IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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JOSEPH F. SHUCOFSKY,
as personal representative of
the Estate of D.S., and
GLORIA D. SYKES,

Plaintiffs,

OPINION and ORDER

10-cv-393-bbc

v.

DANE COUNTY, CUYAHOGA
COUNTY DEPARTMENT OF
CHILDREN AND FAMILY SERVICES,
LYNDA SYKES and JOHN DOES #1-100,

Defendants.

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In this civil rights action brought under 42 U.S.C. § 1983 and state law, plaintiffs Joseph Shucofsky (as the representative of the Estate of D.S.) and Gloria Sykes contend that defendants Dane County, Cuyahoga County, Linda Sykes and various unnamed county employees should be held liable for their alleged roles in the death of D.S., the daughter of plaintiff Gloria Sykes. In particular, plaintiffs allege that defendant Linda Sykes (Gloria's sister) had custody of D.S., "inflicted injuries" on her and "caus[ed][her] death," that despite Linda Sykes's criminal record, defendant Dane County placed D.S. with defendant Sykes

while Sykes was living in Wisconsin, and that, after defendant Sykes and D.S. moved to Ohio, defendant Cuyahoga County returned D.S. to defendant Sykes's custody even though it had previously removed D.S. because of suspicions of abuse.

Defendant Cuyahoga County has filed a motion to dismiss the complaint as to it on various grounds, but all of them boil down to the question whether it is fair to force the county to defend this lawsuit in Wisconsin. Dkt. #14. (Because Dane County is not the subject of the motion before the court, I will refer to Cuyahoga County as "the county" for the remainder of the opinion.) The county's motion is ready for decision.

The threshold question is whether this court may exercise personal jurisdiction over the county, which is located in northeastern Ohio. The plaintiff has the burden to show that subjecting the defendant to suit in this state is consistent with both Wisconsin's long arm statute, Wis. Stat. § 801.05, and the due process clause. Purdue Research Foundation v. Sanofi-Synthelabo, S.A., 338 F.3d 773, 782 n. 11 (7th Cir. 2003); Hyatt International Corp. v. Coco, 302 F.3d 707, 713 (7th Cir. 2002). Giotis v. Apollo of the Ozarks, Inc., 800 F.2d 660, 664 (7th Cir. 1986). Because I am concluding that plaintiffs have failed to meet their burden with respect to the due process clause, it is unnecessary to consider the requirements of the long arm statute.

Under the due process clause, the general question is whether the defendant has "certain minimum contacts with [the forum state] such that the maintenance of the suit does

not offend 'traditional notions of fair play and substantial justice.' " International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945) (quoting Milliken v. Meyer, 311 U.S. 457, 463 (1940)). Contacts are not sufficient unless the defendant has "purposefully avail[ed] itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." Hanson v. Denckla, 357 U.S. 235, 253 (1958). Stated another way, the question is whether the defendant has obtained a benefit from Wisconsin or inflicted an injury on one of its citizens that would lead one to reasonably anticipate being haled into court here. World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980).

Personal jurisdiction under the due process clause is divided into two types, general and specific. Mobile Anesthesiologists Chicago, LLC v. Anesthesia Associates of Houston Metroplex, P.A., 623 F.3d 440, 444 (7th Cir. 2010). General jurisdiction means that the defendant "may be called into court there to answer for any alleged wrong, committed in any place." uBID, Inc. v. GoDaddy Group, Inc., 623 F.3d 421, 425-26 (7th Cir. 2010). This "is a demanding standard that requires the defendant to have such extensive contacts with the state that it can be treated as present in the state for essentially all purposes." Id. Plaintiffs do not suggest that they can meet that standard as to the county.

The question for specific jurisdiction is whether the lawsuit "arises out of" or is "related to" a party's minimum contacts with the forum state. Requiring a nexus between

a party's contacts and the parties' dispute adds a degree of predictability to the legal system by allowing potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit. Hyatt International Corp., 302 F.3d at 716. The reason for this is simple:

> Potential defendants should have some control over—and certainly should not be surprised by—the jurisdictional consequences of their actions. Thus, when conducting business with a forum in one context, potential defendants should not have to wonder whether some aggregation of other past and future contacts will render them liable to suit there.

Id.

Plaintiffs do not challenge the affidavit submitted by the deputy director of the Cuyahoga County Department of Children and Family Services, who avers that all of the county's and its employees' actions related to D.S. occurred in Ohio. McCray Aff., dkt. #15-2. In fact, plaintiffs do not adduce any evidence in support of an exercise of jurisdiction.

Plaintiffs point to the allegation in their complaint that the county "knew or should have known that it would be dangerous to place children in the home of Defendant Linda Sykes because of her past disturbed and violent behavior, past complaints of possible child abuse and the risk of potential future violent behavior." Cpt. ¶ 34, dkt. #4. This allegation might support the drawing of an inference that the county contributed to D.S.'s death, but it provides no support for an exercise of jurisdiction over the county in this state. The

county placed D.S. with defendant Sykes in Ohio and D.S. died in Ohio, not Wisconsin. Further, the parties seem to agree that plaintiff Gloria Sykes was living in Texas at the time the county returned D.S. to defendant Linda Sykes's custody, so there is no colorable argument that an exercise of jurisdiction is appropriate on the ground that the county's actions harmed a plaintiff in Wisconsin. Calder v. Jones, 465 U.S. 783, 789-90 (1984) (intentional tort outside forum state may be sufficient contact under some circumstances when victim is in forum state).

Alternatively, plaintiff speculates that any county investigation of defendant Sykes, "if [it had been] thoroughly completed, would necessarily include performing certain acts in" Wisconsin. These acts might include speaking with employees of the Dane County Department of Human Services, any family members in Wisconsin and defendant Sykes's probation or parole officers and reviewing various documents located in Wisconsin, such as court records, police reports and Dane County's own files on defendant Sykes. Plts.' Br., dkt. #24, at 17.

Plaintiffs do not point to any evidence supporting a view that the county engaged in any of this alleged conduct. However, they offer two reasons why their lack of such evidence should not lead to the county's dismissal. First, plaintiffs argue that, even if the county did not conduct a thorough investigation of defendant Sykes's history in Wisconsin, a party's "omissions" may form the basis for an exercise of jurisdiction, citing a provision in

Wisconsin's long-arm statute, Wis. Stat. § 801.05(3). Although the long arm statute does not control an analysis under the due process clause, I agree with plaintiffs that a failure to act could be relevant in determining a party's contacts with Wisconsin. However, plaintiffs would have to show that the failure to act occurred in the state or at least caused an injury to a plaintiff in Wisconsin, for example, if a parent living out of state failed to pay child support or a seller in Wisconsin failed to disclose material defects about a product. Federated Rural Electrial Insurance Corp. v. Inland Power and Light Co., 18 F.3d 389, 392 (7th Cir. 1994); Lincoln v. Seawright, 104 Wis. 2d 4, 310 N.W.2d 596, 600 (1981). Whether an act or omission is at issue, it must be an actual contact with Wisconsin; plaintiffs cannot manufacture jurisdiction simply by alleging a number of contacts that defendants "should have" made with the state. Because any failure to act on the county's part occurred in Ohio and neither Gloria Sykes nor D.S. lived in Wisconsin at the relevant time, plaintiffs cannot rely on the county's alleged "omissions" to establish jurisdiction.

Second, plaintiffs ask the court for permission to conduct discovery so that they have an opportunity to show that the county conducted an investigation that involved speaking with Wisconsin residents and reviewing documents prepared in Wisconsin. This request will be denied as futile. GCIU-Employer Retirement Fund v. Goldfarb Corp., 565 F.3d 1018, 1026 (7th Cir. 2009) ("In order to garner discovery, at a minimum, the plaintiff must establish a colorable or prima facie showing of personal jurisdiction.") (alternations and

internal quotations omitted). Even if I assume that the county conducted such an investigation, that would not be enough to support the exercise of jurisdiction over the county in this case. Plaintiffs cite no authority for the proposition that the mere collection of information from a state is sufficient to put a party on notice that it will be subject to litigation in that state. A request for information under the circumstances alleged by plaintiffs would not necessarily be similar to the solicitations that courts have found to be sufficient because the county would not be receiving a significant benefit, only attempting to help a third party. Compare International Shoe, 326 U.S. at 314-15 (minimum contacts included employing salesmen or agents in the forum state and shipping physical merchandise to forum state buyers); Burger King v. Rudzewicz, 471 U.S. 462, 474-75 (1985) (entering into long-term business franchise contract with resident of forum); uBID, Inc., 623 F.3d at 429 (sales and marketing in forum state) with Stover v. O'Connell Associstes, Inc., 84 F.3d 132, 135-36 (4th Cir.1996) ("occasional telephonic requests for information from Maryland-based investigation services" insufficient to subject defendant to personal jurisdiction in Maryland court); Rolls-Royce Corp. v. Alcor Engine Co., Inc., 2007 WL 1021450, *9 (S.D. Ind. 2007) (requests for information "simply do not meet the minimum contacts standard required for an exercise of specific or general jurisdiction").

If plaintiffs' claim against the county was that it misused the information it received from Wisconsin and harmed someone in Wisconsin as a result, plaintiffs would have a better

argument because, in that situation, a strong nexus would exist between the contacts and the cause of action. Cf. FC Investment Group LC v. Lichtenstein, 441 F. Supp. 2d 3, 8 (D.D.C. 2006) (alleged fraud committed over telephone may be sufficient for exercise of personal jurisdiction). However, plaintiffs' claim in this case is not that the county obtained or disclosed information wrongfully; it is that the county allowed D.S. to remain with defendant Sykes. A "but for" causal relationship between the defendant's contacts with the state and the plaintiffs' alleged harm is not sufficient to establish a nexus, GCIU-Employer Retirement Fund, 565 F.3d at 1025, but plaintiffs cannot even show that much. According to plaintiffs' own allegations, to the extent the county's actions or inactions contributed to D.S.'s death, it was not because the county obtained information from Wisconsin about defendant Sykes, but because it *disregarded* that information. Accordingly, I conclude that plaintiffs have failed to show that this court may exercise personal jurisdiction over the county.

In some cases, a court may deny a motion to dismiss for lack of personal jurisdiction and instead transfer the case to another venue where jurisdiction is proper. Cote v. Wadel, 796 F.2d 981, 985 (7th Cir. 1986). I decline to transfer this case for two reasons. First, none of the parties have shown that courts in Ohio could exercise jurisdiction over defendant Dane County. Second, plaintiffs have objected vigorously to a transfer because of a belief that they cannot prevail against Cuyahoga county on the federal claim under the substantive law of the Sixth Circuit. Accordingly, I will dismiss the complaint as to that county.

Plaintiffs are free to refile their claim against that defendant in another state in which the exercise of jurisdiction is appropriate.

ORDER

IT IS ORDERED that the motion to dismiss filed by defendant Cuyahoga County Department of Children and Family Services, dkt. #14, is GRANTED. Plaintiff's complaint is DISMISSED as to that defendant for lack of personal jurisdiction.

Entered this 17th day of December, 2010.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge