
Sixth Circuit Affirms Dismissal for Lack of Personal Jurisdiction Over Out-of-State Twitter Messages

To establish jurisdiction over a defendant that is not domiciled in the forum, plaintiffs must generally demonstrate a substantial relationship between that forum and the defendant's conduct giving rise to the suit. An interesting question arises, however, when the out-of-state conduct at issue occurs on the Internet and has effects in the forum state. In a recent decision by the United States Court of Appeals for the Sixth Circuit, *Blessing v. Chandrasekhar*, 988 F.3d 889 (6th Cir. 2021),¹ the court considered whether posting allegedly tortious messages on Twitter, without more, could expose the posters to jurisdiction wherever the subjects of the tweets resided. In holding that it could not, the Sixth Circuit held that there must be additional contacts by the defendant connecting them to the forum for the exercise of jurisdiction to be proper. The decision reaffirms that personal jurisdiction cannot be based solely on the effects of conduct in a forum state.

I. Personal Jurisdiction and the Effects of Speech

The exercise of personal jurisdiction over an out-of-state defendant is proper only where the defendant has certain "minimum contacts" with the forum state.

In *Calder v. Jones*, the United States Supreme Court was asked to determine when an out-of-state speaker was subject to personal jurisdiction for speech that had effects in the forum. 465 U.S. 783 (1984). In that case, employees of a Florida-based national magazine were sued in California for allegedly libelous comments made about a California-resident actress. The Court held that the publication's contacts with California were sufficient to establish jurisdiction. Those contacts included phone calls to "California sources" for the information in the article; a story about the plaintiff's activities in California; and causing reputational injury in California by writing an allegedly libelous article that was widely circulated in the state. *Id.* at 788-89. The Court concluded that because California was the "focal point" of both the story and the injury, jurisdiction over the magazine company was proper in California based on the "effects" of its conduct within that state. *Id.*

In *Walden v. Fiore*, the Court clarified that *Calder* held that an injury "is jurisdictionally relevant only insofar as it shows that the defendant has formed a contact with the forum State." 571 U.S. 277, 290. The Court also held that mere injury to a forum resident, by itself, was not sufficient to confer jurisdiction over an out-of-state defendant. Instead, the Court held, the proper question was "not where the plaintiff experienced a particular injury or effect" but whether "the defendant's conduct connects him to the forum in a meaningful way." *Id.* In the context of comments

¹ Unless otherwise cited, all quoted statements in this memo are taken from this decision.

made online, several U.S. Courts of Appeals have applied this standard to hold that a speaker is not subject to jurisdiction in a forum merely because the online posting could be read there.²

More recently, the Supreme Court held in *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.* that a defendant's contacts with a forum that "relate to" the plaintiffs' claims can support the exercise of jurisdiction in certain cases, even if there is no "causal link" between the two. 141 S.Ct. 1017 (2021). In that case, the Court held that Ford was subject to personal jurisdiction in Montana and Minnesota on claims arising out of car accidents in those states, even though Ford designed, manufactured, and directly sold the vehicles at issue elsewhere. However, the Court cautioned that its reasoning would not apply to an online seller who makes products available to customers nationwide, noting that "[t]he differences between that case and the ones before us virtually list themselves." *Id.* at 1028 n.4. Without making any formal holding on this point, the Court suggested that an online user could not be "sued in any state if some harm arises" from online activity that did not target a particular forum. *Id.*

II. Background of *Blessing*

The Sixth Circuit's decision in *Blessing* arose out of social media commentary following a high-profile political protest. On January 18, 2019, a group of students from Covington Catholic High School in Kentucky attended the "March for Life" rally in Washington, D.C. After the march, the students became involved in an incident with Native American activist Nathan Phillips. While the students claimed they acted appropriately, critics alleged that they behaved disrespectfully towards Phillips. The incident received widespread media attention, and video of the confrontation spread widely on social media.

Two days later, Sujana Chandrasekhar, a resident of New Jersey, posted critical messages about the students on Twitter. Her message included numbered headshots of 45 Covington Catholic students, along with a caption that read "Do you know them? The world would like to know too." Chandrasekhar also wrote that the students had "scary faces" and that "[m]assive re-education is needed, for these children, their families, and their communities."

Kathy Griffin, a professional comedian who resides in California, also tweeted about the incident. Griffin posted a link to an article about the controversy along with a caption that read in part: "Name these kids. I want NAMES. Shame them." Over the next two days, Griffin posted additional tweets critical of the students, including one again inquiring about the students' identities and another claiming that students had "the look of white patriarchy."

Following these tweets, a group of the Covington students sued Griffin and Chandrasekhar separately in the U.S. District Court for the Eastern District of Kentucky, bringing claims against both defendants for civil harassment, harassing communications, menacing, terroristic threatening, and common law invasion of privacy. The students also brought claims against Chandrasekhar for aiding and abetting the foreseeable, wrongful, and tortious conduct of other persons against them.

Chandrasekhar and Griffin filed motions to dismiss for lack of personal jurisdiction, both of which were granted by the district court. The Sixth Circuit consolidated both cases on appeal.

² See *Shrader v. Biddinger*, 633 F.3d 1235, 1241 (10th Cir. 2011) ("[P]osting allegedly defamatory comments or information on an Internet site does not, without more, subject the poster to personal jurisdiction wherever the posting could be read (and the subject of the posting may reside.)"); *Johnson v. Arden*, 614 F.3d 785, 797 (8th Cir. 2010) (Colorado defendant who posted an allegedly defamatory statement online about the Missouri plaintiff's business did "not create the type of substantial connection between [the defendant] and Missouri necessary to confer specific personal jurisdiction").

III. The Sixth Circuit Decision

On appeal, the Sixth Circuit affirmed the district court's dismissal for lack of personal jurisdiction.

The Sixth Circuit concluded that the exercise of jurisdiction over Chandrasekhar and Griffin was impermissible under Kentucky's "long-arm" statute. The students alleged that the defendants' conduct fell under the statute's provision covering acts that cause "tortious injury by an act or omission in this Commonwealth." They further argued that, because the provision covers "criminally tortious communications" and Kentucky's criminal statutes provide for a private right of action, Chandrasekhar and Griffin were therefore subject to jurisdiction in Kentucky. But the court rejected the plaintiffs' arguments, holding that because Chandrasekhar and Griffin sent their tweets from out-of-state, they committed no "act" in Kentucky for purposes of jurisdiction.

The Sixth Circuit also held that, even if Kentucky's long-arm statute could be satisfied, the exercise of jurisdiction over the defendants would not comport with due process. The court held that Chandrasekhar and Griffin could not be subject to jurisdiction in Kentucky because they "took no affirmative steps to direct any communications to the plaintiffs or to anyone else" in the state. The court held that there was no evidence that the defendants posted the messages hoping to reach Kentucky specifically, as opposed to other states, and that there was no allegation that either user had any Twitter followers in Kentucky or that anyone in Kentucky actually read the tweets. The court distinguished this fact pattern from cases involving the transmission of "numerous tortious communications directly to the plaintiffs in the forum state," which the court had previously recognized as sufficient to support the exercise of jurisdiction.

The Sixth Circuit also rejected the students' argument that the defendants deliberately targeted Kentucky by encouraging their followers to identify and shame the students there. Citing *Walden*, the court observed that the minimum contacts inquiry is "defendant-focused" and that it cannot be satisfied by "demonstrating contacts between...third-parties and the forum State." Because the tweets at issue focused on the defendants' conduct, the court held that the tweets formed no contacts between the defendants and Kentucky.

Finally, the Sixth Circuit also rejected the plaintiffs' attempt to base jurisdiction on the students' allegation that they suffered harm in Kentucky. Unlike in *Calder*, the court held that Kentucky was not the "focal point...of the story," observing that the tweets focused not on that state but on the students' conduct in Washington, D.C. The court found that the plaintiffs were allegedly injured in Kentucky only because that is where they happened to reside and "not because anything independently occurred there." Because the plaintiffs would have experienced the same alleged harm "wherever else they might have traveled," the court held that the defendants did not have sufficient contacts with Kentucky to support the exercise of jurisdiction over them.

IV. Implications

In *Blessing*, the Sixth Circuit affirmed that effects of allegedly tortious conduct in a forum state are insufficient by themselves to support the exercise of personal jurisdiction. The case confirms that a speaker cannot be hauled into court for speech transmitted over the Internet simply because those communications caused injury in the forum where the plaintiff resides. There must be additional contacts that show the defendant aimed their conduct at the forum.

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If you have any questions about the issues addressed in this memorandum, or if you would like a copy of any of the materials mentioned in it, please do not hesitate to call or email authors Joel Kurtzberg (Partner) at 212.701.3120 or jkurtzberg@cahill.com; Adam S. Mintz (Counsel) at 212.701.3981 or amintz@cahill.com; or Benjamin Lash (Associate) at 212.701.3312 or blash@cahill.com; or email publications@cahill.com.

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