

**IN THE COURT OF APPEALS OF IOWA**

No. 2-1184 / 12-0317

Filed April 10, 2013

**SHELDON WOODHURST and CARLA  
WOODHURST,**  
Plaintiff-Appellants,

**vs.**

**MANNY'S INCORPORATED, a Corporation,**  
**d/b/a MANNY'S,**  
Defendant-Appellee.

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Appeal from the Iowa District Court for Jackson County, Mary E. Howes,  
Judge.

Plaintiffs appeal the district court's dismissal of their lawsuit against an  
Illinois corporation for lack of personal jurisdiction. **AFFIRMED.**

David M. Pillers and Ryan F. Gerdes of Pillers and Richmond, DeWitt, for  
appellants.

James R. Patton and J. Sue Myatt of Bozeman, Neighbour, Patton & Noe,  
L.L.P, Moline, Illinois, for appellee.

Considered by Vaitheswaran, P.J., and Tabor and Mullins, JJ.

**VAITHESWARAN, P.J.**

Sheldon and Carla Woodhurst appeal the district court's dismissal of their lawsuit against an Illinois corporation for lack of personal jurisdiction.

***I. Background Facts and Proceedings***

Sheldon Woodhurst and his wife, Carla, sued several defendants including Manny's, Incorporated, a restaurant in Savanna, Illinois. They alleged that David Zabransky consumed alcohol at Manny's and encountered Sheldon at a tavern in Sabula, Iowa, and shot him at close range.

The Woodhursts raised a dramshop liability claim against Manny's, asserting that the alcohol provided by the establishment was the proximate cause of Sheldon's injuries.

Manny's moved to dismiss the petition, claiming a lack of personal jurisdiction. Following an unreported hearing, the district court granted the motion and denied a motion for enlarged findings and conclusions. The court later approved a proposed statement of evidence. The Woodhursts filed an application for interlocutory appeal, which the Iowa Supreme Court granted.

***II. Personal Jurisdiction***

A hearing and disposition of a motion involving personal jurisdiction is a special proceeding requiring the court to find facts and draw conclusions. *Bankers Trust Co. v. Fidata Trust Co. New York*, 452 N.W.2d 411, 413 (Iowa 1990). The Woodhursts do not take issue with the district court's fact findings; they contend the court made an error of law in concluding it lacked specific personal jurisdiction over Manny's. See *Capital Promotions, L.L.C. v. Don King*

*Prods., Inc.*, 756 N.W.2d 828, 833 (Iowa 2008) (distinguishing between general and specific personal jurisdiction).

“In contrast to general, all-purpose jurisdiction, specific jurisdiction is confined to adjudication of ‘issues deriving from, or connected with, the very controversy that establishes jurisdiction.’” *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846, 2851 (2011) (citation omitted); accord *Capital Promotions*, 756 N.W.2d at 833 (“Specific jurisdiction refers to jurisdiction over causes of action arising from or related to a defendant’s actions within the forum state.”) (quoting *Bell Paper Box, Inc. v. U.S. Kids, Inc.*, 22 F.3d 816, 819 (8th Cir. 1994)). The inquiry is “whether there was ‘some act by which the defendant purposefully avail[ed] itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.’” *Goodyear*, 131 S. Ct. at 2854 (quoting *Hanson v. Denckla*, 357 U.S. 235, 253 (1958)); accord *Capital Promotions*, 756 N.W.2d at 833 (stating a plaintiff must, as an initial matter, show that “the defendant has purposefully directed his activities at residents of the forum and the litigation results from alleged injuries that arise out of or relate to those activities”) (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472–73 (1985)).

The Woodhursts maintain Manny’s “purposefully directed” its activities in Iowa by advertising in this State. Advertising may serve as a means of establishing specific jurisdiction. See *State ex. rel. Miller v. Baxter Chrysler Plymouth, Inc.*, 456 N.W.2d 371, 377 (Iowa 1990) (holding advertising by Nebraska dealerships within this state, while not sufficient to establish jurisdiction for all causes of action, was sufficient to render them amenable to suit in Iowa

where the action was premised on the advertising); see also *Myers v. Casino Queen, Inc.*, 689 F.3d 904, 913 (8th Cir. 2012) (citing an Illinois casino’s marketing to Missouri residents in support of a finding of specific jurisdiction). But to serve as a jurisdictional hook, those advertisements should actively solicit and target out-of-state residents. *Miller*, 456 N.W.2d at 374 (citing Iowa circulation statistics for ads in Nebraska newspaper); see also *Myers*, 689 F.3d at 908 (describing casino’s marketing activities directed to Missouri residents); *Nowak v. Tak How Invs., Ltd.*, 94 F.3d 708, 717 (1st Cir. 1996) (citing the circulation of print advertisements in Massachusetts and solicitations of Massachusetts residents by direct mail).

Ads appearing in an Iowa-based newspaper failed to establish that Manny’s purposefully directed its activities to Iowans. First, those ads were not for Manny’s in Savanna, Illinois, where Zabransky was alleged to have consumed alcohol, but for Manny’s Too! in Fulton, Illinois, which was not alleged to have any connection with Zabransky. Second, while Manny’s conceded it marketed its business to Iowans, that admission falls short of establishing the type of “purposeful activity” that has been found to confer personal jurisdiction. See *Myers*, 689 F.3d at 913–14.

Advertisements in a Savanna newspaper are equally unavailing. Those ads were for “Manny’s Pizza” in Savanna. There was no evidence that the Savanna publication was circulated to Iowans. See *Miller*, 456 N.W.2d at 374 (citing affidavits attesting to number of Iowans subscribing to Nebraska newspaper).

The Woodhursts additionally assert that Manny's advertised "on an Iowa radio station." The record contains no evidence supporting this assertion. As for Facebook and MySpace pages included in the record, there is nothing to indicate Manny's was directing activity to Iowans over those pages.

We conclude the Woodhursts did not establish that Manny's purposefully directed its activities at Iowa residents through its advertising.

Next, the Woodhursts argue that, based on the proximity of Savanna, Illinois, to Sabula, Iowa, it is "reasonable to infer that [Manny's] transactions result in more than insubstantial patronage by Iowa residents." The Woodhursts rely on *Svendson v. Questor Corp.*, 304 N.W.2d 428 (Iowa 1981), for this proposition. But that opinion involved a distinct factual scenario: a manufacturer's placement of an allegedly defective good into the "stream of commerce." *Svendson*, 304 N.W.2d at 430. The "stream of commerce" concept permits "jurisdiction in products liability cases in which the product has traveled through an extensive chain of distribution before reaching the ultimate consumer." *Goodyear*, 131 S. Ct. at 2855 (quotation marks and citation omitted); accord *J. McIntyre Mach., Ltd. v. Nicastro*, 131 S. Ct. 2780, 2788 (2011) ("Stream of commerce . . . refers to the movement of goods from manufacturers through distributors to consumers."). The concept is inapposite here.

Even if we could glean guidance from the "stream of commerce" opinions, it is clear that transmission of goods is not alone sufficient to permit the exercise of jurisdiction. *McIntyre*, 131 S. Ct. at 2788. Nor is it "enough that the defendant might have predicted that its goods will reach the forum State." *Id.* Jurisdiction may be exercised "only where the defendant can be said to have targeted the

forum.” *Id.* Manny’s proximity to Sabula, Iowa, therefore, is not a basis for permitting Iowa courts to exercise specific personal jurisdiction over the establishment.

The Iowa Supreme Court held just that in *Meyers v. Kallestead*, 476 N.W.2d 65, 68 (Iowa 1991). As in this case, the plaintiffs alleged that the defendant owned and operated a business in Savanna, Illinois. *Meyers*, 476 N.W.2d at 66. They further alleged that the business served alcohol to a man, who subsequently crossed the border into Iowa and killed a woman driving another vehicle. *Id.* After canvassing opinions finding personal jurisdiction over border state liquor vendors based on proximity to the forum state, the court concluded those opinions were no longer viable in light of a recent United States Supreme Court opinion. *Id.* at 67–68. The court noted that courts exercising jurisdiction over border state liquor vendors after the change in the legal landscape could do so only if “the nonresident defendant purposefully established minimum contacts.” *Id.* at 68 n.2. The court concluded the plaintiffs did not establish that Kallestead had this type of connection with Iowa. *Id.* at 68. While the court made reference to a five-factor test that the Iowa Supreme Court has since called into question,<sup>1</sup> that reference did not detract from the court’s holding or reasoning. *Id.* at 67. *Meyers* supports the district court’s dismissal of the petition.

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<sup>1</sup> See *Capital Promotions*, 756 N.W.2d at 834 (“Although these five factors retain their relevancy, they no longer provide a useful analytical framework for determining personal jurisdiction under current case law.”).

We conclude the district court did not err in granting Manny's motion to dismiss for lack of personal jurisdiction.

**AFFIRMED.**