

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION

CYNTHIA HUFFMAN, WILLA BURKE,)
VIRGINIA KING, and EQUAL)
EMPLOYMENT OPPORTUNITY)
COMMISSION,)

Plaintiffs,)

vs.)

Case No. 01-3144-CV-S-ODS

NEW PRIME, INC. d/b/a PRIME, INC.,)
ABEL JOSEPH LORMAND, SAMUEL)
TURNER, and KENNETH)
LITTLEJOHN,)

Defendants.)

ORDER GRANTING DEFENDANT KENNETH LITTLEJOHN'S MOTION TO DISMISS

Pending is Defendant Kenneth Littlejohn's ("Littlejohn") motion to dismiss (Doc. # 76) Plaintiff Virginia King's ("King") complaint against him. Littlejohn asserts two grounds for dismissal. The first is that this Court lacks personal jurisdiction over him,¹ and the second is that King's complaint is time-barred. The Court does have personal jurisdiction over Littlejohn, but King's complaint is time-barred. Therefore, Littlejohn's motion to dismiss is granted.

New Prime, Inc. is a Nebraska corporation that has its principal place of business in Springfield, Missouri. At all relevant times New Prime employed King as a truck driver-trainee. It also employed Littlejohn as a truck driver-trainer. Littlejohn entered into an "Independent Contractor Operator Agreement" with New Prime, leased equipment from New Prime, and agreed to a "Personal Service Agreement" which enabled him to train drivers for New Prime. Each of these contracts specified Missouri as the choice of both forum and law.

¹Littlejohn is an Arkansas resident, and King is an Ohio resident.

King agreed to let Littlejohn train her on September 2, 1997 in Springfield, Missouri. The two left from Springfield on a training trip. While still in Missouri plaintiff alleges that defendant began making inappropriate comments to her. Allegedly these comments continued throughout the trip and lead to Littlejohn sexually assaulting King in Texas.

I. Personal Jurisdiction

The Court has personal jurisdiction over the defendant. This Court, when sitting in a diversity action, may assume jurisdiction over a nonresident defendant to the extent permitted by Missouri law so long as the exercise is consistent with the Due Process Clause.² Missouri courts consistently extend the reach of their jurisdiction to the limits permitted by the Constitution. *See Institutional Food Marketing Associates, Ltd. v. Golden State Strawberries, Inc.*, 747 F.2d 448, 453 (8th Cir. 1984).

The “minimum contacts” analysis required by the Fourteenth Amendment entails consideration of the following factors: “(1) the nature and quality of contacts with the forum state; (2) the quantity of these contacts; (3) the relationship between the contacts and the cause of action; (4) the interest of the forum state; and (5) the convenience of the parties.” *Wines v. Lake Havasu Boat Mfg.*, 846 F.2d 40, 42 (8th Cir. 1988). The first three of these are of primary importance. *E.g., Austad Co. v. Pennie & Edmonds*, 823 F.2d 223, 226 (8th Cir. 1987). “Jurisdiction is proper where there is a substantial and continuing relationship purposefully made with a party in the forum state, *see Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985), so long as ‘maintenance of the suit does not offend traditional notions of fair play and substantial justice.’ *International Shoe*

²In *State ex rel. K-Mart Corp. v. Holliger*, the Missouri Supreme Court rejected the “remarkable assertion that the only means by which jurisdiction may be obtained over a foreign corporation is through the state’s long-arm statute,” 986 S.W.2d 165, 166 (Mo. 1999), and instead held that a corporation’s general business activity in a state could give rise to jurisdiction even if the suit does not arise from those contacts.

Co. v. Washington, 326 U.S. 310, 316 (1945).” *CPC-Rexcell, Inc. v. La Corona Foods, Inc.*, 912 F.2d 241, 243 (8th Cir. 1990).

The nonresident defendant’s conduct and connection with the forum state must be such that he should reasonably anticipate being haled into court there, and it is essential that there be some act by which the defendant purposefully avails himself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws. Purposeful availment means that the defendant’s contacts with the forum state must not be random, fortuitous, attenuated, or the result of unilateral activity or a third person or another party.

Guinness Import Co. v. Mark VII Distributors, Inc., 153 F.3d 607, 614 (8th Cir. 1998) (internal citations omitted).

Littlejohn should have reasonably anticipated being haled into court in Missouri. He purposefully availed himself of the privilege of conducting activities within Missouri by working here and entering into numerous contracts that specify Missouri as the choice of forum and choice of law. Thus, he invoked the benefits and protections of Missouri’s laws. Littlejohn’s business contacts are closely related to King’s cause of action. The two only met because they worked for the same company, and “The Personal Service Agreement” is the instrument that enabled Littlejohn to train King. Also, King claims that Littlejohn committed tortious acts against her in Missouri. The state has an interest in adjudicating tortious acts that occur within its borders.

In addition, §500.506 RSMo. (Missouri Long Arm Statute) confers jurisdiction of this Court over Defendant Littlejohn. Any person, whether or not a citizen or resident of Missouri, is subject to the jurisdiction of the courts of this state as to any cause of action arising from transacting business within this state, making contracts within this state, and/or committing a tortious act within this state. Littlejohn transacted business within this state. In fact, training King was a business transaction. Littlejohn made several contracts within Missouri, but which the plaintiff and defendant would not have met. Most importantly, King claims that Littlejohn committed tortious acts against her in Missouri.

Thus, asserting personal jurisdiction over Littlejohn comports with fair play and substantial justice.

II. Statute of Limitations

King's complaint against Littlejohn is time-barred. King alleges that Littlejohn began inflicting emotional distress on her through inappropriate comments and unwanted touching shortly after they began their trip and while still in Missouri. The culmination of this distress came when Littlejohn sexually assaulted her in Texas on September second or third, 1997. King merely claimed intentional or negligent infliction of emotional distress in her January 17, 2001 Corrected Complaint.³ That charge enjoys a five year statute of limitations, which she easily meets. §516.120(4) RSMo.

Missouri courts, however, have consistently held that "there is no independent action for intentional infliction of emotional distress where the existence of the claim is dependent upon a battery." *K.G. v. R.T.R.*, 918 S.W.2d 795, 799 (Mo. 1996) (en banc); *see also Restatement (Second) of Torts*, § 47 ("conduct which is tortious because intended to result in bodily harm to another or in the invasion of any other of his legally protected interests does not make the actor liable for an emotional distress which is the only legal consequence of his conduct."). The existence of King's emotional distress claim is dependent upon an alleged battery, the sexual assault in Texas. Therefore, she cannot bring an independent action for intentional infliction of emotional distress. King must claim battery if she is to maintain any complaint at all. In Missouri battery is subject to a two-year statute of limitations. §516.140 RSMo. "To hold that the specific two-year

³While the plaintiff includes the "negligence" label in her Complaint, the defendant correctly points out that the allegations do not support a claim that Littlejohn acted negligently. Rather the allegations are that he engaged in intentional conduct without any reference to the required elements of a negligence claim. Intentional conduct is the foundation of plaintiff's claim. Therefore, as a matter of law, the only cause of action asserted in plaintiff's Complaint is for an intentional tort.

state [i]s not applicable would evade a clearly expressed legislative policy.” *K.G.*, 918 S.W.2d at 800. Under Texas law a person must bring suit for personal injury “not later than two years after the day the cause of action accrues.” Tex. Code Ann. § 16.003(a). This statute not only governs battery, but it also controls intentional and negligent infliction of emotional distress. See, e.g., *Wagner v. Tex. A&M Univ.*, 939 F. Supp. 1297 (S.D. Tex. 1996) (finding claims for intentional infliction of emotional distress under Texas law are subject to two-year statute of limitations); *Patin v. Allied-Signal, Inc.*, 865 F. Supp. 365 (E.D. Tex.) *aff’d.*, 69 F.3d 1 (5th Cir. 1994) (holding torts of negligent and intentional infliction of emotional distress are barred by two-year limitation period). Regardless of which state’s law is applied, King clearly does not meet a two-year time limit. Her action is time-barred. The Court grants Littlejohn’s motion to dismiss and dismisses King’s complaint against him.

IT IS SO ORDERED.

/s/ Ortrie D. Smith
ORTRIE D. SMITH, JUDGE
UNITED STATES DISTRICT COURT

DATE: August 12, 2002