

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 21, 2016

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2015AP2168

Cir. Ct. No. 2015CV157

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

PETER BERNEGGER,

PLAINTIFF-APPELLANT,

V.

**CARA THOMPSON, JACOB COLLECTION GROUP LLC
AND STATE OF MISSISSIPPI DEPARTMENT OF REVENUE,**

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Waupaca County:
VICKI L. CLUSSMAN, Judge. *Affirmed.*

Before Kloppenburg, P.J, Sherman, and Blanchard, JJ.

¶1 PER CURIAM. Peter Bernegger appeals an order of the circuit court dismissing his lawsuit against the State of Mississippi Department of Revenue, Cara Thompson (an employee of the Mississippi Department of

Revenue), and Jacob Collection Group, LLC.¹ Bernegger contends that the court erred in concluding that it did not have personal jurisdiction over the out-of-state defendants and that, even if it had jurisdiction, Bernegger's complaint failed to state a claim upon which relief may be granted. We affirm based on the personal jurisdiction issue. The out-of-state defendants' attempts to collect taxes allegedly owed in Mississippi by Bernegger's Mississippi-based limited liability company by periodically sending tax statements or letters and making phone calls to Bernegger at his Wisconsin residence do not meet the due process requirement of minimum contacts necessary to confer personal jurisdiction over the out-of-state defendants in Wisconsin.

BACKGROUND

¶2 Bernegger filed a complaint, and later an amended complaint, in Waupaca County circuit court alleging multiple causes of action, although the complaint does not always make clear which allegations apply to which defendant or defendants.² Putting to the side the particular labels that Bernegger assigns to the various causes of action, the complaint at its core alleges that a fraudulent tax lien was filed in Mississippi against Bernegger and his Mississippi-based company, and that the out-of-state defendants improperly attempted to collect on the tax lien.

¹ As explained at footnote 5 *infra*, Bernegger voluntarily moved to dismiss Jacob Collection Group LLC, and therefore this defendant stands in different shoes from the other defendants. When we refer collectively to "the out-of-state-defendants" we are referring to the State of Mississippi Department of Revenue and its employee Thompson.

² We will refer to "the complaint" without differentiating between the original complaint or the amended complaint. It does not matter to our resolution of this appeal which was operative at the time of dismissal, because we affirm dismissal based on a lack of personal jurisdiction, not based on failure to state a claim upon which relief may be granted.

¶3 Of the many submissions filed with the court by the parties, only two are pertinent to our resolution of this appeal: Bernegger’s motion to “fully dismiss Jacob” as a defendant; and the answer to the complaint filed on behalf of the Department and Thompson, asserting that the circuit court lacks personal jurisdiction over the defendants in this action.³

¶4 The circuit court held a hearing to address these and other submissions, as might be needed, and at the hearing the court made the following statements:

³ Bernegger argues that we should reverse because he was “blindsided” by dismissal of his action, at a hearing scheduled by the court, based on a lack of personal jurisdiction because he did not receive five-day advance notice under WIS. STAT. § 801.15(4) (2013-14) that the action might be dismissed at the hearing. We reject this notice argument for the following reasons. Circuit courts have discretion to shorten the five-day notice requirement for hearings, and we reject Bernegger’s argument on this ground. *See Schopper v. Gehring*, 210 Wis. 2d 208, 216, 565 N.W.2d 187 (Ct. App. 1997). Bernegger was on notice of the hearing and the potential issues to be considered at the hearing more than five days before the hearing. In an answer to the complaint filed approximately two weeks before the scheduled hearing on all pending motions, the Department and Thompson asserted the personal jurisdiction defense on behalf of all defendants. Bernegger acknowledges that he received timely notice of the hearing on the motions, and that he was aware of the fact that the circuit court would generally be considering dismissal at that hearing. Moreover, several days in advance of the hearing, Bernegger personally acknowledged to the court that the defendants had raised the personal jurisdiction defense in their answer to his complaint.

Given that Bernegger had actual notice of the hearing well in advance of five days before the scheduled date, that Bernegger was aware that the court would be considering dismissal at the hearing based on Jacob’s motion, and that a personal jurisdiction defense had been raised in the answer, we conclude that Bernegger was on notice that his action against the out-of-state defendants could be dismissed at the scheduled hearing. *See, e.g., id.* at 214 (“While the notice sent by the court did not specifically refer to [a particular defendant’s] motion to dismiss, the caption of the case, the nature of the notice and the fact that motions to dismiss were pending were sufficient to advise [the plaintiff], under the circumstances, as to the nature of the hearing.”). Also in support of our conclusion, we observe that Bernegger does not provide any argument on appeal that, if he had been given more time, he would have been able to produce additional evidence that may have convinced the court to conclude that it would comport with due process requirements to hale the out-of-state defendants into Wisconsin courts. *See id.*

All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

I believe ... after looking at all of the paperwork that's been filed in this case, that this is a case where [Bernegger is] asserting that there was an alleged ... unpaid tax liability in the State of Mississippi. And that enforcement action has been taken in the State of Wisconsin. However, I don't believe that that enforcement action gives this Court jurisdiction over this case. I believe that any cause of action [Bernegger has] should be taken up in the State of Mississippi.⁴

I further don't believe that the action states any claim for which relief can be granted. So, for those two reasons, I believe that the matter should be dismissed, and I will be dismissing the case at this time.

The court subsequently issued a written order memorializing its earlier decision, indicating that the court was dismissing the action, in part because the "Court found there is no jurisdiction for this case in the State of Wisconsin." Bernegger appeals.⁵ We include additional pertinent facts in our discussion of the issues below.

⁴ Bernegger argues in at least one place in his briefing that, because the circuit court did not use the specific phrase "personal jurisdiction" in dismissing the action, Bernegger "is left guessing what jurisdiction [the circuit court] was talking about." We reject this argument. In explaining that the court lacked jurisdiction over the case, the court stated that "any cause of action ... should be taken up in the State of Mississippi," and that "there is no jurisdiction for this case in the State of Wisconsin," clear indications of the court's meaning. In addition, to the extent that Bernegger asserts that the court might have been referring to a lack of general jurisdiction, our supreme court has explained that Wisconsin circuit courts are courts of general jurisdiction, and that subject matter jurisdiction may not be curtailed by the legislature. See *Village of Trempealeau v. Mikrut*, 2004 WI 79, ¶8, 273 Wis. 2d 76, 681 N.W.2d 190. Bernegger effectively concedes the point elsewhere in his briefing, stating that "the circuit court had subject matter jurisdiction pursuant to WIS. STAT. § 801.04(1) and could not have found it lacked 'jurisdiction.'" Therefore, going forward, we discuss only whether the circuit court properly determined that it lacked *personal* jurisdiction over the out-of-state defendants.

⁵ Bernegger's appeal purports to raise issues pertaining to Jacob. However, as noted above, Bernegger voluntarily moved the circuit court "to fully dismiss Jacob from this action," and the circuit court granted that request. Bernegger has not provided us with reason to think that the circuit court should have understood him to have withdrawn this motion prior to the court's dismissal of the action against Jacob. Bernegger also provides us with no alternative basis to resurrect the action against Jacob. We affirm Jacob's dismissal based on Bernegger's motion to
(continued)

DISCUSSION

¶5 Bernegger asks us to review the circuit court’s decision that it could not assert personal jurisdiction over the out-of-state defendants in this action. Whether a Wisconsin court has personal jurisdiction over an out-of-state defendant is a question of law that we review de novo. *Carlson v. Fidelity Motor Group, LLC*, 2015 WI App 16, ¶7, 360 Wis. 2d 369, 860 N.W.2d 299 (citing *Johnson Litho Graphics of Eau Claire, Ltd. v. Sarver*, 2012 WI App 107, ¶6, 344 Wis. 2d 374, 824 N.W.2d 127).

¶6 “On a question of personal jurisdiction over an out-of-state defendant, the plaintiff bears ‘the minimal burden of establishing a prima facie threshold showing’ that the requirements of both constitutional due process and Wisconsin’s long-arm statute, WIS. STAT. § 801.05 (2011-12), are satisfied.” *Carlson*, 360 Wis. 2d 369, ¶8 (quoted source omitted). “In reviewing whether this burden has been met, ‘we may consider documentary evidence and weigh affidavits.’ We accept as true all well-pleaded allegations in the complaint, unless controverted by affidavits of the challenging party.” *Id.* (quoted sources omitted).

¶7 Although courts typically engage in the personal jurisdiction inquiry by first reviewing whether the long-arm statute’s requirements are met, when it appears likely that the due process requirements have not been met, we may proceed directly to the due process analysis. *Id.*, ¶9 (citing *Hy Cite Corp. v. Badbusinessbureau.com, L.L.C.*, 297 F. Supp. 2d 1154, 1157 (W.D. Wis. 2004))

dismiss him, and our discussion for the balance of this opinion is generally confined to dismissal of the Department and Thompson based on a lack of personal jurisdiction.

(if constitutional due process requirements are not met, a court need not decide if WIS. STAT. § 801.05 is satisfied).

¶8 The due process analysis also involves a two-step process: first, we determine whether a non-resident defendant “purposefully established minimum contacts in” Wisconsin; then, if we conclude that the plaintiff has met its burden on the first prong, we examine whether exercising personal jurisdiction “comports with ‘fair play and substantial justice.’” *Id.*, ¶10 (quoted sources omitted).

¶9 As we now explain, we resolve this appeal based on the first prong of the two-step due process test, because even assuming as true all representations Bernegger makes about pertinent allegations, this would be insufficient to show that the out-of-state defendants purposefully established minimum contacts in Wisconsin.

¶10 Bernegger alleges that the out-of-state defendants “contacted Bernegger or caused numerous contacts to be made to Bernegger at his home in the state of Wisconsin.” Although his argument is not framed in terms of the due process analysis, Bernegger apparently means to argue that the out-of-state defendants had sufficient minimum contacts with Wisconsin to confer specific personal jurisdiction in Wisconsin courts over them.

¶11 More specifically, the only contacts that Bernegger alleges that the out-of-state defendants have had with the state of Wisconsin involved sending letters and/or making phone calls to Bernegger, now a Wisconsin resident, in an attempt to collect on an alleged delinquent Mississippi tax debt. In other words, Bernegger’s allegations, if taken as true, would establish only that the out-of-state defendants had a single connection to the state of Wisconsin, namely, their contacts with him alone, arising from transactions initiated within the state of

Mississippi. And, under the facts he alleges, these particular contacts strictly involved this alleged delinquent Mississippi tax debt and the contacts spilled over into Wisconsin only as a result of Bernegger's decision to move his residence from Mississippi to Wisconsin.

¶12 We rely on recent case law from the United States Supreme Court and this court to support our conclusion. See *Walden v. Fiore*, ___ U.S. ___, 134 S. Ct. 1115, 1121 (2014); *Salfinger v. Fairfax Media Ltd.*, 2016 WI App 17, ¶24, 367 Wis. 2d 311, 876 N.W.2d 160.

¶13 In *Walden*, the Supreme Court addressed the “minimum contacts” necessary for “a State to exercise jurisdiction consistent with due process.” 134 S. Ct. at 1121. The Court concluded that a Georgia resident lacked minimum contacts with Nevada, even though the Georgian knew that his allegedly tortious conduct in Georgia could potentially harm the Nevada-resident plaintiffs. Although the contacts that Bernegger alleges differ from those alleged in *Walden*, what matters to our analysis is that the Court emphasized longstanding due-process jurisdictional principles that included the following: (1) a defendant himself or herself must establish the relationship with the proposed forum state; and (2) a court's analysis of the “minimum contacts” aspect of due process hinges on “the defendant's contacts with the forum state itself, not the defendant's contacts with persons who reside there.” *Id.* at 1122.

¶14 The *Walden* Court observed that, although it is true that a defendant may have contact with a forum state through “goods, mail, or some other means,” “the plaintiff cannot be the only link between the defendant and the forum.” *Id.* Rather, “[d]ue process requires that a defendant be haled into court in a forum

State based on his own affiliation with the State,” not based solely on his interaction with a person who happens to reside in the State. *Id.* at 1123.

¶15 Embracing principles set forth in *Walden*, this court recently upheld a circuit court’s dismissal for lack of personal jurisdiction over a Wisconsin action against a non-resident defendant. *See Salfinger*, 367 Wis. 2d 311. There was evidence in *Salfinger* that publication of an on-line article by a foreign newspaper with several Wisconsin subscribers and numerous Wisconsin readers potentially damaged the reputation of a Wisconsin resident. *See id.*, ¶¶1, 2, 4. We concluded that it would violate due process to confer personal jurisdiction in Wisconsin over the non-resident defendant. *See id.*, ¶1. In explaining our decision, we noted that the *Walden* Court had “recently reiterated that when addressing minimum contacts in the context of specific jurisdiction, the inquiry of whether a state may exercise specific jurisdiction over a nonresident defendant focuses on” the relationships among “the defendant, the forum State, and the litigation.” *Id.*, ¶24 (citing *Walden*, 134 S. Ct. at 1121). We further explained, again citing *Walden*, that the fact that the alleged harm occurred to a plaintiff living in Wisconsin is not dispositive of the question of whether due process permits Wisconsin to exercise jurisdiction over a non-resident defendant. *See id.* (quoting *Walden*, 134 S. Ct. at 1122) (plaintiff’s “contacts cannot be ‘decisive in determining whether the defendant’s due process rights are violated.’” Instead, due process analysis “looks to the defendant’s contacts with the forum State itself, not the defendant’s contacts with persons who reside there.””).

¶16 Here, Bernegger points to nothing to suggest that the out-of-state defendants’ contacts with Wisconsin were anything more than attempts to collect from Bernegger alone, who happened at that time to be a resident of Wisconsin, or to suggest that such limited contacts would be sufficient under the case law.

Bernegger fails to convince us that, on these facts, the out-of-state defendants “would understand” that the alleged collection efforts would “open the door to jurisdiction in” Wisconsin. *See Salfinger*, 367 Wis. 2d 311, ¶34. Thus, under the principles established in *Walden* and embraced by this court in *Salfinger*, it would not comport with due process requirements to subject the out-of-state defendants to the jurisdiction of Wisconsin courts.

¶17 *Salfinger* provides that:

Having concluded that the [out-of-state defendants] do not have sufficient minimum contacts with the State of Wisconsin for due process purposes under the first prong of our due process analysis, we do not address the second prong, which considers the defendants’ contacts with the forum in light of other factors to determine whether exercise of personal jurisdiction would comport with fair play and substantial justice.

See Salfinger, 367 Wis. 2d 311, ¶52 (citing *Kopke*, 245 Wis. 2d 396, ¶23).

¶18 Bernegger makes only one other argument that warrants discussion.⁶ The remaining argument is that the court could not dismiss the case on personal jurisdiction grounds without first holding an evidentiary hearing. We reject this argument. A court need not hold an evidentiary hearing in every case in which personal jurisdiction is challenged. *Kavanaugh Restaurant Supply, Inc. v. M.C.M. Stainless Fabricating, Inc.*, 2006 WI App 236, ¶12, 297 Wis. 2d 532, 724 N.W.2d 893. Even now on appeal, Bernegger fails to suggest any additional

⁶ We have examined Bernegger’s brief and reply in an attempt to discern all of his arguments. To the extent we do not address an argument, we conclude it is not sufficiently developed to merit discussion. *See, e.g., State v. Waste Mgmt. of Wisconsin, Inc.*, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978) (“issues raised and not discussed ... can be deemed to lack sufficient merit or importance to warrant individual attention.”).

alleged fact or topic of inquiry that could have changed the analysis in his favor.
See id.

¶19 Given our conclusion that the circuit court properly dismissed the action on the ground that it would violate the out-of-state defendants’ due process protections to hale them into Wisconsin courts, there is no need for us to address the circuit court’s decision that Bernegger’s complaint failed to state a claim on which relief can be granted, or any other potential issues raised by Bernegger on appeal that are unrelated to personal jurisdiction.⁷ *See Walworth State Bank v. Abbey Springs Condominium Ass’n, Inc.*, 2016 WI 30, ¶13 n.7, 368 Wis. 2d 72, 878 N.W.2d 170 (quoting *Maryland Arms Ltd. P’ship v. Connell*, 2010 WI 64, ¶48, 326 Wis. 2d 300, 786 N.W.2d 15) (“Typically, an appellate court should decide cases on the narrowest possible grounds.”).

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

⁷ In a separate summary disposition that we also release today, *Bernegger v. Thompson, et al.*, No. 2015AP2546, unpublished op. and order (WI App July 21, 2016), we resolve related issues raised by Bernegger arising from the same litigation.

