

STATE OF VERMONT
RUTLAND COUNTY, ss.

RUTLAND SUPERIOR COURT
DOCKET NO. (*not assigned*)

ST. PETER'S COMMUNITY
CREDIT UNION,

Plaintiff,

v.

SUSAN GORTON,

Defendant.

ENTRY ORDER

**Motion for Order to File Change of Venue Case Without Submitting Additional Filing Fee
filed July 1, 1999**

This collection case has not yet been filed in Rutland Superior Court. It was originally filed in Addison Superior Court on May 21, 1999. On June 10, 1999, the plaintiff filed a motion for a change of venue stating that the plaintiff's case was filed in Addison County based on erroneous information that the defendant was a resident of Addison County, and because the plaintiff had learned that the defendant resided in Rutland County, the plaintiff wished to change venue to Rutland Superior Court. The motion was granted on June 15, 1999, and the Addison Superior Court Clerk transferred the file to the Rutland Superior Court.

On June 21, 1999, the Deputy Clerk of the Rutland Superior Court informed the plaintiff that the court could not file the case until the filing fee was paid to the Rutland Court. The plaintiff has filed a motion seeking a judicial ruling that no filing fee is due to the Rutland Superior Court on the grounds that the plaintiff has already paid a filing fee to the Addison Superior Court, and the Addison Court has ordered the case to continue in Rutland Superior Court by its Order for change of venue. The plaintiff also seeks to have the ruling provide that the case is treated as if it had originally been brought and entered in Rutland County. The issue is whether the Rutland Superior Court is bound by the Addison Order, and must in consequence accept removal of the case from Addison without payment of a filing fee and treat it as if it had been filed in Rutland Superior Court on May 21, 1999.

The right to a change of venue is of statutory origin, and does not exist unless conferred by statute. See State v. Stacy, 104 Vt. 379 (1932), *abrogated on other grounds*, see State v. Blondin, 128 Vt. 613 (1970). In Stacy, the Vermont Supreme Court rejected the theory that common law courts have inherent power to order a change of venue, and that such power exists unless a statute specifically limits the power. See Stacy at 388. Instead, the Court adopted the principle that a superior court only

has power to transfer venue when expressly authorized to do so by statute.¹

There is only one statute authorizing a superior court to remove a case to the superior court of another county, and the removal is authorized only under a specific set of circumstances:

§404. Removal to another county

(a) When it appears to a presiding judge of a county court that there is reason to believe that a civil action pending in such court cannot be impartially tried in the county where it is pending, on petition of either party, such judge shall order the cause removed to the county court in another county for trial.

12 V.S.A. §404 (a). Subsections (b), (c), and (d) detail the specifics of the process.²

No other statutes authorize removal for other reasons. Where the meaning of the statute is plain on its face, the court must enforce it according to its plain meaning. State v. Forcier, 162 Vt. 71, 75 (1994). Where the language of the statute is unambiguous, the court enforces the statute according to its terms. State v. Caron, 155 Vt. 492, 512 (1990). Under the statute, transfer is *only* authorized pursuant to 12 V.S.A. §404 when a fair and impartial trial cannot be obtained.

The plaintiff argues that 12 V.S.A. §404 (c) authorizes waiver of the filing fee when a case is transferred between superior courts. While this is correct, it is only true when the basis for removal is the need for a fair and impartial trial under 12 V.S.A. §404 (a). The reason advanced by plaintiff for a change of venue in its Motion For Change Of Venue, filed June 10, 1999, in the Addison Superior Court was that the plaintiff had erroneously filed the case in the wrong court. This is not a basis for removal under 12 V.S.A. §404(a). The question then becomes whether Rutland Superior Court is required to accept removal when removal is not based on 12 V.S.A. §404(a).³

¹ The Vermont Supreme Court broke with its rule enunciated in Stacy when the Supreme Court itself ordered a change of venue in a case. In response to a challenge of its authority, the Vermont Supreme Court upheld its order, finding that it had authority under the Vermont Constitution, rather than by statute. See State v. Hunt, 150 Vt. 483, 489 (1988). The Hunt case, however, was exceptional, based on a unique set of facts and circumstances. Even so, the Supreme Court reflected, in hindsight, that it should have handled the matter differently. See Hunt at 489. Therefore, it is still the rule in Vermont that a court only has power to transfer venue when expressly permitted by statute.

² Superior court and county court are synonymous according to a Supreme Court Order dated April 9, 1974. See V.R.C.P. at 5. See also 4 V.S.A. §111a.

³ It should be noted that the plaintiff did not provide in its original Motion to Change Venue in Addison Superior Court a basis of authority for the court to act, and the motion was granted without explanation. Thus, the Addison court may not have had the opportunity to consider the pertinent statute. Whether the ruling was based on full consideration of the law or not, the Rutland Superior Court Clerk is nonetheless faced with the question of the clerk's independent responsibility to follow

There are two circumstances in which a superior court may accept a case for filing without payment of a filing fee: when a plaintiff has successfully qualified to proceed in forma pauperis under V.R.C.P. 3.1,⁴ and when a case has been removed from another county pursuant to 12 V.S.A. §404. Even if plaintiff's request is viewed as simply a request for a waiver of a filing fee based on its mistake in filing, there is no authority for such a request under the Vermont Rules of Civil Procedure, which provide specifically that matters of venue are to be construed strictly and are not to be affected by procedural issues:

RULE 82. JURISDICTION AND VENUE UNAFFECTED

These rules shall not be construed to extend or limit the jurisdiction of the superior courts or the venue of actions therein.

V.R.C.P. 82. If the clerk accepted this case as a removal case, she would be conferring venue in Addison County for the period from May 21, 1999 as if it had been properly filed in Addison County. The Rutland County Clerk has no power to extend venue to Addison County when the case does not qualify for venue in Addison County.

While 12 V.S.A. §404 authorizes removal without a filing fee, that is only when the removal is pursuant to §404(a) in the limited circumstances described in the statute. That is not the basis on which this case is presented for filing in this court. Thus, the Rutland Superior Court is not required by statute, nor permitted by rule, to accept the case for filing without payment of a filing fee.

There is a specific statute that provides for the proper procedure in cases in which it is discovered that the case was filed in the wrong county:

§402. County court actions generally. . .

(a) An action before a county court shall be brought in the county in which one of the parties resides . . . otherwise, on motion, the complaint *shall be dismissed*. (emphasis added).

12 V.S.A. §402(a). This statute sets forth the proper procedure to be followed when, as in this case, the plaintiff filed in Addison Superior Court based on erroneous information that the defendant was a resident of Addison County. On motion, the complaint is to be *dismissed*--not removed to a different county. This statute is consistent with 12 V.S.A. §404(a) that permits removal to another county only in narrow circumstances, and both statutes reflect the principle that the jurisdictional authority of the court is limited to cases filed in the proper venue as set forth by statute.

Under this statute, following a dismissal, a plaintiff's recourse is to file a complaint in a county

the law in processing the case for filing.

⁴ Rule 3.1 makes specific provision for waiver of the filing fee for persons who qualify to proceed in forma pauperis, and sets forth detailed procedural requirements. No other statute or rule authorizing waiver of filing fees, except for removal pursuant to 12 V.S.A. §404, has been found.

in which a party resides, at which time a filing fee is payable in the normal course. If that had happened in this case, the filing of the complaint would require the payment of a filing fee, and the action would commence as of the date filed.

Review of the venue statutes for the various types of courts shows that the statutory provisions for change of venue are the most limited in superior court.

In Probate Court, which is organized by statute into districts throughout the state (4 V.S.A. §§271-277), venue is determined by 4 V.S.A. §311a, which provides for venue on an alternate basis in multiple districts for many types of cases, depending on the nature of the action. Rule of Probate Procedure 38 provides:

On motion by one of the parties or on the judge's initiative, the venue of a probate court proceeding may be changed to another district by court order for the convenience of the parties, witnesses and counsel, and in the interest of justice.

V.R.P.P. 38. The Reporter's Notes accompanying Rule 38 explicitly state that this rule authorizes a change of venue and that there is *no civil rule equivalent*.

Family Court is a single court with statewide jurisdiction. 4 V.S.A. §451(a). The statute on venue specifies the place of trial if parties are residents; otherwise, venue may be in any county. 4 V.S.A. §458. A specific statute governs venue in relief from abuse proceedings. 15 V.S.A. §1102. There is no statute that provides for dismissal of an action filed in an improper venue, in contrast to the law for superior courts, in which such dismissal is specifically provided for in 12 V.S.A. §402(a).

District Court is also a single court with statewide jurisdiction. 4 V.S.A. §436. For criminal cases, venue may be changed for prejudice against the defendant that is so great that the defendant cannot obtain a fair and impartial trial, as well as for the convenience of the parties and witnesses, and in the interest of justice, as provided by rule promulgated by the Supreme Court. 13 V.S.A. §4631; V.R.Cr.P. 21 (a), (b). There are no filing fees for criminal cases. 32 V.S.A. §1431. Bail is to be transferred together with the court file upon change of venue. V.R.Cr.P. 21(c).

In Superior Court, removal of civil cases is limited to the grounds and procedure set forth in 12 V.S.A. §404(a), and cases improperly filed in the wrong venue are subject to dismissal, not change of venue. There is no statute providing for superior court as a single court with statewide jurisdiction. The superior courts previously existed as county courts. 4 V.S.A. §111a.

Because of the limited basis for statutory authorization for change of venue, the Rutland Superior Court Clerk is only authorized to accept on removal cases that have been removed pursuant to 12 V.S.A. §404(a), and this case was not. If a clerk were to accept removal of cases not authorized by statute, the effect would be to extend the venue of actions beyond the statutory limits of venue, which a clerk is not authorized to do. It also calls for the clerk to knowingly act outside of the bounds of statutory authority. Therefore, the Rutland Superior Court Clerk correctly declined to accept removal of the case.

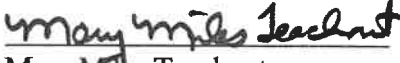
For other rulings in which the law has been similarly applied in like circumstances, *see* Order on Motion for Change of Venue, *Gilligan v. Valley Electric*, Rutland Docket No. S0606-97RcC (December 5, 1997, Valente, J.); Order on Motion to Dismiss for Improper Venue, or in the Alternative for Transfer to Chittenden Superior Court, *Senecal v. Pezzetti*, Rutland Docket No. S0697-93RcC (February 10, 1994, Jenkins, J.)

Because the case cannot be accepted as a removal case transferred pursuant to 12 V.S.A. §404(a), the plaintiff is required to pay the filing fee to the Rutland Superior Court in order to file its complaint in this county, and the action will be treated as a new case and not a removal.

For the foregoing reasons, Plaintiff's Motion for Order to File Change of Venue Case Without Submitting Additional Filing Fee is **denied**.

SO ORDERED.

Dated at Rutland this 10th day of September, 1999.


Mary Miles Teachout
Superior Judge