

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas

Daniel DeWitt Hall, Circuit Court Judge

Appellate Case No. 2022-001533

Case No. 2019-CP-25-00111

Renee S. Beach, as Personal Representative of the Estate of Mallory Beach,.....Respondent,

v.

Gregory M. Parker, Inc. d/b/a Parker’s Corporation, Richard Alexander Murdaugh, Richard Alexander Murdaugh, Jr., John Marvin Murdaugh, as P.R. of the Estate of Margaret Kennedy Branstetter Murdaugh, and Randolph Murdaugh, IV, as P.R. of the Estate of Paul Terry Murdaugh,Defendants,

Of whom Gregory M. Parker, Inc. d/b/a Parker’s Corporation, is the.....Appellant.

**MEMORANDUM IN SUPPORT OF APPEAL
AND RESPONSE TO RESPONDENT’S MOTION TO DISMISS APPEAL**

Appellant Gregory M. Parker, Inc. d/b/a Parker’s Corporation (hereinafter “Parker’s” or “Appellant”), pursuant to Rule 240, SCACR and in response to the November 03, 2022 letter from the South Carolina Court of Appeals and in response to Respondent’s Motion to Dismiss Appeal, hereby submits this Memorandum in Support of Appeal and Response to Respondent’s Motion to Dismiss Appeal. The Order at issue is appealable under South Carolina law because it affects a substantial right of Appellant.

BACKGROUND

On February 23, 2019, adults Paul Murdaugh, Morgan Doughty, Connor Cook, Miley

Altman, Mallory Beach, and Anthony Cook (collectively, “the Boaters”) crafted a premeditated plan for a night of illegal, underage drinking and boating.¹ The plan completely disregarded their own safety and the safety of others.² They hatched this plan purposely and intentionally early in the day before consuming any alcohol whatsoever.³ The Boaters, some of whom had prior alcohol-related charges, intentionally chose to travel by boat on a dark, foggy, misty, cold, February night to avoid known DUI checkpoints.⁴ This plan was designed so they could get intoxicated and avoid getting caught by law enforcement.⁵ To start the evening, Paul Murdaugh intentionally deceived Tajeeha Cohen, the Customer Service Representative on duty at Parker’s, in order to purchase alcohol.⁶ Paul Murdaugh intentionally deceived Ms. Cohen by illegally and fraudulently using his brother’s (“Buster” Murdaugh) valid South Carolina driver’s license to purchase alcohol.⁷ Buster Murdaugh, Alex Murdaugh, Margaret Murdaugh, and the Boaters all knew Paul Murdaugh had previously illegally purchased and consumed alcohol on a regular basis by using Buster Murdaugh’s valid identification as his own.⁸

The Boaters met at the Murdaugh River House where they began drinking alcohol, most of which was not purchased at Parker’s.⁹ The Boaters then purposely and intentionally took the boat to an oyster roast at the home of Kristy and James Wood for an evening of eating, partying, and drinking alcohol, despite the fact that the Boaters were all under the age of twenty-one.¹⁰ The oyster roast

¹ *Amended Answer of Gregory M. Parker, Inc.* filed in 2021-CP-25-00391, which includes the same or substantially similar factual assertions of Parker’s filed in each of the Boaters’ lawsuit, including those of Morgan Doughty, Miley Altman, the Estate of Mallory Beach, Connor Cook, and Keith Anthony Cook, Jr.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

attendees included Miley Altman’s own parents, relatives of the Boaters, and other adults who knew them well.¹¹ For the next several hours and in the presence of these attendees, the Boaters continued to drink alcohol.¹² After drinking for several hours, they left the oyster roast by boat even though it was dark, foggy, misty and cold, with only a handheld flashlight to guide them because the boat did not have lights.¹³ The Boaters knew that Paul Murdaugh, who was operating the boat when leaving the oyster roast, was intoxicated.¹⁴ Knowing they had consumed alcohol for many hours, the Boaters, with the knowledge of parents, relatives, and other adult attendees, purposely chose to travel by boat again to avoid DUI checkpoints, even though safer options and alternatives were available including Uber and/or staying at the Wood’s house.¹⁵

After leaving the Wood’s house, the Boaters traveled to the Beaufort Day Dock.¹⁶ Paul Murdaugh and Connor Cook then went to Luther’s Rare and Well Done Bar (“Luther’s Bar”) specifically to drink hard liquor.¹⁷ The remaining Boaters waited for Paul Murdaugh and Connor Cook to consume hard liquor and return to the boat to go back to the Murdaugh River House.¹⁸ Paul Murdaugh, again using Buster Murdaugh’s valid South Carolina license, and Connor Cook, using a fake ID, intentionally and illegally deceived the Luther’s Bar bouncer using their IDs and entered the bar to drink liquor.¹⁹

Paul Murdaugh and Connor Cook each chugged one large glass of “Jager Bomb” (Jägermeister and Red Bull), followed by another glass of “Lemon Drop” (Vodka, Triple Sec,

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

Lemon, and Simple Syrup).²⁰ Paul Murdaugh and Connor Cook returned to the other Boaters, all of whom knew Paul was visibly stumbling drunk.²¹ All of the Boaters then again voluntarily chose to get back on the boat with Paul Murdaugh driving at that point.²² Prior to this date, they all knew of Paul Murdaugh’s dangerous history of drinking and operating vehicles, yet all still intentionally and purposely made a conscious decision to get back in the boat.²³ Each Boater knew or should have known of the dangers associated with traveling in a boat under the circumstances that morning, without a light at night and in the dense fog, especially after consuming alcohol.²⁴ Each Boater yet again rejected safer alternatives, including rideshare options, and made the decision to get on the boat with a driver who was known to be intoxicated.²⁵ Each Boater purposely, intentionally and without regard for their own safety or the safety of others assumed the risk of injury and/or death by getting on the boat repeatedly throughout the evening despite clear and actual knowledge that Paul Murdaugh was drunk and impaired.²⁶

After the Boaters left the Beaufort Day Dock sometime after midnight on February 24, 2019, the boat crashed near the Archer’s Creek bridge where Mallory Beach was ejected from the boat and later died.

PROCEDURAL HISTORY

Respondent, as the Plaintiff, filed a Summons and Complaint in the Hampton County Circuit Court on March 29, 2019 against several defendants, including Parker’s (Appellant), Richard Alexander Murdaugh (“Alex Murdaugh”), Richard Alexander Murdaugh, Jr. (“Buster”), and others following the boat accident which occurred on February 24, 2019 that ultimately caused

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

the death of Mallory Beach. Respondent amended her Complaint several times, and eventually included as defendants the Estate of Paul Terry Murdaugh (“Paul”) and the Estate of Margaret Kennedy Branstetter Murdaugh (“Maggie”).

On June 7, 2021, defendants Maggie Murdaugh and Paul Murdaugh were tragically killed on their property in Colleton County. On July 14, 2022, defendant Alex Murdaugh was indicted for allegedly murdering his wife Maggie and his son Paul. Alex Murdaugh also has been indicted on multiple other charges, including money laundering, insurance fraud, theft, computer crimes, obstruction of justice, and others.

As a result of the indictments for murder filed against him, Alex Murdaugh’s attorneys, in this action, filed on August 5, 2022 a Motion to Stay Discovery and Continue Trial, which trial had been set to begin in Hampton County starting on October 3, 2022. A hearing on the Motion to Stay Discovery and Continue Trial was held by the Court on August 10, 2022 during which the Court granted the Motion to Continue Trial. The continuance was granted due to significant events that had not yet occurred when this case was set for trial beginning on October 3, 2022, including the fact that Alex Murdaugh was indicted for the alleged murders of two codefendants in this action, Maggie and Paul; and the fact that different attorneys were retained by and filed notices of appearances for Alex, Maggie and Paul following these events. The Court ruled that based on the above circumstances, trial should not go forward on October 3, 2022, particularly with respect to the Murdaugh defendants. The Court, however, indicated during the August 10, 2022 hearing that it might consider a separate trial involving Respondent’s claims against Appellant should the issue of severance be raised.²⁷

²⁷ “Now, I will say that, when I say it’s continued, there again, we’re just talking out loud, if the other parties were severed and this boiled down to the Parker involvement, it appears that part of the case is ready to be tried in October. That’s not before the court today. And if that’s something the court needs to address in the next week or so, just let

On August 19, 2022, Appellant filed a Motion to Sever and requested that the trial move forward on October 3, 2022 with respect to Respondent’s claims against Appellant (*Exhibit “A”*). The Court set a hearing on Appellant’s Motion to Sever for September 1, 2022, and Respondent filed a Memorandum in Opposition on August 30, 2022 (*Exhibit “B”*). The hearing was conducted on September 1, 2022 in the Lancaster County, SC Courthouse with counsel for the parties present, and the Court provided all parties, including Respondent, the opportunity to be heard, both in briefing and with respect to lengthy oral arguments at the hearing.

On September 13, 2022, the Court issued a measured and well-considered Order Granting Appellant’s Motion to Sever (*Exhibit “C”*). The Order, in pertinent part, states as follows:²⁸

The Court grants Parker’s Motion to Sever to prevent delay, embarrassment, additional expense, and the prejudice it will suffer if not severed away from the Murdaugh defendants. Plaintiff’s lawsuit against Parker’s began when the Summons and Complaint were filed on March 29, 2019 – over three years ago. Due to the recent murder indictments of Alex Murdaugh with an unknown criminal trial date set for these charges, and due to the fact that counsel for each of the Murdaugh defendants (Alex, Maggie, Buster, and Paul) in this matter recently filed notices of appearances, a trial with all defendants in this case will not occur in the year 2022, and such a trial date is indefinite. Additionally, the murder charges relate to events that do not involve Parker’s and will undoubtedly cause additional expense and certain delay to Parker’s if Plaintiff’s claims against Parker’s are not severed. Further, Plaintiff’s claims against Parker’s are separate and distinct such that Plaintiff may fully try her case against Parker’s during a trial separate from the Murdaugh defendants. Therefore, in order to prevent delay, additional expense, and prejudice (as further discussed herein below), the Court finds that exercising its discretion to grant Parker’s Motion to Sever and order separate trials is sound.

Moreover, the Court is well aware of the local, regional, national, and international interest and focus of the Murdaugh family, each of whom are codefendants with Parker’s in the instant action. Most of the Murdaugh defendants, individually and/or collectively, have been or are currently being accused of misconduct or various crimes, including, *inter alia*, murder, intentional misconduct, obstruction of justice, computer crimes, money laundering, tampering with the investigation of the very boat crash involved in this action, theft, fraud, and extortion. Alex Murdaugh, a codefendant, has been indicted for allegedly

me know. There are other motions that might lead to that.” *The Honorable Daniel DeWitt Hall, presiding during the hearing in the Spartanburg County Court of Common Pleas*, August 10, 2022.

²⁸ *Order Granting Parker’s Motion to Sever* signed and filed by The Honorable Daniel DeWitt Hall on September 13, 2022.

murdering two codefendants in this case, Maggie and Paul. The entire jury venire in Hampton County, South Carolina likely will be aware of the Murdaugh name, family, and news surrounding them. The media has written and continues to write about the Murdaugh defendants involving the above allegations. The recent criminal indictments and civil lawsuits surrounding the Murdaugh family involve potentially the most reactionary and publicized proceedings in the history of the South Carolina judiciary and legal system, none of which is due to any conduct of Parker's and have nothing to do with Plaintiff's allegations against Parker's in this case. If Parker's is not severed away from the Murdaugh defendants and remain tethered to any of them at trial in the instant case, Parker's undoubtedly will be prejudiced. Rule 20(b) states that a Court "may order separate trials or make other orders to prevent delays or prejudice" and if there was ever a case in which a Court may exercise its sound discretion to order separate trials *to prevent delays or prejudice*, this is it, based on the facts and circumstances involving the parties in this matter. Therefore, in order to prevent prejudice to Parker's, the Court finds that exercising its discretion to grant Parker's Motion to Sever from each of the Murdaugh defendants and ordering a separate trial is sound and necessary.

Under these extraordinary circumstances, the Court finds that severance is warranted and necessary to prevent delay, embarrassment, additional expense, and the prejudice Parker's will suffer if not severed away from the Murdaugh defendants.

Despite the fact that nothing had changed or developed (i.e., no new evidence and no new changes in the law) from the time Judge Hall issued his Order Granting Appellant's Motion to Sever, Respondent filed a Motion for Reconsideration and Memorandum in Support on September 12, 2022 (*Exhibit "D"*). In response, Appellant filed, on September 22, 2022, a Memorandum in Opposition to Respondent's Motion for Reconsideration (*Exhibit "E"*). The Court conducted a hearing on September 23, 2022 in the Hampton County Courthouse with counsel for all parties present.

On September 27, 2022, the Court signed and filed a Form 4 Order granting Respondent's Motion for Reconsideration (*Exhibit "F"*), stating as follows:²⁹

Upon further review of the South Carolina Rules of Civil Procedure, applicable case law, brief of parties and oral arguments, Plaintiff's Motion for Reconsideration is GRANTED and the September 13, 2022 Order of this Court Granting Plaintiff's Motion to Sever is REVERSED.

²⁹ *Form 4 Order* signed and filed by The Honorable Daniel DeWitt Hall on September 27, 2022.

This civil case is set for day certain trial on Monday, January 9, 2023 in Hampton County with the inclusion of all named Defendants.

On October 24, 2022, Appellant served a Notice of Appeal on Respondent and counsel of record. On November 3, 2022, Ms. Katherine Harrison, the Honorable Deputy Clerk for the South Carolina Court of Appeals, issued a letter requesting that counsel “serve and file a memorandum addressing the issue of appealability within ten (10) days of the date of this letter.” On November 7, 2022, Respondent served and filed her Response and Motion to Dismiss Appeal. Appellant’s Memorandum in Support of Appeal and Response to Respondent’s Motion to Dismiss Appeal hereby follows.

DISCUSSION

The Circuit Court’s September 27, 2022 Form 4 Order granting Respondent’s Motion for Reconsideration is immediately appealable because it affects a substantial right of the Appellant.

I. The trial court’s order on the issue of bifurcation/severance affects a substantial right and is immediately appealable.

Contrary to the cases cited in Respondent’s Response and Motion to Dismiss Appeal, the most recent case allowing the appealability of the issue of bifurcation of a trial was decided in 2015 by the Supreme Court of South Carolina in the case of *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 773 S.E.2d 144 (2015). The Court in *Morrow* departed from the previous lineage of cases that determined the issue of bifurcation was not immediately appealable under S.C. Code Ann. § 14-3-330. The Supreme Court stated that, “[b]y its nature, the question of whether an order is immediately appealable is determined on a case-by-case basis.” *Id.* at 538, 773 S.C.2d 144, 146. Specifically at issue in *Morrow* was whether a trial court’s order of bifurcation was immediately appealable. *Id.* at 537, 773 S.C.2d 144, 145. The Supreme Court of South Carolina unequivocally said it was. *Id.* The following is quoted from the case:

ISSUE PRESENTED

Did the court of appeals err in holding the trial court's order of bifurcation was not immediately appealable?

LAW / ANALYSIS

The Morrows argue the court of appeals erred by holding the trial court's order of bifurcation was not immediately appealable because the order affects a substantial right. We agree.

Id.

The same issue in *Morrow* is present here: the mode of trial with respect to bifurcation or severance of the defendants. This is particularly true in the context of what Judge Hall stated about these issues in his initial Order – that this case involves “extraordinary circumstances” due to the fact that “if there was ever a case in which a Court may exercise its sound discretion to order separate trials *to prevent...prejudice*, this is it.” (Italics in original). In other words, based on the fact that our Supreme Court in this State has unequivocally stated in *Morrow* that the appealability of this issue “is determined on a case-by-case basis,” coupled with Judge Hall’s determination in his initial Order that Appellant “*will be* prejudiced” (italics added) if bifurcation or severance does not occur, the issue on appeal in this case affects a substantial right of the Appellant – as it did in *Morrow* – and should be immediately appealable.

II. The issue of severance affects a mode of trial, which is a substantial right.

This Court has determined that “the mode of trial...is a substantial right” and is “immediately appealable.” *Frampton v. S.C. Dep’t of Transp.*, 406 S.C. 377, 386, 752 S.E.2d 269, 274 (Ct. App. 2014). In *Frampton*, this Court was asked to consider the trial judge’s decision about “seating the jury during the takings phase” of a condemnation case. *Id.* at 385, 752 S.E.2d 269, 274. In that case, one of the parties, DOT, “filed a motion to transfer the case to the non-jury

docket... The trial court denied the motion in a Form 4 order... DOT never appealed the trial court's order." *Id.* at 386, 752 S.E.2d 269, 274. This Court explained as follows:

As a threshold matter, we will address Frampton's assertion that DOT did not preserve this issue for our review. Orders affecting the mode of trial affect a substantial right as defined in section 14-3-330(2) of the South Carolina Code (1976), "and must, therefore, be appealed immediately." *Lester v. Dawson*, 327 S.C. 263, 266, 491 S.E.2d 240, 241 (1997); e.g., *Foggie v. CSX Transp., Inc.*, 313 S.C. 98, 103, 431 S.E.2d 587, 590 (1993) ("Issues regarding mode of trial must be raised in the trial court at the first opportunity, and the order of the trial judge is immediately appealable."). "Moreover, the failure to timely appeal an order affecting the mode of trial effects a waiver of the right to appeal that issue." *Lester*, 327 S.C. at 266, 491 S.E.2d at 241 (citing *Foggie*, 313 S.C. at 103, 431 S.E.2d at 590).

Id.

This Court held that "DOT did not preserve this issue for our review because it did not immediately appeal the trial court's order affecting the mode of trial, which is a substantial right."

Id.

Such is the case at bar. The mode of trial with respect to the parties at issue in this case – whether trial(s) in the Circuit Court proceed as one (1) jury trial with all defendants present, or two (2) jury trials with the Appellant severed away from the Murdaugh defendants while defending their respective cases separately – is an issue that affects a substantial right of the parties and, under *Frampton*, is immediately appealable.

It is substantial that the Honorable Daniel DeWitt Hall, in his September 13, 2022 Order Granting Parker's Motion to Sever, stated that "The Court grants Parker's Motion to Sever to prevent...the prejudice *it will suffer* if not severed away from the Murdaugh defendants." (Italics added). Judge Hall additionally stated that "If Parker's is not severed away from the Murdaugh defendants and remains tethered to any of them at trial in the instant case, Parker's *undoubtedly will be prejudiced*." (Italics added). Moreover, Judge Hall wrote that "if there was ever a case in which a Court may exercise its sound discretion to order separate trials *to prevent...prejudice*, this

is it.” (Italics in original). Finally, Judge Hall concluded his September 13, 2022 Order by stating, “Under these extraordinary circumstances, the Court finds that severance is warranted and necessary to prevent...the prejudice Parker’s *will suffer* if not severed away from the Murdaugh defendants.” (Italics added). These statements unequivocally reflect Judge Hall’s concern that a party – namely the Appellant, Parkers – *will* be prejudiced if a certain mode of trial occurs. A substantial right must surely contemplate the concern that a party *will* be “pre-judged.” Avoiding prejudice is what a fair legal system should, at its core, seek to avoid, and if a mode of trial is timely raised on appeal – as mandated by this Court in *Frampton* – the appeal, affecting a substantial right as in this case, should be briefed, heard, and fairly ruled upon after due consideration.

Even Respondent has agreed with Appellant with respect to the appealability of this issue. Contrary to Respondent’s position as reflected in her Response and Motion to Dismiss Appeal filed a few days ago on November 7, 2022, Respondent has asserted that the Circuit Court’s Order on the issue of severance should be appealed.³⁰ Moreover, Respondent stated in her Motion for Reconsideration and Memorandum in Support filed on September 12, 2022 that the Circuit Court’s Order initially granting severance “is not allowed under Morrow, under our Supreme Court’s pronouncement in that case, or under the Constitution. Further, this reality renders the Order Granting Parker’s Motion to Sever *immediately appealable*.”³¹ (Italics added.) Respondent, for a third time in her Motion for Reconsideration and Memorandum in Support filed on September 12, 2022, asserted the issue of severance was immediately appealable, stating in her conclusion that,

³⁰ “Significantly, if the Court severs Plaintiff’s claims, Plaintiff will be left with no choice but to appeal this Order.” *Plaintiff’s Motion for Reconsideration and Memorandum in Support* filed on September 12, 2022 in the Hampton County Circuit Court, Case No. 2019-CP-25-00111.

³¹ *Plaintiff’s Motion for Reconsideration and Memorandum in Support* filed on September 12, 2022 in the Hampton County Circuit Court, Case No. 2019-CP-25-00111.

“For each of these reasons, the Plaintiff respectfully request[sic] the Court’s reconsideration of its Order Granting Parker’s Motion to Sever *which is immediately appealable and fraught with errors that will result in reversal...*”³² (Italics added). Finally, Respondent’s counsel has communicated with the media with respect to the appealability of this issue to the extent that he has “also vowed to file an appeal in the event the judge sticks with his original decision” on the issue of severance.³³

CONCLUSION

The Supreme Court of South Carolina, in its most recent decision on the very issue before this Honorable Court, has determined that a trial court’s order concerning the issue of bifurcation or severance is immediately appealable because it affects a substantial right of a party under S.C. Code Ann. § 14-3-330. This is the very same question at issue in this matter. Accordingly, and for the reasons stated above, this Honorable Court should perfect the appeal and allow the parties to fully brief and argue this substantial right.

Respectfully Submitted,

s/David L. Williford

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³² *Id.*

³³ ‘Murdaugh Murders’ Saga: Key Ruling in Boat Crash Lawsuit Likely Headed for Appeal, FitsNews, September 13, 2022.

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