

Affirmed and Memorandum Opinion filed December 13, 2022.



In The

Fourteenth Court of Appeals

NO. 14-21-00729-CV

**MARQUETTE TRANSPORTATION COMPANY, LLC AND
MARQUETTE TRANSPORTATION COMPANY GULF-INLAND, LLC,
Appellants**

V.

GERALD SIMON, Appellee

**On Appeal from the 157th District Court
Harris County, Texas
Trial Court Cause No. 2020-80504**

MEMORANDUM OPINION

Appellee Gerald Simon suffered a stroke while aboard a vessel that was owned, operated, and crewed by appellants Marquette Transportation Company, LLC and Marquette Transportation Company Gulf-Inland, LLC (collectively, Marquette). Simon sued Marquette for claims under the Jones Act, for unseaworthiness, and for maintenance and cure. Marquette filed a special

appearance, and after Simon filed an amended petition with additional allegations regarding personal jurisdiction, the trial court denied the special appearance.

Marquette asserts in two issues that the trial court erred by denying the special appearance because Texas courts cannot exercise general or specific jurisdiction over it. We hold that the trial court did not err by denying the special appearance based on specific personal jurisdiction, and we affirm.

I. Legal Principles for Specific Personal Jurisdiction

Texas courts may exercise 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 constitutional due-process guarantees. *Moncrief Oil Int'l Inc. v. OAO Gazprom*, 414 S.W.3d 142, 149 (Tex. 2013). A state's exercise of personal jurisdiction over a nonresident defendant comports with federal due process if the defendant has "minimum contacts" with the state and the exercise of jurisdiction does not offend traditional notions of fair play and substantial justice. *M&F Worldwide Corp. v. Pepsi-Cola Metro. Bottling Co.*, 512 S.W.3d 878, 885 (Tex. 2017). A defendant's contacts may give rise to either specific or general jurisdiction. *Retamco Operating, Inc. v. Republic Drilling Co.*, 278 S.W.3d 333, 338 (Tex. 2009).

General jurisdiction arises when a defendant's contacts are continuous and systematic. *Id.* A specific jurisdiction analysis considers the relationship among the defendant, the forum, and the litigation. *Id.* (citing *Moki Mac River Expeditions v. Drugg*, 221 S.W.3d 569, 574 (Tex. 2007)). A defendant has sufficient minimum contacts with a state to establish specific jurisdiction if "(1) the defendant purposefully avails itself of conducting activities in the forum state, and (2) the cause of action arises from or is related to those contacts or activities." *Retamco*, 278 S.W.3d at 338. The second requirement requires a "substantial

connection” between the defendant’s activities within the forum state and the operative facts of the litigation. *M&F Worldwide*, 512 S.W.3d at 890 (citing *Moki Mac*, 221 S.W.3d at 585).

We review determinations of personal jurisdiction de novo. *Id.* at 884. A plaintiff has the initial burden to plead sufficient allegations to confer jurisdiction. *Retamco*, 278 S.W.3d at 337. A defendant seeking to avoid being sued in Texas then has the burden to negate all potential bases for jurisdiction pled by the plaintiff. *Id.* If the plaintiff fails to plead facts bringing the defendant within the reach of Texas’s long-arm statute, a defendant need only prove that it does not live in Texas to negate jurisdiction. *Kelly v. Gen. Interior Const. Inc.*, 301 S.W.3d 653, 658–59 (Tex. 2010). When a pleading is devoid of jurisdictional facts, “the plaintiff should amend the pleading to include the necessary factual allegations, thereby allowing jurisdiction to be decided on evidence rather than allegations, as it should be.” *Id.* at 659 (citing Tex. R. Civ. P. 63).

Generally, for a challenge to pleadings, we construe a plaintiff’s petition liberally in their favor and look to their intent. *Cf. Tex. Dep’t of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 227 (Tex. 2004) (plea to the jurisdiction); *Wooley v. Schaffer*, 447 S.W.3d 71, 75 (Tex. App.—Houston [14th Dist.] 2014, pet. denied) (Rule 91a motion to dismiss); *see also Roark v. Allen*, 633 S.W.2d 804, 809 (Tex. 1982) (“When there are no special exceptions, a petition will be construed liberally in favor of the pleader.”). To determine whether a plaintiff satisfied its pleading burden in the context of a special appearance, courts may consider the plaintiff’s petition as well as its response to the defendant’s special appearance. *See Washington DC Party Shuttle, LLC v. IGuide Tours*, 406 S.W.3d 723, 738 (Tex. App.—Houston [14th Dist.] 2013, pet. denied) (en banc) (citing *Max Protetch, Inc. v. Herrin*, 340 S.W.3d 878, 883 (Tex. App.—Houston [14th Dist.] 2011, no pet.)).

A defendant can negate jurisdiction on either a factual or legal basis. *Kelly*, 301 S.W.3d at 659. Factually, the defendant can present evidence that it has no contacts with Texas, effectively disproving the plaintiff’s allegations. *Id.* Legally, the defendant can show that even if the plaintiff’s alleged facts are true, the evidence is insufficient to establish jurisdiction because (1) the defendant’s contacts fall short of purposeful availment; (2) the claims do not arise from the contacts; or (3) traditional notions of fair play and substantial justice are offended by the exercise of jurisdiction. *Id.*

We analyze jurisdictional contacts on a claim-by-claim basis unless the claims arise from the same forum contacts. *See Moncrief Oil*, 414 S.W.3d at 150–51.

II. Relevant Background

As Marquette acknowledges in its briefing before this court, Marquette chose to negate Simon’s allegations of jurisdiction on a legal basis, contending that Simon’s allegations are insufficient to establish jurisdiction because the claims do not “arise from or relate to” Marquette’s alleged contacts. Thus, we focus our review on Simon’s allegations in his live petition.¹

It is undisputed that Simon is a Louisiana resident, the vessel was in Louisiana waters when he suffered a stroke, and the Marquette companies are incorporated in Delaware and have their principal places of business outside Texas.

¹ Consistent with Texas’s long-arm statute, Simon alleged in his original petition that Marquette does business in Texas. *See* Tex. Civ. Prac. & Rem. Code § 17.042 (“doing business” in Texas includes committing “a tort in whole or in part” in Texas). Marquette filed a special appearance along with a declaration from their claims manager. The manager testified that the Marquette companies were Delaware limited liability companies with principal places of business outside Texas. The manager testified that the “alleged incident occurred in Louisiana.” Simon filed his first amended petition to allege jurisdictional facts more specifically, *see Kelly*, 301 S.W.3d at 659, and a response to the special appearance with evidence.

Simon alleges in his live petition, however, that Marquette maintains an office in La Porte, Texas, and Simon's claims arise out of and are related to Marquette's contacts with Texas.

Regarding his claims under the Jones Act and for unseaworthiness, Simon alleges that Marquette "issued and/or failed to enforce specific safety policies and procedures that comprise their health and safety/HSE responsibilities from within Harris County, in the State of Texas." Simon alleges the following:

Employees of Defendants that are actually based out of a Harris County, Texas office, performed the following functions at the time of the accident: (1) ensuring U.S. Coast Guard, OSHA, ISM, TMSA, & Customer compliance by studying and interpreting regulations and standards; (2) conducting vessel inspections, identifying problems, developing solutions, accompanying and working with inspectors or boarding teams; (3) leading accident prevention practices through investigation; (4) identify root causes of accidents and recommending policies and procedures; (5) conduct vessel safety training; (6) preparing employees for safe work by developing and disseminating safety information; (7) assisting in development of orientation and awareness training, conducting safety training and work audits; (8) attending U.S. Coast Guard, Industry, and OSHA sponsored meetings; (9) maintain safety awareness by providing information relevant to the operation of both vessels and shore side facilities, conduct inspections, recommend improvements, and coach crews.

....

Additionally Defendant Marquette Transportation Company's Vessel Quality, Safety & Environmental Compliance Manager works out of an office in Houston, Texas. In this job, he performs numerous tasks specifically related to the acts and omissions of Defendants as alleged in this lawsuit. This individual has the final responsibilities as assigned by Defendants: (1) Responsible for maritime safety, training, environmental and regulatory compliance for large fleet of towing vessels, and their crews; (2) Ensures U.S. Coast Guard, OSHA, ISM, TMSA, AWO and Customer compliance by studying and interpreting regulations and standards; conducting inspections and audits, identifying problems, developing solutions, accompanying and

working with inspectors or boarding teams; (3) Lead accident prevention practices through investigation; identify root causes of accidents and recommend policies and procedures; and (4) Prepare employees for safe work by developing and disseminating safety information; assist in development of orientation and awareness training, conducting safety training and work in audits. Audit AWO and OMSA Security Plans and implementation.

Simon identifies the following specific acts of negligence:

- (a) failing to provide proper and adequate crew on the vessel;
- (b) failing to maintain the vessel and her appurtenances and/or equipment in a safe and reasonable state of repair;
- (c) failing to take reasonable precautions for Plaintiff's safety;
- (d) failing to provide Plaintiff with a reasonably safe place to work;
- (e) failing to ensure U.S. Coast Guard, OSHA, ISM, TMSA compliance;
- (f) failing to conduct vessel inspections, in order to identify problems on the vessel, developing solutions, and eliminating risks before the incident;
- (g) failing to perform adequate accident prevention practices; including the failure to identify root causes of prior accidents and recommending policies and procedures to remedy;
- (h) failing to conduct adequate vessel safety training;
- (i) failing to sufficiently prepare employees for safe work by developing and disseminating safety information;
- (j) failing to maintain safety awareness.

Regarding his claim for maintenance and cure, Simon alleges that Marquette failed to pay medical expenses and maintenance and cure "within the State of Texas." Simon alleges that the "violation of the responsibilities under the Jones Act to provide maintenance and cure are ongoing and continuous torts within the State of Texas." In his response to Marquette's special appearance, Simon alleges that Marquette failed to provide maintenance and cure "[f]rom the office in La Porte, Texas."

Simon also adduced evidence of an arrival-departure report for the vessel in question, showing as Simon alleged in his response to Marquette’s special appearance that the vessel routinely called upon ports within Texas.

In a declaration by Marquette’s claims manager, which was filed with the special appearance before Simon made detailed factual allegations regarding personal jurisdiction in his live petition, the manager testified that the companies’ “senior management, and the ultimate decision making authority for each, are currently located—and have always been located—at their respective principal places of business outside of Texas.” He testified further, “None of the facts or circumstances alleged in Mr. Simon’s lawsuit arise out of, or have any relationship to Texas.” At the hearing on the special appearance, the trial court invited Marquette to further develop the record and file additional evidence or briefing regarding “when and where” Marquette denied Simon’s request for maintenance and cure. Marquette did not file additional evidence or briefing. The trial court denied the special appearance, finding that general and specific jurisdiction existed.

III. Analysis

In its second and dispositive issue, Marquette contends that Simon’s allegations are insufficient to establish specific personal jurisdiction because the claims do not “arise from or relate to” Marquette’s alleged contacts.² We address the issue on a claim-by-claim basis as the parties have done.

² Marquette does not dispute that it has minimum contacts with Texas to show purposeful availment, nor does Marquette contend that traditional notions of fair play and substantial justice are offended by the exercise of personal jurisdiction.

A. *Jones Act and Unseaworthiness Claims*

Marquette contends that the operative facts of the litigation are not substantially connected with Marquette's contacts in Texas for Simon's Jones Act negligence or unseaworthiness claims because the vessel was in the intracoastal waterway of Louisiana when the incident occurred and "any action that occurred—or allegedly did not occur—with regard to the crew members on the Vessel occurred in Louisiana." Marquette cites no factually analogous case.

The location of a crewmember's injury outside of Texas is not dispositive for whether specific personal jurisdiction may be proper in Texas. *See Weeks Marine, Inc. v. Carlos*, No. 01-21-00015-CV, 2021 WL 4897714, at *7, (Tex. App.—Houston [1st Dist.] Oct. 21, 2021, pet. filed) (mem. op.) (upholding jurisdiction when the plaintiff was injured in the waters of Louisiana but alleged that it was the defendant's "decision to recruit workers from Texas and failure to properly train them that led to his injuries").

Simon alleges in his petition that employees at Marquette's Texas office were responsible for, among other things, conducting vessel safety training and preparing employees for safe work by developing and disseminating safety information. Simon alleges that Marquette was negligent and the vessel unseaworthy for, among other reasons, Marquette's failures to conduct adequate vessel safety training and to sufficiently prepare employees for safe work by developing and disseminating safety information. Thus, Simon alleges a direct relationship and substantial connection between Marquette's contacts in Texas and the operative facts of his Jones Act negligence and unseaworthiness claims. Marquette has adduced no evidence disputing Simon's allegations or otherwise showing that Marquette's safety and training activities in Texas are unrelated to Simon's claims. *Cf. Weeks Marine Co. v. Landa*, 629 S.W.3d 742, 750–51 (Tex.

App.—San Antonio 2021, no pet.) (no personal jurisdiction over plaintiff’s claim based on inadequate training of a fellow employee because the defendant adduced undisputed evidence that its employee who injured the plaintiff outside Texas received his training outside of Texas).

Based on the record before the trial court, the court did not err in denying Marquette’s special appearance regarding Simon’s Jones Act and unseaworthiness claims.

B. Maintenance and Cure

Marquette contends that Simon’s maintenance and cure claim, like his other claims, arise from or relate to “the illness in Louisiana.” Although Marquette contends that its challenge to Simon’s jurisdictional allegations is legal rather than factual, Marquette also contends that its claims manager’s declaration shows that “Marquette’s decision and actions with respect to the implementation of maintenance and cure benefits are made from each company’s respective principal places of business—Kentucky and Louisiana.” Marquette cites no factually analogous case.

Simon alleges in his petition that Marquette failed to pay maintenance and cure “within the State of Texas,” and he alleges in his response to the special appearance that Marquette failed to provide maintenance and cure “[f]rom the office in La Porte, Texas.” He alleges that he has suffered additional personal injuries because of Marquette’s failure to pay maintenance and cure and seeks punitive damages for Marquette’s willful failure to pay. *See Weeks Marine, Inc. v. Garza*, 371 S.W.3d 157, 163–65 (Tex. 2012) (claim for maintenance and cure may include personal injuries caused by a breach of the duty to pay and punitive damages for willful and wonton failure to pay). Thus, Marquette’s alleged contacts with Texas—the Texas office, from which Marquette failed to pay—have

a substantial connection to the operative facts of Simon’s maintenance and cure claim. Marquette’s declaration stating that its “senior management, and the ultimate decision making authority” is located outside Texas is not evidence that Marquette’s decisions and actions regarding maintenance and cure, in particular, were made from Marquette’s principal places of business outside Texas. The claims manager’s additional declaration—that none of the facts or circumstances in the lawsuit are related to Texas—is conclusory and does not negate Simon’s allegations. Although a plaintiff’s allegations in the petition need only give fair notice, *see* Tex. R. Civ. P. 45, 47, a defendant’s conclusory affidavit in support of a special appearance does not adequately negate the plaintiff’s allegations, *see Hoagland v. Butcher*, 396 S.W.3d 182, 193 (Tex. App.—Houston [14th Dist.] 2013, pet. denied) (plurality op.); *id.* at 198 (Frost, C.J., concurring).

Based on the record before the trial court, the court did not err in denying Marquette’s special appearance regarding Simon’s maintenance and cure claim. Marquette’s second issue is overruled.

IV. Conclusion

After Marquette filed its special appearance, Simon amended his petition to detail his factual allegations regarding specific personal jurisdiction. Although the trial court invited Marquette to file more evidence to develop a record contradicting those allegations, Marquette did not do so. Because Simon’s petition is sufficient and no evidence contradicts his assertion of specific personal jurisdiction, we cannot conclude that the trial court erred in denying Marquette’s special appearance.

The trial court’s order denying the special appearance is affirmed.³

³ In the same written order that denied the special appearance, the trial court also denied

/s/ Ken Wise
Justice

Panel consists of Chief Justice Christopher and Justices Wise and Hassan.

Marquette's motion to dismiss based on a forum-selection clause, which Marquette challenged separately by a petition for writ of mandamus in Case No. 14-22-00047-CV. That portion of the order is not the subject of this appeal.