OPINION SUMMARY
MISSOURI COURT OF APPEALS EASTERN DISTRICT

DIVISION ONE

CHARLES BABB and AUTUMN BABB,	)	No. ED109479
	)	
Appellants,	)	Appeal from the Circuit Court of
	)	St. Louis County
vs.	)	
	)	Honorable David L. Vincent III
TIFFANY BARTLETT,	)	
	)	
Respondent.	)	Filed: December 14, 2021

Autumn Babb ("Autumn"), in her individual capacity and as Plaintiff Ad Litem for her recently deceased husband, Charles Babb ("Charles") (Autumn and Charles are hereinafter collectively "Appellants"), appeals from the judgment of the Circuit Court of St. Louis County, which granted Tiffany Bartlett's ("Bartlett") motion to dismiss Appellants' claims against her for lack of personal jurisdiction. This lawsuit was commenced by Appellants in April of 2020, and arises from personal injuries Charles allegedly sustained in a vehicular accident with Bartlett that occurred in California in May of 2018. In the Second Amended Petition, which is the operative pleading in this matter, Charles alleged an ordinary negligence claim against Bartlett and her employer and Autumn alleged a loss of consortium claim against Bartlett. However, due to Charles's death in August of 2021, Autumn was substituted as Plaintiff Ad Litem for Charles in this matter in September of 2021.

In her sole point on appeal, Autumn argues that the circuit court erred in finding that Bartlett was not subject to personal jurisdiction under Missouri's long-arm statute because, even though Charles, Autumn, and Bartlett were Oklahoma residents at all relevant times and the accident occurred in California, Bartlett purportedly engaged in certain conduct enumerated in the statute and it was foreseeable that Bartlett could be haled into a Missouri court for the claims asserted against her in this lawsuit. Specifically, Autumn argues that Bartlett: (1) transacted business in Missouri; (2) entered into a contract in Missouri; and (3) contracted to insure her employer in Missouri by virtue of her agreement to indemnify her employer, as set forth in sub-divisions (1), (2), and (5) of § 506.500.1 RSMo (2018).

AFFIRMED.

DIVISION I HOLDS: Bartlett either did not engage in these acts within the meaning of § 506.500.1, or to the extent she did, the causes of action against her in the Second Amended Petition do not "arise from" those acts. With respect to Autumn's argument that Bartlett made a contract in Missouri, Autumn did not allege or present any evidence that the independent contractor agreement by and between Bartlett and her employer was entered into in Missouri. As for Bartlett's separate contract with a third-party to lease the tractor and trailer that was involved in the accident, it was made in Missouri. However, Appellants were neither parties to nor third-party beneficiaries of either contract; therefore, Appellants may not benefit—directly or

indirectly—from these contracts for purposes of establishing personal jurisdiction as to Bartlett, including the forum selection clause in each contract. Furthermore, the claims against Bartlett, which only sound in tort, do not "arise from" these contracts, as required under § 506.500.1 and .3, even if we accepted Autumn's argument that the accident would not have occurred if Bartlett had not entered into the independent contractor agreement with her employer, as something more is required to establish personal jurisdiction based on the making of a contract than simple "but for" causation as to the subject contract and the events giving rise to the tort claims raised.

With respect to Autumn's argument that Bartlett transacted business in Missouri, this argument primarily relies on the allegation that Bartlett carried numerous loads for her employer, which included picking up and delivering loads in Missouri. However, there are no allegations or evidence establishing that the tort claims against Bartlett actually "arose from" this conduct. The origin or destination of the load Bartlett happened to be carrying at the time of the accident has absolutely nothing to do with the core negligence claim against Bartlett, which included allegations that she failed to keep a careful lookout, failed to maintain control of the vehicle, was distracted, and failed to properly maintain the tractor and/or trailer.

With respect to Autumn's argument that Bartlett is subject to personal jurisdiction by virtue of agreeing to indemnify her employer in her independent contractor agreement, Autumn cited no authority supporting her proposition that such an indemnification provision constitutes a "contract to insure" within the meaning of § 506.500.1(5). However, we need not decide whether this indemnification provision constitutes a "contract to insure" because the tort claims against Bartlett in the Second Amended Petition do not "arise from" Bartlett's indemnification agreement in the independent contractor agreement for the same reasons these claims do not "arise from" the independent contractor agreement itself. In addition, this argument fails because neither Charles nor Autumn were located in Missouri at the time of contracting in that they were Oklahoma residents at all relevant times.

Because we find that Autumn failed to satisfy her initial burden of making a *prima facie* case showing that Bartlett engaged in at least one of the acts enumerated in § 506.500.1 and that her tort claims against Bartlett in the Second Amended Petition "arose from" that conduct, we are not required to analyze whether Bartlett had sufficient "minimum contacts" with Missouri to satisfy due process, and decline to do so as unnecessary.

For these reasons, the circuit court did not err in granting Bartlett's Motion to Dismiss. Because the dismissal of the claims against Bartlett was not an adjudication on the merits, the circuit court correctly made the dismissal *without prejudice*. Accordingly, the circuit court's dismissal of these claims is affirmed.

Opinion by: Kelly C. Broniec, J.
Kurt S. Odenwald, P.J. and John P. Torbitzky, J. concur.

Attorney for Appellant: James V. O'Brien and Andrew S. Buchanan

Attorney for Respondent: Susan M. Herold and Paul N. Rechenberg

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