

**IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE**

CHRISTOPHER COOK and LEIDRA COOK,	)	1 CA-CV 07-0110
	)	
Plaintiffs/Appellants,	)	DEPARTMENT B
	)	
v.	)	<b>MEMORANDUM DECISION</b>
	)	
AVI CASINO ENTERPRISES, INC., a	)	
corporation; IAN DODD; JUAN MEJIA;	)	Not for Publication -
STEPHANIE SHAIK; DEBRA PURBAUGH,	)	(Rule 28, Arizona Rule
	)	of Civil Appellate
	)	Procedure
Defendants/Appellees.	)	<b>FILED 3-20-08</b>
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Appeal from the Superior Court in Mohave County

Cause No. CV 2005-0646

The Honorable James E. Chavez, Judge

**AFFIRMED**

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**B A R K E R**, Judge

¶1 Plaintiffs-Appellants Christopher Cook ("Cook") and Leidra Cook appeal from the trial court's dismissal of all but one of Defendants based on its holding that those Defendants were entitled to sovereign immunity and that there was a lack of

personal jurisdiction. Appellants argue that Defendant Avi Casino Enterprises, Inc., ("Avi") is a separate and distinct legal entity from the Fort Mojave Indian Tribe ("the Tribe") and, as such, does not enjoy the Tribe's sovereign immunity. Appellants also argue that they have made a prima facie showing of both general and specific personal jurisdiction, making dismissal inappropriate on jurisdictional grounds. For the reasons discussed below, we affirm the trial court's granting of Defendants' motion to dismiss.

#### ***Facts and Procedural Background***

¶2 At about 4:30 A.M. on May 25, 2003, Cook left the home of his mother-in-law in Bullhead City, Arizona to drive his motorcycle home.<sup>1</sup> Late the previous night and into that morning a birthday party was being held at Avi Resort Casino for an employee. Avi operates Avi Resort Casino and is owned by the Tribe. Juan Mejia, Stephanie Shaik, Debra Purbaugh, and their supervisor, Ian Dodd, ("the Individual Defendants"),<sup>2</sup> were employees of the casino working at the party and serving alcohol

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<sup>1</sup> Because the dismissal is pursuant to Rule 12(b), we accept the well-pleaded allegations in the Plaintiff's complaint as true. *Filer v. Tohono O'Odham Nation Gaming Enter.*, 212 Ariz. 167, 169, ¶ 2, 129 P.3d 78, 80 (App. 2006). Thus, we take many of the facts concerning the collision directly from Cook's complaint.

<sup>2</sup> The Individual Defendants are grouped together separately from the corporate Defendant, Avi, for ease of analysis of the Individual Defendants' roles as employees.

to the guests. One of the party guests, Andrea C. ("Andrea"), was also an Avi employee. During the course of the party, Andrea became intoxicated.

¶3 At about the same time that Cook left his mother-in-law's house, Andrea left the casino, was shuttled to her car, and attempted to drive home. Within moments, Andrea crossed the center line on Aztec Road and collided with Cook. Cook suffered near fatal injuries, including the loss of his left leg at the hip.

¶4 On May 23, 2005, Cook filed a complaint in superior court claiming damages for dram shop liability pursuant to Arizona Revised Statutes ("A.R.S.") section 4-311 (2002) and Arizona common law, dram shop liability pursuant to tribal ordinance, negligence, and punitive damages. Avi and the Individual Defendants moved to dismiss the complaint on May 4, 2006, citing improper and insufficient service of process, lack of personal jurisdiction, and lack of subject matter jurisdiction due to sovereign immunity. The trial court granted this motion, finding that Avi and the Individual Defendants are entitled to sovereign immunity. Cook filed a timely appeal. We have jurisdiction pursuant to A.R.S. § 12-120.21 (2003).

### ***Discussion***

¶5 This court reviews *de novo* the trial court's dismissal of claims pursuant to Arizona Rule of Civil Procedure ("Rule")

12(b), including those claims when a court decides that it lacks subject matter jurisdiction. *Rashedi v. Gen. Bd. of Church of Nazarene*, 203 Ariz. 320, 323, ¶ 13, 54 P.3d 349, 352 (App. 2002). Because our review of personal jurisdiction is dispositive, we address only that issue.

¶6 Personal jurisdiction must be based on sufficient minimum contacts so that it does not offend notions of fair play and substantial justice in hauling a defendant into court in the forum state. *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 320 (1945). Personal jurisdiction is of two types: general jurisdiction or specific jurisdiction. Under either type, "the constitutional touchstone remains whether the defendant purposefully established 'minimum contacts' in the forum State." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474 (1985). For the reasons set forth in *Williams v. Lakeview Co.*, 199 Ariz. 1, 3, ¶ 7, 13 P.3d 280, 282 (2000), there were insufficient contacts with Arizona to establish general jurisdiction. See also *Westphal v. Mace*, 671 F. Supp. 665, 667-68 (D. Ariz. 1987) (general jurisdiction did not exist even though defendant advertised in Arizona, sponsored travel packages with travel agents in Arizona, and published a phone number in Arizona phone directories). As the Arizona Supreme Court stated in *Williams*, "the level of contact required to show general jurisdiction is quite high." 199 Ariz. at 3, ¶ 6, 13 P.3d at 282. This record

simply does not provide pervasive enough contacts such that suits against defendants for any purposes based on a claim of general jurisdiction would be appropriate.

¶7 Specific jurisdiction, which is based on less pervasive contacts than general jurisdiction, is appropriate if "(1) the defendant purposefully avails himself of the privilege of conducting business in the forum; (2) the claim arises out of or relates to the defendant's contact with the forum; and (3) the exercise of jurisdiction is reasonable." 199 Ariz. at 3, ¶ 7, 13 P.3d at 282. In this case, we need not consider whether Avi purposefully availed itself of the privilege of conducting business in Arizona or that the exercise of jurisdiction would be reasonable. The question the parties focus on is prong two, whether "the claim arises out of or relates to the defendant's contact with the forum." *Id.*

¶8 In *Williams*, the passengers and the driver of a vehicle traveled to a Nevada casino located "just past the Arizona border." *Id.* at 2, ¶ 2, 13 P.3d at 281. The driver became intoxicated while at the casino. *Id.* After crossing the Arizona border, the inebriated driver caused a one-car collision in which the passengers were seriously injured. *Id.* at 2-3, ¶ 2, 13 P.3d at 282-82. The Arizona Supreme Court upheld the dismissal for lack of jurisdiction as there was no causal connection between the plaintiffs' claim and the subsequent

incident. *Id.* at 4, ¶ 13, 13 P.3d at 283 (“[T]he plaintiffs do not assert that their visit to the casino resulted from any of Lakeview's contacts with Arizona.”). The court emphasized that “[t]he requirement that a nexus exist between a defendant’s activities in the forum state and a plaintiff’s cause of action provides the key to exercising specific jurisdiction.” *Id.* at 4, ¶ 11, 13 P.3d at 283.

¶19 The plaintiffs’ cause of action in *Williams* did not meet the nexus requirement and jurisdiction was denied. We focus on one aspect of the nexus requirement here that we find to be dispositive. As Avi points out, this accident occurred on a roadway within the reservation. If this incident involved only non-tribal entities, this factor may or may not be dispositive. The nexus requirement would merit further discussion. However, here the Defendants are a tribal entity and its employees acting in the course and scope of their duties. That the damage causing event occurred on the reservation is a critical factor.

¶10 As the United States Supreme Court pointed out,

In litigation between Indians and non-Indians arising out of conduct on an Indian reservation, resolution of conflicts between the jurisdiction of state and tribal courts have depended, absent a governing act of Congress, on “whether the state action infringed on the right of reservation Indians to make their own laws and be ruled by them.”

*Fisher v. Dist. Ct. of Sixteenth Judicial Dist. of Mont.*, 424 U.S. 382, 386 (1976) (quoting *Williams v. Lee*, 358 U.S. 217, 220 (1959)). In *Enriquez v. Superior Court (Joyner)*, 115 Ariz. 342, 565 P.2d 522 (1977), relying on *Williams v. Lee*, we held that a collision occurring on a state highway within an Indian Reservation did not result in jurisdiction when the action involved a suit against an Indian. Here, though the party involved in the collision was a non-Indian, the entities being sued are a tribal entity and its employees. This raises a clear issue of subject matter jurisdiction under *Williams v. Lee*. However, at a minimum, it also results in a diminished nexus between the litigation and the State of Arizona such that the nexus is not satisfied under *Williams v. Lakeview*. As appellees argue, there is an insufficient basis "to confer personal jurisdiction over a Tribal entity or its employees for an accident that occurred on the Reservation." Thus, our analysis turns on the fact that the collision and the overserving all occurred on the reservation and the litigation here involves only a tribal entity and the employees of that entity. We give no opinion as to what the result or analysis would be in the event that the collision or overserving was not on the reservation and the litigation involved non-tribal entities.

¶11 As to the claim that further discovery should have been permitted, none of the discovery requested would resolve the dispositive issue set forth above as to the nexus requirement. Thus, there was no error in not permitting the discovery.

***Conclusion***

¶12 For the foregoing reasons, we affirm.

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DANIEL A. BARKER, Presiding Judge

CONCURRING

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ANN A. SCOTT TIMMER, Judge

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PATRICIA A. OROZCO, Judge