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No. 101212-8
No. 38490-0-III

IN THE SUPREME COURT OF THE STATE OF
WASHINGTON

RACHEL BRADLEY, an individual,
Appellant,
v.

GLOBUS MEDICAL, INC.,
Respondent.

ANSWER TO PETITION FOR REVIEW IN THE SUPREME
COURT

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I. IDENTITY OF RESPONDENT

Respondent submitting this Answer is Globus Medical, Inc. (“Globus”), a foreign corporation.

II. COURT OF APPEALS DECISION

The Court of Appeals, Division Three, filed an unpublished decision on June 30, 2022, that affirmed the trial court’s dismissal of Petitioner’s Complaint under CR 12(b)(2). On July 28, 2022, the Court of Appeals issued an order denying Petitioner’s motion for reconsideration of that decision.

III. COUNTERSTATEMENT OF ISSUES PRESENTED FOR REVIEW

Globus asserts that the issue raised in the Petition is more appropriately formulated as follows:

“Did the Court of Appeals appropriately affirm the trial court’s dismissal of Petitioner Rachel Bradley’s (“Bradley”) Complaint pursuant to CR 12(b)(2) when the Complaint was wholly devoid of jurisdictional facts?”

IV. COUNTERSTATEMENT OF THE CASE

This case tests the limits of Washington’s liberal pleading standards. Bradley filed her nine-paragraph, fifteen-line product liability Complaint against Globus, a foreign corporation, without asserting a single jurisdictional fact. Instead, Bradley baldly concluded that “[t]his Court has jurisdiction and venue.”¹

The Complaint provided that Bradley underwent surgery in 2016, during which allegedly defective “hardware and screws manufactured by” Globus were “placed,” and Bradley suffered resulting damages.² Bradley did not plead any facts that would allow the trial court to find that Globus is subject to the personal jurisdiction of Washington’s courts. The trial court noted:

No Jurisdiction arguments were made beyond stating that the Court has Jurisdiction and Venue over the foreign corporation. No hypotheticals were presented to explain how the medical

¹ CP 3 (Complaint, at ¶ 2).

² CP 3-4 (Complaint, at ¶¶ 5,8).

products entered Washington State or in what way they were defective or how Jurisdiction was obtained. Without even a hypothetical, the complaint does not establish nor support Jurisdiction. When Defendant challenged Jurisdiction, Plaintiff failed to provide additional facts or hypotheticals in support.³

In short, Bradley asked the trial court to exercise jurisdiction over a foreign defendant simply because she concluded that jurisdiction was proper.

Globus timely moved to dismiss the Complaint.⁴ In response to Globus' motion to dismiss, Bradley raised the specter of personal jurisdiction by referencing Globus' registered agent for service of process in Washington State.⁵ Aside from reference to Globus' registered agent, Bradley did not identify any facts that would allow the court to conclude that Globus was subject to its general jurisdiction because its contacts are "so constant and pervasive as to render it

³ CP 43 (Court's Order Denying Plaintiff's Motion for Reconsideration).

⁴ CP 11-18 (Motion to Dismiss).

⁵ CP 30 (Response to Motion to Dismiss).

essentially at home” in Washington.⁶ Nor did Bradley identify any facts demonstrating that 1) the Globus transacts business in Washington, 2) the cause of action arises from or is connected with that transaction, or 3) the assumption of jurisdiction comports with due process.⁷

The trial Court granted Globus’ Motion to Dismiss under CR 12(b)(2) for lack of personal jurisdiction.⁸

The trial court denied Bradley’s subsequent Motion for Reconsideration.⁹ The Court reiterated that its decision was based upon CR 12(b)(2).¹⁰ The Court noted that Bradley “had ample opportunities to amend the complaint, request a continuance to adequately state a claim or establish jurisdiction.

⁶ *Daimler AG v. Bauman*, 571 U.S. 117, 122, 134 S. Ct. 746, 187 L. Ed. 2d 624 (2014).

⁷ *See, e.g., Wash. Equip. Mfg. Co. v. Concrete Placing Co.*, 85 Wn. App. 240, 246, 931 P.2d 170 (1997).

⁸ CP 34-35 (Court’s Order Granting Defendant’s Motion to Dismiss).

⁹ CP 40-45 (Court’s Order Denying Plaintiff’s Motion for Reconsideration).

¹⁰ *Id.*

[Bradley] did none of that.”¹¹

Bradley appealed.

On June 30, 2022, the Court of Appeals, Division Three, issued an unpublished decision affirming the trial court’s dismissal. In affirming, the Court of Appeals made clear that registration to do business within the State of Washington does not convey general jurisdiction.¹² Further, the Court of Appeals found that Bradley “failed to demonstrate purposeful availment or that her action arose out of or is related to Globus’s contacts with Washington.”¹³

Bradley moved for reconsideration of the Court of Appeals decision.

The Court of Appeals denied Bradley’s motion for reconsideration on July 28, 2022.

¹¹ CP 45 (Court’s Order Denying Plaintiff’s Motion for Reconsideration).

¹² Opinion, at 5.

¹³ Opinion, at 8.

This Petition follows. Curiously, Bradley's Petition persists in misapprehending the legal standard at issue, referencing only CR 12(b)(6) motions for failure to state a claim. Conspicuous for its absence is any reference to CR 12(b)(2), or the constitutional bases for Globus' motion to dismiss.

V. ARGUMENT WHY REVIEW SHOULD BE DENIED

Review should be denied because the Court of Appeals' decision to affirm dismissal of a complaint entirely lacking jurisdictional facts is consistent with Washington precedent. The Court of Appeals' decision is not in conflict with any published decision. Nor does the Petition involve an issue of substantial public interest.

A. Considerations Governing Acceptance Of Review Compel Rejection Of The Petition.

RAP 13.4 sets forth the considerations governing acceptance of review:

Considerations Governing Acceptance of Review.
A petition for review will be accepted by the
Supreme Court only:

- (a) If the decision of the Court of Appeals is in conflict with a published decision of the Supreme Court; or
- (b) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or
- (c) (If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or
- (d) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

RAP 13.4(b).

Petitioner argues that review is appropriate under subsections (1) and (4). But that argument should be rejected because the alleged “conflict” is the product of Bradley’s confusion about the legal standard at issue, not a legitimate conflict of law. The Court of Appeals decision is consistent

with Washington law interpreting dismissal for lack of personal jurisdiction under CR 12(b)(2). Further, no substantial public interest would be furthered by the Supreme Court accepting review, despite Bradley's invocation of the right to a jury trial. The Petition should be denied.

B. Review Should Be Denied Because The Decision Of The Court Of Appeals To Affirm Dismissal of a Jurisdictionally Deficient Complaint Does Not Conflict With Any Decision From The Supreme Court.

Contrary to what is asserted in the Petition, the Court of Appeals' affirmance of the dismissal is consistent with Washington authority interpreting CR 12(b)(2).

Bradley errs in her continued reliance upon CR 12(b)(6). It is undisputed that the trial court's dismissal was based upon CR 12(b)(2) for lack of personal jurisdiction. The Court of Appeals confirmed that this appeal only involved CR 12(b)(2). Nonetheless, Bradley persists in reciting the same inapposite legal authority rejected by both the trial court and Court of

Appeals in an attempt to manufacture a conflict justifying this Court's review.

The Court of Appeals noted:

Ms. Bradley relies on an inapposite standard applied to motions under CR 12(b)(6) and 12(c). Washington courts treat a CR 12(c) motion for judgment on the pleadings identically to a CR 12(b)(6) motion to dismiss for failure to state a claim, since both ask the court to determine if a plaintiff can prove any set of facts that would justify relief. *P.E. Sys., LLC v. CPI Corp.*, 176 Wn.2d 198, 203, 289 P.3d 638 (2012). The difference in the two motions is timing: a CR 12(b)(6) motion is made after the complaint but before the answer; a CR 12(c) motion is made after the pleadings are closed.

Curiously, Bradley continues to cite to to *Wash. Trucking Ass'ns v. Emp't Sec. Dep't*,¹⁴ which relates to CR 12(c) and CR 12(b)(6) and *Tenore v. AT&T Wireless Servs.*¹⁵ which involves CR 12(b)(6). What is missing from the Petition is an argument that Bradley set forth a set of facts sufficient to create a prima

¹⁴ 188 Wn.2d 198, 208, 393 P.3d 761, 767 (2017).

¹⁵ 136 Wn.2d 322, 962 P.2d 104 (1998).

face case of personal jurisdiction under CR 12(b)(2). The dearth of reference to CR 12(b)(2) is fatal to Bradley’s claim that there is a conflict requiring Supreme Court review.

The underlying decisions were based upon CR 12(b)(2), and the trial court’s dismissal and Court of Appeals’ affirmance were entirely consistent with personal jurisdiction authority. Review of a CR 12(b)(2) dismissal for lack of personal jurisdiction is *de novo*.¹⁶ When, as here, “a motion to dismiss for lack of personal jurisdiction is resolved without an evidentiary hearing, the plaintiff’s burden is only that of a prima facie showing of jurisdiction.”¹⁷ The court accepts the allegations of the complaint as true, and the plaintiff must provide evidence sufficient to make a prima facie showing

¹⁶ *State v. LG Elecs., Inc.*, 186 Wn.2d 169, 176 (2016).

¹⁷ *Id.* “Black’s Law Dictionary defines a ‘prima facie’ case as sufficient to establish a fact or raise a presumption, unless disproved or rebutted, based on what seems true on first examination, even though it may later be proved to be untrue.” *Downing v. Losvar*, 21 Wn. App. 2d 635, 652 (2022).

that jurisdiction is proper.”¹⁸ If the plaintiff fails to carry that burden, dismissal is required.¹⁹

In this case, Bradley did not plead any jurisdictional facts that would create a prima facie showing of general²⁰ or specific personal jurisdiction.

i. Bradley Offered No Facts to Confer Specific Jurisdiction

Having failed to establish general jurisdiction, Bradley was required to establish that specific personal jurisdiction exists over Globus. Again, Bradley offered no facts to survive Globus’ motion to dismiss on specific personal jurisdiction, and the Court of Appeals was correct in affirming dismissal of the Complaint.

¹⁸ *Noll v. Am. Biltrite, Inc.*, 188 Wn.2d 402, 411, 395 P.3d 1021 (2017).

¹⁹ *Id.*

²⁰ On appeal, Bradley “wisely” did not argue that general jurisdiction applies. *See* Opinion, at 5, fn. 2.

The exercise of personal jurisdiction over a defendant must comport with both Washington’s long arm statute and principles of due process. In Washington, these requirements are co-extensive, and personal jurisdiction exists over a nonresident defendant under Washington’s long arm statute so long as it complies with federal due process.²¹ The Court of Appeals noted that Globus’s motion to dismiss for lack of personal jurisdiction was based on due process grounds, not the long-arm statute.²² Nonetheless, Bradley persists in rehashing twice-rejected long-arm statute arguments, while wholly failing to address the constitutional underpinnings of Globus’s jurisdictional challenge.

Washington courts apply a three-part test to determine whether the exercise of specific jurisdiction is consistent with due process.²³ First, “purposeful ‘minimum contacts’ must

²¹ *Noll*, 188 Wn. 2d at 411, 395 P.3d at 1026.

²² Opinion at 4.

²³ *Grange Ins. Ass'n v. State*, 110 Wn. 2d 752, 758, 757 P.2d 933, 936 (1988).

exist between the defendant and the forum state.”²⁴ Second, “the plaintiff’s injuries must arise out of or relate to those minimum contacts.”²⁵ Third, “the exercise of jurisdiction . . . [must] be consistent with notions of fair play and substantial justice.”²⁶ To establish purposeful minimum contacts with Washington, a plaintiff must show “some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state, thus unlocking the benefits and protections of its laws.”²⁷ To establish the alleged injuries “arise out of or relate to” the defendant’s contacts with Washington, plaintiff must show the alleged injuries would not have occurred “but for” the contacts with Washington.²⁸

²⁴ *Id.* (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472-78, 105 S. Ct. 2174, 2181-85, 85 L. Ed. 2d 528 (1985)).

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Burger King*, 471 U.S. at 475 (emphasis added).

²⁸ *Shute v. Carninal Cruise Lines*, 113 Wn. 2d 763, 769, 783 P.2d 78, 81 (1989).

Having pled no jurisdictional facts whatsoever, Bradley failed to establish specific personal jurisdiction. Indeed, Bradley did not assert any facts which would establish that Globus has purposeful minimum contacts with Washington State, nor has she related her injuries to those notional minimum contacts.

Instead, Bradley maintains that Globus' registration within the State of Washington to sell "wholesale medical devices" satisfies due process concerns. The Court of Appeals explicitly rejected this argument, noting that "we could not disagree more strongly," with the proposition that registering with the State to do business could convey jurisdiction.²⁹ In her Petition, Bradley persists in invoking corporate registration as a basis for personal jurisdiction, despite uncontroverted authority stating otherwise.

A registered agent does not create general or specific jurisdiction within Washington for a foreign corporation.

²⁹ Opinion at 5, fn. 2.

Under the Washington Business Corporation Act (RCW Chapter 23B), “[a] foreign corporation must obtain a certificate of authority to do business and appoint a registered agent to transact business in Washington.”³⁰ “RCW 23B sets out the requirements for doing business in Washington, not jurisdiction. A certificate of authority to do business and appointment of a registered agent do not then confer general jurisdiction over a foreign corporation.”³¹

What is missing in Bradley’s Complaint is some allegation that Globus purposefully availed itself of the laws of the State and some connection with the claimed injuries. The trial court noted that

In argument, [Bradley] asserts [Globus] has Registered Agent in Washington, but stops short of connecting the agent/company to the injury. If [Bradley] merely argued a hypothetical which placed the agent as a conduit between Globus and Bradley, surely the complaint may have survived a

³⁰ *Washington Equip. Mfg. Co. v. Concrete Placing Co.*, 85 Wn. App. 240, 242, 931 P.2d 170, 171 (1997) (citing RCW 23B.15.010(1), .070(1)(b)).

³¹ *Id.*, at 246.

Motion to Dismiss. However, not even a hypothetical was present to support General or Specific Jurisdiction based on the agent being in the state. [Bradley] seems satisfied simply by asserting that there is, in fact, Jurisdiction. Our judicial system does not allow such a rudimentary assertion alone.³²

Instead, it was incumbent on Bradley to come forward with some fact or hypothetical that would have allowed the trial court to find jurisdiction. She did not. The Court of Appeals correctly affirmed the trial court's dismissal of Bradley's deficient Complaint. Nor does Bradley's argument warrant review.

“A foreign distributor does not purposefully avail itself when a sale in the forum state is an isolated occurrence or when the unilateral act of a third party brings the product into the forum state.”³³ In *State v. LG Electronics., Inc.*, the Washington Supreme Court recognized that stream of commerce jurisdiction cannot be based on the mere

³² CP 50 (Court's Order Denying Plaintiff's Motion for Reconsideration).

³³ *Noll*, 188 Wn.2d at 413 (citing *LG Electronics, infra.*)

foreseeability that a product may end up in the forum state.³⁴

Instead, “the defendant's conduct and connection with the state must be such that it should reasonably anticipate being haled into court there.”³⁵ The Washington Supreme Court “has consistently rejected attempts to satisfy the ‘defendant-focused ‘minimum contacts’ inquiry’ by demonstrating contacts between a thirty party and the forum state.”³⁶ Indeed, “Due process requires that a defendant be haled into court in a forum State based upon his own affiliation with the State, not based on the ‘*random, fortuitous, or attenuated*’ contacts he makes by interacting with other persons affiliated with the State.”³⁷

Further, the Supreme Court in *Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco Cty.*,³⁸ not only put to rest any room for debate about whether “something more”

³⁴ 186 Wn.2d at 177-78, 375 P.3d at 1040 (citing *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 295 (1980)).

³⁵ *Id.*

³⁶ *Noll*, 188 Wn.2d at 415.

³⁷ *Id.* (internal citation omitted).

³⁸ 137 S. Ct. 1773, 1783 (2017).

than foreseeability is required for “stream of commerce” jurisdiction (it is), the Court also further reinforced the well-established rule that the actions of a third party cannot justify the exercise of personal jurisdiction over a defendant. Instead, a plaintiff must establish a connection between the non-resident defendant itself, the forum, and the claims at issue.³⁹ What was missing in *Bristol-Myers*, and what is missing here, is a showing of the required nexus between the Globus’ forum-specific activities and the claim at issue.⁴⁰ Review is not warranted because the Court of Appeals correctly affirmed the trial court’s decision, which was consistent with such established authorities.

Under these authorities, the mere fact that a Washington resident files a lawsuit in Washington State does not create

³⁹ See *Bristol Myers*, 137 S.Ct. at 178 (rejecting the argument that the defendant was subject to personal jurisdiction in California simply because it had contracted with a California distributor to sell its products in the state, when those actions were not connected to the non-resident plaintiffs’ claims).

⁴⁰ *Id.*

specific personal jurisdiction. Bradley curiously relies upon *Grange Ins. Assoc.*, but misapprehends its impact. Indeed, *Grange* provides:

Analysis of jurisdiction under a long-arm statute involves two separate issues: (1) does the statutory language purport to extend jurisdiction, and (2) would imposing jurisdiction violate constitutional principles. *See Werner v. Werner*, 84 Wn.2d 360, 364, 526 P.2d 370 (1974) (long-arm jurisdiction is intended to operate "to the full extent allowed by due process except where limited by the terms of the statute"). Courts should address the statutory issue before reaching the constitutional issue. *Lake v. Lake*, 817 F.2d 1416, 1420 (9th Cir. 1987); *Wolf v. Richmond Cy. Hosp. Auth.*, 745 F.2d 904, 909 (9th Cir. 1984), *cert. denied*, 474 U.S. 826 (1985). In this analysis, the burden of proof rests with the party asserting jurisdiction. *In re Marriage of Hall*, 25 Wn. App. 530, 536, 607 P.2d 898 (1980); *Access Rd. Builders v. Christenson Elec. Contracting Eng'g Co.*, 19 Wn. App. 477, 576 P.2d 71 (1978).⁴¹

After citing to *Grange*, Bradley offers no evidence or allegations relating to the constitutional issue: Due Process. The *Grange* court first analyzed the statutory issue, then

⁴¹ *Grange Ins. Asso v. State*, 110 Wn.2d 752, 756, 757 P.2d 933, 935-936 (1998) (emphasis added).

engaged in a lengthy assessment of whether the foreign defendant (the State of Idaho) purposefully availed itself of the laws of Washington State. The *Grange* court concluded, as did the trial Court here, that Due Process considerations did not allow Washington to exercise jurisdiction over the foreign defendant. Review is not appropriate against this backdrop.

C. Review Should Be Denied Because No Substantial Public Interest Would Be Furthered By The Supreme Court Accepting Review.

The Petition should be denied for the additional reason that it presents no issue of substantial public importance that requires determination by this Court.

In her Petition, Bradley argues, without authority, that she has an absolute right to her day of Court in the State of Washington. Implicitly, Bradley asserts that her right to a civil jury trial in Washington State creates personal jurisdiction over a foreign defendant. Not so.

It is well established that “[a] court only has authorization to hear and determine a cause or proceeding if it has jurisdiction over the parties and the subject matter. Absent proper jurisdiction, a court may do nothing more than enter an order of dismissal.”⁴² The right to a jury trial does not nullify this maxim.

While the right to a jury trial is inviolate, it is not absolute. Bradley has no right to hale Globus into a Washington State court when she has not pled facts sufficient to confer jurisdiction. Inviolate “means freedom from substantial impairment,” and does not prohibit dismissal of unsupported complaints, administrative processes and procedures, or bench trials.⁴³

Indeed, courts routinely and correctly impair the right to a jury trial. For example, courts grant summary judgment when

⁴² *Deschenes v. King County*, 83 Wn.2d 714, 716, 521 P.2d 1181 (1974).

⁴³ *See, e.g., State v. Furth*, 5 Wn.2d 1, 104 P.2d 925 (1940).

appropriate and such a grant is not a violation of a litigant's right to a jury trial.⁴⁴ Similarly, administrative procedures do not deprive workers of their right to a jury trial.⁴⁵ There is also no constitutional right to a jury trial in a sexual psychopath hearing.⁴⁶ There is likewise no right to jury in determining benefits in special assessment proceedings.⁴⁷ Dismissal of Bradley's deficient complaint comports with prior analogous decisions of Washington Courts, procedure and public policy. There is no substantial public interest implicated by Bradley's Petition.

To the contrary, review would adversely impact the foreign defendant that has been haled into Washington State court without a single jurisdictional fact connecting Globus to

⁴⁴ *Nave v. City of Seattle*, 68 Wn.2d 721, 415 P.2d 493 (1966).

⁴⁵ *Afoa v. Dep't of Labor & Indus.*, 418 P.3d 190, 3 Wn. App. 2d 794 (2018).

⁴⁶ *State v. Wilmoth*, 22 Wn. App. 419, 589 P.2d 1270 (1979).

⁴⁷ *Commissioners, Commercial Waterway Dist. v. Seattle Factory Sites Co.*, 76 Wash. 181, 135 P. 1042 (1913).

this State. Globus has had to expend significant resources to obtain the underlying dismissal and respond to Bradley's repeated efforts to reconsideration or appeal the trial court's dismissal. Bradley has sought reconsideration twice, filed an unsuccessful appeal, and the instant Petition while staunchly ignoring each of the lower courts' bases for their decisions, pugnaciously repeating unsupported arguments, and steadfastly concluding that Washington law allows courts to simply "find" jurisdiction. Bradley's repeated efforts to circumvent Due Process considerations and established law do not create a substantial public interest warranting review.

VI. CONCLUSION

In her Petition, Bradley invites this Court to create a non-existent conflict between motions to dismiss under CR 12(b)(6) and motions to dismiss for lack of personal jurisdiction; to ignore established Washington and United States Supreme Court precedent in personal jurisdiction matters; and to create law allowing Washington State to confer jurisdiction on foreign

corporations in the absence of any jurisdictional facts. The public interest would be best served by this Court declining that invitation and allowing the Court of Appeals decision to stand.

None of the criteria set out in RAP 13.4(b) have been met. This Court should deny the Petition for Review.

I certify that this Answer contains **3,973** words, exclusive of the Title Page, Table of contents and Table of Authorities from the word count requirement pursuant to Rules of Appellate Procedure 18.17.

Signed this 23rd day of September, 2022.

/s/ Rachel Tallon Reynolds

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CERTIFICATE OF SERVICE

I hereby declare under penalty of perjury under the laws of the State of Washington that I caused a true and correct copy of the foregoing **ANSWER TO PETITION FOR REVIEW IN THE SUPREME COURT** to be served via the method below on September 23, 2022 on the following counsel/party of record:

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