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Personal Jurisdiction in Kentucky: Differing Approaches to “Transacting Any Business”

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Personal Jurisdiction in Kentucky: Differing Approaches to “Transacting Any Business”

By: Daniela A. Foltz, Staff Editor, Vol. 111



Due to the Fourteenth Amendment’s due process protections, “[p]ersonal jurisdiction has always constrained plaintiffs’ access to courts.” [1] States can further limit plaintiffs’ access to courts by adopting long-arm statutes.[2] Kentucky’s long-arm statute does this by enumerating nine categories of conduct where a court may exercise personal jurisdiction over a defendant.[3] One of the categories provides for personal jurisdiction over a defendant “transacting any business” in Kentucky;[4] however, there has been “little precedent interpreting the meaning of ‘transacting business’ as used in” Kentucky’s long-arm statute.[5] Therefore, understandably, Kentucky district courts have differed in their approaches to applying “transacting any business.” Kentucky district courts generally apply one of three approaches: (1) the plain meaning interpretation,[6] (2) the Michigan Court of Appeals interpretation emphasizing “any,”[7] or (3) an interpretation requiring “a course of direct, affirmative actions” in Kentucky.[8]

1. The Plain Meaning Interpretation

The plain meaning approach begins by citing Black's Law Dictionary, which says that to "transact" means "[t]o carry on or conduct to a conclusion."^[9] Transacting business would, thus, mean "to carry on or conduct" business to a conclusion and includes conduct such as negotiations and dealings.^[10] Courts applying this approach have concluded that phone calls and mail to Kentucky residents did not amount to "transacting any business,"^[11]

2. Interpretation Emphasizing "Any" by the Michigan Court of Appeals

Some Kentucky district courts have turned to a Sixth Circuit case, *Beydoun v. Wataniya Restaurants Holding*, Q.S.C., that applied "transacting any business" under Michigan's long-arm statute.^[12] In *Beydoun*, the court stated that the Michigan Legislature's "use of the word 'any' . . . establishes that even the slightest transaction is sufficient to bring a corporation within Michigan's long-arm jurisdiction."^[13] The case, however, applying the law of the forum state, was quoting a Michigan Court of Appeals case, not separately interpreting the phrase.^[14]

Kentucky district courts applying the approach that emphasizes the word "any" note that sending facsimiles, emails, phone calls, or letters to Kentucky alone may be enough to establish jurisdiction when the contact forms the basis for the claim.^[15] Adopting this interpretation, *Eat More Wings, LLC v. Home Market Foods, Inc.*, held that a defendant's emails to the plaintiff, knowing the plaintiff was located in Kentucky and would fulfill orders from Kentucky, amounted to "transacting any business."^[16]

3. Interpretation Requiring "A Course of Direct Affirmative Actions"

The last approach asks whether there has been "a course of direct, affirmative actions within a forum that result in or solicit a business transaction."^[17] One Kentucky district court stated,

Of the three approaches, the [interpretation requiring "direct, affirmative actions"] is best. Personal jurisdiction in a diversity case requires the Court to apply the law of the forum state, and this approach is the only one of the three that does so. The other two approaches turn elsewhere for a definition of transaction business: Black's Law Dictionary in one [and] the Michigan [Court of Appeals] in the other.^[18]

Applying this interpretation, *Gentry v. Mead* held that the defendant did not transact business in Kentucky by simply entering into a contract with a Kentucky resident because the defendant had no other substantial contacts with Kentucky.^[19] For example, the defendant did not travel to Kentucky, and the plaintiff did not allege that the parties executed the contract in Kentucky.^[20]

Conclusion

Many Kentucky district courts have found that certain "attenuated contacts" did not amount to "transacting any business."^[21] This would seemingly be consistent with the third approach, but incompatible with the second approach. The third approach requiring a "course of direct, affirmative actions" in Kentucky, however, may be underinclusive by requiring a *pattern* of conduct when the statute, instead, welcomes the notion that one contact may be sufficient through the word "any."^[22] Still, the second approach emphasizing "any" would be overinclusive and broaden plaintiffs' access to courts by allowing minimal contact.

That said, the distance between the three approaches may not be as great as it initially appears for two reasons. First, even in cases that identify a particular standard, courts focus much of their analysis on case law—sometimes citing cases that use a different standard than the one identified.^[23] Second, some courts have resolved the issue by applying all three approaches and have come to the same conclusion under each approach.^[24] Thus the approach used has likely not made a significant difference in practice. Nonetheless, these approaches can be reconciled with a general rule that the term "transacts any business" "embraces a single purposeful business transaction with [Kentucky, but the term] is not broadly interpreted."^[25] Therefore, a single contact with Kentucky may be sufficient if the event is substantial, but the totality of the circumstances must show "direct, affirmative actions" to solicit or result in a business transaction.

[1] Jonathan Remy Nash, *National Personal Jurisdiction*, 68 Emory L.J. 509, 511, 518 (2019).

[2] *Id.* at 518.

[3] Ky. Rev. Stat. § 454.210(2)(a).

[4] Ky. Rev. Stat. § 454.210(2)(a)(1).

[5] *Churchill Downs, Inc. v. NLR Ent., LLC*, No. 3:14-CV-166-H, 2014 WL 2200674, at *6 (W.D. Ky. May 27, 2014); *Hall v. Rag-O-Rama, LLC*, 359 F. Supp. 3d 499, 505 (E.D. Ky. 2019) (quoting *Gentry v. Mead*, No. 16-100-DLB-CJS, 2016 WL 6871252, at *3 (E.D. Ky. Nov. 21, 2016)).

[6] *E.g.*, *Bayou City Expl., Inc. v. Consumer Advocate Servs. Enters., LLC*, No. 1:14-CV-99-DJH, 2015 WL 4094259, at *3 (W.D. Ky. July 7, 2015).

[7] *E.g.*, *Eat More Wings, LLC v. Home Market Foods, Inc.*, 282 F. Supp. 3d 965, 969 (E.D. Ky. 2017); *Power Invs., LLC v. Becker*, No. CV 5: 18-466-DCR, 2018 WL 4390722, at *2 (E.D. Ky. Sept. 14, 2018), *rev'd sub nom.* *Power Invs., LLC v. SL EC, LLC*, 927 F.3d 914 (6th Cir. 2019); *Stockton Mortg. Corp. v. Bland*, No. 3:22-CV-00036-GFVT, 2022 WL 3437227, at *5 (E.D. Ky. Aug. 16, 2022).

[8] E.g., *Dutch Nats. Processing, LLC v. Thornton*, No. 3:20-CV-055-CHB, 2020 WL 9218530, at *3 (W.D. Ky. Sept. 30, 2020); *V-Soft Consulting Grp., Inc. v. Logic Corp.*, No. 3:16-CV-425-DJH, 2017 WL 1228402, at *4 (W.D. Ky. Mar. 31, 2017); *Gentry*, No. CV 16-100-DLB-CJS, 2016 WL 6871252, at *3 (E.D. Ky. Nov. 21, 2016).

[9] *Black's Law Dictionary* 1726 (10th ed. 2014); *Bayou City Expl., Inc.*, 2015 WL 4094259, at *3.

[10] *Bayou City Expl., Inc.*, 2015 WL 4094259, at *3. Ohio courts apply a similar standard, where to 'transact' under their long-arm statute means "to prosecute negotiations; to carry on business; to have dealings." *Chulsky v. Golden Corral Corp.*, 583 F. Supp. 3d 1059, 1072–73 (S.D. Ohio 2022).

[11] *Id.*; *Est. of Pressma v. ITM TwentyFirst Servs., LLC*, No. 3:21-CV-34-RGJ, 2022 WL 4110317, at *6 (W.D. Ky. Sept. 8, 2022).

[12] *Stockton Mortg. Corp. v. Bland*, No. 3:22-CV-00036-GFVT, 2022 WL 3437227, at *5 (E.D. Ky. Aug. 16, 2022); *Eat More Wings, LLC*, 282 F. Supp. 3d at 969.

[13] *Beydoun v. Wataniya Restaurants Holding, Q.S.C.*, 768 F.3d 499, 504–05 (6th Cir. 2014) (quoting *Oberlies v. Searchmont Resort, Inc.*, 246 Mich.App. 424, 633 N.W.2d 408, 413 (2001)).

[14] *Id.*

[15] *Eat More Wings, LLC*, 282 F. Supp. 3d at 969–70.

[16] *Id.* at 70.

[17] *Mod. Holdings, LLC v. Corning, Inc.*, No. 13-CV-405, 2015 WL 1481443, at *6 (E.D. Ky. Mar. 31, 2015) ("[E]ven before [the Kentucky Supreme Court] narrowed the scope of Kentucky's long arm statute, Kentucky courts have required a course of direct, affirmative actions within a forum that result in or solicit a business transaction."); *Gentry*, 2016 WL 6871252, at *3 (E.D. Ky. Nov. 21, 2016).

[18] *Est. of Gibson v. Daimler N. Am. Corp.*, No. CV21900095WOB/CJS, 2022 WL 16703129, at *5 (E.D. Ky. Nov. 3, 2022).

[19] *Gentry*, 2016 WL 6871252, at *3; *V-Soft Consulting Grp., Inc. v. Logic Corp.*, No. 3:16-CV-425-DJH, 2017 WL 1228402, at *4 (W.D. Ky. Mar. 31, 2017).

[20] *Id.*

[21] E.g., *Philmo, Inc. v. Checker Food Holding Co.*, No. 1:15-CV-00098-JHM, 2016 WL 1092862 (W.D. Ky. Mar. 21, 2016); *Mod. Holdings, LLC*, 2015 WL 1481443, at *6 ("Isolated actions are insufficient."). This approach has been consistent with the approaches of many district courts outside of Kentucky interpreting the "transacting any business" phrase in their own long-arm statute. See, e.g., *Premier Prop. Sales Ltd. v. Gospel Ministries Int'l, Inc.*, 539 F. Supp. 3d 822, 828 (S.D. Ohio 2021) ("[M]erely directing communications to an Ohio resident for the purpose of negotiating an agreement" or fulfilling a contract, "without more, is insufficient to establish that a defendant [was "transacting any business"] in the state.") (quoting *Indus. Fiberglass Specialties, Inc.*, 2009 WL 982805, at *4, 2009 U.S. Dist. LEXIS 35431, at *10); *Power v. Connectweb Techs., Inc.*, No. CV 22-10030-JGD, 2023 WL 36153, at *6 (D. Mass. Jan. 4, 2023) ("[T]he law in Massachusetts is well-established that isolated transactions unaccompanied by 'purposeful intent' on the part of [a] defendant[] and having only a 'slight effect on the commerce of the Commonwealth' are not enough to support jurisdiction under the [transacting any business subsection] of the long-arm statute."); *IOU Cent., Inc. v. Creating Scholars Through Therapy Corp.*, No. 1:21-CV-03673-SCJ, 2022 WL 3699965, at *4 (N.D. Ga. Apr. 28, 2022) ("While it is undisputed that [the defendant] entered into a Promissory Note with Plaintiff at Plaintiff's Georgia Office, this is not sufficient to confer personal jurisdiction.").


[22] There is no definition of "course" in *Black's Law Dictionary*, but "course of dealing" and "course of performance" are defined. Course of dealing means "[a]n established pattern of conduct between parties . . ." COURSE OF DEALING, *Black's Law Dictionary* (11th ed. 2019). Course of performance is defined as "[a] sequence of previous performance . . ." COURSE OF PERFORMANCE, *Black's Law Dictionary* (11th ed. 2019).

[23] See e.g., *Childress Cattle, LLC v. Cain*, No. 3:17-CV-00388-JHM, 2017 WL 3446182, at *3 (W.D. Ky. Aug. 10, 2017) (applying both the plain meaning interpretation and "a course of direct, affirmative actions" interpretation); *Dutch Nats. Processing, LLC*, 2020 WL 9218530, at *3–4 (comparing the case to *V-Soft Consulting Grp., Inc. v. Logic Corp.*, which uses the "course of direct, affirmative actions" approach, and to *Eat More Wings, LLC v. Home Market Foods, Inc.*, which uses the approach emphasizing "any"); *Valvoline, LLC v. Harding Racing, LLC*, No. 5:20-CV-00168-GFVT, 2021 WL 356895 (E.D. Ky. Feb. 2, 2021) (applying "a course of direct, affirmative actions" interpretation and distinguishing *Eat More Wings LLC v. Home Market Foods, Inc.*, which applies the interpretation emphasizing "any").

[24] See, e.g., *Est. of Pressma*, 2022 WL 4110317, at *6 ("Even viewing the allegations in the light most favorable to Plaintiff, there is no evidence that [the defendant] was transacting business (1) by "carr[ying] on or conduct[ing] (negotiations, business, etc.) to a conclusion"; (2) through "a course of direct, affirmative actions within a forum that result in or solicit a business transaction" or (3) by reaching out to those in Kentucky to engage in even the slightest transaction"); *Hall*, 359 F. Supp. 3d at 506 ("The Court finds that, under any of the three approaches outlined above, [the defendant] has transacted

business in Kentucky.”); Eitel v. PNC Bank, N.A., No. 3:20-CV-12-RGJ, 2021 WL 4487609, at *6 (W.D. Ky. Sept. 30, 2021) (“Under any of the three approaches outlined above, viewing the allegations in the light most favorable to Plaintiff, there is no evidence that [the defendants were] transacting business . . .”).

[25] Ferrara v. Munro, 585 B.R. 269, 285 (D. Conn. 2018).

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