

***Edwards v. Direct Access, LLC, 121 Nev. Adv. Op. 89, 124 P. 3d 1158
(2005)***¹

CIVIL PROCEDURE – GENERAL JURISDICTION

Summary

Appeal from Eighth Judicial District Court's order granting respondent's, Direct Access's, motion to dismiss for lack of jurisdiction because of appellant's, Edwards', failure to state a claim under federal and state statutes.

Disposition/Outcome

Reversed and remanded. As a matter of first impression, the Nevada Supreme Court held that Nevada state courts have general jurisdiction over alleged violations of the Federal Telephone Consumer Protection Act (TCPA).² The court also held that appellant's claimed damages met the limit requirements for jurisdiction in Nevada district courts.

Factual and Procedural History

In 2002 and 2003, on six different occasions, appellant Paul D.S. Edwards received one-page unsolicited facsimiles from respondent Direct Access, LLC regarding low interest loans. As a result, Edwards demanded \$3,000 from Direct Access for alleged violations of the TCPA and state law. Direct Access refused to pay. In 2003, Edwards filed suit in Nevada district court alleging violations of the TCPA, NRS 41.730, invasion of privacy and nuisance. Pursuant to 47 U.S.C. § 227(b)(3), Edwards sought damages in the amount of \$500 for each of the alleged six unsolicited facsimiles. Therefore, Edwards claimed that his statutory damages equaled \$3,000. Additionally, Edwards alleged that the \$3,000 in damages should be trebled to total \$9,000 under the statute.

Direct Access moved to dismiss Edwards' claims for lack of jurisdiction arguing that the district court did not have jurisdiction over TCPA claims because the statute does not create a private cause of action in Nevada state courts. In the alternative, Direct Access argued that even if a violation had occurred, the Nevada district court lacked jurisdiction because Edwards' alleged damages did not meet the district court's monetary threshold.

The district court held that Edwards failed to state a claim under both federal and state statutes. The district court also held that Edwards failed to state a claim in excess of the \$10,000 limit for actions in district court. Edwards appealed.

¹ By David T. Gluth

² 47 U.S.C. § 227(b) (2000).

Discussion

1. General Jurisdiction

The issue of whether Nevada state courts have jurisdiction over claims under TCPA was a matter of first impression for the Nevada Supreme Court. The TCPA prohibits any person from using a facsimile machine to send unsolicited advertisements to another facsimile machine.³ Additionally, §227 (b)(3) of the TCPA provides that a person may bring a private cause of action in the appropriate court of a state if permitted by the laws or courts rules of that state.⁴ The state court may also award treble damages if the court finds that the defendant willfully or knowingly violated the statute.⁵

The federal circuit courts have interpreted the TCPA, specifically §227 (b)(3), as conferring “exclusive jurisdiction on state courts and that there is no private cause of action in federal courts under the TCPA.”⁶ Unless Congress indicates otherwise, state courts are courts of general jurisdiction and may hear cases based on federal law.⁷ Therefore, the Nevada Supreme court held that, absent laws or court rules providing otherwise, Nevada state courts have jurisdiction over causes of action under the TCPA. The court also stated, that while a separate law or court rule conferring the jurisdiction of state courts over TCPA claims is not necessary for the state court to have jurisdiction, the states have the “ultimate decision” on whether or not TCPA claims are actionable in their courts.⁸ Since the Nevada legislature has not passed laws expressly excluding TCPA claims, Nevada courts have general jurisdiction over private causes of action under the TCPA.⁹

³ 47 U.S.C. § 227 (b)(1)(C) states in pertinent part:

(1) Prohibitions. It shall be unlawful for any person within the United States, or any person outside the United States if the recipient is within the United States- (C) to use any telephone facsimile machine, computer, or other device to send, to a telephone facsimile machine, an unsolicited advertisement...

⁴47 U.S.C. § 227 (b)(3) provides:

A person or entity may, if otherwise permitted by the laws or rules of court of a State, bring in an appropriate court of that State--

(A) an action based on a violation of this subsection or the regulations prescribed under this subsection to enjoin such violation,

(B) an action to recover for actual monetary loss from such a violation, or to receive \$500 in damages for each such violation, whichever is greater, or

(C) both such actions.

If the court finds that the defendant willfully or knowingly violated this subsection or the regulations prescribed under this subsection, the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under subparagraph (B) of this paragraph.

⁵ *Id.*

⁶ Edwards v. Direct Access, LLC, 121 Nev. Adv. Op 89, 124 P. 3d 1158, 1160 (2005) (citing Murphy v. Lanier, 204 F.3d 911, 913 (9th Cir. 2000)).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

2. Damages Threshold for Jurisdiction in District Court

Direct Access also argued that the district court lacked jurisdiction because the amount of damages that Edwards alleged did not meet the district court's monetary threshold to vest jurisdiction in the district court. Prior to January 1, 2005, the district court's jurisdiction included cases involving damages claimed in excess of \$7,500.¹⁰ Currently, Nevada justice courts have original jurisdiction where the damages claimed do not exceed \$10,000.¹¹ Edwards claimed damages of \$500 under TCPA for each of the six unsolicited facsimiles he received for a total of \$3,000. Additionally, Edwards alleged that the \$3,000 in damages should be trebled to total \$9,000 under the statute for Direct Access's willful violations. The court held that since the alleged damages of \$9,000 exceeds \$7,500, the jurisdictional threshold for district courts at the time the suit was filed in 2003, the district court erred in concluding Edwards did not meet this jurisdictional requirement.¹²

3. Injunctive Relief

Finally, the court noted that because Edwards also claimed that he was entitled to injunctive relief under §227 (b)(3),¹³ the district court had another basis for jurisdiction.

Conclusion

The court concluded that Nevada state courts have jurisdiction over TCPA claims. The court further held that a separate law or court rule is not necessary to confer state court jurisdiction over such claims. Edwards also met the jurisdictional threshold for damages of \$7,500 at the time he filed his Complaint. Because Edwards sought injunctive relief, there was an additional independent basis for jurisdiction in the district court. Therefore, the court reversed the district court's order dismissing Edwards TCPA claims and remanded.

¹⁰ *Edwards*, 124 P.3d at 1161 (citing NEV. REV. STAT § 160 (2003)).

¹¹ NEV. REV. STAT. § 4.370 (2004).

¹² *Edwards*, 124 P. 3d at 1160.

¹³ 47 U.S.C. § 227(B)(3) (2000).