

IN THE SUPREME COURT OF THE STATE OF MONTANA
No. OP 22-0587

MELISSA GROO,

Petitioner,

v.

THE MONTANA ELEVENTH JUDICIAL
DISTRICT COURT FLATHEAD COUNTY,
THE HONORABLE AMY EDDY

Respondent.

SUMMARY RESPONSE TO WRIT OF SUPERVISORY CONTROL

*Original Proceeding Arising from the District Court of Montana's Eleventh
Judicial District, Flathead County
Honorable Judge Amy Eddy, Presiding
Cause No. DV-15-2022-0000087*

TRIPLE D GAME FARM, INC. A/K/A TRIPLE D WILDLIFE,
LORNEY "JAY" DEIST AND KIMBERLY DEIST, Plaintiffs,

v.

HEATHER LYNN KEEPERS, JUSTINE HAYES GLASMAN, JEANETTA
TARTAGLINO, MELISSA GROO, JOHN DOES 1-4 AND CORPORATIONS
A-D, Defendants.

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STATEMENT OF THE CASE

Plaintiffs Triple D Game Farm Inc, aka Triple D Wildlife, a Montana corporation and Lorney “Jay” Deist and Kimberly Deist (hereinafter “Triple D”) filed a *Complaint and Demand for Jury Trial* on January 25, 2022, alleging Tortious Interference with Contractual Relations and Tortious Interference with Prospective Economic Advantage (Business Relations) claims against Petitioner Melissa Groo (hereinafter “Groo”), Heather Keepers and other persons. (Petitioner’s Brief Ex. A.)

Petitioner Groo filed a Motion to Dismiss the Complaint and supporting brief asserting that a Montana Court had no personal jurisdiction over her requiring her to answer the Complaint and defend herself in Montana (Petitioner’s Brief Ex. C). After considering Triple D’s Response Brief (Petitioner’s Brief Ex. D) and hearing oral argument, the District Court entered an order denying Petitioner Groo’s Motion to Dismiss the Complaint. (Petitioner’s Brief Ex. F)

In its Order denying Petitioner Groo’s Motion to dismiss, the District Court set forth the following detailed factual background for its ruling drawn from the record before it that is presented, in pertinent part, below:

For over 45-years, Plaintiff Triple D Game Farm, Inc. (hereinafter “Triple D”) in Flathead County, Montana “has offered wildlife enthusiasts the exceptional

opportunity to observe trained wildlife in their natural environment and capture their beauty with the lens or brush.” *Compl.*, p. 3, P11. Triple D has thousands of clients and approximately 21,000 followers on its Facebook page, which it uses to promote its business. *Compl.*, p. 3, P13. Triple D “employs experienced animal trainers and staff to care for Triple D’s wildlife and accommodate Triple D’s clientele.” *Compl.*, p. 3, P14. (Petitioner’s Brief Exhibit F, District Court Order P. 1).

In 2011, Triple D hired Heather Keepers as an animal trainer. Keepers worked for Triple D until leaving in July of 2020, representing she was relocating to pursue a personal relationship. Keepers was contacted by B.M., a group leader and client of Triple D, asking if she had “left for a guy.” Keepers responded in August of 2020 and told B.M. a story of poor animal welfare at Triple D. B.M. recommended Keepers contact Groo. (Petitioner’s Brief Exhibit F, District Court Order P. 2)

Groo is a citizen and resident of the State of New York. She has never been a citizen or resident of the State of Montana, nor domiciled within the State of Montana. She has never been an owner, operator or employee of a Montana business, had a registered agent in Montana, or owned any property or assets in Montana. Groo has never received mail, opened a bank account, paid taxes,

initiated litigation or maintained a phone account in Montana. In fact, Groo has only visited Montana four times since 2018, and only once since August of 2020. In June of 2021, she stayed at the home of an owl researcher and personal friend in Charlo, Montana for 12 days to photograph wildlife in the Charlo area.

Groo is a self-employed photographer whose business is located in New York. She is also a “well-known expert and leader in the field of ethics in wildlife photography and [has] written a number of articles criticizing the practice of photography game farms like Triple D Game Farm”, although she has not visited Triple D. *Aff. Groo*, p. 2, P5, p. 3, P18.

In August of 2020, Groo was contacted by Keepers via Facebook Messenger at 8:47 p.m. with the following message:

Hello Melissa. As I am not a big fan of yours, this message is difficult for me to send. But someone mentioned your name yesterday when I filled them in in some information. And I got to thinking. While you and I are not friends, we do have a common enemy....for slightly different reasons, but also for many of the same. Triple D.

My time spent there was heaven and hell all wrapped in one. I love those animals more than anyone could love anything. And I gave them the best I could with what I was provided with. I worked there for 9 years under the false pretense that I would soon be taking it over. I held onto that idea Bc I wanted to change so much of what it was. And is. Many things you are wrong about but many things you are right about.

I will not disclose any information to you yet. Other than I have ENDLESS information and evidence and knowledge of evidence of

many things. Illegal, unethical, and just absolutely morally wrong and dishonest. My goal in reaching out to you is simple. Those animals need to be “saved” from Jay Deist.

Those animals deserve so much better. And especially now that I'm not there to provide half of what they deserve, a lot of them are now just sitting and rotting. Some have even died suddenly since I left. (I left July 9). I am obviously desperate to save them. And well.... it'll take someone who hates the Triple D as much as I do to do that. And I don't mean some animals and then Jay can get more. I mean ALL animals. And his operation stops entirely. Forever.

Is this something that interests you?

Doc. 17, Ex. A.

Less than an hour later, at 9:41 p.m., Groo responded:

Absofuckinglutely.

You are writing me at a very opportune time. i would love to get your help on taking him down. The things that I have uncovered from lots of research haunt me more than you can know. Or maybe you can know. I know we have clashed in the past, but if your first concern is the animals, we have that in common, and that is HUGE. Let's try to collaborate to make a better future for them. I am incredibly grateful you reached out. I know how terribly difficult it must be....

I can't tell you how grateful I am to hear from you. I have a very special opportunity for you to speak out and to help make a big change but I can't say more about it now. Let's figure out how to move forward on this. I am away from home right now, and short on time, but will be back home as of this weekend.

I seriously want to weep with gratitude

I want very much for Triple D and all game farms to be done. i am with you 200%.

Doc. 17, Ex. A.

Approximately an hour later, Keepers replied:

Perfect. Look forward to talking. Disclaimer: my biggest hesitation is that I signed a nondisclosure agreement upon employment. (Who tf has animal professionals sign a nondisclosure???) Anyway. I'd lose every penny from here on out if it meant ridding him of any and all animals now and future. But I'd rather not get sued. I'm not sure the total legality of everything. But I am working on understanding it.

Doc. 17, Ex. A.

Groo later sent Keepers the following text message:

Heather, I was just doing some reading, and in advance of our talking, thought you might like to look over this info too:

When an NDA can be broken:

<https://law.stackexchange.com/questions/4339/when-can-an-nda-be-legaybroken>

Animal Welfare Act enforcement:

<https://www.aphis.usda.gov/aphis/ou/office-us/animal-welfare/awa-enforcements>

For violations of Endangered Species Act (which might just apply to the

leopards?) <https://www.animallaw.info/article/briefsummary-endangered-speciesact>

You are probably way ahead of me on this, but in case it's helpful!

I also wanted to mention that I am well connected to many kinds of folks we could seek out to help guide you. I know animal lawyers, am friends with Dan Ashe who was head of USFWS for years, I know a Montana FWP legal counsel, and am friends with the folks that lead captive wildlife programs at leading animal conservation and welfare

orgs. So just know there is lots of support out there for you if you want it and I can help you connect to your choice.

M.

Doc. 17, Ex. I.

Although Groo and Keepers were discussing driving Triple D, a Montana business, out of business, and breaching a NDA entered into in Montana and applicable to a Montana business, neither individual was located in Montana when these conversations occurred.

Groo then went on to make various public Facebook posts about Deist, including:

“There are no words to describe how deeply cruel this man is. He has caused unspeakable suffering for so many animals. I am at a loss.”

Doc. 17, Ex. B.

On August 6, 2020, Groo shared on her Facebook page an article entitled “*Photography game farm Triple D Wildlife cited 6 times for keeping animals in squalor*”, with the comment:

More on Triple D photo game farm. What a disgrace to treat these magnificent animals so poorly. It’s time for these wildlife brothels to be done. Photo by Susan Fox from a visit years ago to Triple D. Please share.

Doc. 17, Ex. C.

On August 2-4, 2021, Groo sent the following through Facebook Messenger to a number of photography Group Leaders about Triple D:

I hope very much that those photographers/artists and companies listed as holding future workshops there would cancel them immediately. It would be unconscionable to continue to support this facility.

Doc. 17, Ex. D.

Approximately one-quarter of the individuals and companies target by the above message were located in Montana. Doc 17, Ex. F, P14; Doc. 19, Ex. A-I. Groo also tagged or contacted photographers and others with disparaging remarks about Triple D and encouraging them not to support Triple D, approximately a third of which were from Montana. *Id.* Some of these online comments were made while the photographer was hosting a workshop at Triple D. Doc 17, Ex. F, PP16-17. (Petitioner's Brief Ex. F; District Court Order P. 2-5, citing exhibits to Plaintiff's Response Brief below [Doc. 17] that is Exhibit D to Petitioner's Brief and exhibits to Groo's Reply Brief below [Doc. 19] that is Exhibit E to Petitioner's Brief).

STANDARD OF REVIEW

Mont. R. App. P. 14(3) provides in relevant part: Supervisory control is an extraordinary remedy and is sometimes justified when urgency or emergency

factors exist making the normal appeal process inadequate, when the case involves purely legal questions, and when one or more of the following circumstances exist:

- (a) The other court is proceeding under a mistake of law and is causing a gross injustice;
- (b) Constitutional issues of state-wide importance are involved; ...

This Court reviews a personal jurisdiction ruling de novo. *Tackett v Duncan*, 2014 MT 253, ¶ 16, 376 Mont. 348, 334 P.3d 920.

ARGUMENTS AND AUTHORITIES FOR REJECTING JURISDICTION

1. Legal Standards

This Court applies “a two-step test to determine whether a Montana court may exercise personal jurisdiction over a nonresident defendant.” *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 2019 MT 115, ¶ 10, 395 Mont. 478, 484–85, 443 P.3d 407, 412, *aff’d*, 141 S. Ct. 1017, 209 L. Ed. 2d 225 (2021) (citations omitted).

First, the Court determines whether personal jurisdiction exists under Montana's long-arm statute, M. R. Civ. P. 4(b)(1). *Ford Motor Co.*, ¶ 10 (citing *Milky Whey, Inc. v. Dairy Partners, LLC*, 2015 MT 18, ¶ 18, 378 Mont. 75, 342 P.3d 13. Montana’s long-arm statute found at Mont. R. Civ. P. 4(b)(1) states, in pertinent part,

All persons found within the state of Montana are subject to the jurisdiction of Montana courts. Additionally, any person is subject to

the jurisdiction of Montana courts as to any claim for relief arising from the doing personally, or through an employee or agent, of any of the following acts:

(A) the transaction of any business within Montana;

(B) the commission of any act resulting in accrual within Montana of a tort action;

Id.

If the first step is satisfied, the Court then must turn to the second step of the analysis to determine whether “exercising personal jurisdiction is constitutional; that is, whether it conforms with ‘the traditional notions of fair play and substantial justice embodied in the due process clause.’” *Ford Motor Co.*, ¶ 10 (quoting *Cimmaron Corp. v. Smith*, 2003 MT 73, ¶ 10, 315 Mont. 1, 67 P.3d 258).

The exercise of jurisdiction comports with a defendant's right of due process when the following three elements are present:

- (1) the nonresident defendant purposefully availed itself of the privilege of conducting activities in Montana, thereby invoking Montana's laws;
- (2) the plaintiff's claim arises out of or relates to the defendant's forum-related activities; and
- (3) the exercise of personal jurisdiction is reasonable.

Ford Motor Company, ¶ 12 (citing *Simmons v. State*, 206 Mont. 264, 276, 670 P.2d 1372, 1378 (1983)).

“A nonresident defendant purposefully avails itself of the benefits and protections of the laws of the forum state when it takes voluntary action designed to have an effect in the forum.” *Ford Motor Company*, ¶ 13.

Once the plaintiff demonstrates that the first element is satisfied—that the defendant purposefully availed itself of the privilege of conducting activities in Montana—a presumption of reasonableness arises, which the defendant can overcome only by presenting a compelling case that jurisdiction would be unreasonable. *Ford Motor Company*, ¶ 12 (citing *B.T. Metal Works v. United Die & Mfg. Co.*, 2004 MT 286, ¶ 34, 323 Mont. 308, 100 P.3d 127.).

2. Groo is Subject to Specific Personal Jurisdiction in Montana

a. Groo Committed Acts Resulting in the Accrual Within Montana of a Tort Action

Montana’s Long Arm Statute, Mont. R. Civ. P. 4(b)(1) states, in pertinent part, “[a]dditionally, any person is subject to the jurisdiction of Montana courts as to any claim for relief arising from the doing personally, or through an employee or agent, of any of the following acts: *** (B) the commission of any act resulting in accrual within Montana of a tort action.” *Id.* Triple D’s allegations of Tortious Interference with Contractual Relations and Tortious Interference with Prospective Economic Advantage in their Complaint with the exhibits and affidavits in the

record, form the basis for a Montana Court to exercise specific personal jurisdiction over Groo. Mont. R. Civ. P. R 12(b)(2) and (6); Mont. R. Civ. P. 4(b)(1).

The factual record cited by the District Court documents Groo conspiring with Keepers to destroy Triple D's business "forever" then carrying out this plan by discovering and targeting Triple D's clients and group leaders on Facebook, tagging them to her comments, and posting "I hope very much that those photographers and companies listed as holding future workshops there would cancel them immediately. It would be unconscionable to continue to support [the Triple D]." (Petitioner's Brief Exh. D-Ex. D, Facebook Message to Group Leaders).

Groo's social media campaign deliberately targeted Montana residents and entities by name with the intent of damaging the Triple D's business-and it worked. Groo's actions resulted in the accrual within Montana of the torts alleged against her in Triple D's complaint. Montana's long-arm statute applies.

In her Petition, Groo mischaracterizes her targeted attacks as "out-of-state" communications, "accessible by Montana residents" and argues her tortious conduct did not take place in Montana. Groo could have poked the computer keystrokes that created these damaging communications anywhere on earth-or in a

plane flying over the earth. Based on this factual record, the District Court correctly found that Groo’s social media statements were “designed to have a targeted impact in Montana” and “specifically targeted a Montana audience” which constituted “forum related activities for purposes of personal jurisdiction.”

(Petitioner’s Brief Ex. F, District Court Order P. 8)

b. Exercising Personal Jurisdiction Over Groo comports with Due Process

i. Groo’s Voluntary Actions Were Designed to Have an Effect in Montana

“A nonresident defendant purposefully avails itself of the benefits and protections of the laws of the forum state when it takes voluntary action designed to have an effect in the forum.” *Ford Motor Co.*, ¶ 13. Groo’s actions meet this standard.

Groo took intentional action to shut Triple D down and prevent them from conducting business in Montana. The Facebook messages between Groo and Keepers demonstrate, in no uncertain terms, that in August of 2020, Groo agreed to assist Keepers in shutting down Triple D’s business “forever”. (Petitioner’s Brief Ex. D-Ex. A, Messages between Groo and Keepers). Groo recommended sources to Keepers on how to work around her nondisclosure contract related to her employment in Montana at Triple D. (Petitioner’s Brief Ex. D-Ex. I, Non-Disclosure Agreement Email). Groo publicly called out for ridicule, individuals

and businesses who conducted business with Triple D, in a manner that sent notification of her posts not only to her followers, but to specific named Triple D group leaders (clients) in Montana. (Petitioner’s Brief Ex. D-Ex. F, Affidavit of Jay Deist ¶ 16; Ex. G, Affidavit of Kimberly Deist ¶ 16; Ex. D, Facebook Message to Group Leaders). Presumably, as the individuals Groo contacted assured Groo that they would no longer do business with Triple D, Groo would remove those individuals from her public “hit list.” *Id.* Groo was also in contact on multiple occasions with defendant Tartaglino while Tartaglino was residing in Montana. (Petitioner’s Brief Ex. D-Ex. F, Affidavit of Jay Deist ¶ 19; Ex. G, Affidavit of Kimberly Deist ¶ 19; Petitioner’s Brief Ex. B Declaration of Melissa Groo ¶ 23). Groo intentionally reached into Montana and directed communications at Montana citizens with the intent of shutting down a family-owned Montana business. (Petitioner’s Brief Ex. D-Ex. F, Affidavit of Jay Deist ¶¶ 14, 16-19; Ex. G, Affidavit of Kimberly Deist ¶¶ 14, 16-19; Ex. D, Facebook Message to Group Leaders). The totality of Groo’s actions shows a clear intent to “have an effect” in Montana. Therefore, Groo purposefully availed herself of the privilege of conducting activities in Montana¹.

//

¹ Ms. Groo is in direct competition with Triple D and its clients for wildlife photography business. (See Petitioner’s Brief Ex.D- Ex.H and Ex. E)

ii. Plaintiffs' Claims Against Groo Arise Out of Groo's Montana Related Activities

The next step of the analysis requires the Court to determine whether Plaintiffs' claims "arise out of or relate to the defendant's contacts with the forum." *Ford Motor Co.*, ¶ 18.

Here, Triple D's claims against Groo arise directly from Groo's Montana related activities. Groo conspired with Keepers to shut down Triple D's business. (Petitioner's Brief Ex. D-Ex. A, Messages Between Ms. Groo and Ms. Keepers). Groo contacted and harassed Triple D customers, abroad as well as in Montana, to shut down Triple D's business. (Petitioner's Brief Ex. D-Ex. F, Affidavit of Jay Deist ¶¶ 14, 16-19; Ex. G, Affidavit of Kimberly Deist ¶¶ 14, 16-19; Ex. B, Groo Facebook Comment; Ex. D, Facebook Message to Group Leaders; Ex. C, Groo Facebook Post). Groo's actions have caused damage to Triple D. Clients, some of whom are Montana residents targeted by Groo, stopped patronizing Triple D out of fear of future harassment or damage to their own business from Groo's activities. (Petitioner's Brief Ex. D-Ex. F, Affidavit of Jay Deist ¶¶ 18, 24; Ex. G, Affidavit of Kimberly Deist ¶¶ 18, 24).

Groo's contacts with Montana were targeted at a Montana business and its Montana business partners and caused damage to Triple D, here in Montana. Triple D's claims arise out of Groo's Montana related activities.

iii. The Exercise of Personal Jurisdiction over Groo by this Court is Reasonable

Triple D has established Groo purposefully availed herself of the privilege of conducting activities in Montana. Therefore, Groo has the burden to present a compelling case that jurisdiction in Montana would be unreasonable. Ms. Groo is unable to meet that burden.

The reasonableness analysis generally depends on an examination of factors that illustrate the concept of fundamental fairness, such as: (1) the extent of the defendant's purposeful interjection into Montana; (2) the burden on the defendant of defending in Montana; (3) the extent of conflict with the sovereignty of the defendant's state; (4) Montana's interest in adjudicating the dispute; (5) the most efficient resolution of the controversy; (6) the importance of Montana to the plaintiff's interest in convenient and effective relief; and (7) the existence of an alternative forum. *Ford Motor Co.*, ¶ 29.

An examination of these factors shows that exercise of jurisdiction by Montana is fundamentally fair in this case. As to the first factor, Groo purposely injected herself into Montana to contact Montana citizens and disrupt business relationships and contracts in Montana. (Petitioner's Brief Ex. D-Ex. F, Affidavit of Jay Deist ¶¶ 14, 16-19; Ex. G, Affidavit of Kimberly Deist ¶¶ 14, 16-19; Ex. D, Facebook Message to Group Leaders). Groo was acting in accordance with her

agreement with Keepers in a concerted effort to destroy a family-owned Montana business. (Petitioner's Brief Ex. D-Ex. A, Message between Groo and Keepers). Groo publicly targeted Montana residents when she called them out by name in a successful effort to intimidate them and stop them from doing business with Triple D (Petitioner's Brief Ex. D-Ex. F, Affidavit of Jay Deist ¶¶ 14, 16-19; Ex. G, Affidavit of Kimberly Deist ¶¶ 14, 16-19; Ex. D, Facebook Message to Group Leaders).

As to the third factor, the conflict with Groo's state is minimal. New York does not have a legitimate interest in allowing its citizens to tortiously harm a legal and licensed business in Montana.

As to the fourth factor, the Plaintiffs are Montana citizens running a small family-owned Montana business. (Petitioner's Brief Ex. D-Ex. F, Affidavit of Jay Deist ¶¶ 2, 4-6; Ex. G, Affidavit of Kimberly Deist ¶¶ 2, 4-6). Montana has a strong and legitimate interest in protecting its citizens and businesses from tortious interference, particularly from tortious interference by a business competitor like Groo, who reached into Montana to cause harm.

As to the fifth factor, Montana provides the most efficient resolution of the controversy. Triple D's business, witnesses, and records are located in Montana. Triple D has also sued Groo's co-defendants in Montana. Triple D would not be

able to join all the defendants in a suit in New York where Groo resides. Montana presents the only forum where all defendants are subject to jurisdiction and therefore presents the only forum where this case can be brought in a single action.

Finally, the sixth factor weighs strongly in favor of allowing Triple D to litigate in Montana. Plaintiffs are long-term residents of Montana, who have built up a family business in the state over the past forty-five (45) years. Plaintiffs have already suffered significant financial strain because of Groo's and the other Defendant's actions. Forcing the Plaintiffs to travel to New York to litigate their cause of action against Groo would impose a significant burden and unfairly prejudice Triple D. Groo reached out to Montana to destroy Triple D's business. Fairness dictates that Groo be hailed to Montana to answer for her actions.

Groo is unable to "present a compelling case" to overcome the presumption that Montana is a reasonable forum for this case. Personal jurisdiction of Groo is properly in Montana.

CONCLUSION

The District Court analyzed a rich factual record and thoughtfully determined that Montana Courts have personal jurisdiction over Petitioner Groo for the tortious conduct described in Plaintiff's Complaint. This is obviously not a purely legal question, the Court was not proceeding under a mistake of law or

causing a gross injustice in its decision. Petitioner does not even contend that Constitutional issues of state-wide importance are involved. Therefore, the District Court's decision does not warrant the extraordinary remedy of supervisory control. This Court should deny Petitioner's Writ of Supervisory Control. Mont. R. App. P. 14(3).

Respectfully submitted this 18th day of November, 2022.

/s/ Kris A. McLean
Kris A. McLean
Attorney for Plaintiffs

CERTIFICATE OF COMPLIANCE

Pursuant to the Montana Rules of Appellate Procedure, I hereby certify that the Appellant's Opening Brief is printed with proportionately-spaced Times New Roman typeface of 14 points; is double spaced except for lengthy quotations, footnotes, and argument headings; and does not exceed 4,000 words. The exact words count is 3,917 words as calculated by my Microsoft Word software excluding the Table of Contents, Table of Authorities, Certificate of Service, and Certificate of Compliance.

DATED this 18th day of November, 2022.

/s/ Kris A. McLean

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CERTIFICATE OF SERVICE

I, Tyson Allen McLean, hereby certify that I have served true and accurate copies of the foregoing Response/Objection - Response to Motion to the following on 11-18-2022:

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