

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 02-3953

M. Otis Dolphin, Jr.,

Appellant,

v.

Equibase Company, L.L.C.; Jockey
Club; Jockey Guild,

Appellees.

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Appeal from the United States
District Court for the Eastern
District of Missouri.

[UNPUBLISHED]

Submitted: May 7, 2003
Filed: May 13, 2003

Before MORRIS SHEPPARD ARNOLD, BYE, and RILEY, Circuit Judges.

PER CURIAM.

M. Otis Dolphin, Jr. (Dolphin), a Missouri citizen, sued defendants--who are citizens of Kentucky, New York, and Nevada--for allegedly fixing California horse races upon which he had bet in Illinois. Dolphin appeals the district court's¹ order dismissing his diversity action for lack of personal jurisdiction.

¹The Honorable Thomas C. Mummert, United States Magistrate Judge for the Eastern District of Missouri, to whom the case was referred for final disposition by consent of the parties pursuant to 28 U.S.C. § 636(c).

Upon de novo review, see Clune v. Alimak AB, 233 F.3d 538, 541 (8th Cir. 2000), we conclude the district court lacked personal jurisdiction over defendants. Dolphin presented evidence defendants' advertisements reached Missouri, and their websites could be accessed from Missouri. However, jurisdiction cannot be based solely on the ability to access a website, see GTE New Media Servs., Inc. v. BellSouth Corp., 199 F.3d 1343, 1349-50 (D.C. Cir. 2000), or on defendants' alleged limited advertising in Missouri, see Burlington Indus., Inc. v. Maples Indus., Inc., 97 F.3d 1100, 1103 (8th Cir. 1996), especially considering Dolphin alleged no connection between the websites or the advertising and his claims. Thus, there were insufficient contacts to justify the court's exercise of jurisdiction over defendants. See Porter v. Berall, 293 F.3d 1073, 1076 (8th Cir. 2002) (listing five factors to consider, including relation of cause of action to contacts); Guinness Import Co. v. Mark VII Distributions, Inc., 153 F.3d 607, 614 (8th Cir. 1998) ("defendant's contacts with forum state must not be random, fortuitous, attenuated, or the result of unilateral activity of third person").

Accordingly, we affirm.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.