

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

VERNDELL WILLIAMS : CIVIL ACTION  
 :  
 v. :  
 :  
 GREGORY STEVEN MOODY : No. 98-1211

ORDER-MEMORANDUM

AND NOW, this 22nd day of January, 1999 defendant Gregory Steven Moody's motion to dismiss the complaint is granted. The action is dismissed without prejudice.

This lawsuit arises from an automobile accident that occurred in Sicily, Italy on March 6, 1996. Defendant is an aviation boatswains mate in the U.S. Navy, stationed in Spain. Plaintiff Verndell Williams is a resident of Pennsylvania. She filed this personal injury action against defendant in his personal capacity.<sup>1</sup> Subject matter jurisdiction is diversity. 28 U.S.C. § 1332.

Defendant filed a motion to dismiss asserting improper service of process, lack of personal jurisdiction, and lack of venue. Fed. R. Civ. P. 12(b)(2), 12(b)(3), and 12(b)(5).

Service of process consisted of mailing defendant a copy of the complaint in care of the Department of Navy, Bureau of Personnel, Washington, D.C., return receipt requested. Plaintiff

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<sup>1</sup> There was some question whether defendant was "on duty" at the time of the accident, giving rise to a claim under the Federal Torts Claim Act. However, the Department of the Navy, in a letter to defense counsel dated December 15, 1998, stated that defendant was not acting within the scope of his employment and was therefore "off duty."

maintains that this form of service was proper under Fed. R. Civ. P. 4(e)(1)<sup>2</sup> because, under Pennsylvania law, defendant could be served at his usual place of business. Defendant argues that, because he resides abroad, service should have been effectuated via The Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (the Hague Convention), 20 U.S.T. 361. Fed. R. Civ. P. 4(f)(1).<sup>3</sup>

Inasmuch as defendant is not a resident of any judicial district of the United States, his position is correct that service is governed by Rule 4(f).<sup>4</sup> Our Court of Appeals has held that, while the preferable remedy is to quash improper service of process, there is broad discretion, in the alternative, to dismiss

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<sup>2</sup> Rule 4(e) governs service upon individuals within a judicial district of the United States. It reads, in relevant part, that service may be made in any judicial district of the United States: (1) pursuant to the law of the state in which the district court is located, or in which service is effect, for service of a summons upon the defendant in an action brought in the courts of general jurisdiction of the State. Fed. R. Civ. P. 4(e)(1).

<sup>3</sup> Under Rule 4(f), serviced may be effected in a place not within any judicial district of the United States: (1) by any internationally agreed means reasonably calculated to give notice, such as those means authorized by the [Hague Convention]. Fed. R. Civ. P. 4(f)(1).

<sup>4</sup> However, even if Rule 4(e) were to be applied, proper service is lacking. Service may not be made by mail at defendant's usual place of business under either the Federal Rules, the Hague Convention, or Pennsylvania state law. See Barrett v. City of Allentown, 152 F.R.D. 46, 49-50 (E.D. Pa. 1993) (citations omitted); Fed. R. Civ. P. 4; 21 U.S.T. 361; Pa. R. Civ. P. 403, 404.

the action. Umbenhauer v. Wooq, 969 F.2d 25, 30 (3d Cir. 1992). Here, the action must be dismissed because of the lack of personal jurisdiction over defendant.

When personal jurisdiction is challenged, plaintiff must establish either a general basis - sufficient forum contacts on defendant's part - or a forum-specific cause of action. See Helicopteros Nacionales De Colombia v. Hall, 466 U.S. 408, 414, 104 S.Ct. 1868, 1872, 80 L.Ed.2d 404 (1984); Mellon Bank v. DiVeronica Bros., Inc., 983 F.2d 551, 554 (3d Cir. 1993), cited in Monga v. Ottenberg, 1996 WL 325896, \*2 n.3 (E.D. Pa. June 11, 1996). In this case, the requisite elements of jurisdiction, general or specific, are lacking. The accident occurred in Italy; defendant is stationed in Spain; he was born and raised in Ohio, owns no property in Pennsylvania, and has no other forum contacts such as voting or paying taxes. His sole forum connection is that during a three-year period ending in 1990 he was stationed by the Navy and resided in Philadelphia.<sup>5</sup>

Plaintiff maintains that the Pennsylvania long-arm statute provides jurisdiction over a defendant who commits a tort out-of-state that results in harm in-state. 42 Pa. C.S.A. § 5322(a)(4). However, the stretch of this statute has not been extended to

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<sup>5</sup> Plaintiff's argument that this three-year assignment that ended nearly nine years ago is sufficient contact for jurisdiction and venue is rejected. Defendant has not "maintained 'continuous and substantial' forum affiliations" as required for an exercise of general jurisdiction. Grand Entertainment Group, Ltd. v. Star Media Sales, Inc., 988 F.d. 476, 481 n.3 (3d Cir. 1993) (citations omitted).

include the residual effects of an out-of-state accident to a state resident. See, e.g., Dunn v. Skate 22, Inc., 1997 WL 786439, \*3 (E.D. Pa. Nov. 24, 1997); Dunnigan v. Siverthorn, 542 F. Supp. 32, 33 (E.D. Pa. 1982).

Moreover, in that defendant is not a district resident and the accident did not occur here, this court is not a proper venue. 28 U.S.C. § 1391(a).

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Edmund V. Ludwig, J.