in the decision.

activity in this case "arguably the same" as that of "any individual who posts a negative review of a product or service in a public forum" and warned that not only does subjecting a person to personal jurisdiction in Ohio on that basis not comport with due process (even under the Calder effects test) but it also has the "practical impact" of "unnecessarily chill[ing] the exercise of free speech."

It will be interesting to see if Roberts decides to appeal this case to the United States Supreme Court and if that Court will agree to hear it. It also remains to be seen how courts in Ohio and in other jurisdictions will interpret this case -- either limiting it to its facts, as arguably it should be, or applying it more broadly as the dissent fears, leading to a potential floodgate of this type of litigation and/or a chilling of Internet speech. If read broadly, then the case may be viewed as another step by the courts to further restrict or restrain First Amendment rights in this digital era.

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