IN THE COURT OF APPEALS OF TENNESSEE
WESTERN SECTION AT JACKSON

STAR TRUCK AND TRAILER, INC.,

Plaintiff-Appellant,

Vs.

Shelby Circuit No. 76588
C.A. No. 02A01-611-CV-00267

JIM HAWK TRUCK TRAILERS, INC.,

Defendant-Appellee.

FILED

July 17, 1997

Cecil Crowson, Jr.
Appellate Court Clerk

FROM THE SHELBY COUNT CIRCUIT COURT
THE HONORABLE D'ARMY BAILEY, JUDGE

Stephen H. Price; Farris, Warfield & Kanaday of Nashville
For Appellee

James T. Allison of Memphis
For Appellant

DISMISSED

Opinion filed:

W. FRANK CRAWFORD,
PRESIDING JUDGE, W.S.

CONCUR:

ALAN E. HIGHERS, JUDGE

HOLLY KIRBY LILLARD, JUDGE

This appeal involves long-arm jurisdiction over a nonresident corporate defendant. The plaintiff, Star Truck and Trailer, Inc. (Star Truck), appeals from the judgment of the trial court granting the defendant's, Jim Hawk Truck Trailers, Inc.'s (Hawk), motion to dismiss for lack of

personal jurisdiction.

On March 6, 1996, Star Truck filed a complaint against Hawk in the Circuit Court of Shelby County, Tennessee seeking damages for breach of contract. The complaint avers that Star Truck is a Tennessee corporation and that Hawk is an Iowa corporation. The complaint alleges that, several days before September 10, 1995, Star Truck's president called Hawk and arranged to buy four 1993 Capacity Spotter Tractors for $24,500.00 each. On September 10, 1995, Hawk completed a Sales Order and Security Agreement that described the parties, the merchandise, and the terms of the sale. Hawk signed the contract and, with Star Truck's permission, signed Star Truck's name as the buyer. A copy was mailed to Star Truck's offices in Memphis where Star Truck's president signed the contract. The parties agreed that Hawk would deliver the tractors to Star Truck within sixty days of September 10, 1995.

The complaint alleges that, at the time the contract was signed, the tractors were rented to third parties by Hawk, and Hawk needed to have the tractors returned before it could deliver them to Star Truck. During October and November 1995, the parties spoke several times by telephone about the condition of the tractors and the upcoming delivery. Hawk did not deliver the tractors on the agreed upon delivery date, but on December 21, 1995, Hawk sent a letter to Star Truck stating that the tractors would be delivered between January 7 and 10, 1996. The tractors were not delivered by these dates either.

The complaint alleges that in anticipation of the delivery, Star Truck arranged to sell the tractors to Guaranteed Performance Service for $32,000.00 each. On January 29, 1996, three of the four tractors were sent to Guaranteed Performance by Hawk. The fourth tractor was scheduled for delivery a few days later. On February 3, 1996, Star Truck sent a check for $73,500.00 to Hawk in Davenport, Iowa as payment for the first three tractors.

Star Truck avers that Guaranteed Performance informed Star Truck that it was going to purchase the three tractors directly from Hawk. Star Truck called Hawk to investigate, and Hawk denied that it was selling the tractors directly to Guaranteed Performance. Star Truck requested that the fourth tractor be delivered directly to its office in Memphis. On February 5, 1996, Star Truck attempted to pick up the other three tractors from Guaranteed Performance, but Hawk's manager refused to release them. After Guaranteed Performance refused to cooperate, stating that Star Truck had no legal right to the tractors, Star Truck stopped payment on the

$73,500.00 check.

The complaint further alleges that Hawk breached the September 10, 1995 contract by refusing to deliver the four tractors. Star Truck claims damages of daily rent starting on December 12, 1995 and damages for the lost profit from the sale to Guaranteed Performance that was not consummated.

The complaint avers that the circuit court has jurisdiction over Hawk pursuant to the Tennessee long-arm statute, specifically, T.C.A. § 20-2-201 (1994) and T.C.A. § 20-2-214 (1994).

On April 17, 1996, Hawk filed a motion to dismiss for lack of personal jurisdiction asserting that Hawk was an Iowa corporation with no office or agent in Tennessee and that it did not have the "minimum contacts" with Tennessee required to establish personal jurisdiction. In support of its motion, Hawk filed the affidavit of Scott Kulhanek, the general manager of Hawk. In opposition to the motion, Star Truck filed exhibits that documented prior business transactions between the parties and evidence of other business conducted in Tennessee by Hawk. Scott Kulhanek filed a second affidavit explaining Hawk's business connections in Tennessee.

On June 21, 1996, the trial court heard arguments on the motion to dismiss and, by orders entered on July 1, 1996 and July 18, 1996, granted the motion for lack of personal jurisdiction over Hawk. Star Truck has appealed and presents one issue for review: whether the trial court erred in dismissing the complaint for lack of personal jurisdiction over Hawk. Hawk presents an additional issue for review: whether Star Truck timely filed its notice of appeal.

We will first consider Star Truck's issue. Because Hawk is a corporate nonresident of Tennessee, Star Truck filed the suit in Tennessee pursuant to the provisions of T.C.A. § 20-2-214(a) (1994), which provide in pertinent part:

> **20-2-214. Jurisdiction of persons unavailable to personal service in state -- Classes of action to which applicable. --** (a) Persons who are nonresidents of Tennessee and residents of Tennessee who are outside the state and cannot be personally served with process within the state are subject to the jurisdiction of the courts of this state as to any action or claim for relief arising from:
> (1) The transaction of any business within the state;
>
> * * *
>
> (6) Any basis not inconsistent with the constitution of this state or of the United States;

T.C.A. § 20-2-201 (1994) provides in pertinent part:

> **2-20-201. Foreign corporations subject to actions. --** (a) Any corporation claiming existence under the laws of the United States or any other state or of any country foreign to the United States, or any business trust found doing business in this state, shall be subject to suit here to the same extent that corporations of this state are by the laws thereof liable to be sued, so far as relates to any transaction had, in whole or in part, within this state or any cause of action arising here, but not otherwise.

The Tennessee long-arm statute confers jurisdiction to the full extent allowable under the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States. ***Southland Express, Inc. v. Scrap Metal Buyers of Tampa, Inc.***, 895 S.W.2d 335, 338 (Tenn. App. 1994).

In determining whether a court may assert *in personam* jurisdiction over a nonresident defendant, due process requires that the defendant have certain "minimum contacts" with the forum state "such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." ***International Shoe Co. v. Washington***, 326 U.S. 310, 316, 66 S. Ct. 154, 158, 90 L. Ed. 95 (1945); ***J.I. Case Corp. v. Williams***, 832 S.W.2d 530, 531-32 (Tenn. 1992). The Due Process Clause requires "fair warning that a particular activity may subject [the defendant] to the jurisdiction of a foreign sovereign." ***Burger King Corp. v. Rudzewicz***, 471 U.S. 462, 472, 105 S. Ct. 2174, 2182, 85 L. Ed. 2d 528 (1985) (quoting ***Shaffer v. Heitner***, 433 U.S. 186, 218, 97 S. Ct. 2569, 2587, 53 L. Ed. 2d 683 (1977) (Stevens, J. concurring)).

Courts recognize two types of *in personam* jurisdiction: general jurisdiction and specific jurisdiction. ***Third Nat'l Bank in Nashville v. Wedge Group Inc.***, 882 F.2d 1087, 1089 (6th Cir. 1989); ***Shoney's Inc. v. Chic Can Enterprises***, 922 S.W.2d 530, 537 (Tenn. App. 1995). When a state exercises personal jurisdiction over a defendant in a suit not arising out of or related to the defendant's contacts with the forum, the state is exercising "general jurisdiction" over the defendant. ***Helicopteros Nacionales De Columbia, S.A. v. Hall***, 466 U.S. 408, 414 n. 9, 104 S. Ct. 1868, 1872 n. 9, 80 L. Ed. 2d 404 (1984). When a state exercises personal jurisdiction over a defendant in a suit arising out of or related to the defendant's contacts with the forum, the state is exercising "specific jurisdiction" over the defendant. ***Id***. at 414 n. 8, 104 S. Ct. at 1872 n. 8.

We will first examine general personal jurisdiction. For a court to exercise general *in personam* jurisdiction over a nonresident defendant without violating the requirements of the

Due Process Clause, the proof must show that the defendant maintains "continuous and systematic" contacts with the foreign state. ***International Shoe Co.***, 326 U.S. at 317, 66 S. Ct. at 159; ***J.I. Case Corp.***, 832 S.W.2d at 532. "While it has been held in cases . . . that continuous activity of some sort within a state is not enough to support the demand that the corporation be amenable to suits unrelated to that activity, there have been instances in which the continuous corporate operations within a state were thought to be so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities." ***International Shoe Co.***, 326 U.S. at 318, 66 S. Ct. at 159.

Star Truck asserts that Hawk's business activities in Tennessee, considered as a whole, constitute "continuous and systematic" contacts. In its brief, Star Truck categorized Hawk's business activities:

> Hawk's general business activities in Tennessee fall into at least six (6) categories: (1) advertisement and the solicitation of business in Tennessee on a regular and continuing basis; (2) the purchase in substantial volume of platform trailers manufactured in Tennessee on a systematic and continuous basis; (3) visits to Tennessee by its agents and employees to pick up the trailers manufactured in Tennessee; (4) sales of "Spotter" tractors and truck parts to a Tennessee customer; (5) purchases of "Spotter" tractors from a Tennessee dealer; and (6) payments made directly to a Tennessee dealer.

We will examine Hawk's general business contacts with Tennessee in the same manner as Star Truck. First, Hawk claims that Star Truck advertises and solicits business in Tennessee on a regular and continuing basis. Hawk advertises in *American Trucker*, a monthly magazine with the subtitle, "National Network of Truck Trader Magazines." It appears that the magazine is a listing of trucks and trailers for sale by various dealers across the nation. The magazine in which Hawk advertised the tractors was the "South Central Edition Serving Texas, Oklahoma, Louisiana and Arkansas." Star Truck subscribes to the publication and called Hawk as a result of the advertisement in the publication.

Star Truck asserts that the *American Trucker* is distributed in every state, including Tennessee, but there is no proof in the record other than Hawk's advertisement in the "South Central Edition." The record does not contain evidence that shows that Hawks solicits business in Tennessee "through advertising reasonably calculated to reach the State." ***See World-Wide Volkswagen Corp. v. Woodson***, 444 U.S. 286, 295, 100 S. Ct. 559, 566, 62 L. Ed. 2d 490 (1980).

Star Truck next argues that Hawk purchases a substantial volume of platform trailers manufactured in Tennessee on a continuous and systematic basis. Hawk purchased 263 platform trailers from Great Dane Trailers, Inc's (Great Dane) manufacturing plant in Memphis, Tennessee from January 1, 1995 through May 1996. Scott Kulhanek, Hawk's General Manager, submitted an affidavit explaining Hawk's relationship with Great Dane. Hawk has a franchise/dealership agreement with Great Dane of Savannah, Georgia. Great Dane is a manufacturer of semi-trailers with factories in Savannah, Georgia; Brazil, Indiana; Terre Haute, Indiana; Memphis, Tennessee; and Wayne, Nebraska. Hawk purchases Great Dane trailers in Wayne, Brazil, and Memphis, but the majority are purchased from Wayne or Brazil. The prices and terms for the sales are established in Savannah, Georgia, and specific price concessions are negotiated in Kansas City. Hawk sends the payments for the trailers to Savannah.

Mere purchases, even if occurring at regular intervals, are not enough to warrant a state's assertion of *in personam* jurisdiction over a nonresident corporation in a cause of action not related to those purchase transactions. ***Helicopteros Nacionales***, 466 U.S. at 418, 104 S. Ct. at 1874. We believe that any connection with Tennessee from Hawk's purchase of Great Dane trailers is "random," "fortuitous," or "attenuated" at best. ***See Burger King Corp.***, 471 U.S. at 475, 105 S. Ct. at 2183.

Star Truck asserts that Hawk's agents and employees visit Tennessee to pick up the trailers manufactured in Tennessee by Great Dane. In his affidavit, Scott Kulhanek stated, "When a Great Dane trailer purchased by Hawk has been manufactured in Memphis, either the end-use customer or an outside carrier typically picks up the trailer in Memphis." However, he admitted that, on a few occasions, a Hawk driver has picked up the trailers in Memphis.

It is "clear that purchases and *related trips*, standing alone, are not a sufficient basis for a State's assertion of jurisdiction." ***Helicopteros Nacionales***, 466 U.S. at 417, 104 S. Ct. at 1874 (citing ***Rosenberg Bros & Co. v. Curtis Brown Co.***, 260 U.S. 516, 43 S. Ct. 170, 67 L. Ed. 372 (1923)) (emphasis added). The casual presence of a corporate agent or even his or her conduct of single or isolated items of activities in a state in the corporation's behalf are not enough to subject it to suit on causes of action unconnected with the activities there. ***International Shoe Co.***, 326 U.S. at 317, 66 S. Ct. at 159. The brief presence of Hawk's representatives in Tennessee is not a significant contact with the state, and in no way does it enhance the nature of

Hawk's contacts with Tennessee. ***See Helicopteros Nacionales***, 466 U.S. at 418, 104 S. Ct. at 1874.

Finally, Star Truck claims that Hawk established minimum contacts with Tennessee through sales of Spotter tractors and truck parts to a Tennessee customer, through purchases of Spotter tractors from a Tennessee dealer, and through payments made directly to a Tennessee dealer. We note that the Tennessee customer and the Tennessee dealer in each instance is Star Truck itself. Star Truck asserts that Hawk transacted business with it in Tennessee from November 1993 until the filing of this suit on March 6, 1996. The record reveals four transactions between Star Truck and Hawk. In November 1993, Hawk purchased a used 1988 Spotter tractor from Star Truck for $34,500.00. In June 1995, Hawk purchased a 1989 Capacity tractor from Star Truck for $33,500.00. In September 1995, Star Truck agreed to buy the four Spotter tractors that are in issue in this case. Finally, in October 1995, Star Truck ordered $1,083.16 in unrelated truck parts from Hawk. Hawk paid cash for both of its purchases directly to Star Truck, and it appears that none of the transactions involved a warranty or a continuing relationship.

The September 1995 transaction is the one that gave rise to this cause of action and will be discussed in detail when we consider specific *in personam* jurisdiction. The other three transactions are isolated dealings with one entity in Tennessee. We do not believe that these three forays into Tennessee by Hawk are substantial or that they are of such a nature as to justify suit against Hawk on an unrelated transaction. ***See International Shoe Co.***, 326 U.S. at 318, 66 S. Ct. at 159.

We conclude that Hawk's general contacts with Tennessee, even when viewed as a whole, are not sufficient to support a finding of general *in personam* jurisdiction. Hawk has not maintained "continuous and systematic" contacts with Tennessee. ***International Shoe Co.***, 326 U.S. at 317, 66 S. Ct. at 159; ***J.I. Case Corp.***, 832 S.W.2d at 532.

However, in the absence of general jurisdiction resulting from continuous and systematic contacts with the forum state, specific *in personam* jurisdiction still may be found when a commercial actor purposely directs his activities toward citizens of the forum state and litigation results from injuries arising out of or relating to those activities. ***Burger King Corp.***, 471 U.S. at 472, 105 S. Ct. at 2182; ***J.I. Case Corp.***, 832 S.W.2d at 532. In such a case, "the defendant's

conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there." ***World-Wide Volkswagen Corp.***, 444 U.S. at 297, 100 S. Ct. at 567; ***Shoney's, Inc.***, 922 S.W.2d at 536.

When a controversy is related to or "arises out of" a defendant's contacts with the forum, the United States Supreme Court has said that a "relationship among the defendant, the forum, and the litigation" is the essential foundation of *in personam* jurisdiction. ***Helicopteros Nacionales***, 466 U.S. at 414, 104 S. Ct. at 1872 (quoting ***Shaffer v. Heitner***, 433 U.S. 186, 204, 97 S. Ct. 2569, 2579, 53 L. Ed. 2d 683 (1977)).

In ***Masada Investment Corp. v. Allen***, 697 S.W.2d 332 (Tenn. 1985), the Tennessee Supreme Court faced the question of jurisdiction of a malpractice suit against a Texas lawyer who had prepared an inaccurate deed for the transfer of real estate in Memphis, Tennessee at the request of a Tennessee resident. ***Id.*** at 333. The Court stated:

> A three-pronged test had been developed to determine the outer limits of personal jurisdiction based on a single act: the defendant must purposefully avail himself of the privilege of acting in or causing a consequence in the forum State; the cause of action must arise from the defendant's activities there; and defendant's acts or consequences must have a substantial connection with the forum to make the exercise of jurisdiction reasonable. ***Southern Machine Co. v. Mohasco Industries, Inc.***, 401 F.2d 374, 381 (6th Cir. 1968). Subsection (6) [of the Tennessee long-arm statute] changed the long-arm statute from a "single act" statute to a "minimum contacts" statute which expanded the jurisdiction of Tennessee courts to the full limit allowed by due process. ***Shelby Mutual Ins. Co. v. Moore***, 645 S.W.2d 242, 245 (Tenn. App. 1981). That decision, quoting extensively from ***Gullett v. Qantas Airways Ltd.***, 417 F.Supp. 490 (M.D. Tenn. 1975), noted that the ***Mohasco*** test was now too restrictive. The ***Moore*** court noted that three primary factors are to be considered in determining whether the requisite minimum contacts were present: the quantity of the contacts, their nature and quality, and the source and connection of the cause of action with those contacts. Two lesser factors to be considered are the interest of the forum State and convenience. The ***Moore*** court concluded:
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> > The phrase "fair play and substantial justice" must be viewed in terms of whether it is fair and substantially just to both parties to have the case tried in the state where the plaintiff has chosen to bring the action. In each case, the quality and nature of those activities in relation to the fair and orderly administration of the law must be weighed. As stated above in ***Qantas***, this must involve some subjective value judgment by the courts.
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> 645 S.W.2d at 246.

Masada Investment Corp., 697 S.W.2d at 334-35. The ***Masada*** Court concluded that "[b]y

willfully and knowingly choosing to prepare legal documents which would be filed in Tennessee and be of great consequence here, Allen purposely availed himself of the privilege of doing business within this state." ***Id.*** at 335. The Court stated that "Tennessee has substantial interest in the outcome of this litigation and is the most convenient forum since this action involves a Tennessee defendant, WTFF, Tennessee property, and is controlled by Tennessee law." ***Id.***

We believe that the case before us is very different from ***Masada***. Hawk is an Iowa corporation with its principal office in Council Bluffs, Iowa. Hawk has never been registered to do business in Tennessee and has never had an office or an agent located in Tennessee. The property involved is personal property that was to be delivered from Vermont and Massachusetts to Pennsylvania. Finally, the contract that was allegedly breached had a provision that it was to be "governed by the laws of the state where accepted by the Seller." The contract was accepted by Hawk in Iowa, and payment was to be received by Hawk in Iowa.

After an examination of the three primary factors established in ***Masada*** to determine if the requisite minimum contacts are present, we conclude that it would be a violation of the Due Process Clause of the Fourteenth Amendment to subject Hawk to specific *in personam* jurisdiction in Tennessee.

In ***J.I. Case Corp.***, the Tennessee Supreme Court addressed the same question of *in personam* jurisdiction. ***J.I. Case Corp.***, 832 S.W.2d at 530-31. In that case, the defendant, Earl Dean Williams, was an Arkansas farmer who wanted to purchase a land excavator, which is a large piece of farm equipment, from Case, the plaintiff. ***Id***. at 531. Case filed suit against Williams after a controversy developed regarding the amount of the lease payment under their agreement. ***Id***. After this Court found that the trial court did not have *in personam* jurisdiction over Williams, the Supreme Court reversed, finding that the trial court had specific *in personam* jurisdiction. ***Id***. at 533

The Court found jurisdiction under the following circumstances:

> The initial contact between the parties occurred at Case's equipment exhibit at the fair in Tennessee; the instruments controlling the transaction between the parties were prepared and executed by Case in Tennessee; financing for the balance due under the agreement was furnished by a company located in Tennessee; the agreement executed by the parties contemplated that payments due under the agreement would be made in Tennessee; and parts and labor for the repair and maintenance of the equipment under the warranty agreement were to be furnished in or from Tennessee. The cause of action alleged deals directly

> with the relationship between the parties and their duties and rights under the instruments executed.

Id. We believe that the facts of the instant case are distinguishable once again. In this case, the transaction was completed by telephone and facsimile and through the mail; the contract was prepared in Iowa and was to be governed by Iowa law; it was a cash transaction payable in Iowa; and it was an "as is" sale with no warranties. Hawk's contacts with Tennessee as a result of this contract do not constitute a continuing relationship with the state.

Star Truck argues that Hawk has established a presence in Tennessee and that it is fair for Hawk to be subject to suit in Tennessee because Hawk purposely availed itself of the benefits of a market in Tennessee. Star Truck claims that the parties have established a course of dealing and that Hawk could have reasonably anticipated being sued in Tennessee.

In ***Burger King Corp.***, the United States Supreme Court stated:

> Where a forum seeks to assert specific jurisdiction over an out-of-state defendant who has not consented to suit there, this "fair warning" requirement is satisfied if the defendant has "purposefully directed" his activities at residents of forum, ***Keeton v. Hustler Magazine, Inc.***, 465 U.S. 770, 774, 104 S. Ct. 1473, 1478, 79 L. Ed. 2d 790 (1984), and the litigation results from alleged injuries that "arise out of or relate to" those activities, ***Helicopteros Nacionales de Colombia, S.A. v. Hall***, 466 U.S. 408, 414, 104 S. Ct. 1868, 1872, 80 L. Ed. 2d 404 (1984). . . . And with respect to interstate contractual obligations, we have emphasized that parties who "reach out beyond one state and create continuing relationships and obligations with citizens of another state" are subject to regulation and sanctions in the other State for the consequences of their activities. ***Travelers Health Assn. v. Virginia***, 339 U.S. 643, 647, 70 S. Ct. 927, 929, 94 L. Ed. 1154 (1950). See also ***McGee v. International Life Insurance Co.***, 355 U.S. 220, 222-223, 78 S. Ct. 199, 200-201, 2 L. Ed. 2d 223 (1957). . . .
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> In defining when it is that a potential defendant should "reasonably anticipate" out-of-state litigation, the Court frequently has drawn from the reasoning of ***Hanson v. Denckla***, 357 U.S. 235, 253, 78 S. Ct. 1228, 1239-1240, 2 L. Ed. 2d 1283 (1958):
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> > "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."
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> 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, ***Keeton v. Hustler Magazine, Inc***., 465 U.S., at 774, 104 S. Ct., at 1478;

> ***World-Wide Volkswagen Corp. v. Woodson, supra***, 444 U.S., at 299, 100 S. Ct., at 568, or of the "unilateral activity of another party or a third person," ***Helicopteros Nacionales de Colombia, S.A. v. Hall, supra***, 466 U.S., at 417, 104 S. Ct., at 1873. Jurisdiction is proper, however, where the contacts proximately result from actions by the defendant himself that create a "substantial connection" with the forum State. ***McGee v. International Life Insurance Co., supra***, 355 U.S., at 223, 78 S. Ct., at 201; ***see also Kulko v. California Superior Court, supra***, 436 U.S., at 94, n. 7, 98 S. Ct., at 1698, n. 7. Thus where the defendant "deliberately" has engaged in significant activities within a State, ***Keeton v. Hustler Magazine, Inc., supra***, 465 U.S., at 781, 104 S. Ct., at 1481, or has created "continuing obligations" between himself and residents of the forum, ***Travelers Health Assn. v. Virginia***, 339 U.S., at 648, 70 S. Ct., at 929, he manifestly has availed himself of the privilege of conducting business there, and because his activities are shielded by "the benefits and protections" of the forum's laws it is presumptively not unreasonable to require him to submit to the burdens of litigation in that forum as well.

Burger King Corp., 471 U.S. at 472-76, 105 S. Ct. at 2182-84.

We disagree with Star Truck that the parties established a course of dealing. The other three transactions between the parties were separate and distinct from the one at issue. We do not believe that Hawk has engaged in "significant activities" in Tennessee or has a "substantial connection" with Tennessee, and it is clear from the contract that the parties do not have "continuing obligations." We also find that, from the circumstances, Hawk should not have reasonably anticipated being haled into court in Tennessee. Hawk simply did not have sufficient "minimum contacts" with Tennessee to subject Hawk to suit in this state, and the trial court did not err in granting the motion to dismiss.

We will now address Hawk's issue asserting that the notice of appeal was untimely filed. The record reflects that the motion to dismiss was heard by the trial court on June 21, 1996. The court entered an order on July 1, 1996 granting the motion to dismiss. Subsequently, on July 18, 1996, the court entered the exact order again. Star Truck filed its notice of appeal on August 12, 1996. On October 28, 1996, the court entered an order titled, "Order Substituting Final Judgment Dated June 17, 1996 In Place Of Final Judgment Dated June 1, 1996,[1]" which provides:

> This cause came on to be heard on the oral Motion of Plaintiff to substitute the Final Judgment For Defendant entered by the Court on June 17, 1996, in place of the Final Judgment entered by the Court on June 1, 1996. After hearing argument of counsel for

[1] These dates are obviously typographical errors because the record is clear that the first order was entered on July 1, 1996, and the second order was entered on July 18, 1996.

> both parties, the Court is of the opinion that the June 17, 1996, Order should stand, and the June 1, 1996, Order be withdrawn.
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> IT IS, HEREBY ORDERED, ADJUDGED AND DECREED:
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> That the Final Judgment entered on June 17, 1996, be substituted for the Final Judgment entered on June 1, 1996, and the June 1, 1996, Order be withdrawn.

The scenario of how two identical orders were entered can be gleaned from the parties' briefs and oral arguments. Hawk was represented by Nashville counsel, and Star Truck was represented by Memphis counsel. Hawk's counsel prepared and sent, on or about June 24, 1996, an order to the court clerk that was eventually entered July 1, 1996. Hawk's counsel certified that a copy of the order was sent to Star Truck's lawyer on June 24, 1996. Apparently the court clerk presented the order to the judge for signature and then entered the order on July 1, 1996. On July 18, 1996, Star Truck's lawyer, apparently unaware that an order had already been entered, proceeded to enter the same order.[2] If the order was effectively entered July 1, 1996, then the July 18, 1996 order was a nullity. Therefore, our first inquiry should be whether the July 1, 1996 order was effectively entered.

Tenn. R. Civ. P. 58 provides:

> Entry of a judgment or an order of final disposition is effective when a judgment containing one of the following is marked on the face by the clerk as filed for entry:
>
> (1) the signatures of the judge and all parties or counsel, or
>
> (2) the signatures of the judge and one party or counsel with a certificate of counsel that a copy of the ***proposed order*** has been served on all other parties or counsel, or
>
> (3) the signature of the judge and a certificate of the clerk that a copy has been served on all other parties or counsel.
>
> When requested by counsel or pro se parties, the clerk shall mail or deliver a copy of the entered judgment to all parties or counsel within five fays after entry. In the event the residence of a party is unknown and cannot be ascertained upon diligent inquiry, the certificate of service shall so state. Following entry of judgment, the clerk shall make appropriate docket notations and shall copy the judgment on the minutes, but failure to do so will not affect validity of the entry of judgment.

Tenn. R. Civ. P. 58 (emphasis added). In the case before us, the July 1 order contained the signature of the judge, the signature of counsel for one of the parties, together with a certificate

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[2] It appears that the order entered was the copy of the order that Hawk's lawyer sent to Star Truck's lawyer on June 24, 1996 because it contains the same certificate of service signed by Hawk's lawyer on June 24, 1996.

of that counsel that a copy of the proposed order had been served on opposing counsel. Therefore, the order was effectively entered as of July 1, 1996, and the duplicate order entered July 18, 1996 was a nullity.

Next, our inquiry must be to determine the effect of the order of October 28, 1996, which purports to substitute the July 18, 1996 order for the July 1, 1996 order.

The order states on its face that it was pursuant to an oral motion made by Star Truck. Since no date is specified as to the oral motion, we presume it was made in open court on the date of the entry of order, October 28, 1996. However, the court's jurisdiction to consider such a motion exists for only 30 days after the entry of a final judgment. ***Parks v. McGuire***, 270 S.W.2d 347, 348 (Tenn. 1954). Therefore, the court had no jurisdiction to enter this order of October 28, 1996.

After thirty days, however, Tenn. R. Civ. P. 60 governs the trial court's jurisdiction over a case. ***Algee v. State Farm General Ins. Co.***, 890 S.W.2d 445, 447 (Tenn. App. 1994). If we attempt to consider the motion made by Star Truck's counsel in October, 1996 as a Tenn. R. Civ. P. 60.02 motion, we are faced with further obstacles. First, the motion is not in writing as required by the rules, and second, the motion could not be considered by the trial court since the appeal to this Court was pending. ***See Spence v. Allstate Ins. Co.***, 883 S.W.2d 586 (Tenn. 1994). In ***Spence***, the Court said:

> [A] trial court has no jurisdiction to consider a Rule 60.02 motion during the pendency of an appeal. If a party wishes to seek relief from the judgment during the pendency of an appeal, he should apply to the appellate court for an order of remand. We stress that because the trial court will most likely be in a better position to quickly assess the merits of such a motion, leave should be freely granted by the appellate court if the motion is not frivolous on its face.

Id. at 596.

Accordingly, the October 28, 1996 order is void. The final order in this case was entered July 1, 1996, and the notice of appeal was filed on August 12, 1996, which is more than 30 days after the entry of the final judgment. The time for filing a notice of appeal cannot be extended. T.R.A.P. 2. Without a valid notice of appeal, this Court has no jurisdiction. Therefore, the appeal is dismissed and costs of the appeal are assessed against appellant.

W. FRANK CRAWFORD,
PRESIDING JUDGE, W.S.

CONCUR:

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ALAN E. HIGHERS, JUDGE

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HOLLY KIRBY LILLARD, JUDGE