

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM JASPER COUNTY
Court of Common Pleas

S.C. Supreme Court
S.C. Supreme Court

Richard E. Fields, Special Referee

Appellate Case No. 2012-213391

Barbara Clark, Warren E. Hatcher, Cassie Deeton, Daniel Green,
Powell Hampton, Amos Hatcher, Bobby Keeton, James Moseley,
Willie B. Oliver, Individually and as General Officers of the
RMUE Church.....Respondents

v.

Fred Henderson Moore.....Appellant

INITIAL BRIEF OF RESPONDENTS

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STATEMENT OF ISSUES ON APPEAL

- A. WHETHER THIS COURT HAS ALREADY REJECTED APPELLANT’S ARGUMENT THAT THE NOTICE OF REMOVAL DEPRIVED JUDGE FIELDS OF JURISDICTION?
- B. WHETHER APPELLANT CONSENTED TO VENUE IN JASPER COUNTY AND ANY OBJECTION TO VENUE WAS NOT PRESERVED FOR APPEAL?
- C. WHETHER THE ISSUE OF FEDERAL JURISDICTION IS MOOT AND RES JUDICATA, BECAUSE THE FEDERAL DISTRICT COURT RULED UPON THE ISSUE AND APPELLANT DID NOT APPEAL THE RULING?

STATEMENT OF FACTS/STATEMENT OF THE CASE

This case involves a dispute among members of the Reformed Methodist Union Episcopal Church (the "Church"). The factual and procedural histories are so intertwined that Respondents will treat them together. Barbara Clark, the initial Plaintiff, filed her initial Summons and Complaint in the Court of Common Pleas for Jasper County, South Carolina, on May 2, 2012, against the Reformed Methodist Union Episcopal Church and Fred Henderson Moore. Ms. Clark alleged one count for accounting and enforcement of her rights and a second count for the removal of Defendant Fred Henderson Moore. (ROA p. ___) Prior to any Answer being filed, Ms. Clark voluntarily dismissed the Church from the action without prejudice and the Voluntary Dismissal was filed on July 9, 2012. (ROA p. ___) The Defendant, Fred Henderson Moore, was subsequently served and Mr. Moore filed his Answer with the Court of Common Pleas for Jasper County on July 16, 2012. Though not separately alleged, the Defendant asserted a general denial and defenses based generally upon a civil court's lack of jurisdiction of an ecclesiastical matter. (ROA p. ___) The Defendant did not specifically object to the State Court, as opposed to Federal Court, lack of jurisdiction and the Defendant filed no Notice of Removal at this time.

On July 18, 2012, the parties next consented to an Order of Reference by the Clerk of Court for Jasper County to Retired Circuit Court Judge Richard E. Fields as Special Referee with Finality. The Plaintiff was the moving party of the Order of Reference and Judge Fields and the Defendants both consented to the reference. (ROA p. ___) The parties next engaged in written discovery and depositions and some other pre

trial maneuvering. The parties have had several hearings and attempted mediations with Judge Fields and the matter remains hotly and bitterly contested.

Some other members of the Church were allowed to intervene as Plaintiffs with Ms. Clark (namely Warren E. Hatcher, Cassie Keeton, Daniel Green, Powell Hampton, Amos Hatcher, Bobby Keeton, James Moseley, and Willie B. Oliver, all in their individual capacities and as General Officers of the Church. The Plaintiffs filed an Amended Summons and Complaint on October 12, 2012. Other than the new parties and the lack of the previously dismissed Church, the body of the Amended Complaint was almost verbatim the original Complaint and, importantly, asserted no new claims or causes of action. The Amended Complaint also changed tenses from what the Defendant was attempting to do to what the Defendant had, by that time, done. (ROA p. ___)

A pre trial conference was held on Wednesday, October 31, at which time a hearing was set for Friday, November 2, to deal with actions Defendant proposed to take on November 5. The hearing was commenced on November 2, 2012, at 10:00 a.m., before Judge Fields and the parties argued their positions extensively. The Report of Proceedings from the hearing and exhibits thereto more fully elaborates the background of this case. The Defendant next filed a Notice of Removal with the Clerk of Court for Jasper County, by Notice of Removal dated November 1, 2012, and received via fax by the Plaintiff's attorney on November 2 at 3:01 p.m.. (ROA p. ___) The Defendant based his Notice of Removal on 28 U.S.C. § 1446(a) et seq and 28 U.S.C. § 1331 and, specifically on the theory that action was one over which the District Court of the United States has original jurisdiction. First, the Defendant asserts that his First Amendment rights to Freedom of Religion have been or are being violated. Second, the Defendant

asserts he has a right to be tried in his home county of Charleston County, South Carolina, rather than Ms. Clark's home county of Jasper County, South Carolina. The case was remanded back to State Court by Order of the Honorable Sol Blatt on March 12, 2013. Judge Blatt found that the Notice of Removal was not timely and the case did not involve issues that were exclusively Federal. (ROA p. ____) By Order of April 1, 2013, this Court certified this matter to be heard before the South Carolina Supreme Court and asked that the parties submit briefs addressing whether this Court should vacate the Order on appeal and other Orders entered by Judge Fields while the matter was removed to Federal Court. The parties submitted briefs and, by Order dated July 11, 2013, this Court found that the Order on appeal should not be vacated and that the other Orders entered during removal were not before the Court.

ARGUMENT AND CITATION OF AUTHORITY

A. THIS COURT HAS ALREADY REJECTED APPELLANT'S ARGUMENT THAT THE NOTICE OF REMOVAL DEPRIVED JUDGE FIELDS OF JURISDICTION.

By Order dated April 1, 2013, this Court voiced concerns about Judge Fields to issue an Order after Appellant had filed a Notice of Removal to Federal Court and this Court requested that the parties file a response addressing whether this Court should vacate the Order on appeal and the other Orders issued by Judge Fields while the matter was removed to Federal Court. This Court noted that if the Order on appeal were vacated, this appeal would be moot. The parties next submitted briefs on the issue. Respondents stand on their brief and will not repeat those arguments here. After consideration of the parties' briefs, by Order of July 11, 2013, this Court found that Judge Fields' Order on appeal should not be vacated and that the other Orders issued by Judge

Fields during the removal to Federal Court were not before this Court. Appellant now seeks to relitigate this issue and Respondents submit that the issue has been ruled upon by this Court and should not be reconsidered.

B. APPELLANT CONSENTED TO VENUE IN JASPER COUNTY AND ANY OBJECTION TO VENUE WAS NOT PRESERVED FOR APPEAL.

Pursuant to S. C. Code Ann. § 15-7-50, nothing in S.C. Code Ann. §§ 15-7-10, 15-7-30 or 15-7-40 contained shall be so construed as to prevent the hearing of any such action as is referred to in those sections by consent of the parties or their attorneys to the action in a county other than that in which the action may have been brought and may be pending. In the present case, the parties, by their attorneys, consented to the Order of Reference which provided that the case would be tried before Retired Circuit Judge Richard Fields in Jasper County. Appellant should be estopped to now object to venue in Jasper County.

Further, Appellant cannot raise an objection to venue, because the issue was not presented to and ruled upon by Judge Fields. It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review. Supreme Court will not consider any point which was not presented and considered below unless it involves jurisdiction of the court. A question of law which was not presented to or passed upon by the trial court cannot be raised on appeal. *See eg. Elam vs. South Carolina Department of Transportation*, 361 S.C. 9, 602 S.E.2d 772 (S.C. 2004). Venue is not jurisdictional. Subject matter jurisdiction is the power to hear and determine cases of the general class to which the proceedings in question belong. Venue is the place or geographical location of trial. The propriety of either is independent of the other. *See eg. Dove v. Gold Kist*,

Inc., 314 S.C. 235, 442 S.E.2d 598 (1994). Judge Fields' Order does not address venue. Appellant could have filed a Rule 59 Motion to preserve the issue for appeal, but Appellant failed to do so. Due to Appellant's consent to venue via the Order of Reference and the issue of venue not being addressed by Judge Fields, Appellant's argument now on venue is not properly before this Court.

C. THE ISSUE OF FEDERAL JURISDICTION IS MOOT AND RES JUDICATA, BECAUSE THE FEDERAL DISTRICT COURT RULED UPON THE ISSUE AND APPELLANT DID NOT APPEAL THE RULING.

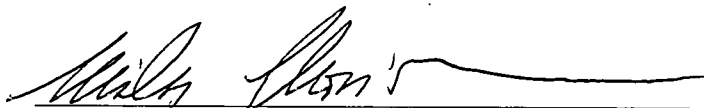
After this case was removed to Federal Court, Respondents filed a Motion to Remand and Appellant's arguments that the case involved exclusive Federal questions were extensively argued and litigated. Judge Blatt's Order Remanding the case to State Court addresses the arguments which Appellant raises here and rejected those arguments. (ROA p._____) Appellant did not file an appeal of Judge Blatt's Order of Remand to the U.S. Court of Appeals, but rather seeks to reargue and relitigate those arguments here.

An unchallenged ruling becomes the law of the case and requires affirmance. *See eg. Charleston Lumber Co., Inc. v. Miller Housing Corp., 338 S.C. 171, 525 S.E.2d 869 (S.C. 2000)* With the District Court having fully ruled against Appellant on the issues of Federal jurisdiction and Appellant not having appealed the District Court's Order, those issues are now the law of the case and should not be relitigated here. Assuming *arguendo* that these issues are properly before this Court and further assuming this Court rules with Appellant, then this case would be in a legal limbo between a State Court that has ruled the Federal Court has jurisdiction and a Federal Court that has ruled the State Court has jurisdiction. Such should not be the case and this Court should enforce and not disturb Judge Blatt's ruling.

CONCLUSION

The question of the Circuit Court's jurisdiction after the filing of the Notice of Removal has already been ruled upon by this Court and this Court should stand by its prior ruling. Appellant consented to venue in Jasper County by consenting to the Order of Reference to Judge Fields as Special Referee. The Order on appeal did not address venue, so the issue was not preserved for this Court's review. The District Court considered and ruled upon the questions of Federal jurisdiction, Appellant did not appeal the District Court's ruling and it is now the law of the case and should not be relitigated here. For these reasons, this Court should affirm the Order of Judge Fields and remand this case to Judge Fields for further proceedings.

Respectfully submitted this ^{5th} ~~2nd~~ day of NOVEMBER, 2013.



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PROOF OF SERVICE

I certify that I have, this date, served a copy of the Respondents' Designation of Matter to be Included in the Record on Appeal and Initial Brief of Respondents on the below listed counsel of record by depositing the same in the United States Mail, with proper postage affixed, and addressed as follows:

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Respectfully submitted this 8th day of NOVEMBER, 2013.



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