IN THE

ARIZONA COURT OF APPEALS

DIVISION ONE

THOMAS D. SCOTT; GARY D. ANDERSON, GENE LUNCEFORD; MELINDA S. PROVENCE; THE ESTATE OF MICHAEL D. TENNYSON, DECEASED; ROBERT J. RIEK, ESQ., *Petitioners*,

v.

THE HONORABLE MICHAEL KEMP, Judge of the SUPERIOR COURT OF THE STATE OF ARIZONA, in and for the COUNTY OF MARICOPA, *Respondent Judge*,

IONE RICHARDSON, Personal Representative of the ESTATE OF IONE DAVIS, on behalf of the ESTATE OF IONE DAVIS, and IONE RICHARDSON, Personal Representative, for and on behalf of IONE DAVIS'S statutory beneficiaries under A.R.S. § 12-612(A), *Real Parties in Interest*.

No. 1 CA-SA 19-0271
FILED 3-5-2020

Petition for Special Action from the Superior Court in Maricopa County
No. CV2019-003176

The Honorable Michael W. Kemp, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Campbell Yost, Clare & Norell, P.C., Phoenix
By Jeffrey L. McLerran
Co-Counsel for Petitioners

Haynes and Boone, LLP, Dallas, Texas
George W. Morrison (argued) and Taryn McDonald
Co-Counsel for Petitioners

Wilkes & McHugh, P.A., Tampa, Florida
By Bennie Lazzara, Jr.
Counsel for Real Parties in Interest

OPINION

Judge Paul J. McMurdie delivered the opinion of the Court, in which Presiding Judge Samuel A. Thumma and Judge Jennifer M. Perkins joined.

M c M U R D I E, Judge:

¶1 Petitioners Gary Anderson, Gene Lunceford, Melinda Provence, and the estate of Michael Tennyson (collectively the "Management Partners"), along with Thomas Scott and Robert Riek, live in Texas and have occupied various corporate officer, manager, or partner roles and functions in a network of Texas-based entities that own, operate, and manage some 110 skilled-nursing and other long-term care facilities in twelve states—including Arizona. The Petitioners request special action relief from the superior court's ruling that Arizona has specific personal jurisdiction over them concerning personal–injury claims alleged to have occurred in Arizona.

FACTS AND PROCEDURAL BACKGROUND

¶2 As stated by the superior court in another case involving the Petitioners, "[t]he relationships between the [Petitioners] and the business entities involved with [the care facility] are not particularly easy to navigate." The complicated structuring, consisting of limited liability companies and limited partnerships, likely is not accidental. *See* John A. Pearce II, et al., *Protecting Nursing Home Residents from Attacks on Their Ability to Recover Damages*, 61 Rutgers L. Rev. 705, 717 (2009) (noting such structures are an "increasingly common tactic of liability avoidance used by nursing home companies . . . to insulate assets from plaintiffs executing judgments entered against defendant nursing homes or to dissuade litigation altogether"); *see also* Joseph E. Casson & Julia McMillen, *Protecting Nursing Home Companies: Limiting Liability Through Corporate Restructuring*, 36 J. Health L. 577, 578 (2003) ("In the context of nursing home ownership

and operation, legal entities such as corporations, limited liability companies, and limited liability partnerships can be formed to benefit nursing home companies by limiting the financial liability and Medicare and Medicaid exclusion exposure of the real-estate investors and business owners.").

¶3 For a time, Preferred Care, Inc. ("PCI"), a Delaware corporation with its principal place of business in Texas, controlled a significant network of nursing home and related companies around the nation. By late 2017, however, PCI and 33 affiliated entities were facing vast numbers of claims for injuries allegedly suffered by former residents of their nursing home facilities. *See In re Preferred Care, Inc.*, No. 17-44642-mxm-11, 2019 WL 4877525, at *1–2 (Bankr. N.D. Tex. Mar. 22, 2019); *see also Ware v. Paducah Health Facilities, L.P.*, No. 14-CI-00647, 2017 WL 9531112, at *4 (Ky. Cir. Ct. Oct. 2, 2017) (trial court order) ($28,500,050 judgment, including $25,000,000 in punitive damages). Accordingly, in November 2017, PCI and these 33 affiliated entities filed for Chapter 11 bankruptcy protection. Seven months later, the general partners of the 33 affiliated entities followed them into bankruptcy. *Preferred Care,* 2019 WL 4877525, at *1.

¶4 With this background, and returning to the specific lawsuit resulting in this special action, Pinnacle Health Facilities XXVI, L.P. ("Pinnacle 26") is a Texas-based limited partnership that operates Mesa Christian Nursing and Rehabilitation Center ("Mesa Christian" or the "Facility") and other skilled-nursing and long-term care facilities ("care facilities") in Arizona. Scott, the first-named defendant in this case, owns a 99% limited partnership interest in Pinnacle 26. Pinnacle Health Facilities GP V, LLC ("Pinnacle 5"), a Texas-based limited liability company, is the general partner and owns the remaining 1%. Scott owns all of Pinnacle 5. Scott and Riek are the co-managers and the only people that can make decisions for the partnership.

¶5 Before 2004, the Petitioners were significant participants in the network of interrelated PCI companies. Scott was the president and sole shareholder of PCI, Riek was the vice president and general counsel, and the Management Partners, in this case, were PCI's senior managers—Provence, the director of human resources; Tennyson, the director of the treasury; Anderson, the director of operations; and Lunceford, the accountant. In 2004, the Management Partners disassociated from PCI and formed a separate management company. Although the corporate structure changed, as outlined below, it appears from the record that the parties continued to maintain the same roles.

¶6 PCPMG at MC, LLC (the "management company") is a Texas-based limited liability company with the four Management Partners as its managers.[1] The management company provides managerial services for the day-to-day operation of PCI facilities. It has never managed any facility that was not a PCI facility. Beyond the basic operation of the facilities, the management company conducts due diligence and advises Scott on the acquisition of new facilities. Scott remains the ultimate decision-maker concerning acquiring a facility, but his decision is based on the management company's recommendation. Scott also decides when and if a separate entity will be formed to operate a newly acquired facility. Scott testified that this process was the way the Petitioners made acquisition decisions before disassociating the companies.

¶7 Pinnacle 26 is the "licensed operator" of Mesa Christian, meaning Pinnacle 26 owns the license to operate the facility. As the owner of the entities that own Pinnacle 26, Scott indirectly owns the partnership that owns the license. As a manager of Pinnacle 26's general partner, Scott also procures managerial services to oversee a facility's day-to-day operations. Pinnacle 26 contracted with the management company to provide such services for Mesa Christian. The Management Partners have also formed entities, such as PCPMG Consulting, LLC, and PCPMG of Arizona, LLC, with which the management company subcontracts to provide services to PCI facilities, including Mesa Christian. Both PCPMG Consulting and PCPMG of Arizona are Texas-based limited liability companies whose managers are the Management Partners.[2]

¶8 In May 2019, Ione Richardson filed a complaint against the Petitioners in Arizona. This case is one of at least six active cases in Maricopa County Superior Court brought against one or more of the

---

[1] Before filing for bankruptcy in 2018 as mentioned in ¶ 3, Management Partners formed a new company that took over providing services for PCI facilities, including Mesa Christian. Because the entities served the same function and were under the same control, we refer to whichever entity was providing PCI services at the time as the "management company."

[2] It is unclear whether Tennyson was a manager of these entities during the applicable time but it is not relevant for our analysis.

Petitioners in their individual capacity.[3] The facts alleged are nearly identical in each case, as are the attorneys, the briefs, and for the most part, the rulings. In this case, Richardson filed a claim on behalf of Ione Davis's estate, alleging the Petitioners' negligent understaffing and underfunding of Mesa Christian injured Davis and ultimately caused her death. The Petitioners moved to dismiss, arguing Arizona lacks personal jurisdiction over them. The court denied the motion in this action, as well as in three other active Arizona cases. A ruling is still pending in one case, and a sixth case is in jurisdictional discovery.

DISCUSSION

¶9 Special action jurisdiction is discretionary and only appropriate when there is not "an equally plain, speedy, and adequate remedy by appeal." Ariz. R.P. Spec. Act. 1(a). "The general policy of our appellate courts is to decline jurisdiction when special action relief is sought from a denial of a motion to dismiss . . . because relief by appeal after judgment is usually an adequate remedy." *Polacke v. Superior Court*, 170 Ariz. 217, 218 (App. 1991). "[W]hen the motion to dismiss is based on an absence of jurisdiction, . . . an appeal inadequately remedies a trial court's improperly requiring a defense in a matter where it has no jurisdiction." *Id.* at 219; *see also* Ariz. R.P. Spec. Act. 3(b) ("Whether the [court] has proceeded or is threatening to proceed without or in excess of jurisdiction or legal authority [is a permissible issue to raise in a special action].").

¶10 Here, because sufficient contacts create personal jurisdiction in Arizona over each of the Petitioners based on the uncontroverted facts concerning their control of the operation and management of the care facilities, in our discretion, we accept jurisdiction but deny relief and offer this opinion to guide any future motion based on the same material facts.

¶11 "An Arizona state court may exercise personal jurisdiction over a person, whether found within or outside Arizona, to the maximum

---

[3] We take judicial notice of the Petitioners' related cases. *See State v. Valenzuela*, 109 Ariz. 109, 110 (1973); *see also In re Sabino R.*, 198 Ariz. 424, 425, ¶ 4 (App. 2000). The precise number of cases pending against these individuals and entities in Arizona and elsewhere is not known with certainty. As of November 2017, however, there were approximately 163 lawsuits pending—97 in Kentucky and 27 in New Mexico—in which one or more of PCI or its related entities in bankruptcy were named as defendants, with others filed after that date. *See Preferred Care*, 2019 WL 4877525, at *2.

extent permitted by the Arizona Constitution and the United States Constitution." Ariz. R. Civ. P. 4.2(a). Under this "long-arm" rule, due process requires the defendant to have a sufficient connection with Arizona so that it is fair to require the defendant to defend the action here. *N. Propane Gas Co. v. Kipps*, 127 Ariz. 522, 525 (1980).

¶12 The superior court found general jurisdiction over the Petitioners lacking, but that specific jurisdiction was proper. A court may "find specific jurisdiction if: (1) the defendant purposefully avails himself of the privilege of conducting business in the forum; (2) the claim arises out of or relates to the defendant's contact with the forum; and (3) the exercise of jurisdiction is reasonable." *Williams v. Lakeview Co.*, 199 Ariz. 1, 3, ¶ 7 (2000).

¶13 Richardson made a *prima facie* showing that jurisdiction was conferred by service under our long-arm rule, and the Petitioners failed to rebut that argument. *See Macpherson v. Taglione*, 158 Ariz. 309, 312 (App. 1988). "When reviewing the grant of such a motion to dismiss, the court looks at the pleadings and the affidavits in support of and in opposition to the motion." *Maloof v. Raper Sales, Inc.*, 113 Ariz. 485, 487 (1976). "Uncontroverted allegations in the plaintiff's complaint must be taken as true." *Boschetto v. Hansing*, 539 F.3d 1011, 1015 (9th Cir. 2008). "Issues of credibility or disputed issues of fact may require an evidentiary hearing." *Sher v. Johnson*, 911 F.2d 1357, 1361 (9th Cir. 1990). The Petitioners did not request an evidentiary hearing on their motion to dismiss for lack of personal jurisdiction; therefore, the court relied upon the parties' pleadings, affidavits, and other documents. Accordingly, we review the superior court's ruling *de novo*, viewing the facts in the light most favorable to the plaintiffs but accepting as true the uncontradicted facts put forward by the defendants. *Planning Grp. of Scottsdale, L.L.C. v. Lake Mathews Mineral Props., Ltd.*, 226 Ariz. 262, 264, n.1 (2011).

A. The Petitioners Purposefully Availed Themselves of the Privilege of Conducting Activities in Arizona.

¶14 "[I]t is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." *Hanson v. Denckla*, 357 U.S. 235, 253 (1958). "This purposeful availment requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of random, fortuitous, or attenuated contacts . . . ." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985) (quotations omitted).

¶15 The Petitioners argue "[n]either [their] status as corporate officers or partners, nor their alleged involvement in such company-wide business decisions, creates the sort of personal and purposeful contacts directed to Arizona needed to support specific personal jurisdiction." The Petitioners maintain that "[p]articipating as high-level officers in . . . business decisions that might have a tangential impact on the forum is not enough." Many, if not all, of the Petitioners' supporting cases involve the application of the "fiduciary shield doctrine," which, we hold, is inconsistent with the "maximum reach" of Arizona's long-arm rule.

1. The Fiduciary Shield Doctrine is Inconsistent with Arizona's Long-Arm Rule.

¶16 To support the proposition that "no specific personal jurisdiction exists over Mr. Scott based on his alleged participation in company-wide financial decisions that purportedly went on to influence how others made decisions at affiliated entities," the Petitioners cite to *Stuart v. Spademan*, 772 F.2d 1185, 1197 (5th Cir. 1985), and *SCG Characters LLC v. Telebrands Corp.*, CV 15-00374 DDP (AGRx), 2015 WL 4624200, at *4 (C.D. Cal. Aug. 3, 2015). Both cases apply the fiduciary shield doctrine, which, where applicable, limits long-arm jurisdiction to something less than required under due process.

¶17 "Under the fiduciary shield doctrine, a person's mere association with a corporation that causes injury in the forum state is not sufficient in itself to permit that forum to assert jurisdiction over the person. Rather, there must be a reason for the court to disregard the corporate form." *Davis v. Metro Prods., Inc.*, 885 F.2d 515, 520 (9th Cir. 1989) (citations omitted). For purposes of personal jurisdiction under the fiduciary shield doctrine, before attributing an act an individual makes in his or her corporate capacity to the individual, the doctrine requires the court to pierce the corporate veil. *Id.* But "whether there exists a jurisdictional corporate shield is not [an issue of constitutional dimensions]." *Id.* at 521. The United States Supreme Court has held that "employees who act in their official capacity are [not] somehow shielded from suit in their individual capacity. . . . Each defendant's contacts with the forum State must be assessed individually." *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 781, n.13 (1984); *see also Calder v. Jones*, 465 U.S. 783, 790 (1984).

¶18 The inconsistency between the fiduciary shield doctrine and what due process allows (i.e., Arizona's long-arm rule) was discussed in *Davis.*

> [B]ecause the Arizona long-arm [rule] extends to the limit of constitutional due process, and because it is not equitably limited by the fiduciary shield doctrine, the reach of long-arm jurisdiction in Arizona is effectively stretched by the reasoning of *Calder* and *Keeton*. Thus, Arizona's long-arm [rule] may, consistent with constitutional due process, allow assertion of personal jurisdiction over officers of a corporation as long as the court finds those officers to have sufficient minimum contacts with Arizona.

885 F.2d at 522 (citations omitted). *But see Parks v. Macro-Dynamics, Inc.*, 121 Ariz. 517, 521 (App. 1979) (implying in dicta that jurisdiction would not be correct absent evidence of fraud, which was present in the subject case (citing *Powder Horn Nursery, Inc. v. Soil & Plant Lab., Inc.*, 20 Ariz. App. 517 (1973))); *Powder Horn*, 20 Ariz. App. at 524 (decided before *Calder* and *Keeton* and citing cases from other jurisdictions that held contacts made in an individual's corporate capacity could not establish personal jurisdiction). "Consequently, if the constitutionally required minimum contacts are present, the defendant's conduct necessarily satisfies Rule [4.2(a)]." *Batton v. Tenn. Farmers Mut. Ins. Co.*, 153 Ariz. 268, 270 (1987).

¶19 Because our rule requires nothing more than what due process requires, we need only consider whether each petitioner engaged in sufficient purposeful conduct for which he or she could reasonably expect to be brought into this State's courts concerning claims arising out of that conduct unless the facts of the case would make the exercise of personal jurisdiction unreasonable. *Planning Grp.*, 226 Ariz. at 268, ¶ 25. Richardson is not alleging that it is the Petitioners' mere association with the entities that bring them into the purview of Arizona courts, but that the budgetary and staffing decisions they made by and for those entities, directed at Arizona—specifically Mesa Christian—do. Accordingly, the fiduciary shield doctrine, and cases applying that doctrine, are inapplicable here.

2. A Contact is Not Exempt from Consideration Solely Because It Was Implemented Company-Wide or Its Effect Was Felt Nationwide.

¶20 Next, the Petitioners argue "the development or provision of nation-wide policies or services also does not by itself establish minimum contacts." They direct us to *Batton v. Tennessee Farmers Mutual Insurance Co.*, 153 Ariz. 268 (1987), and *Hills v. AT&T Mobility Services, LCC*, 3:17-cv-556-

JD-MGG, 2018 WL 6322363 (N.D. Ind. Dec. 4, 2018). Neither case supports their position.

¶21 In *Batton*, a Tennessee insurance company issued an automobile insurance policy, with nationwide coverage, in Tennessee to a Tennessee resident. 153 Ariz. at 269. The insured traveled to Arizona and was severely injured while riding as a passenger in his brother's car. *Id.* The insured sued the Tennessee insurance company in Arizona. *Id.* at 269–70. The insurance company had "no offices or agents in Arizona, [wa]s not licensed to do business in Arizona, and, aside from [the insured's] claim, ha[d] never investigated, adjusted, settled, or defended a claim in Arizona." *Id.* at 270. The court held that the insurance company had not purposefully availed itself of the Arizona forum because there was no evidence that the insurance company "was regularly coming into contact with Arizona" and the insured's "presence in Arizona was the consequence of his own *unilateral* activity." *Id.* at 272–73; *accord World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 298 (1980). The court held that without any Arizona contacts, foreseeability that an insured could be injured in Arizona was insufficient. *Batton*, 153 Ariz. at 272–73.

¶22 In *Hills*, a plaintiff in a putative class action moved to transfer venue from Indiana to Georgia. 2018 WL 6322363, at *1. The claims arose out of her employer's company-wide policy that the plaintiff alleged was discriminatory against pregnant women. *Id.* Although the plaintiff had been employed by and terminated from an Indiana retail location, to support the transfer of venue to Georgia, the plaintiff argued that AT&T was headquartered in Georgia, and the alleged discriminatory policy originated out of Georgia. *Id.* at *5, 6. The court declined to transfer venue because under the statute governing venue, a federal civil action may be brought in "a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated." 28 U.S.C. § 1391(b)(2). The court found that the plaintiff "ha[d] not demonstrated that a substantial part of the events or omissions giving rise to her claims occurred in Georgia." *Hills*, 2018 WL 6322363, at *7.

¶23 We find no support in either case for the categorical statement that participating in a nationwide or company-wide decision that has direct effects in the forum state is not a purposeful contact directed at the forum. However, we do not need to consider the Petitioners' decisions applicable across the network of nursing homes that were felt in Arizona to find more than sufficient contacts by each Petitioner with Arizona.

3. The Petitioners Each Have Sufficient Contacts with Arizona.

¶24 Richardson alleged that the Petitioners "operated the Facility, and furthermore participated in the conduct of [the] Facility." "If the defendant is doing business or causes an event to occur in Arizona, he may be subjected to the personal jurisdiction of our courts, but only after minimum contacts between the defendant and this state have been established." *N. Propane Gas*, 127 Ariz. at 527. The Petitioners argue that they did not purposefully and individually direct their activities to Arizona, maintain that we cannot consider any of their contacts concerning other Arizona care facilities, and attempt to characterize any contact with Arizona as "random, fortuitous, or attenuated." But we cannot, as they suggest, discount the Petitioners' Arizona contacts concerning other care facilities, or what they classify as "attenuated" contacts when conducting our analysis. "[J]urisdictional contacts are to be analyzed not in isolation, but rather in totality," and here, the uncontroverted facts show the Petitioners were in the business of owning, operating, and managing Arizona care facilities, including Mesa Christian. *See Planning Grp.*, 226 Ariz. at 269, ¶ 29.

¶25 Although ample evidence supports a finding that the Petitioners had direct control over the day-to-day operation of the individual facilities, so much is not required. It is enough that each of the six Petitioners exercised their control over the various entities to own, operate, or manage Mesa Christian, and continued to use that control when it benefited them, albeit from afar. As discussed below, the individual Petitioners have sufficient contacts with Arizona.

Thomas Scott and Robert Riek

¶26 Scott and Riek's ongoing contacts with Arizona allow the Facility to operate administratively and financially. They are the co-managers of the general partner of the partnership that holds the license to operate Mesa Christian. Each year, both sign as managers of the Facility to renew Mesa Christian's Arizona license. *Cf. Wal-Mart Stores, Inc. v. LeMaire*, 242 Ariz. 357, 361, ¶ 13 (App. 2017) (Under Arizona Revised Statutes ("A.R.S.") sections 10-1501 to -1510, requirements for a foreign corporation to do business in Arizona, "registration and appointment [of an agent for service] may form the basis for a finding that a corporation has established minimum contacts with the forum state."). Arizona relies on the information in the license application to determine whether it will permit the owner to operate a long-term care facility. When designating a partnership as the owner, the applicant must list all the partners. The

applicant must also certify that no partner with more than a 10% interest has had a license denied, revoked, or suspended. That is because the partnership does not operate Mesa Christian, its partners do.

¶27 The license is essential because it enables a facility to operate. And Arizona allows Scott and Riek to operate care facilities in Arizona because there is a person behind the partnership that is taking responsibility. Scott and Riek listed Pinnacle 26 as the governing authority on the application for Mesa Christian. Scott stated that "[a] governing authority is responsible for operating or for maintaining the facility [and] provides through some way or another the adequate care for the patients in the facilities." Scott and Riek are the only managers of Pinnacle 26's general partner Pinnacle 5.

¶28 In response to the Petitioners' motion to dismiss, Richardson submitted an annual Federal Medicare cost report for another Arizona care facility, for which Pinnacle 26 is also the licensed operator, involved in a similar lawsuit. The Petitioners do not dispute that Riek also prepares and certifies Mesa Christian's Federal Medicare cost report. Instead, Riek argues that the fact that he "signed cost reports on behalf of certain entities" is insufficient to hale him into court in Arizona, and that "[t]hose routine cost reports certified familiarity with applicable laws and regulations (he is in-house counsel, after all) and that services were provided in compliance with those laws and regulations." But Riek did not certify the report as "in-house counsel," he certified the report as "Manager of the General Partner."

¶29 The significance of the "routine cost reports" was explained in another PCI case from a neighboring state. *See Grano v. Pinnacle Health Facilities XXXIII, LP*, 17 CV 11 JAP/LF, 2017 WL 4712212, at *4 (D.N.M. Oct. 18, 2017). Pinnacle 26, as Mesa Christian's "license operator," was receiving regular reimbursements for Medicare services that it provided.

> The Licensed Operator, as a certified Medicare provider, receives regular reimbursements from [Centers for Medicare and Medicaid Services] for costs incurred in caring for Medicare patients and for overhead expenses attributable to those patients. Each year, the Licensed Operator must submit a cost report to ensure that the monthly Medicare payments for the reported year were accurate. 42 U.S.C. § 1395g. "The reimbursement scheme is premised on the assumption that the providers will be advanced funds periodically to cover their estimated costs and that adjustments must be made later

> when analysis of their reports reveals the actual cost of covered services. Interim payments are subject to retroactive adjustment."

Grano, 2017 WL 4712212, at *5 (quoting *United States v. Gravette Manor Homes, Inc.*, 642 F.2d 231, 233 (8th Cir. 1981)).

¶30 The annual report must be certified and submitted to Federal Medicare officials before a facility may receive reimbursements for costs. *Grano*, 2017 WL 4712212, at *5.

> Payment from the federal government (under Medicare) and/or the State (under Medicaid) is made directly to the nursing home for services furnished to eligible beneficiaries of both programs. However, in order to qualify to receive payments under either program, a nursing home must be periodically "certified" through on-site "surveys," as meeting the health and safety requirements specified in the relevant statutes and regulations.

Id. (quotation omitted). The annual report requires Riek to attest—subject to criminal, civil, or administrative penalties—that: "I further certify that I am familiar with the laws and regulations regarding the provision of health care services, and that the services identified in this cost report were provided in compliance with such laws and regulations." 42 C.F.R. § 413.24(f)(4)(iv)(B). Scott testified, "Medicare rates are rates that can be very important in the facility." The ratio of Medicare residents is one of the measures the management company considers when determining whether a facility is performing well, and the daily census reports are separated by payor source.

¶31 As the managers of the general partner of the licensed operator, Scott's and Riek's responsibilities were far more extensive than those of "in-house counsel" or "a passive investor," as Scott claims. Riek reviewed and executed the annual cost report, and both Scott and Riek applied for, obtained, and annually renewed the license for the Facility allowing Mesa Christian to continue to operate based on their guarantees that the services complied with state and federal law. It is illogical to conclude that an individual may provide a service, in Arizona, to Arizona residents—mostly "vulnerable adults" who require the assistance of a skilled nursing or long-term care facility—but that Arizona may not exercise personal jurisdiction over the individual who accepted the

responsibility of ensuring that those residents would be provided with adequate and proper care.

Management Partners

¶32 Similarly, the Management Partners contracted with Pinnacle 26, agreeing to provide proper and adequate care in Arizona, to Arizona residents. As rebuttal evidence, the Management Partners provided their affidavits, which only listed what they did *not* do. According to their affidavits, Management Partners do not "*personally* own, operate, manage, or control the Facility," nor had they ever "created . . . the *day-to-day* budgets, staffing, staff training, policies and procedures, accounts payable, accounts receivable, *day-to-day* accounting, cash management, development and leasing, reimbursement, or pricing for the Facility." (Emphasis added). *See Macpherson*, 158 Ariz. at 312 ("The affidavit of [the defendant] is more important for what it does not say than for what it does say.").

¶33 Despite the Management Partners' affidavits—replete with modifiers such as "day-to-day" and "personally" that whittle the statements' breadth and scope down to nothing or almost nothing—the Management Partners' conduct cannot be characterized as anything other than purposeful and targeted to Arizona. The management company agreed to provide managerial services to Arizona residents, in Arizona, according to Arizona law. The management company then subcontracted its responsibilities under the agreement to various limited liability companies, such as PCPMG of Arizona. The Management Partners are also managers of the entities created to provide services under the subcontracts. The management company had total control over contracting, and as members of the management company, the Management Partners are the only individuals authorized to make those decisions. Accordingly, the Management Partners either participated in or authorized executing the management agreement with Pinnacle 26 and the subcontracts with the related entities.

¶34 By entering an agreement with Pinnacle 26 to provide managerial services in Arizona to Arizona residents, and by further subcontracting with the affiliated entities to fulfill its responsibilities under the management agreements, the Management Partners' conduct was purposeful, targeted to Arizona, and sufficient for personal jurisdiction.

B. The Petitioners' Contacts Are Related to the Cause of Action.

¶35 "The requirement that a nexus exist between a defendant's activities in the forum state and a plaintiff's cause of action provides the key to exercising specific jurisdiction." *Williams*, 199 Ariz. at 4, ¶ 11. "[C]asual or accidental contacts by a defendant with the forum state, particularly those not directly related to the asserted cause of action, cannot sustain the exercise of specific jurisdiction." *Planning Grp.*, 226 Ariz. at 266, ¶ 16. "[W]e must focus on the relationship between the defendant, the forum, and the litigation." *Williams*, 199 Ariz. at 4, ¶ 11.

¶36 The complaint specifically alleges that the Petitioners "in their individual capacities undertook a duty of reasonable care to control the operations of Facility," and breached that duty in the following ways: they "had access to information showing that Facility was underfunded as to staffing"; they "knowingly or recklessly made the decision to budget Facility at insufficient levels for staffing, thereby leaving Facility understaffed to the detriment of Ione Davis"; and they "had access to funds, through Medicare payments to the Facility, including those payments for the benefit of Ione Davis, to sufficiently staff Facility but chose not to do so." Richardson claims those acts harmed Davis because they led to "skin breakdown, a fall, infections, and ultimately death." The Petitioners' contacts arise out of a responsibility each undertook to provide proper and adequate care following the applicable laws. There is a sufficient causal connection between the Petitioners' contacts and the cause of action.

C. The Exercise of Personal Jurisdiction is Reasonable.

¶37 "[T]he facts of each case must [always] be weighed in determining whether personal jurisdiction would comport with fair play and substantial justice." *Burger King*, 471 U.S. at 485–86 (quotations omitted) (second alteration in original). The Petitioners claim that requiring them "to each defend this lawsuit in Arizona based on alleged acts taken in their corporate or partner capacities for Texas-based entities would impose an enormous burden on them" because each is a Texas resident and "all of Petitioners' records, agents, employees, property, or the like related to this case are located in Plano, Texas."

¶38 "Generally, the existence of sufficient contacts between the defendant and the forum state giving rise to the suit will justify exercise of jurisdiction." *Beverage v. Pullman & Comley, LLC*, 232 Ariz. 414, 420, ¶ 27 (App. 2013). "A defendant that has purposefully directed activities toward the forum state 'must present a compelling case that the presence of some

other considerations would render jurisdiction unreasonable.'" *Id.* (quoting *Burger King*, 471 U.S. at 477). A conclusory statement that litigating in Arizona would be burdensome due to substantial travel and litigation costs is insufficient. *Id.* at 420–21, ¶ 28.

¶39 Requiring the Petitioners to defend the claims that arose out of their targeted conduct in the forum where the harm occurred "does not offend traditional notions of fair play and substantial justice." *Int'l Shoe Co. v. State of Wash., Office of Unemployment Comp. & Placement*, 326 U.S. 310, 316, (1945) (quotation omitted). The focus of the Petitioners' reasonableness argument is that they did not "personally" undertake the actions related to the claim. Contrary to the Petitioners' assertion that individual contacts must be contacts made in one's "individual capacity," an individual's contact with Arizona is not precluded because it was made in the individual's corporate or partner capacity.

¶40 Mesa Christian, its employees, files, and records all are in Arizona. The complaint alleges violations of Arizona law, and Arizona has an interest in ensuring that individuals that are providing care to "vulnerable adults" in Arizona are complying with the law, particularly A.R.S. §§ 46-451 to -474, the Adult Protective Services Act. Moreover, the Petitioners are parties in one or more of five other similar actions in Maricopa County and have local counsel who can assist in local matters. Given that the Petitioners were the individuals making decisions for the entities that assumed a responsibility to provide proper care to Arizona residents in Arizona, they can reasonably be expected to defend against an action alleging they neglected that responsibility in Arizona courts.

CONCLUSION

¶41 Whether the several layers of entities the Petitioners created to own and manage the Facility ultimately will shield them from personal liability is not before us. We decide only whether it is fair and accords with due process to require them to defend against the action in Arizona. Similarly, we are not asked to address the merits of Richardson's claims under Rules 12(b)(6), 12(c), or 56 of the Arizona Rules of Civil Procedure, or after trial. Instead, the issue here is whether Arizona may properly exercise jurisdiction over the Petitioners considering the facts presented and the claims made. Because it can, we grant review but deny relief.

AMY M. WOOD • Clerk of the Court
FILED: AA