IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT OF FLORIDA
CASE NO. 1D23-3059
L.T. CASE NO. 2022 CA 001749

RYAN TRANSPORTATION SERVICES, INC.,

Defendant-Appellant,

v.

KRISTEN KULP, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF ADAM JAMES KULP, DECEASED,

Plaintiff-Appellee. /

REPLY BRIEF OF DEFENDANT-APPELLANT RYAN TRANSPORTATION SERVICES, INC.

On Interlocutory Appeal from a Non-Final Order of the Second Judicial Circuit, In and For Leon County, Florida

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INTRODUCTION

Plaintiff's answer brief (AB) disregards three fundamental principles of Florida law that govern here and warrant reversal of the trial court's order denying Ryan Transportation Services, Inc.'s motion to dismiss for lack of personal jurisdiction.

First, the Florida "long-arm statute must be strictly construed, and any doubts about applicability of the statute resolved in favor of the defendant and against a conclusion that personal jurisdiction exists." *Gadea v. Star Cruises, Ltd.*, 949 So. 2d 1143, 1150 (Fla. 3d DCA 2007). It is not only "the Third and Fourth Districts [that] have stated that the long-arm statute is strictly construed." (AB 23.) This Court also "strictly construe[s] Florida's long-arm statute." *Samsung SDI Co., Ltd. v. Fields*, 346 So. 3d 102, 105 (Fla. 1st DCA 2022) (citing *LaFreniere v. Craig-Myers*, 264 So. 3d 232, 237 (Fla. 1st DCA 2018)).

Second, "[i]t has long been the law of Florida that '[n]o decision is authority on any question not raised and considered, although it may be involved in the facts of the case.'" *MVW Mgmt., LLC v. Regalia Beach Developers LLC*, 230 So. 3d 108, 114 (Fla. 3d DCA 2017) (quoting *State ex rel. Helseth v. DuBose*, 99 Fla. 812, 128 So. 4, 6 (Fla. 1930)). Plaintiff's argument that subparagraph 6. of section

48.193(1)(a), Florida Statutes, confers jurisdiction over Ryan turns on her assertion that *Coates v. R.J. Reynolds Tobacco Co.*, No. SC21-175, 2023 Fla. LEXIS 17, 2023 WL 106899 (Fla. Jan. 5, 2023)—a case having nothing to do with personal jurisdiction or the long-arm statute—"controls" interpretation of the long-arm statute in this case. (AB 19.) It does not. *Coates* interpreted "the injury suffered" under section 768.74(5)(d), Florida Statutes, "for purposes of evaluating a punitive damages award in a wrongful death action." *Coates*, 2023 Fla. LEXIS 17, at *13. Applying *Coates* out of context in this one case would wreak havoc in future cases where Florida citizens are injured and die *in* Florida but their survivors all reside *outside* Florida.

Third, specific jurisdiction under the Florida long-arm statute "requires a 'claim-specific' analysis" and "[t]he 'provisions of Florida's long-arm statute governing specific jurisdiction expressly require *both*: (i) that the defendant does one of the enumerated acts within Florida, *and* (ii) that the plaintiff's cause of action "arise from" one of the enumerated acts occurring in Florida.'" *D-I Davit Int'l-Hirsche GmbH v. Carpio*, 346 So. 3d 197, 201 (Fla. 3d DCA 2022) (emphasis in original) (quoting *Banco de los Trabajadores v. Cortez Moreno*, 237 So. 3d 1127, 1133, 1135 (Fla. 3d DCA 2018)). Plaintiff barely

mentions her specific vicarious-upon-vicarious-upon-vicarious liability claims against Ryan and her discussion of the long-arm statute's "connexity requirement," *id.*, is conclusory, at best.

The order denying Ryan's motion to dismiss should be reversed.

ARGUMENT

I. PLAINTIFF DID NOT CARRY HER BURDEN OF PROVING THE LONG-ARM STATUTE CONFERS JURISDICTION OVER RYAN IN THIS CASE.

The trial court found three sections of the long-arm statute were satisfied—section 48.193(1)(a), Florida Statutes, subparagraphs 1., 2., and 6.a. (RA 2358-63.) Plaintiff asserts "Ryan conflates the statute's requirements with one another and takes various quotes from a few cases out of context to generate an inaccurate presentation of Florida's personal jurisdiction law" (AB 23)—and then proceeds to do exactly that in responding to Ryan's arguments. (AB 23-27.) As it did in its initial brief, Ryan will discuss each of the three subparagraphs of the long-arm statute under a separate heading.

A. Subparagraph 1. does not confer jurisdiction over Ryan because there is no connexity between Plaintiff's specific claims against Ryan and Ryan's business activities in Florida.

The issue here is not whether Ryan "engaged in some business activities in Florida," *Fields*, 346 So. 3d at 106, so whether Ryan

"conducts a substantial amount of business in Florida" (AB 4) is irrelevant. The issue here is "the 'connexity' requirement"—the requirement "that there be a 'nexus' or 'substantial connection' between *the cause of action* and the defendant's activities *within the state*." *Fields*, 346 So. 3d at 106 (emphasis added). This "requires a *'claim-specific' analysis*"—"[t]he purported connexity to Florida must relate to *the actual tort alleged*." *Carpio*, 346 So. 3d at 201 (emphasis added) (quoting *Banco de los Trabajadores*, 237 So. 2d at 1133).

Plaintiff does not engage in any meaningful analysis of the connexity requirement. When discussing subparagraph 1. specifically, Plaintiff cites no authority on the connexity requirement and all she can say is her "cause of action arises from the very business activity Ryan directs to Florida through its brokering services. A direct, causal connection exists between Plaintiff's cause of action and Ryan's business activities in Florida." (AB 16-17.) A plaintiff cannot carry her "burden … to prove a jurisdictional basis," *Fields*, 346 So. 3d at 108, with such conclusory assertions.

As in *Carpio*, "the accident underlying the causes of action occurred outside of Florida's jurisdiction." *Carpio*, 346 So. 3d at 203 n.9. So did *all* of Ryan's allegedly wrongful conduct. (RA 193-203.)

Plaintiff herself identifies Ryan's "actual tortious conduct" as "brokering the load to Florida." (AB 25-26.) *To* Florida is not the same as *in* Florida, and it is undisputed Ryan brokered the load to Defendant VA Logistics, LLC ("VA Logistics"), a Missouri motor carrier, from Ryan's office in Kansas. (RA 278, 1722.)

Plaintiff's attempt to dismiss *Carpio* as "a 'foreseeability' decision involving products liability" (AB 25) fails. In *Carpio*, there was "no connexity" between "the actual tort alleged"—strict liability—"and Florida." *Carpio*, 346 So. 3d at 201. The plaintiff attempted to "sidestep this jurisdictional flaw" by pointing to inspection contracts between the German product manufacturer defendant and her deceased husband's employer entered into "*in Florida*." *Id.* (emphasis added). "By interjecting the inspection contracts entered in Florida," the plaintiff hoped "to provide the necessary hook to trigger specific jurisdiction over the claims at issue." *Id.* at 203 n.9. Her attempt failed because even if the Court "were to agree that the inspection contract conferred third-party beneficiary status on [the plaintiff's decedent], the lack of connexity to the claims alleged bars a finding of specific jurisdiction." *Id.*

The same result should follow here as in *Carpio*. Since "[n]one of the acts related to the alleged tort occurred in Florida," *Carpio*, 346 So. 3d at 201-02, subparagraph 1. of section 48.193(1)(a), Florida Statutes, does not confer jurisdiction over Ryan.

B. Subparagraph 2. does not confer jurisdiction over Ryan because Ryan did not commit a tortious act in Florida or make tortious communications into Florida.

Ryan did not argue "the act performed by a defendant must be performed physically in Florida for long-arm jurisdiction to attach, full stop." (AB 24.) There is no question the absence of "a physical presence within Florida … does not *necessarily* preclude a finding of personal jurisdiction under subparagraph 2." *Fields*, 346 So. 3d at 107 (emphasis added). "'[C]ommitting a tortious act' in Florida … can occur through the nonresident defendant's telephonic, electronic, or written communications into Florida. However, the cause of action must arise from the communications." *Wendt v. Horowitz*, 822 So. 2d 1252, 1260 (Fla. 2002).

Plaintiff does not identify any tortious communications Ryan directed into Florida. Indeed, she does not identify *any* communications Ryan made into Florida. Instead, Plaintiff argues she "met subparagraph (1)(a)2. because Ryan directed its out-of-state

conduct towards Florida by coordinating for the shipment of a truckload destined for delivery in Florida, and in doing so, caused injury to Florida residents in Florida." (AB 22.) That is not sufficient.

Because Plaintiff does not identify any "tortious communications into Florida," her claims against Ryan do not fall into the "recognized class" of tort claims that do not require physical presence in Florida, and "the reasoning in *Wendt* does not apply here." *Fields*, 346 So. 3d at 107; *accord Robinson Helicopter Co. v. Gangapersaud*, 346 So. 3d 134, 139 (Fla. 2d DCA 2022) ("the *Wendt* rule is applied when the tort 'involves some sort of communication directed into Florida for purpose of fraud, slander, or other intentional tort'") (quoting *Stonepeak Partners, LP v. Tall Tower Cap., LLC*, 231 So. 3d 548, 554 (Fla. 2d DCA 2017) (quoting *Wiggins v. Tigrent, Inc.*, 147 So. 3d 76, 86 (Fla. 2d DCA 2014))).

This Court's decision in *Dean v. Johns*, 789 So. 2d 1072 (Fla. 1st DCA 2001), pre-dates the Florida Supreme Court's 2002 decision in *Wendt* and, in any event, it is distinguishable. "The facts of *Dean* reveal that the defendant accepted Dean as a patient, rendered a diagnosis and recommended surgery, and reached out to both Dean and her referring physician in Florida to discuss the procedure."

Robinson Helicopter, 346 So. 3d at 140-41. Plaintiff here alleges no such thing; she identifies Ryan's "actual tortious conduct" as "brokering the load" (AB 25-26) to Defendant VA Logistics, a Missouri motor carrier, from Ryan's office in Kansas. (RA 278, 1722.) As in *Robinson Helicopter*, "[t]his is a far cry from the circumstances which led the court in *Dean* to conclude that the defendant had committed a tort in Florida for the purposes of long-arm jurisdiction." *Robinson Helicopter*, 346 So. 3d at 141.

Accordingly, subparagraph 2. of section 48.193(1)(a), Florida Statutes, does not confer jurisdiction over Ryan.

C. Subparagraph 6. does not confer jurisdiction over Ryan because Mr. Kulp's personal injury did not occur in Florida.

Plaintiff's argument that subparagraph 6. confers jurisdiction over Ryan turns on her contention that, "although Mr. Kulp died at the scene of the accident in Georgia, the decedent's death is not the 'injury suffered' in a wrongful death case" under *Coates*, 2023 Fla. LEXIS 17, 2023 WL 106899. (AB 17.) According to Plaintiff, "[i]n determining for jurisdictional purposes the injury suffered in a wrongful death case, a court should therefore look to the survivors." (AB 18-19.) And since Mr. Kulp's survivors happen to "all … live in

Florida," it follows (again, according to Plaintiff) that Ryan "caus[ed] injury in Florida" for purposes of subparagraph 6. (AB 20.) Plaintiff's proposed interpretation of the long-arm statute is not viable.

Coates did not interpret the long-arm statute—let alone what it means to cause "injury to persons or property within this state" under section 48.193(1)(a)6., Florida Statutes. "That issue was not presented to the court, and it was not decided by the court." *Speedway SuperAmerica, LLC v. Tropic Enterprises, Inc.*, 966 So. 2d 1, 3 (Fla. 2d DCA 2007) (holding trial court erred by treating judicial decision as binding on an issue that was not raised, argued, or analyzed).

Rather, *Coates* interpreted "two statutes, sections 768.73 and 768.74, Florida Statutes (1997), that govern review of … punitive damages award[s]." *Coates*, 2023 Fla. LEXIS 17, at *7. The Court's analysis centered on the words "the injury suffered" in section 768.74(5)(d), "which requires the trial court to consider '[w]hether the amount awarded bears a reasonable relation to the amount of damages proved and the injury suffered.'" *Coates*, 2023 Fla. LEXIS 17, at *9 (quoting § 768.74(5)(d)).

The Court held the decedent's death is not "the injury suffered" "*for purposes of evaluating a punitive damages award* in a wrongful death action *under section 768.74(5)(d).*" *Coates*, 2023 Fla. LEXIS 17, at *13 (emphasis added). Plaintiff contends "nothing in the Court's reasoning limits its interpretation of the Wrongful Death Statute to only those contexts." (AB 18.) The problem with Plaintiff's argument is that "*[n]o Florida appellate decision 'is authority on any question not raised and considered, although it may be involved in the facts of the case.'*" *Rey v. Phillip Morris, Inc.*, 75 So. 3d 378, 381 (Fla. 3d DCA 2011) (emphasis added) (quoting *Benson v. Norwegian Cruise Line Ltd.*, 859 So. 2d 1213, 1217 (Fla. 3d DCA 2003) (quoting *DuBose*, 128 So. at 6)). Accordingly, *Coates* does not help Plaintiff. To the contrary, it underscores the complications that arise when words from a judicial opinion are plucked out of context and applied in situations that were not previously raised, argued, or analyzed by the court that issued the opinion.

Unlike in *Coates*, the Florida Supreme Court in *Aetna Life & Casualty Co. v. Therm-O-Disc, Inc.*, 511 So. 2d 992 (Fla. 1987), actually interpreted what is now subparagraph 6. of section

48.193(1)(a), Florida Statutes.[1] The Court held, for purposes of subparagraph 6., "injury to persons or property" means "personal injury or physical property damage." *Aetna Life*, 511 So. 2d at 994. A "personal injury" is a "bodily injury," *id.* at 993—a "physical injury." *Price v. Point Marine, Inc.*, 610 So. 2d 1339, 1342 (Fla. 1st DCA 1992).

A wrongful death action is not a personal injury action. "When a personal injury to the decedent results in death, no action for the personal injury shall survive, and any such action pending at the time of death shall abate." § 768.20, Fla. Stat.; *see Sheffield v. R.J. Reynolds Tobacco Co.*, 329 So. 3d 114, 120 (Fla. 2021) ("The Wrongful Death Act … explicitly provides that a wrongful death action is *not* a continuation of a personal injury action.") (emphasis in original) (citing § 768.20, Fla. Stat.). Plaintiff asserts her "wrongful death claim is obviously a claim seeking non-economic damages" (AB 26-27), but that does not make it a personal injury action, i.e., an action for "physical injury." *Price*, 610 So. 2d at 1342.

More importantly, accepting Plaintiff's proposed interpretation of "[c]ausing injury to persons or property within this state" under

[1] Section 48.193(1)(f), Florida Statutes, was renumbered as section 48.193(1)(a)6., Florida Statutes, but the text is unchanged.

section 48.193(1)(a)6., Florida Statutes, would have far-reaching consequences in future wrongful death cases where Florida citizens are injured and die in Florida but their survivors—unlike Mr. Kulp's survivors in this one case—all reside *outside* Florida. In such cases, under Plaintiff's reading of the statute, there would be no jurisdiction over a nonresident defendant under subparagraph 6. The Legislature could not have intended that result.

If there is no long-arm jurisdiction over Ryan in this case, Plaintiff can sue Ryan in Georgia—the home state of Defendants Markil Bernard Kendrix (the allegedly negligent Georgia driver), Markil & Tia Trucking LLC (Kendrix's Georgia business), and Imerys Carbonates USA, Inc. (the Georgia shipper of the load); where the load originated; where the accident happened; where Mr. Kulp died; and where Ryan has agreed to submit to jurisdiction. (RA 127-28, 149, 151-52, 1624.) Or, Plaintiff could sue Ryan in Kansas, where Ryan is incorporated and has its principal of business (RA 277), and is therefore subject to general jurisdiction. *BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 1549 (2017); *Daimler AG v. Bauman*, 571 U.S. 117 (2014). In future cases, however, there very well may be *nowhere* in the United States where plaintiffs can sue over the allegedly wrongful

deaths of Florida citizens in Florida, should Plaintiff's interpretation of subparagraph 6. be accepted.

The personal injury in this case occurred outside Florida's jurisdiction, in Georgia. Subparagraph 6. of section 48.193(1)(a), Florida Statutes "is not applicable to situations in which persons outside the state are injured by acts or omissions which occur outside the state." *Price*, 610 So. 2d at 1342. Accordingly, subparagraph 6. does not confer jurisdiction over Ryan. The trial court erred in finding otherwise, and the order denying Ryan's motion to dismiss for lack of personal jurisdiction should be reversed.

Because Plaintiff did not prove a basis for exercising long-arm jurisdiction over Ryan, there is no need to "reach the due process prong of personal jurisdiction." *Fields*, 346 So. 3d at 108. However, Plaintiff did not carry her burden of proving the exercise of jurisdiction over Ryan would comport with due process, either.

II. PLAINTIFF DID NOT CARRY HER BURDEN OF PROVING DUE PROCESS PERMITS THE EXERCISE OF JURISDICTION OVER RYAN IN THIS CASE.

Plaintiff concedes, as she must, that "only specific jurisdiction is at issue in this appeal"—general jurisdiction is not. (AB 13; *see also id.* at 9.) Only in an "exceptional case" can a court exercise

general jurisdiction in a forum that is not "the corporation's place of incorporation [or] its principal place of business." *BNSF*, 137 S. Ct. at 1558. The proper inquiry "is not whether a foreign corporation's in-forum contacts can be said to be in some sense 'continuous and systematic,' it is whether that corporation's 'affiliations with the State are so "continuous and systematic" as to render [it] essentially at home in the forum State.'" *Daimler*, 571 U.S. at 138-39 (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011)). "A corporation that operates in many places can scarcely be deemed at home in all of them." *Id.* at 139 n.20. "Otherwise, 'at home' would be synonymous with 'doing business' tests framed before specific jurisdiction evolved in the United States." *Id.*

The specific jurisdiction analysis "focuses on 'the relationship among the defendant, the forum, and the litigation.'" *Walden v. Fiore*, 571 U.S. 277, 284 (2014) (quoting *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 775 (1984)). Like she did with subparagraph 1. of the long-arm statute, Plaintiff focuses her discussion on "Ryan's contacts with Florida" (AB 29) instead of the real issue: whether Plaintiff's claims "'arise out of or relate to [Ryan]'s contacts' with the forum." *Ford Motor Co. v. Montana Eighth Judicial Dist. Court*, 141 S. Ct. 1017,

1025 (2021) (quoting *Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773, 1780 (2017) (quoting *Daimler*, 571 U.S. at 127)).

A defendant's contact with the forum State is relevant only if it establishes "a connection between the forum and *the specific claims at issue*." *Bristol-Myers*, 137 S. Ct. at 1781 (emphasis added). "When there is no such connection, specific jurisdiction is lacking regardless of the extent of a defendant's unconnected activities in the State." *Id.*

Plaintiff argues there is "a direct causal connection" between her claims and Ryan's contacts with Florida; according to Plaintiff, "the very service that Ryan provides to Florida is the service that resulted in the accident that injured Florida plaintiffs." (AB 32.) As shown above, the injury that matters for purposes of assessing personal jurisdiction is the personal injury to Mr. Kulp *in Georgia*. Moreover, "however significant the plaintiff's contacts with the forum may be, those contacts cannot be 'decisive in determining whether the defendant's due process rights are violated.'" *Walden*, 571 U.S. at 285 (quoting *Rush v. Savchuk*, 444 U.S. 320, 332 (1980)).

The "'essential foundation' of specific jurisdiction" is missing because there is no "strong 'relationship'" among Ryan, a Kansas broker; Florida; and this lawsuit involving an accident in Georgia,

allegedly caused by the negligence of a Georgia driver selected by a Georgia business, which was in turn selected by a Missouri motor carrier. *Ford*, 141 S. Ct. at 1028 (quoting *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984)).

Plaintiff's argument that "[t]raditional notions of fair play and substantial justice favor Florida's jurisdiction over Ryan" (AB 33 (emphasis removed)) is irrelevant. Due process takes account of general reasonableness and fairness considerations, but only *after* the plaintiff demonstrates (1) the defendant purposefully availed itself of the privilege of conducting relevant activities within the forum state; and (2) the plaintiff's claims arise out of or relate to the defendant's contacts with the forum. *Ford*, 141 S. Ct. at 1024-25.

If a plaintiff carries her burden of proving these two requirements, *then* a defendant can still argue the exercise of jurisdiction would be unreasonable. Only then does a court weigh "the burden on the defendant, the forum State's interest in adjudicating the dispute, the plaintiff's interest in obtaining convenient and effective relief, the interstate judicial system's interest in obtaining the most efficient resolution of controversies, and the shared interest of the several States in furthering fundamental

substantive social policies." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476-77 (1985). Because Plaintiff did not carry her threshold burden of demonstrating facts justifying the exercise of jurisdiction, the Court need not consider whether the exercise of jurisdiction would comport with fair play and substantial justice.

CONCLUSION

Defendant-Appellant Ryan Transportation Services, Inc. respectfully requests that this Court reverse the trial court's October 30, 2023 Order denying Ryan's Motion to Dismiss for Lack of Personal Jurisdiction.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy of the foregoing was e-filed with the Court and served via email and via the Florida Courts E-Portal on March 4, 2024, which system will issue electronic service to all counsel of record, including all counsel listed on the attached Service List.

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CERTIFICATE OF COMPLIANCE

I CERTIFY that this Reply Brief complies with Rules 9.045 and 9.210 by using Bookman Old-Style 14-point font and that it contains 3,333 words.

/s/ Caroline Sand
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