



we conclude Chizek was entitled to an evidentiary hearing on the personal jurisdiction issue, we summarily reverse the order and remand for further proceedings. *See* WIS. STAT. RULE 809.21 (2017-18).

The entities and individuals comprising Hull Trailers are located in Iowa and are in the business of manufacturing and selling trailers. Chizek filed this lawsuit based on alleged defects in the trailers he purchased, which Chizek arranged to have picked up from Iowa after Chizek placed a telephone order from Wisconsin. Hull Trailers filed a motion to dismiss on personal jurisdiction grounds. The parties briefed the issue and filed affidavits in support of their respective positions.

The circuit court acknowledged Chizek's request for an evidentiary hearing, but it concluded a hearing was unnecessary because Chizek did not seek to conduct further jurisdictional discovery and the parties' affidavits did not show a dispute of fact that required an evidentiary hearing. Based on the undisputed facts contained in the affidavits, the court concluded it could not validly exercise personal jurisdiction over Hull Trailers.

We agree with the circuit court that there do not appear to be material issues of disputed fact regarding Hull Trailers' contacts with Wisconsin. Nonetheless, *Kavanaugh Restaurant Supply, Inc. v. M.C.M. Stainless Fabricating, Inc.*, 2006 WI App 236, 297 Wis. 2d 532, 724 N.W.2d 893, appears to require circuit courts to hold evidentiary hearings upon request to decide matters of personal jurisdiction. The court stated that "[a]lthough it may seem counter-intuitive, a plaintiff is normally entitled to an evidentiary hearing when a defendant challenges personal jurisdiction even if the plaintiff does not demonstrate that an evidentiary hearing is necessary." *Id.*, ¶8. Indeed, relying on *Bielefeldt v. St. Louis Fire Door Co.*, 90 Wis. 2d 245, 279 N.W.2d

464 (1979), and *Henderson v. Milex Products, Inc.*, 125 Wis. 2d 141, 370 N.W.2d 291 (Ct. App. 1985), the court stated that “neither case requires that the complaint or any submission by a plaintiff show the need for an evidentiary hearing.” *Kavanaugh*, 297 Wis. 2d 532, ¶10.

Hull Trailers responds by emphasizing *Kavanaugh*’s observation that an evidentiary hearing need not be held “every time a defendant moves to dismiss for lack of personal jurisdiction.” *Id.*, ¶12. Read in context, however, the *Kavanaugh* court clearly viewed a stipulation by the parties as the only exception to the general rule requiring evidentiary hearings. *Id.*, ¶¶11-12. Consistent with this understanding, *Kavanaugh* stated the circuit court could not rely on the affidavits submitted by the defendant in the absence of a concession by the plaintiff that the facts stated therein were correct. *Id.*, ¶11.

Here, even though Chizek submitted affidavits in opposition to the motion, and even though the averments contained therein did not directly rebut the averments in Hull Trailers’ submissions, he never stipulated that the facts contained in Hull Trailers’ affidavits were correct. Moreover, Chizek requested an evidentiary hearing on the issue of personal jurisdiction. Under these circumstances, *Kavanaugh* required the circuit court to hold such a hearing.

Therefore,

IT IS ORDERED that the order is summarily reversed and the cause remanded for further proceedings. WIS. STAT. RULE 809.21 (2017-18).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*