

HANSON v. DENCKLA

Supreme Court of the United States, 1958.
357 U.S. 235, 78 S.Ct. 1228, 2 L.Ed.2d 1283

MR. CHIEF JUSTICE WARREN delivered the opinion of the Court.

This controversy concerns the right to \$400,000, part of the corpus of a trust established in Delaware by a settlor who later became domiciled in Florida. One group of claimants, "legatees," urge that this property passed under the residuary clause of the settlor's will, which was admitted to probate in Florida. The Florida courts have sustained this position. Other claimants, "appointees" and "beneficiaries," contend that the property passed pursuant to the settlor's exercise of the *inter vivos* power of appointment created in the deed of trust. The Delaware courts adopted this position and refused to accord full faith and credit to the Florida determination because the Florida court had not acquired jurisdiction over an indispensable party, the Delaware trustee. We postponed the question of jurisdiction in the Florida appeal, and granted certiorari to the Delaware Supreme Court.

The trust whose validity is contested here was created in 1935. Dora Browning Donner, then a domiciliary of Pennsylvania, executed a trust instrument in Delaware naming the Wilmington Trust Co., of Wilmington, Delaware, as trustee. The corpus was composed of securities. Mrs. Donner reserved the income for life, and stated that the remainder should be paid to such persons or upon such trusts as she should appoint by *inter vivos* or testamentary instrument. The trust agreement provided that Mrs. Donner could change the trustee, and that she could amend, alter or revoke the agreement at any time. * * * Thereafter she left Pennsylvania, and in 1944 became domiciled in Florida, where she remained until her death in 1952. Mrs. Donner's will was executed Dec. 3, 1949. On that same day she executed the *inter vivos* power of appointment whose terms are at issue here. * * * [S]he appointed the sum of \$200,000 to each of two trusts previously established with another Delaware trustee, the Delaware Trust Co. The balance of the trust corpus, over \$1,000,000 at the date of her death, was appointed to her executrix. That amount passed under the residuary clause of her will and is not at issue here.

The two trusts with the Delaware Trust Co. were created in 1948 by Mrs. Donner's daughter, Elizabeth Donner Hanson, for the benefit of Elizabeth's children, Donner Hanson and Joseph Donner Winsor. * * *

Mrs. Donner died Nov. 20, 1952. Her will, which was admitted to probate in Florida, named Elizabeth Donner Hanson as executrix. She was instructed to pay all debts and taxes, including any which might be payable by reason of the property appointed under the power of appointment in the trust agreement with the Wilmington Trust Co. After disposing of personal and household effects, Mrs. Donner's will directed that the balance of her property (the \$1,000,000 appointed from the Delaware trust) be paid in equal parts to two trusts for the benefit of her daughters Katherine N.R. Denckla and Dorothy B.R. Stewart.

This controversy grows out of the residuary clause that created the last-mentioned trusts. It begins:

All the rest, residue and remainder of my estate, real, personal and mixed, whatsoever and wheresoever the same may be at the time of my death, including any and all property, rights and interest over which I may have power of appointment which prior to my death has not been effectively exercised by me or has been exercised by me in favor of my Executrix, I direct my Executrix to deal with as follows * * * .

Residuary legatees Denckla and Stewart, already the recipients of over \$500,000 each, urge that the power of appointment over the \$400,000 appointed to sister Elizabeth's children was not "effectively exercised" and that the property should accordingly pass to them. Fourteen months after Mrs. Donner's death these parties petitioned a Florida chancery court

for a declaratory judgment “concerning what property passes under the residuary clause” of the will. Personal service was had upon * * * : (1) executrix Elizabeth Donner Hanson, (2) beneficiaries Donner Hanson and Joseph Donner Winsor, and (3) potential beneficiary William Donner Roosevelt, also one of Elizabeth’s children. Curtin Winsor, Jr., another of Elizabeth’s children and also a potential beneficiary * * * , was not named as a party and was not served. About a dozen other defendants were nonresidents and could not be personally served. These included the Wilmington Trust Co. (“trustee”), the Delaware Trust Co. (to whom the \$400,000 had been paid shortly after Mrs. Donner’s death) * * * . A copy of the pleadings and a “Notice to Appear and Defend” were sent to * * * these defendants by ordinary mail, and notice was published locally as required by the Florida statutes * * * . With the exception of two individuals whose interests coincided with complainants Denckla and Stewart, none of the nonresident defendants made any appearance.

The appearing defendants (Elizabeth Donner Hanson and her children) moved to dismiss the suit because the exercise of jurisdiction over indispensable parties, the Delaware trustees, would offend Section 1 of the Fourteenth Amendment. The Chancellor ruled that he lacked jurisdiction over these nonresident defendants because no personal service was had and because the trust corpus was outside the territorial jurisdiction of the court. The cause was dismissed as to them. As far as parties before the court were concerned, however, he ruled that the power of appointment was testamentary and void under the applicable Florida law. In a decree dated Jan. 14, 1955, he ruled that the \$400,000 passed under the residuary clause of the will.

After the Florida litigation began, but before entry of the decree, the executrix instituted a declaratory judgment action in Delaware to determine who was entitled to participate in the trust assets held in that State. * * * [T]he parties were substantially the same as in the Florida litigation. * * * All of the trust companies, beneficiaries, and legatees except Katherine N.R. Denckla, appeared and participated in the litigation. * * * When the Florida decree was entered the legatees unsuccessfully urged it as *res judicata* of the Delaware dispute. In a decree dated Jan. 13, 1956, the Delaware Chancellor ruled that the trust and power of appointment were valid under the applicable Delaware law, and that the trust corpus had properly been paid to the Delaware Trust Co. and the other appointees.

Alleging that she would be bound by the Delaware decree, the executrix moved the Florida Supreme Court to remand with instructions to dismiss the Florida suit then pending on appeal. No full faith and credit question was raised. The motion was denied. The Florida Supreme Court affirmed its Chancellor’s conclusion that Florida law applied to determine the validity of the trust and power of appointment. Under that law the trust was invalid because the settlor had reserved too much power over the trustee and trust corpus, and the power of appointment was not independently effective to pass the property because it was a testamentary act not accompanied by the requisite formalities. The Chancellor’s conclusion that there was no jurisdiction over the trust companies and other absent defendants was reversed. The court ruled that jurisdiction to construe the will carried with it “substantive” jurisdiction “over the persons of the absent defendants” even though the trust assets were not “physically in this state.” Whether this meant jurisdiction over the person of the defendants or jurisdiction over the trust assets is open to doubt. In a motion for rehearing the beneficiaries and appointees urged for the first time that Florida should have given full faith and credit to the decision of the Delaware Chancellor. The motion was denied without opinion * * * .

The full faith and credit question was first raised in the Delaware litigation by an unsuccessful motion for new trial filed with the Chancellor Jan. 20, 1956. After the Florida Supreme Court decision the matter was renewed by a motion to remand filed with the Delaware Supreme Court. In a decision of Jan. 14, 1957, that court denied the motion and affirmed its Chancellor in all respects. The Florida decree was held not binding for purposes of full faith and credit because the Florida court had no personal jurisdiction over the trust

companies and no jurisdiction over the trust *res*.

The issues for our decision are, first, whether Florida erred in holding that it had jurisdiction over the nonresident defendants, and second, whether Delaware erred in refusing full faith and credit to the Florida decree. We need not determine whether Florida was bound to give full faith and credit to the decree of the Delaware Chancellor since the question was not seasonably presented to the Florida court.

* * *

Relying upon the principle that a person cannot invoke the jurisdiction of this Court to vindicate the right of a third party, appellees urge that appellants lack standing to complain of a defect in jurisdiction over the nonresident trust companies, who have made no appearance in this action. Florida adheres to the general rule that a trustee is an indispensable party to litigation involving the validity of the trust. In the absence of such a party a Florida court may not proceed to adjudicate the controversy. Since state law required the acquisition of jurisdiction over the nonresident trust company before the court was empowered to proceed with the action, any defendant affected by the court's judgment has that "direct and substantial personal interest in the outcome" that is necessary to challenge whether that jurisdiction was in fact acquired.

Appellants charge that this judgment is offensive to the Due Process Clause of the Fourteenth Amendment because the Florida court was without jurisdiction. * * * The alleged defect is the absence of those "affiliating circumstances" without which the courts of a state may not enter a judgment imposing obligations on persons (jurisdiction *in personam*) or affecting interests in property (jurisdiction *in rem* or *quasi in rem*).¹² While the *in rem* and *in personam* classifications do not exhaust all the situations that give rise to jurisdiction, they are adequate to describe the affiliating circumstances suggested here, and accordingly serve as a useful means of approach to this case.

In rem jurisdiction. Founded on physical power, the *in rem* jurisdiction of a state court is limited by the extent of its power and by the coordinate authority of sister States. The basis of the jurisdiction is the presence of the subject property within the territorial jurisdiction of the forum State. Tangible property poses no problem for the application of this rule, but the *situs* of intangibles is often a matter of controversy. * * * The parties seem to assume that the trust assets that form the subject matter of this action¹⁶ were located in Delaware and not in Florida. We can see nothing in the record contrary to that assumption, or sufficient to establish a *situs* in Florida.¹⁷

The Florida court held that the presence of the subject property was not essential to its jurisdiction. Authority over the probate and construction of its domiciliary's will, under

¹² A judgment *in personam* imposes a personal liability or obligation on one person in favor of another. A judgment *in rem* affects the interests of all persons in designated property. A judgment *quasi in rem* affects the interests of particular persons in designated property. The latter is of two types. In one the plaintiff is seeking to secure a pre-existing claim in the subject property and to extinguish or establish the nonexistence of similar interests of particular persons. In the other the plaintiff seeks to apply what he concedes to be the property of the defendant to the satisfaction of a claim against him. For convenience of terminology this opinion will use "*in rem*" in lieu of "*in rem* and *quasi in rem*."

¹⁶ This case does not concern the *situs* of a beneficial interest in trust property. These appellees were contesting the validity of the trust. Their concern was with the legal interest of the trustee or, if the trust was invalid, the settlor. Therefore, the relevant factor here is the *situs* of the stocks, bonds, and notes that make up the corpus of the trust. Properly speaking such assets are intangibles that have no "physical" location. But their embodiment in documents treated for most purposes as the assets themselves makes them partake of the nature of tangibles.

¹⁷ The documents evidencing ownership of the trust property were held in Delaware by a Delaware trustee who was the obligee of the credit instruments and the record owner of the stock. The location of the obligors and the domicile of the corporations do not appear. The trust instrument was executed in Delaware by a settlor then domiciled in Pennsylvania. Without expressing any opinion on the significance of these or other factors unnamed, we note that none relates to Florida.

which the assets might pass, was thought sufficient to confer the requisite jurisdiction. But jurisdiction cannot be predicated upon the contingent role of this Florida will. Whatever the efficacy of a so-called “*in rem*” jurisdiction over assets admittedly passing under a local will, a State acquires no *in rem* jurisdiction to adjudicate the validity of *inter vivos* dispositions simply because its decision might augment an estate passing under a will probated in its courts. If such a basis of jurisdiction were sustained, probate courts would enjoy nationwide service of process to adjudicate interests in property with which neither the State nor the decedent could claim any affiliation. The settlor-decedent’s Florida domicile is equally unavailing as a basis for jurisdiction over the trust assets. For the purpose of jurisdiction *in rem* the maxim that personalty has its *situs* at the domicile of its owner¹⁹ is a fiction of limited utility. The maxim is no less suspect when the domicile is that of a decedent. In analogous cases, this Court has rejected the suggestion that the probate decree of the State where decedent was domiciled has an *in rem* effect on personalty outside the forum State that could render it conclusive on the interests of nonresidents over whom there was no personal jurisdiction. The fact that the owner is or was domiciled within the forum State is not a sufficient affiliation with the property upon which to base jurisdiction *in rem*. Having concluded that Florida had no *in rem* jurisdiction, we proceed to consider whether a judgment purporting to rest on that basis is invalid in Florida and must therefore be reversed.

Prior to the Fourteenth Amendment an exercise of jurisdiction over persons or property outside the forum State was thought to be an absolute nullity, but the matter remained a question of state law over which this Court exercised no authority. With the adoption of that Amendment, any judgment purporting to bind the person of a defendant over whom the court had not acquired *in personam* jurisdiction was void within the State as well as without. *Pennoyer*. Nearly a century has passed without this Court being called upon to apply that principle to an *in rem* judgment dealing with property outside the forum State. The invalidity of such a judgment within the forum State seems to have been assumed—and with good reason. Since a State is forbidden to enter a judgment attempting to bind a person over whom it has no jurisdiction, it has even less right to enter a judgment purporting to extinguish the interest of such a person in property over which the court has no jurisdiction.²³ Therefore, so far as it purports to rest upon jurisdiction over the trust assets, the judgment of the Florida court cannot be sustained.

In personam jurisdiction. Appellees’ stronger argument is for *in personam* jurisdiction over the Delaware trustee. They urge that the circumstances of this case amount to sufficient affiliation with the State of Florida to empower its courts to exercise personal jurisdiction over this nonresident defendant. Principal reliance is placed upon *McGee*. In *McGee* the Court noted the trend of expanding personal jurisdiction over nonresidents. * * * But it is a mistake to assume that this trend heralds the eventual demise of all restrictions on the personal jurisdiction of state courts. Those restrictions are more than a guarantee of immunity from inconvenient or distant litigation. They are a consequence of territorial limitations on the power of the respective States. However minimal the burden of defending in a foreign tribunal, a defendant may not be called upon to do so unless he has had the “minimal contacts” with that State that are a prerequisite to its exercise of power over him.

We fail to find such contacts in the circumstances of this case. The defendant trust company has no office in Florida, and transacts no business there. None of the trust assets has ever been held or administered in Florida, and the record discloses no solicitation of business

¹⁹ We assume *arguendo* for the purpose of this discussion that the trust was invalid so that Mrs. Donner was the “owner” of the subject property.

²³ This holding was forecast in *Pennoyer*. When considering the effect of the Fourteenth Amendment, this Court declared that in actions against nonresidents substituted service was permissible only where “*property in the State* is brought under the control of the court, and subjected to its disposition by process adapted to that purpose * * *.” (Emphasis supplied.)

in that State either in person or by mail.

The cause of action in this case is not one that arises out of an act done or transaction consummated in the forum State. In that respect, it differs from *McGee*. In *McGee*, the non-resident defendant solicited a reinsurance agreement with a resident of California. The offer was accepted in that State, and the insurance premiums were mailed from there until the insured's death. Noting the interest California has in providing effective redress for its residents when nonresident insurers refuse to pay claims on insurance they have solicited in that State, the Court upheld jurisdiction because the suit "was based on a contract which had substantial connection with that State." In contrast, this action involves the validity of an agreement that was entered without any connection with the forum State. The agreement was executed in Delaware by a trust company incorporated in that State and a settlor domiciled in Pennsylvania. The first relationship Florida had to the agreement was years later when the settlor became domiciled there, and the trustee remitted the trust income to her in that State. From Florida Mrs. Donner carried on several bits of trust administration that may be compared to the mailing of premiums in *McGee*. But the record discloses no instance in which the trustee performed any acts in Florida that bear the same relationship to the agreement as the solicitation in *McGee*. Consequently, this suit cannot be said to be one to enforce an obligation that arose from a privilege the defendant exercised in Florida. This case is also different from *McGee* in that there the State had enacted special legislation to exercise what *McGee* called its "manifest interest" in providing effective redress for citizens who had been injured by nonresidents engaged in an activity that the State treats as exceptional and subjects to special regulation.

The execution in Florida of the powers of appointment under which the beneficiaries and appointees claim does not give Florida a substantial connection with the contract on which this suit is based. It is the validity of the trust agreement, not the appointment, that is at issue here.²⁵ For the purpose of applying its rule that the validity of a trust is determined by the law of the State of its creation, Florida ruled that the appointment amounted to a "republication" of the original trust instrument in Florida. For choice-of-law purposes such a ruling may be justified, but we think it an insubstantial connection with the trust agreement for purposes of determining the question of personal jurisdiction over a nonresident defendant. The unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State. The application of that rule will vary with the quality and nature of the defendant's activity, but it 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. The settlor's execution in Florida of her power of appointment cannot remedy the absence of such an act in this case.

It is urged that because the settlor and most of the appointees and beneficiaries were domiciled in Florida the courts of that State should be able to exercise personal jurisdiction over the nonresident trustees. This is a *non sequitur*. With personal jurisdiction over the executor, legatees, and appointees, there is nothing in federal law to prevent Florida from adjudicating concerning the respective rights and liabilities of those parties. But Florida has not chosen to do so. As we understand its law, the trustee is an indispensable party over whom the court must acquire jurisdiction before it is empowered to enter judgment in a proceeding affecting the validity of a trust. It does not acquire that jurisdiction by being the "center of gravity" of the controversy, or the most convenient location for litigation. The is-

²⁵ The Florida Supreme Court's opinion makes repeated references to the "invalidity" of the trust, and uses other language of like import. Its ruling that the 1949 and 1950 "appointments" were ineffective to pass title to the property (because lacking the requisite testamentary formalities) proceeded from this initial ruling that the trust agreement was "invalid," or "illusory," and therefore created no power of appointment. There was no suggestion that the appointment was ineffective as an exercise of whatever power was created by the trust agreement.

sue is personal jurisdiction, not choice of law. It is resolved in this case by considering the acts of the trustee. As we have indicated, they are insufficient to sustain the jurisdiction.

* * *

The judgment of the Delaware Supreme Court is affirmed, and the judgment of the Florida Supreme Court is reversed and the cause is remanded for proceedings not inconsistent with this opinion.

It is so ordered.

MR. JUSTICE BLACK, whom MR. JUSTICE BURTON and MR. JUSTICE BRENNAN join, dissenting.

I believe the courts of Florida had power to adjudicate the effectiveness of the appointment made in Florida by Mrs. Donner with respect to all those who were notified of the proceedings and given an opportunity to be heard without violating the Due Process Clause of the Fourteenth Amendment.¹ If this is correct, it follows that the Delaware courts erred in refusing to give the prior Florida judgment full faith and credit.

Mrs. Donner was domiciled in Florida from 1944 until her death in 1952. The controversial appointment was made there in 1949. It provided that certain persons were to receive a share of the property held by the Delaware "trustee" under the so-called trust agreement upon her death. Until she died Mrs. Donner received the entire income from this property, and at all times possessed absolute power to revoke or alter the appointment and to dispose of the property as she pleased. As a practical matter she also retained control over the management of the property, the "trustee" in Delaware being little more than a custodian.² A number of the beneficiaries of the appointment, including those who were to receive more than 95% of the assets involved, were residents of Florida at the time the appointment was made as well as when the present suit was filed. The appointed property consisted of intangibles which had no real *situs* in any particular State although Mrs. Donner paid taxes on the property in Florida.

The same day the 1949 appointment was made Mrs. Donner executed a will, which after her death was duly probated in a Florida court. The will contained a residuary clause providing for the distribution of all of her property not previously bequeathed, including "any and all property, rights and interest over which I may have power of appointment which prior to my death has not been effectively exercised by me * * * ." Thus if the 1949 appointment was ineffective the property involved came back into Mrs. Donner's estate to be distributed under the residuary clause of her will. As might be anticipated the present litigation arose when legatees brought an action in the Florida courts seeking a determination whether the appointment was valid. The beneficiaries of the appointment, some of whom live outside Florida, and the Delaware trustee were defendants. They had timely notice of the suit and an adequate opportunity to obtain counsel and appear.

In light of the foregoing circumstances it seems quite clear to me that there is nothing in the Due Process Clause which denies Florida the right to determine whether Mrs. Donner's appointment was valid as against its statute of wills. This disposition, which was designed

¹ In my judgment it is a mistake to decide this case on the assumption that the Florida courts invalidated the trust established in 1935 by Mrs. Donner while she was living in Pennsylvania. It seems quite clear to me that those courts had no such purpose. As I understand it, all they held was that an appointment made in Florida providing for the disposition of part of the trust property after Mrs. Donner's death was (1) testamentary since she retained complete control over the appointed property until she died, and (2) ineffective because not executed in accordance with the Florida statute of wills.

² Among other things Mrs. Donner reserved the right to appoint "advisers" serving at her sufferance who controlled all purchases, sales and investments by the "trustee." Evidence before the Delaware courts indicated that these advisers, not the Delaware "trustee," actually made all decisions with respect to transactions affecting the "trust" property and that the "trustee" mechanically acted as they directed.

to take effect after her death, had very close and substantial connections with that State. Not only was the appointment made in Florida by a domiciliary of Florida, but the primary beneficiaries also lived in that State. In my view it could hardly be denied that Florida had sufficient interest so that a court with jurisdiction might properly apply Florida law, if it chose, to determine whether the appointment was effectual. True, the question whether the law of a State can be applied to a transaction is different from the question whether the courts of that State have jurisdiction to enter a judgment, but the two are often closely related and to a substantial degree depend upon similar considerations. It seems to me that where a transaction has as much relationship to a State as Mrs. Donner's appointment had to Florida its courts ought to have power to adjudicate controversies arising out of that transaction, unless litigation there would impose such a heavy and disproportionate burden on a nonresident defendant that it would offend what this Court has referred to as "traditional notions of fair play and substantial justice." So far as the nonresident defendants here are concerned I can see nothing which approaches that degree of unfairness. Florida, the home of the principal contenders for Mrs. Donner's largess, was a reasonably convenient forum for all. Certainly there is nothing fundamentally unfair in subjecting the corporate trustee to the jurisdiction of the Florida courts. It chose to maintain business relations with Mrs. Donner in that State for eight years, regularly communicating with her with respect to the business of the trust including the very appointment in question.

Florida's interest in the validity of Mrs. Donner's appointment is made more emphatic by the fact that her will is being administered in that State. It has traditionally been the rule that the State where a person is domiciled at the time of his death is the proper place to determine the validity of his will, to construe its provisions and to marshal and distribute his personal property. Here Florida was seriously concerned with winding up Mrs. Donner's estate and with finally determining what property was to be distributed under her will. In fact this suit was brought for that very purpose.

The Court's decision that Florida did not have jurisdiction over the trustee * * * stems from principles stated the better part of a century ago in *Pennoyer*. That landmark case was decided in 1878, at a time when business affairs were predominantly local in nature and travel between States was difficult, costly and sometimes even dangerous. There the Court laid down the broad principle that a State could not subject nonresidents to the jurisdiction of its courts unless they were served with process within its boundaries or voluntarily appeared, except to the extent they had property in the State. But as the years have passed the constantly increasing ease and rapidity of communication and the tremendous growth of interstate business activity have led to a steady and inevitable relaxation of the strict limits on state jurisdiction announced in that case. In the course of this evolution the old jurisdictional landmarks have been left far behind so that in many instances States may now properly exercise jurisdiction over nonresidents not amenable to service within their borders. Yet further relaxation seems certain. Of course we have not reached the point where state boundaries are without significance, and I do not mean to suggest such a view here. There is no need to do so. For we are dealing with litigation arising from a transaction that had an abundance of close and substantial connections with the State of Florida.

* * *

[Justice Douglas's dissenting opinion is omitted.]

