

Concurring and Opinion Filed June 18, 2020



In The  
Court of Appeals  
Fifth District of Texas at Dallas

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No. 05-19-01134-CV

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DAVID HANSCHEN, TRUSTEE OF THE DAVID HANSCHEN  
HERITAGE TRUST TWO AND TRUSTEE OF THE ARGUS STAMP  
COMPANY MPT; MICHAEL HANSCHEN; AND RYAN HANSCHEN,  
Appellants

V.

JAMES HANSCHEN, INDIVIDUALLY AND IN HIS CAPACITY AS THE  
TRUSTEE OF THE VIER SOHNE PROGENY TRUST, FORMER  
MANAGER OF NBR-C2, LLC. AND NBR-C3, LLC, ET AL., Appellee

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On Appeal from the 101st Judicial District Court  
Dallas County, Texas  
Trial Court Cause No. DC-19-04371

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**CONCURRING OPINION**

Before Justices Bridges, Pedersen, III, and Evans

Opinion by Justice Pedersen, III

I agree with the holding and the reasoning of the majority opinion. I write separately only to clarify—in the event of any subsequent question—what our majority opinion does *not* say. The issue before us is whether the trial court correctly granted the special appearance as to all defendants, that is, as to James Hanschen (“James”) in all capacities in which he was sued.

We have concluded that James was properly served personally with the petition and citation while he was present in the State of Texas. Accordingly, the trial court obtained personal jurisdiction over him in his individual capacity. *See Burnham v. Superior Court of Cal., Cty. of Marin*, 495 U.S. 604, 619 (1990); *see also Stallworth v. Stallworth*, 201 S.W.3d 338, 344 (Tex. 2006). We have concluded further that James was not properly served in his representative capacities because: (1) the citation in this case completely omitted any indication of James’s representative capacities, *see Stauffer v. Nicholson*, 438 S.W.3d 205, 212 (Tex. App.—Dallas 2014, no pet.); and (2) the return of service did not indicate that he was served in those representative capacities, *see Price v. Dean*, 990 S.W.2d 453, 454–55 (Tex. App.—Corpus Christi–Edinburg 1999, no pet.). “When the attempted service of process is invalid, the trial court acquires no personal jurisdiction over the defendant.” *Lytle v. Cunningham*, 261 S.W.3d 837, 840 (Tex. App.—Dallas 2008, no pet.) (citing *Westcliffe, Inc. v. Bear Creek Constr., Ltd.*, 105 S.W.3d 286, 290 (Tex. App.—Dallas 2003, no pet.)). Based on these conclusions, we have reversed the trial court’s special appearance order in part and affirmed the order in part.

We did not conclude whether the trial court could obtain personal jurisdiction over James in his representative capacities in the future if he were to be served properly in those capacities. If appellants accomplish that service, and James again disputes personal jurisdiction, it will be up to the trial court in the first instance to determine whether he has established minimum contacts with Texas and whether the

exercise of jurisdiction comports with traditional notions of fair play and substantial justice. *See BMC Software Belg., N.V. v. Marchand*, 83 S.W.3d 789, 795 (Tex. 2002). Those issues are beyond our reach in this case.

/Bill Pedersen, III//  
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BILL PEDERSEN, III  
JUSTICE

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