

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 15-12508-CC

JAMES N. STRAWSER,
JOHN E. HUMPHREY,
ROBERT POVILAT,
ANNA LISA CARMICHAEL,
KRISTY SIMMONS, et al.,

Plaintiffs-Appellees,

versus

STATE OF ALABAMA, et al.,

Defendants,

TIM RUSSELL,
in his official capacity as Probate Judge
of Baldwin County, Alabama,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Alabama

Before: TJOFLAT, HULL, and WILSON, Circuit Judges

BY THE COURT:

Alabama Probate Judge Tim Russell appeals from the following three district court orders: (1) the court's April 23, 2015 order denying Judge Russell's motion to dismiss; (2) the court's May 21, 2015 order denying Judge Russell's motion to alter or amend the order denying his motion to dismiss; and (3) the court's May 21, 2015 order granting a preliminary injunction

that requires Alabama probate judges to issue marriage licenses to same-sex couples. Judge Russell argues that he was entitled to quasi-judicial immunity due to an order of the Alabama Supreme Court enjoining all Alabama probate judges from issuing marriage licenses to same-sex couples. He also argues that the district court's preliminary injunction was improper because of the conflicting order from the Alabama Supreme Court. He also contends that he was never served with the motion for a preliminary injunction, and was not allowed an opportunity to respond to that motion.

Since the filing of this appeal, the Alabama Supreme Court's order was abrogated by the Supreme Court's decision in Obergefell v. Hodges, 576 U.S. ___, 135 S. Ct. 2584 (2015), which held that the fundamental right to marry is guaranteed to same-sex couples by both the Due Process Clause and the Equal Protection Clause, and that bans on same-sex marriage are unconstitutional. Therefore, the arguments supporting Judge Russell's motion to dismiss are now moot. See Soliman v. United States, 296 F.3d 1237, 1242 (11th Cir. 2002). Moreover, the other arguments Judge Russell seeks to raise with respect to his motion to dismiss are not properly before this Court. See Doe v. Marshall, 622 F.2d 118, 119 (5th Cir. 1980)¹ (holding that the issue of attorneys' fees does not "salvage[] an otherwise moot case"); S & Davis Int'l, Inc. v. Yemen, 218 F.3d 1292, 1297 (11th Cir. 2000) (holding that this Court can consider other arguments presented in a motion to dismiss only where they are "inextricably intertwined" with an issue that is properly before this Court on interlocutory appeal"). Accordingly, to the extent that Judge Russell seeks review of the district court's April 23, 2015 order denying his motion to

¹ See Bonner v. City of Prichard, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc) (adopting as binding precedent the decisions of the former Fifth Circuit handed down prior to the close of business on September 30, 1981).

dismiss and the May 21, 2015 order denying his motion to alter or amend the order denying his motion to dismiss, this appeal is DISMISSED AS MOOT. See Soliman, 296 F.3d at 1242.

Additionally, Judge Russell's assertions about not being served with the motion for a preliminary injunction are contradicted by the record. An affidavit filed with the district court certified that he was served with a summons, a copy of the amended complaint, a copy of the plaintiffs' motion for a preliminary injunction, and various other documents relating to the motion two months prior to the district court's order granting the motion. In the intervening two months, Judge Russell filed his motion to dismiss the complaint, which requested a preliminary injunction among other forms of relief. Accordingly, in light of the record and Obergefell, the district court's May 21, 2015 order granting a preliminary injunction requiring the issuance of marriage licenses to same-sex couples is SUMMARILY AFFIRMED.

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

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Amy C. Nerenberg
Acting Clerk of Court

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October 20, 2015

Charles R. Diard Jr.
U.S. District Court
113 SAINT JOSEPH ST
STE 123
MOBILE, AL 36602

Appeal Number: 15-12508-CC
Case Style: James Strawser, et al v. Tim Russell
District Court Docket No: 1:14-cv-00424-CG-C

The enclosed copy of this Court's Order of Dismissal is issued as the mandate of this court. See 11th Cir. R. 41-4. Counsel are advised that pursuant to 11th Cir. R. 27-2, "a motion to reconsider, vacate, or modify an order must be filed within 21 days of the entry of such order. No additional time shall be allowed for mailing."

Sincerely,

AMY C. NERENBERG, Acting Clerk of Court

Reply to: Joe Caruso
Phone #: (404) 335-6177

Enclosure(s)

DIS-4 Multi-purpose dismissal letter