

COA Opinion: No personal jurisdiction under MCL 600.705(2) (causing tortious harm in Michigan) where plaintiff fails to establish prima facie tort claim

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In *Yoost v. Caspari*, No. 294299, the Michigan Court of Appeals reversed the trial court's holding that Michigan's long-arm statute, MCL 600.705(2), provided personal jurisdiction over Counter-Defendant Hank Asher. MCL 600.705(2) grants jurisdiction where the suit arises out of the defendant "doing or causing an act to be done, or consequences to occur, in th[is] state resulting in an action for tort." The Court held that MCL 600.705(2) cannot support jurisdiction where the plaintiff cannot present a *prima facie* tort case.

Plaintiff Wally Yoost used to work for Defendant Irwin Zalcborg, and he used to be romantically involved with Defendant Patricia Caspari. When his employment with Zalcborg ended and his relationship with Caspari soured, Yoost moved to Florida to work for Asher. Yoost and Asher are both Florida residents; Zalcborg and Caspari are both Michigan residents. Litigation ensued between all four individuals. Zalcborg filed a counterclaim against Yoost and Asher alleging abuse of process and conspiracy to commit abuse of process.

Asher moved for summary disposition asserting that the trial court had no personal jurisdiction over him because he was a Florida resident, and had neither engaged in any business in Michigan nor had any qualifying contacts with the state. Asher admitted advancing Yoost money for litigation expenses and discussing the case with Yoost, but argued that this was insufficient to create jurisdiction. The trial court denied Asher's motion. In reversing, the Court of Appeals made three rulings.

First, the Court ruled that a party to a lawsuit does not commit the abuse of process by merely pursuing discovery that the other party characterizes as "overreaching and irrelevant." The Court stressed that Michigan has an open and broad discovery policy and that any actions Yoost and Asher took during discovery did not damage Zalcborg. Even if Yoost and Asher had an alleged improper

purpose, this accusation is insufficient to support a finding of abuse of process. Because Zalcborg failed to establish his abuse-of-process claim, MCL 600.705(2) could not support jurisdiction.

Second, even if Zalcborg had established a *prima facie* abuse-of-process case, Zalcborg failed to establish a *prima facie* case that Asher conspired with Yoost. Under the “conspiracy theory” of jurisdiction, a conspirator not within the forum state may be subject to the jurisdiction of the forum state based on the acts a co-conspirator committed in the forum state. Zalcborg asserted Michigan had jurisdiction over Asher because Michigan had jurisdiction over Yoost. Zalcborg argued that Asher was in control of the litigation because Asher paid Yoost’s legal fees, Yoost did not recall reading the complaint filed in his case, and Yoost discussed the details of the case with Asher. Essentially, Zalcborg argued and the trial court agreed that “Yoost in this case is the puppet and Asher is the puppeteer.” The Court of Appeals ruled that these facts cannot support the conclusion controlled Yost or directed the litigation. At best, the facts gave rise to speculation of control. Thus, Zalcborg failed to present a *prima facie* case, and Michigan lacked jurisdiction over Asher under the conspiracy theory.

Third, the Court of Appeals held that MCL 600.705(1) did not provide personal jurisdiction over Asher. MCL 600.705(1) provides jurisdiction for actions arising out of “the transaction of any business within” Michigan. The Court held that Asher’s payment of legal fees to Michigan attorneys, representing Yoost, did not amount to the transaction of business in Michigan.

Judge Meter concurred in the majority opinion, except he would not have reached the question of whether Zalcborg failed to state a claim for abuse of process.