

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

The Hon. Daniel D. Hall, Circuit Court Judge
S. Jackson Kimball, Special Circuit Court Judge

Case No.: 2013-CP-46-00246

Morningstar Fellowship Church,

Appellant-Respondent,

v.

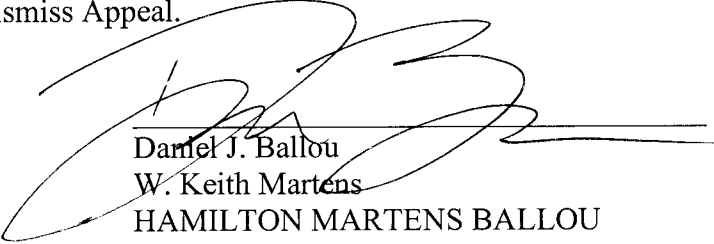
York County, South Carolina

Respondent-Appellant.

**REPLY TO RETURN TO
MOTION TO DISMISS INTERLOCUTORY APPEAL**

Pursuant to Rule 240(f), Respondent-Appellant hereby replies to Appellant's Return to Respondent's Motion to Dismiss Appeal.

March 9, 2015



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SC Court of Appeals

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MEMORANDUM IN SUPPORT OF REPLY

The appeal arises from the Order of the Honorable Daniel D. Hall filed on February 3, 2015, regarding York County’s Motion to Exclude Damages and Motion in Limine (“Order”). The Order finds and concludes that certain evidence that had been proposed by the Appellant-Respondent Morningstar Fellowship Church to be offered at the trial of this case should be excluded. Appellant-Respondent appealed the Order on February 4, 2015, and on February 13, 2015, Respondent-Appellant moved to dismiss the appeal on the grounds that the Order is interlocutory and not immediately appealable. On March 4, 2015, Appellant-Respondent filed a Return to the Motion to Dismiss. A true and correct copy of the Order was attached to the Motion to Dismiss as Exhibit “A.”

Appellant–Respondent contends that the effect of the Order is to eliminate all of its claims for affirmative relief “and reduce the case simply to a trial of Respondent’s claims,”

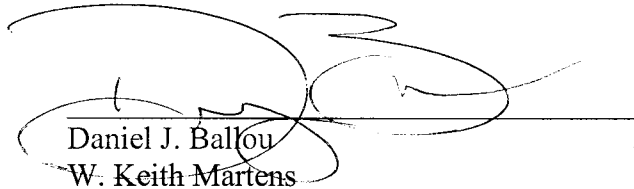
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analogizing these facts to the state's appeal of a pretrial order suppressing evidence in a criminal proceeding. While under State v. McKnight, 287 S.C. 167, 337 S.E.2d 208 (1985), an order suppressing evidence against a defendant in General Sessions is immediately appealable, that principle arises from the unique and limited appeal rights of the state, and is inextricably linked to the attachment of jeopardy. In Common Pleas, a preliminary order on the admissibility of evidence requires a proffer of that evidence and final ruling at trial excluding it, and any errors made by the trial court can be corrected on appeal, and the case retried, if necessary. In General Sessions, however, a pretrial order excluding the state's evidence must be appealed immediately, because after the jury is sworn and jeopardy attaches, it cannot be corrected on appeal. See, S.C.A.C.R. 203(b)(2) (In those cases in which the State is allowed to appeal a pre-trial order or ruling ... the notice of appeal must be served before the jury is sworn or, if tried without a jury, before the State begins the presentation of its case in chief.)

Nor does the ruling in Widener v. Fort Mill Ford, 381 S.C. 522, 674 S.E.2d 172, (Ct. App. 2009), support the immediate appealability of the Order in this case. In Widener, the order dismissing the plaintiff's case and compelling arbitration did in fact dismiss the case, and therefore "finally determined the rights of the parties." 381 S.C. at 524. Distinguishing that order with one staying litigation pending arbitration, the Widener Court relied on authority under the Federal Arbitration Act from other Circuits, following the trend of allowing immediate appeal of orders dismissing (as opposed to staying) cases subject to arbitration. See, Carolina Care Plan, Inc. v. United Healthcare Svcs., Inc., 361 S.C. 544, 606 S.E.2d 752 (2004)(denying immediate appeal of order compelling arbitration and staying remaining claims).

The Order is not a final order, and is not immediately appealable pursuant to, S.C. Dept. Transp. V. McDonald's Corp., 375 S.C. 90, 650 S.E.2d 473 (2007) and Ex parte Wilson, 367 S.C. 7, 625 S.E.2d 205 (2006), previously argued.

March 9, 2015



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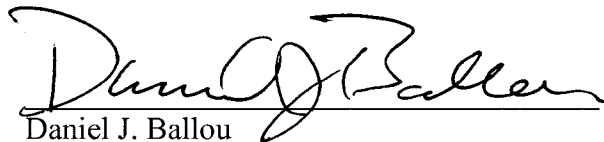
York County, South Carolina

Respondent- Appellant.

PROOF OF SERVICE

The undersigned certifies that she has served this Reply to Return to Motion to Dismiss Appeal on the Appellant-Respondent by depositing a copy of it in the United States Mail, postage prepaid, on March 9, 2015, addressed to its attorney of record, Richard B. Fennell, James, McElroy & Diehl, PA, 600 South College Street, Charlotte, North Carolina 28202.

March 9, 2015



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SC Court of Appeals

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March 9, 2015

The Honorable Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
PO Box 11629
Columbia, SC 29211

RE: Morningstar Fellowship Church vs. York County
C. A. No.: 2013-CP-46-00246
Appellate Case No.: 2015-000262

Dear Ms. Kitchings:

I have enclosed for filing originals and seven (7) copies each of York County's Reply to Appellant's Return to its Motion to Dismiss Appeal and Memorandum in Support of the Reply. Please file the originals and return the clocked copies to me in the envelope provided.

By copy of this letter to opposing counsel, I am enclosing a copy of the Reply to Appellant's Return to Motion to Dismiss and Memorandum in support of same.

Thank you for your cooperation in this matter.

Sincerely,



L. Melia Sweatt
Paralegal

/lms
Enclosures
cc: Richard B. Fennell
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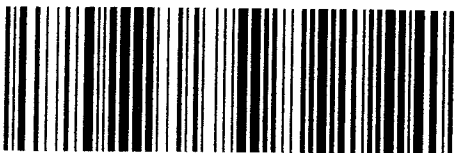
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