101212-8

No. 38490-0-III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

RACHEL BRADLEY an individual

Appellant,

GLOBUS MEDICAL, INC.

Respondent.

PETITION FOR REVIEW IN SUPREME COURT

David A. Williams, WSBA # 12010
Law Office of David A. Williams
9 Lake Bellevue Dr. Ste. 104
Bellevue, WA 98005
Email: daw@bellevue-law.com
Phone: 425-646-7767
Facsimile: 425-646-1011

Attorney for Appellant

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IDENTIFY OF PETITIONER

Petitioner is Rachel Bradley ("Bradley"), who was the Appellant below.

COURT OF APPEALS DECISION

Review is sought from the attached Court of Appeals Opinion, dated June 30, 2022. Reconsideration was denied on July 28, 2022.

ISSUE PRESENTED FOR REVIEW

The issue is whether the trial court erred in dismissing Appellant's Complaint for lack of "specific personal jurisdiction", on the pleadings, when the Complaint:

specifically alleged that:

The Superior Court "has jurisdiction and venue";

Further alleged that Appellant had undergone surgery, "during which hardware designed and manufactured by [Respondent] were placed";

Further alleged that the hardware "was not reasonably safe as designed and/or constructed";

Further alleged that the hardware "failed due to their design and/or construction";

Further alleged that, as a result of the failure, Appellant suffered "general and special damages as will be proven at trial", AND

The undisputed evidence (the only evidence before the Court) was that Respondent is registered to do business in the State, in the business of "wholesale medical devices", and indeed **had been served through its Washington registered agent?**

STATEMENT OF THE CASE

1. The Respondent Globus Medical, Inc. ("Globus") is incorporated in Pennsylvania. CP 26. Its business is "wholesale medical products". ID. It has a registered agent in the State. CP 27.
2. Appellant Rachel Bradley ("Bradley") filed a Summons and Complaint on February 25th, 2021. CP 1-4. The Complaint alleges in relevant part:

> "Plaintiff is a Washington resident."
>
> "This Court has jurisdiction and venue."
>
> "…Plaintiff underwent surgery, during which hardware and screws designed and manufactured by Defendant were placed."
>
> "Defendant's products were not reasonably safe as designed and/or constructed."
>
> "The products failed due to their defective design and/or construction…"

> "As a result of the products' failure, plaintiff has suffered general and special damages as will be proven at trial."

3. The Summons and Complaint were properly served upon Globus' registered agent. CP 25.
4. Without undertaking any discovery, Globus through counsel brought a Motion to Dismiss. CP 11-18.
5. The Motion contended that the Complaint alleged insufficient facts to state a claim or trigger jurisdiction. Id.
6. Bradley through counsel responded, pointing out among other things that Globus is registered as a foreign corporation engaged in the business of "wholesale medical products", and maintained a registered agent in the state, who had been properly served. CP 25.
7. The trial court granted the Motion, handwriting on its Order "Under CR 12 2, no specific PJ".
8. Bradley moved for reconsideration, CP 36-39, which the trial court denied. CP 40-45.

9. The Court of Appeals affirmed and denied reconsideration. Appendix 1, 2.

ARGUMENT

The Decision Is In Conflict With A Decision Of The Supreme Court

Respectfully, the Court of Appeal's decision is in conflict with essentially every modern decision of this Court governing the circumstances under which dismissal on the pleadings is appropriate. Most obviously:

> Dismissal on the pleadings is appropriate "only where it appears beyond doubt that the plaintiff cannot prove any set of facts that would justify recovery". Washington Trucking Association v. The Employment Security Department, 188 Wn.2d 198,207, 393 P.3d 761 (2017); Future Select Portfolio Mgmt., Inc. v. Tremont Grp. Holding, Inc., 180 Wn.2d 954, 962, 331 P.3d 29 (2014).

> On review, the court must "presume the truth of the allegations and may consider hypothetical facts not included in the record". Washington Trucking Assn., supra; Future Select Portfolio Mgmt., supra.

> Dismissal on the pleadings is appropriate "only in the unusual case in which plaintiff includes allegations that show on the face of the Complaint that there is some

insuperable bar to relief". Tenore v. AT&T Wireless Services, 136 Wn.2d 322, 329-30, 962 P.2d (1998).

Again respectfully, the allegations of the Complaint obviously support routine "long-arm" jurisdiction under RCW 4.28.185, for the "commission of a tortuous act within the state". No, the Complaint doesn't specifically allege that Bradley's injury occurred in this State, but it hardly taxes the imagination to consider that "hypothetical fact", especially since the first paragraph of the Complaint alleges that she's a Washington resident.

Our Court has "held many times" that where the injury occurs within the State's boundaries, it is deemed to have occurred in this state for purposes of the long arm statute." Grange Insurance v. State, 101 Wn.2d 752, 757, 757 P.2d 933 (1988). Indeed, the United State Supreme Court has recently held that long-arm jurisdiction is constitutional even where the particular defective product was neither designed, nor manufactured, nor sold within that State's boundaries, if the

Defendant markets its products generally there. Ford Motor Company Co. v Montana Eighth Judicial District Court, 141 S. Ct. 1017 (2021).

Here, there was undisputed evidence before the Court, that Respondent maintains a registered agent in this State, and is registered for the business of "wholesale medical devices" ---the exact type of product the Complaint alleges to have injured Bradley. The Court of Appeals Opinion brushes this fact aside, stating (twice) that "A corporation might qualify to do business in a state in which it never undertakes business or establishes a presence beyond appointed a registered agent". Opinion, p 7.

Again, **most** respectfully, this analysis is ***precisely opposite*** of that required by established case law recited in the Court of Appeals decision itself, i.e. that Appellant was entitled to "all reasonable inferences" from this evidence. Surely this would include the inference that **the reason** that Respondent is

registered in the State, in the business of "wholesale medical products", is that ***it sells wholesale medical products here.***

The Petition Involves An Issue Of Substantial Public Interest That Should Be Determined By The Supreme Court

Namely: The right to one's Day in Court in the State of Washington.

The right to trial by jury is rendered "inviolate" by Section 21 of our State Constitution. It is essentially guaranteed by Civil Rule and established case law, in all but the most extreme cases. It is venerated and cherished.

Yet this case, involving allegations by an elderly woman that routinely invoke "long-arm" jurisdiction, was dismissed on the pleadings, and this despite (1) a direct and unambiguous allegation that the Superior Court "has jurisdiction and venue"; and (2) undisputed evidence before the Court that Respondent is registered to sell "wholesale medical products" within this

State—the exact type of product the Complaint alleges injured Plaintiff!

The case presents an opportunity for this Court to re-affirm the fundamental purpose of the civil justice system, and the frame of reference for deciding all dispositive motions in civil cases—the right of this States' citizens to their Day in Court.

CONCLUSION

Petitioner seeks review and reversal of the Court of Appeals decision, and remand to the Superior Court for trial.

I certify that this document contains 1,130 words, exclusive of the Title Page, Table of Contents and Table of Citations.

Date this 26 day of August, 2022

David A. Williams, WSBA #12010
Attorney for Appellant

APPENDIX

Appendix 1

FILED
JUNE 30, 2022
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

RACHEL BRADLEY, an individual,	)	
	)	No. 38490-0-III
Appellant,	)	
	)	
v.	)	
	)	
GLOBUS MEDICAL, INC.,	)	UNPUBLISHED OPINION
	)	
Respondent.	)	

SIDDOWAY, C.J. — Rachel Bradley appeals the dismissal under CR 12(b)(2) of her product liability action against Globus Medical, Inc. After her sparse jurisdictional allegations were challenged by Globus's motion, Ms. Bradley stood by her position that they sufficed. They do not. We affirm.

PROCEDURAL BACKGROUND

In February 2021, Rachel Bradley filed suit against Globus Medical, Inc. in Spokane County Superior Court. Apart from her prayer for relief, her complaint made only the following allegations:

1. Plaintiff is a Washington resident.
2. This Court has jurisdiction and venue.
3. All acts/omissions hereinafter alleged were by agents/employee of Defendants, for which Defendants are responsible.
4. Plaintiff discovered her cause of action against Defendant no sooner than February 27th, 2018, within three years last past.

5. On or about October 18, 2016, Plaintiff underwent surgery, during which hardware and screws designed and manufactured by Defendant were placed.
6. Defendant's products were not reasonably safe as designed and/or constructed.
7. The products failed due to their defective design and/or construction in early 2018.
8. As a result of the products' failure, Plaintiff has sustained general and special damages as will be proven at trial.

Clerk's Papers (CP) at 3-4.

Globus moved to dismiss under CR 12(b)(2) for lack of personal jurisdiction and under CR 12(b)(6) for failure to state a claim. In support of its CR 12(b)(2) motion (which proved to be the basis for dismissal and is the only motion at issue on appeal), Globus argued that Ms. Bradley alleged no facts to establish that it was subject to the general or specific jurisdiction of Washington courts. As it related to specific jurisdiction, Globus argued that Ms. Bradley failed to assert any facts supporting purposeful minimum contacts with Washington or that her injuries related to those contacts.

In opposing the motion, Ms. Bradley filed a declaration of counsel authenticating a printout of information from the Washington Secretary of State's website. It showed that Globus was authorized to do business in Washington, is a Pennsylvania corporation with its principal office in Pennsylvania, the nature of its business is wholesale medical devices, and it had a registered agent, which it identified. Counsel's declaration stated

that service of the complaint had been made on the registered agent. Ms. Bradley's brief in opposition to the dismissal motion argued that Globus itself "at least tacitly admits that Globus manufactures and sells medical implants in this State." CP at 29. It posited that Globus "[s]urely . . . doesn't deny" that a defective product foreseeably damaging a Washington resident would give rise to tort liability and long-arm jurisdiction. *Id.*

Globus replied that its appointment of a registered agent did not constitute consent to jurisdiction.

The superior court granted the motion to dismiss on jurisdictional grounds. Ms. Bradley moved for reconsideration, which was denied. She appeals.

ANALYSIS

Ms. Bradley makes one assignment of error: that "[t]he court erred in dismissing the Plaintiff's Complaint." Appellant's Br. at 5.

The rules for superior court permit a defendant to raise the defense of lack of jurisdiction over the person by motion. CR 12(b)(2). Ms. Bradley did not request an evidentiary hearing. When a trial court decides a motion to dismiss for lack of personal jurisdiction without an evidentiary hearing, the plaintiff's burden is to make a prima facie showing of jurisdiction. *State v. LG Elecs., Inc.*, 186 Wn.2d 169, 176, 375 P.3d 1035 (2016). A prima facie showing requires "sufficient foundational facts when assuming the truth of the evidence presented by the party carrying the burden of proof and all

reasonable inferences from that evidence in a light most favorable to the party." *Downing v. Losvar*, 21 Wn. App. 2d 635, 652, 507 P.3d 894 (2022).[1]

Our review of a CR 12(b)(2) dismissal for lack of personal jurisdiction is de novo. *LG Elecs., Inc.*, 186 Wn.2d at 176. We accept the allegations of the complaint as true. *Noll v. Am. Biltrite Inc.*, 188 Wn.2d 402, 411, 395 P.3d 1021 (2017).

For a state court to exercise personal jurisdiction over a nonresident defendant, the exercise of jurisdiction must be permitted by the state's long-arm statute and the due process clause of the Fourteenth Amendment to the United States Constitution. *Daimler AG v. Bauman*, 571 U.S. 117, 125, 134 S. Ct. 746, 187 L. Ed. 2d 624 (2014). The Washington Supreme Court has consistently held that the state long-arm statute permits the exercise of personal jurisdiction to the fullest extent of the federal due process clause. *E.g., Noll*, 188 Wn.2d at 411; *Shute v. Carnival Cruise Lines*, 113 Wn.2d 763, 766-67, 783 P.2d 78 (1989).

Globus's motion to dismiss for lack of personal jurisdiction was based on constitutional grounds, not the long-arm statute. The Fourteenth Amendment's due

---

[1] 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.

At issue in this appeal is only a CR 12(b)(2) motion.

process clause limits a state court's power to exercise jurisdiction over a nonresident defendant. *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, __ U.S. __, 141 S. Ct. 1017, 1024, 209 L. Ed. 2d 225 (2021). There are two types of federal personal jurisdiction: general (sometimes called all-purpose jurisdiction), and specific (sometimes called case-linked) jurisdiction. *Id.*

In two decisions in and after 2011, the United States Supreme Court dramatically reined in general jurisdiction over corporations. *See Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 928-29, 131 S. Ct. 2846, 180 L. Ed. 2d 796 (2011); *Daimler AG*, 571 U.S. at 137-39. A state court may exercise general jurisdiction only when a defendant is "essentially at home" in the state. *Goodyear*, 564 U.S. at 919. Just as an individual is subject to general jurisdiction in her domicile, a corporation's equivalent forums, and what the Supreme Court calls the "paradigm" bases for general jurisdiction, are the corporation's state of incorporation and principal place of business. *Daimler AG*, 571 U.S. at 137. It has suggested that if there are other circumstances in which a corporation will be found "at home" in a state, they are "exceptional." *Id.* at 139 & n.19. Ms. Bradley wisely does not rely on appeal on general jurisdiction.[2]

[2] She does say in passing that "registering with the State to do business within its borders might arguably convey general jurisdiction," Appellant's Br. at 11, but we could not disagree more strongly. A corporation registered to do business in the state might have no connection with a state other than the fact of its registration.

The courts in some states have found registration under their state's corporate registration statutes to constitute jurisdictional consent (although it remains an open question whether that construction will survive constitutional challenge). Zachary D. Clopton, *Procedural Retrenchment and the States*, 106 CAL. L. REV. 411, 442 & n.260 (2018). Not so in Washington. This court held over 20 years ago that nothing in the Washington Business Corporation Act, Title 23B RCW, states or implies that by complying with the requirement to be authorized to do business, a foreign corporation consents to general jurisdiction in Washington. *Washington Equip. Mfg. Co. v. Concrete Placing Co.*, 85 Wn. App. 240, 245, 931 P.2d 170 (1997).

Ms. Bradley is therefore required to rely on specific jurisdiction. Due process requires that three elements be met for a court to exercise specific jurisdiction: "(1) that purposeful 'minimum contacts' exist between the defendant and the forum state; (2) that the plaintiff's injuries 'arise out of or relate to' those minimum contacts; and (3) that the exercise of jurisdiction be reasonable, that is, that jurisdiction be consistent with notions of 'fair play and substantial justice.'" *Grange Ins. Ass'n v. State*, 110 Wn.2d 752, 758, 757 P.2d 933 (1988) (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472-78, 105 S. Ct. 2174, 85 L. Ed. 2d 528 (1985)). The plaintiff must provide a prima facie demonstration of the first two requirements; if they are shown, the burden shifts to the defendant to present a compelling case that the exercise of jurisdiction would not be reasonable. *LNS Enters. LLC v. Cont'l Motors, Inc.*, 22 F.4th 852, 859 (9th Cir. 2022).

Ms. Bradley's complaint did not allege that Globus had purposefully availed itself of the privilege of conducting activities in Washington or allege facts that would amount to purposeful availment. Purposeful availment is shown when the defendant "reaches out beyond its home state and into another in order to 'deliberately exploi[t] a market in the forum State.'" *Downing*, 507 P.3d at 910 (alteration in original) (internal quotation marks omitted) (quoting *Walden v. Fiore*, 571 U.S. 277, 285, 134 S. Ct. 1115, 188 L. Ed. 2d 12 (2014)). A corporation might qualify to do business in states in which it never undertakes business or establishes a presence beyond appointing a registered agent.

Nor does Ms. Bradley's complaint allege that her claim arises out of or relates to Globus's contacts with Washington. To determine whether the "arising out of or relating to" requirement is met, the court looks to whether an affiliation exists between "the forum and the underlying controversy, principally, [an] activity or an occurrence that takes place in the forum State." *Goodyear*, 564 U.S. at 919. Ms. Bradley did not allege that her surgery took place in Washington. Assuming her surgery did take place in Washington, she did not hypothesize how the hardware and screws allegedly designed and manufactured by Globus came to be used in her surgery through some deliberate reaching out into Washington. The fact that Globus is registered to do business in Washington does not fill that gap. To repeat ourselves, being registered does not mean a corporation has activities in Washington or any presence beyond its registered agent.

Because Ms. Bradley failed to demonstrate purposeful availment or that her action arose out of or is related to Globus's contacts with Washington, the burden did not shift to Globus to identify why exercising jurisdiction over it would be unreasonable.

The order of dismissal is affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Siddoway, C.J.

WE CONCUR:

Pennell, J.

Staab, J.

Tristen L. Worthen
Clerk/Administrator

(509) 456-3082
TDD #1-800-833-6388

The Court of Appeals
of the
State of Washington
Division III

500 N Cedar ST
Spokane, WA 99201-1905

Fax (509) 456-4288
http://www.courts.wa.gov/courts

July 28, 2022

David Andrews Williams
Attorney at Law
9 Lake Bellevue Dr Ste 104
Bellevue, WA 98005-2454
daw@bellevue-law.com

Rachel Tallon Reynolds
Lewis Brisbois Bisgaard & Smith LLP
1111 3rd Ave Ste 2700
Seattle, WA 98101-3224
rachel.reynolds@lewisbrisbois.com

Heather M Jensen
Lewis Brisbois Bisgaard & Smith LLP
1111 3rd Ave Ste 2700
Seattle, WA 98101-3224
heather.jensen@lewisbrisbois.com

CASE # 384900
Rachel Bradley v. Globus Medical, Inc.
SPOKANE COUNTY SUPERIOR COURT No. 2120052232

Counsel:

Enclosed is a copy of the order denying Appellant's motion for reconsideration of this court's June 30, 2022 opinion.

A party may seek discretionary review by the Washington Supreme Court of a Court of Appeals' decision. RAP 13.3(a). A party seeking discretionary review must file a petition for review in this court within 30 days after the attached order on reconsideration is filed. RAP 13.4(a). Please file the petition electronically through the court's e-filing portal. The petition for review will then be forwarded to the Supreme Court. The petition must be received in this court on or before the date it is due. RAP 18.5(c).

If the party opposing the petition for review wishes to file an answer, that answer should be filed in the Supreme Court within 30 days of the service on the party of the petition. RAP 13.4(d). The address of the Washington Supreme Court is: Temple of Justice, P.O. Box 40929, Olympia, WA 98504-0929.

Sincerely,

Tristen Worthen
Clerk/Administrator

TLW:jab
Attachment

Appendix 2

Tristen L. Worthen
Clerk/Administrator

(509) 456-3082
TDD #1-800-833-6388

The Court of Appeals
of the
State of Washington
Division III

500 N Cedar ST
Spokane, WA 99201-1905

Fax (509) 456-4288
http://www.courts.wa.gov/courts

June 30, 2022

Heather M Jensen
Lewis Brisbois Bisgaard & Smith LLP
1111 3rd Ave Ste 2700
Seattle, WA 98101-3224
heather.jensen@lewisbrisbois.com

David Andrews Williams
Attorney at Law
9 Lake Bellevue Dr Ste 104
Bellevue, WA 98005-2454
daw@bellevue-law.com

Rachel Tallon Reynolds
Lewis Brisbois Bisgaard & Smith LLP
1111 3rd Ave Ste 2700
Seattle, WA 98101-3224
rachel.reynolds@lewisbrisbois.com

CASE # 384900
Rachel Bradley v. Globus Medical, Inc.
SPOKANE COUNTY SUPERIOR COURT No. 2120052232

Counsel:

Enclosed please find a copy of the opinion filed by the Court today.

A party need not file a motion for reconsideration as a prerequisite to discretionary review by the Supreme Court. RAP 13.3(b); 13.4(a). If a motion for reconsideration is filed, it should state with particularity the points of law or fact which the moving party contends the court has overlooked or misapprehended, together with a brief argument on the points raised. RAP 12.4(c). Motions for reconsideration which merely reargue the case should not be filed.

Motions for reconsideration, if any, must be filed within twenty (20) days after the filing of the opinion. Please see word count rule change at https://www.courts.wa.gov/wordcount, effective September 1, 2021. Please file the motion electronically through this court's e-filing portal or if in paper format, only the original motion need be filed. If no motion for reconsideration is filed, any petition for review to the Supreme Court must be filed in this court within thirty (30) days after the filing of this opinion. The motion for reconsideration and petition for review must be received (not mailed) on or before the dates they are due. RAP 18.5(c).

Sincerely,

Tristen Worthen
Clerk/Administrator

TLW:jab
Attachment

c: **E-mail**—Hon. Annette S. Plese

LAW OFFICE OF DAVID WILLIAMS

August 26, 2022 - 11:33 AM

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