

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Alexander S Macaulay, Circuit Court Judge

Case No. 2013-CP-04-2409

RECEIVED

APR 20 2015

SC Court of Appeals

Hubert Bethune, . . . Respondent,

vs

Waffle House, Inc , Appellant

FINAL BRIEF OF RESPONDENT

Rodney M Brown
ATTORNEY FOR RESPONDENT
210 S Main Street
Fountain Inn, South Carolina 29644
(864) 862-2528

TABLE OF CONTENTS

Table of Authorities	ii
Statement of Issues on Appeal	1
Statement of the Case	2
Arguments	4
I The Magistrate Court was correct in dismissing the Magistrate's action	4
A Sole issue before the Appellate Court	4
B Plaintiff has a right to have his case in any Court of his choosing	5
C The Magistrate was correct to dismiss the Magistrate's action	6
D Judicial economy would not be served by granting the Appellant's relief	10
Conclusion	11

TABLE OF AUTHORITIES

Cases

Amisub of S C, Inc vs Passmore, 316 S C 112,
114, 447 S.E 2d 207, 208 (1994)

Lake vs Reeder Construction Company, 330 S C 242, 248, 498 S E 2d 650, 653
(Ct of App 1998)

In re Miller, 393 S C 248, 713 S.E 2d 253, 257 (2011)

State vs Guthrie, 352 S.C 103, 107, 572 S.E 2d 309, 311-312 (Ct of App. 2002)

Story vs Nicpee, 105 S C 265, 89 S E 666 (1916)

Statutes and Rules

S C Code Ann Section 22-3-10

S C Code Ann Section 22-3-30

STATEMENT OF ISSUES ON APPEAL

- I The Magistrate Court was correct in dismissing the Magistrate's action
 - A Sole issue before the Appellate Court
 - B Plaintiff has a right to have his case in any Court of his choosing
 - C The Magistrate was correct to dismiss the Magistrate's action
 - D Judicial economy would not be served by granting the Appellant's relief

STATEMENT OF THE CASE

This case arises from the Magistrate Court dismissing the case pending in that Court because the Plaintiff/Respondent had filed an action involving the same set of facts and circumstances in Circuit Court

The Plaintiff/Respondent, Hubert Bethune, initially filed a negligence action in Magistrate Court in 2012. The Plaintiff/Respondent alleges that the Waffle House was negligent in serving him food that contained parts of a broken plate which caused him to cut his mouth and his tongue. The Plaintiff/Respondent subsequently determined that the injury was more serious than he thought and that he had a permanent impairment to his tongue. Accordingly, the Plaintiff/Respondent filed a Motion with the Magistrate's Court to transfer this matter to Circuit Court since his damages now exceeded the jurisdictional limit of Magistrate Court.

That Motion had been set a number of times and had never been heard by the Magistrate Court. Therefore, the Plaintiff/Respondent filed a separate action in Common Pleas Court.

The Magistrate's office then called to schedule the Motion to Transfer and Plaintiff/Respondent's counsel informed the Magistrate Court that an action was already filed in Common Pleas Court. The Magistrate Court directed Plaintiff/Respondent's counsel to send him an Order of Dismissal for it was appropriate for him to dismiss the case given that the case was pending in Common Pleas Court. The Order was filed.

Waffle House subsequently filed an objection and was given a hearing. Waffle House presented all the arguments to the Magistrate that they are presenting to the Appellate Court herein. Their objection was denied and an Amended Order of Dismissal was filed.

Waffle House then appealed the dismissal to the Circuit Court. The Appellant filed a Notice of Appeal outlining why the Magistrate Court dismissal was inappropriate and the Plaintiff/Respondent filed a Return to the Notice of Appeal. A hearing was held in front of Judge Alexander S. Macaulay. After full argument and discussion regarding all the issues raised herein, the Judge affirmed the Magistrate Court's dismissal. Waffle House then filed a Rule 59 Motion which was denied.

ARGUMENTS

I. The Magistrate Court was correct in dismissing the Magistrate's action.

A. Sole issue before the Appellate Court

There is but one issue to be decided by the Court of Appeals. Namely, was the Magistrate Court correct in dismissing the Magistrate action when the Plaintiff/Respondent had another action pending in the Court of Common Pleas concerning the same facts

A good deal of the Appellant's argument as cited on Pages 3 and 4 of their brief is completely irrelevant to the issue before the Court. The Plaintiff/Respondent's right to voluntarily dismiss their case and whether the motion was supported by any evidence, is irrelevant. These motions were never filed and/or heard.

The only issue is whether the Court upon its own motion was correct in dismissing the case. There wasn't a motion pending by the Plaintiff/Respondent to have the case dismissed.

Accordingly, this Court is asked to decide whether there was an abuse of discretion in dismissing the Magistrate case. An abuse of discretion "occurs when the conclusions of the Trial Court are either controlled by an error of law or based upon unsupported factual conclusions". In re Miller, 393 S.C. 248, 713 S.E.2d 253, 257 (2011). In this case there was absolutely not an abuse of discretion, and the Magistrate Court was completely correct in dismissing the Magistrate Court action. The Respondent

submits that the Magistrate Court actually was required to dismiss the Magistrate Court action, and it doesn't rise to the level of an abuse of discretion

B. Plaintiff has a right to have his case in any Court of his choosing

The Plaintiff/Respondent certainly has the right to file his action in a Court of his choosing. There is no statute, rule, regulation or case that prohibits a Plaintiff from choosing the Court they want to file a civil action.

Furthermore, there is no statute, rule, regulation or case prohibiting the Plaintiff/Respondent from transferring a Magistrate Court case to Common Pleas Court when it is determined that the damages exceed the jurisdictional limits of the Magistrate Court.

The legislature determined that Magistrate's have "concurrent civil jurisdiction with the Court of Common Pleas in certain factual situations" Section 22-3-10 of the Code of Laws of South Carolina as enumerated. Section 22-3-10 of the Code of Laws of South Carolina provides as follows.

"Magistrates have concurrent civil jurisdiction in the following cases
(2) in actions for damages for injuries to rights pertaining to the person or personal or real property, if the damages claimed do not exceed \$7,500 00;"

Therefore, it is clear that this legislature has specifically provided that a Plaintiff may file a civil action for damages in Common Pleas or Magistrate Court as long as the damages don't exceed \$7,500 00. However, the Magistrate Court is a Court of limited jurisdiction and does not have jurisdiction in cases where the damages exceed \$7,500 00. See, Section 22-3-10 of the Code of Laws of South Carolina and Section 22-3-30 of the Code of Laws of South Carolina.

The Plaintiff/Respondent could have filed his original action in Common Pleas Court or Magistrate Court and the Defendant/Appellant could not have objected. It is further clear that when the damages exceed \$7,500.00 Magistrate Court does not have jurisdiction.

In this case, the Respondent determined after his suit was filed that his injury was more severe since he had a permanent injury and his damages were greater than the jurisdictional limit of the Magistrate Court. The Respondent filed a Motion to have it transferred to Common Pleas Court, but it was never heard (RoA 25). The Magistrate Court appropriately determined that two actions could not be pending in two Courts and dismissed the Magistrate Court action due to a lack of jurisdiction. The Court of Common Pleas also determined that decision was correct and affirmed the Magistrate Court (RoA 1). They both essentially found that since there was a separation action in Common Pleas Court and that damages exceeded the Magistrate Court jurisdiction, the Magistrate Court action should be dismissed.

It is interesting to note that half of Appellant's arguments supports this position. The Appellant goes to great lengths to convince this Court that the Plaintiff/Respondent cannot have two actions pending in two Courts regarding the same matter involving the same set of facts and damages. That is exactly the reason the Magistrate Court dismissed their case. (RoA 6-7)

The Respondent maintains that the Magistrate Court was correct in determining the Plaintiff/Respondent had the right to have his action pending in the Court of Common Pleas.

C. The Magistrate was correct to dismiss the Magistrate's action.

As noted above and further discussed herein, the Magistrate was correct in dismissing their case. (RoA 6-7) Furthermore, the Common Pleas Court acting as an Appellate Court was correct in affirming this decision (RoA 1)

Magistrate Court is a Court of limited jurisdiction, and it is uncontradicted that when damages exceed \$7,500 00 they do not have jurisdiction See, Code of Laws 22-3-10 and 22-3-30 of the Code of Laws of South Carolina In fact, the most authoritative rule of law regarding this issue is found in Section 22-3-30 of the Code of Laws of South Carolina This section provides that

“when a counterclaim is filed which if successful would exceed the Magistrate’s civil jurisdictional amount as provided in Section 22-3-10, then the initial claim and Counterclaim must be transferred to the docket of the Common Pleas Court for that judicial circuit”.

It is clear that the Magistrate Court has no jurisdiction when the damages exceed the jurisdictional limits The legislature provides that the action must be transferred to the Court of Common Pleas

It can hardly be argued that since the Magistrate Court must transfer the Counterclaim pursuant to Statute 22-3-30 that it would not be required to transfer the Plaintiff’s action if damages exceed the jurisdictional limits This would be an absurd conclusion

Judge Macaulay in the Court of Common Pleas Order denying Waffle House’s Motion for Reconsideration appropriately determined

“that the Appellate Court must always take notice of the lack of subject matter jurisdiction Amisub

of S. C., Inc. vs. Passmore, 316 S.C. 112, 114, 447 S.E.2d 207, 208 (1994). The lack of subject matter jurisdiction can be raised at any time. It can be raised for the first time on appeal, and can be raised sua sponte by the Court. See e.g., Lake vs. Reeder Construction Company, 330 S.C. 242, 248, 498 S.E.2d 650, 653 (Ct. of App. 1998) (Holding issues relating to subject matter jurisdiction would be raised at any time.) The acts of a Court with respect to a matter as to which it has no jurisdiction are void. State vs. Guthrie, 352 S.C. 103, 107, 572 S.E.2d 309, 311-312 (Ct. of App. 2002). (RoA 4-5)

That is exactly the case herein. The Court raised sua sponte the issue of subject matter jurisdiction herein when the Magistrate Court determined that there were two actions pending in Common Pleas and Magistrate Court. The Magistrate Court was informed that the Plaintiff/Respondent's action exceeded the limited jurisdictional limits of Magistrate Court and wanted their matter transferred to Common Pleas Court. Since the transfer did not happen in a timely fashion, then the Plaintiff/Respondent filed the action in Common Pleas Court.

Therefore, it is not only appropriate, but required of the Magistrate Court to dismiss the Magistrate Court action since it did not have jurisdiction over this matter any longer. That is exactly what the Court of Common Pleas determined. In fact, that Court stated it correctly when they said "where the actual value of damages claimed exceed its jurisdictional amount, Magistrate Court is without jurisdiction to try the case." Story vs. Nicpee, 105 S.C. 265, 89 S.E. 666 (1916). (RoA 4)

In this case, the Magistrate Court had lost jurisdiction over the case since the damages claimed exceeded its jurisdictional amount just like Judge Macaulay

determined. Therefore, the Magistrate Court was required to dismiss the case since it no longer had jurisdiction over the matter.

The Respondent does not believe that the Appellant's argument that they sustained legal prejudice is even pertinent or appropriate to this argument since it is a question of jurisdiction of the Courts. Whether the Appellant suffered any prejudice is not an issue to be determined by this Court since the Magistrate Court was without jurisdiction to maintain this case. An abuse of discretion did not occur because the conclusion of the Magistrate Court was not controlled by an error of law or based upon unsupported factual conclusions. See *In re Miller*, supra.

But the Respondent will address it briefly to show the Appellate Court that there was no legal prejudice received by the Appellant anyhow. The Appellant in fact has more legal rights in the Court of Common Pleas than they would have in Magistrate Court. They have the right (not required) to engage in discovery. They can obtain summary judgment. They can engage in depositions and have the full use of all rules of civil procedure that they did not have in Magistrate Court. The Appellant has lost no legal rights but only gained more legal opportunities and arguments.

The Appellant maintains that they were legally prejudiced by having the case transferred to a Court without a cap of damages. This is required by the statutes when the damages exceed \$7,500.00 and cannot be considered to be prejudice.

If the outcome of this case creates legal prejudice then there is legal prejudice with every determination made by a Court which adversely affects a party. A party could easily claim legal prejudice if they lose a motion to dismiss, a motion for summary

judgment or an evidentiary issue presented at trial. The Appellant is in the same position as any party would be when they receive an adverse decision by the Court. It cannot be considered to be legal prejudice when someone simply loses in a motion or argument pursuant to the Rules of Civil Procedure or even evidentiary questions. If that were the case then there would be legal prejudice in every ruling the Court made.

The facts presented to the Magistrate in making this decision was that there were two actions pending regarding the same matter and that the damages exceeded the jurisdictional limits of the Magistrate Court. The Magistrate Court actions are required and mandated when they lose jurisdiction of a case to transfer it to the Court of Common Pleas and it cannot be even considered an issue of an "abuse of discretion".

D. Judicial economy would not be served by granting the Appellant's relief.

In this matter if the Appellant would be successful, they would merely be defeating every concept of judicial economy known to our Courts. If the Appellant is successful then the matter would be returned to the Magistrate Court in same posture that it was prior to the dismissal. Accordingly, there would be an action pending in two Courts, and there would be a Motion to Transfer pending since the jurisdictional limit of the Magistrate Court was exceeded in this case. (The Respondent didn't withdraw their motion as alleged by the Appellant.)

Accordingly, the parties would be back to the exact same position they are today if the Appellant is successful. The Magistrate would have to transfer the case or to dismiss the case since there would be two cases pending and the damages exceed the jurisdictional limit of Magistrate Court. We would be back in the Court of Common

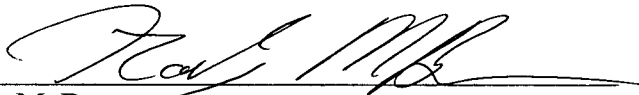
Pleas which is exactly where we are now waiting for trial Absolutely nothing would be accomplished other than a long delay of the trial and denying the Plaintiff/Respondent's right to the relief, if any he is entitled to, as determined by a jury

CONCLUSION

The Respondent maintains that the Magistrate Court was absolutely correct in dismissing the Magistrate Court action for a lack of jurisdiction and that the Court of Common Pleas was correct in affirming that in determining that the Magistrate Court did not have subject matter jurisdiction The Magistrate Court is a Court of limited jurisdiction and once that jurisdiction is exceeded, they no longer have jurisdiction over the case

Therefore, the Magistrate Court was required to transfer the case to Common Pleas Court or in this case dismiss the Magistrate Court case since they no longer had jurisdiction Accordingly, the Respondent respectfully requests this Appellate Court to deny the Appellant's relief As noted above, judicial economy would be lost if the Appellate Court were to grant the Appellant's relief and we ended up in the same place a year or a year and a half from now

Respectfully submitted



Rodney M Brown
210 S Main Street
Fountain Inn, South Carolina 29644
(864) 862-2528
Attorney for Respondent

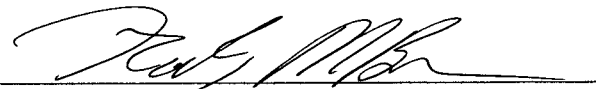
April 14, 2015

CERTIFICATE OF COUNSEL

The undersigned counsel for the Respondent certifies that the Final Brief
complies with Rule 211(b), SCACR

RODNEY M BROWN, P A

BY



Rodney M Brown
210 S Main Street
Fountain Inn, South Carolina 29644
(864) 862-2528

Counsel for Respondent

Fountain Inn, South Carolina

April 14, 2015

RECEIVED

APR 20 2015

SC Court of Appeals

CERTIFICATE OF COMPLIANCE

RECEIVED

APR 20 2015

SC Court of Appeals

The undersigned counsel for the Respondent certifies that the Final Brief of Respondent complies with the Supreme Court's Revised Order of April 15, 2014, regarding personal identifiers and sensitive information

RODNEY M BROWN, P A

BY



Rodney M Brown
210 S Main Street
Fountain Inn, South Carolina 29644
(864) 862-2528

Counsel for Respondent

Fountain Inn, South Carolina

April 14, 2015

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

APR 20 2015

APPEAL FROM ANDERSON COUNTY
Alexander S Macaulay, Circuit Court Judge

SC Court of Appeals

Case No 2013-CP-04-2409

Hubert Bethune, .

Respondent,

vs

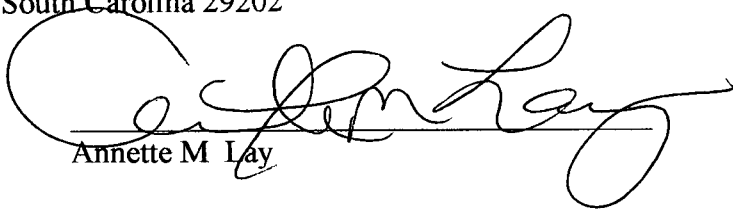
Waffle House, Inc ,

Appellant

CERTIFICATE OF SERVICE

The undersigned employee of Rodney M Brown, P A , counsel for the Respondent, does hereby certify that service of the Final Brief of Respondent was made upon Appellant's counsel by placing a copy in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 16th day of April, 2015

Andrew F Lindemann
Davidson & Lindemann, P A
Post Office Box 8568
Columbia, South Carolina 29202


Annette M Lay