

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
The Honorable Perry H. Gravely, Circuit Court Judge

Appellate Case No. 2020-001150

Josh Hawkins,.....Appellant,

v.

American Airlines, The Qantas Group d/b/a Qantas Airlines, Expedia, and Travel Guard
Insurance

Of Which American Airlines and Expedia are,.....Respondents.

**RETURN OF RESPONDENT AMERICAN AIRLINES, INC.
TO APPELLANT’S PETITION FOR REHEARING**

Appellant’s Petition for Rehearing should be denied because it fails to “state with particularity the points supposed to have been overlooked or misapprehended by the court,” as required by Rule 221(a), SCACR. First, Appellant argues that the Court of Appeals’ ruling “conflicts with the law” simply because it “incorporates arguments made by American Airlines and Expedia which were submitted to the lower court and made into an order, even though the order was merely language the appellees wanted, not necessarily to comply with the law.”

Petition at 1. Appellant does not attempt to explain “with particularity” how the Court of Appeals’ ruling supposedly “conflicts with the law” or does not “comply with the law.”

Instead, Appellant argues that the Court of Appeals’ ruling is erroneous because it incorporates “arguments” and “language” that Respondents American Airlines, Inc. (“American”) and Expedia, Inc. “wanted” to appear in the ruling, and in that of the circuit court, but Appellant cites no authority for the proposition that a court’s agreement with, and adoption of, a party’s arguments or language renders its ruling erroneous. Virtually every ruling issued by a court in a party’s favor includes arguments and language that the prevailing party “wanted” and had previously submitted to the court.

Appellant makes an equally, if not more, defective alternative argument. Appellant requests that the Court of Appeals “clarify its order and acknowledge that the appellant may bring claims . . . pursuant to the Montreal Convention and other claims not part of this appeal” against American. Petition at 1. First, the Court of Appeals lacks the jurisdiction to grant the advisory relief that Appellant seeks. *S.C. Labor Ltd., LLC v. Eastern Tree Service, Inc.*, 362 S.C. 654, 658 n.1, 609 S.E.2d 305, 307 n.1 (Ct. App. 2005) (“We do not address this issue because we do not give advisory opinions.”) (citation omitted).

Second, in his Brief’s “Statement of Issue [sic] on Appeal,” Appellant failed to assert his supposed right to litigate “other claims not part of this appeal” against American in the Magistrate’s Court, or argue this issue in his briefing, so he failed to preserve the issue for review. Appellant’s attempt to raise this issue for the first time in his Petition for Rehearing is untimely and improper. *Herron v. Century BMW*, 395 S.C. 461, 469, 719 S.E.2d 640, 644 (2011) (“And although the issue of preemption was raised in Appellant’s rehearing petition,

such an attempt was untimely and improper as a party may not raise an issue for the first time in a petition for rehearing.”).

Third, Appellant does not cite any authority for the extraordinary proposition that, even though the Court of Appeals has affirmed the circuit court’s holding that all of Appellant’s claims against American fail as a matter of law, he nonetheless has the right to litigate “other claims” – based on the same underlying events – against American in a separate lawsuit. Plaintiff’s conduct violates the well-established prohibition against splitting causes of action. *Plum Creek Development Co. v. City of Conway*, 328 S.C. 347, 351, 491 S.E.2d 692, 695 (Ct. App. 1997) (“[A]lthough Rule 42(b), SCRCF, provides that once a cause of action has been pled, the court may order separate trials of multiple issues under certain circumstances, a party may not of his own volition split his cause of action so as to make it the subject of several causes of action without the consent of the opposing party.”) (citations omitted), *aff’d as modified*, 334 S.C. 30, 512 S.E.2d 106 (1999).

Appellant never sought the circuit court’s leave to add a Montreal Convention cause of action to his Complaint. Instead, Appellant pushed ahead in the circuit court with his original three causes of action against American – all of which were held to be legally defective by the circuit court and then by the Court of Appeals – and purported to advance a Montreal Convention cause of action against American in a separate lawsuit. Appellant laments that denying him the ability to split his causes of action is to “rob” him “of any recourse” (Petition at 2), but he is stuck with the tactical decisions that he made. Appellant is prohibited from sprinkling the state with multiple lawsuits against American alleging different causes of action that arise from the same underlying events.

Finally, Appellant argues that the circuit court’s decision was “flawed” because that court supposedly did not consider the arguments that Appellant made during the hearing on American’s motion to dismiss. Petition at 2-3. Not only did Appellant fail to preserve this issue for appeal, but the Record on Appeal contains no indication that the circuit refused to consider the arguments that Appellant made during the subject hearing. In fact, the circuit court’s order establishes that the opposite is true. R. p. 9.¹

WHEREFORE, for the foregoing reasons, Respondent American Airlines, Inc. requests that Appellant’s Petition for Rehearing be denied.²

(Signatures On Next Page)

¹ “This matter comes before the Court upon various Motions filed by the parties which were heard by WebEx on July 21, 2020 with consent of all parties and with a Court Reporter. The Plaintiff Josh Hawkins (hereinafter ‘Plaintiff’), an attorney, was present for the hearing and represented himself. Present for Defendant American Airlines was John L. McCants, Esq. and Kenneth S. Nankin, Esq. Defendant The Qantas Group d/b/a Qantas Airlines has not been served with the litigation. Present for Defendant Expedia was William S. F. Freeman, Esq. Upon consideration of Defendant American Airlines, Inc.’s (‘American’) Motion to Dismiss Plaintiff Josh Hawkins’s Complaint pursuant to Rule 12(b)(6), SCRCR, the Memorandum of Law in support thereof, the argument of Plaintiff and counsel for American before the Court on July 21, 2020 and the full record in this case, the Court finds as follows. . . .”

² Appellant also requests “en banc review” in his Petition (at 1) but does not present any argument supporting this request. Pursuant to Rule 219(a), SCACR, “[a] hearing or rehearing en banc is not favored and ordinarily will not be ordered except (1) when consideration by the full court is necessary to secure or maintain uniformity of its decisions, or (2) when the proceeding involves a question of exceptional importance.” For the reasons set forth above, Appellant’s request for this disfavored relief should be denied.

Appellate Case No. 2020-001150

Return of Respondent American Airlines, Inc. to Appellant's Petition for Rehearing

Respectfully submitted,

Dated: May 9, 2024

s/John L. McCants

John L. McCants, Esq. (SC Bar No. 10423)

Rogers Lewis Jackson & Mann, LLC

P.O. Box 11803 (29211)

1901 Main Street, Suite 1200

Columbia, South Carolina 29201

Telephone: (803) 978-2834

Facsimile: (803) 252-3653

jmccants@rogerslewis.com

Kenneth S. Nankin, Esq. (Admitted *pro hac vice*)

Nankin Law LLC

700 King Farm Boulevard, Suite 550

Rockville, Maryland 20850

(202) 463-4911 - telephone

(202) 463-6177 - fax

ksn@nankin.com

Counsel for Respondent American Airlines, Inc.

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American Airlines, The Qantas Group d/b/a Qantas Airlines, Expedia, and Travel Guard Insurance

Of Which American Airlines and Expedia are,.....Respondents.

RESPONDENT AMERICAN AIRLINES, INC.’S PROOF OF SERVICE OF RETURN OF RESPONDENT AMERICAN AIRLINES, INC. TO APPELLANT’S PETITION FOR REHEARING

I certify that I have served Respondent American Airlines, Inc.’s Return of Respondent American Airlines, Inc. to Appellant’s Petition for Rehearing and this Proof of Service electronically to the Court of Appeals, and to the following attorneys of record to their electronic addresses, on **May 9, 2024**, listed as follows:

Joshua T. Hawkins, S.C. Bar #78470
Helena L. Jedziniak, S.C. Bar #100825
Hawkins & Jedziniak, LLC
1225 South Church Street
Greenville, South Carolina 29605
josh@hjllesc.com
helena@hjllesc.com
Attorneys for Appellant

William S. F. Freeman
Freeman & Freeman, LLC
Post Office Box 383
Greenville, South Carolina 29602
william@freemanfreemanlaw.com
Attorney for Respondent Expedia

s/John L. McCants
John L. McCants, Esq. (SC Bar No. 10423)
Rogers Lewis Jackson & Mann LLC
P.O. Box 11803 (29211)
1901 Main Street, Suite 1200
Columbia, South Carolina 29201
Telephone: (803) 978-2834
Facsimile: (803) 252-3653
jmccants@rogerslewis.com

Kenneth S. Nankin, Esq. (Admitted *pro hac vice*)
Nankin & Verma PLLC
700 King Farm Boulevard, Suite 550
Rockville, Maryland 20850
(202) 463-4911 - telephone
(202) 463-6177 – fax
ksn@nankin.com

Counsel for Respondent American Airlines, Inc.

ROGERS LEWIS
ATTORNEYS AT LAW

RECEIVED

May 09 2024

SC Court of Appeals

John L. McCants, Esq.
jmccants@rogerslewis.com

May 9, 2024

Via Electronic Delivery
South Carolina Court of Appeals
Jenny Abbott Kitchings, Clerk of Court
1220 Senate Street
Columbia, South Carolina 29201
ctappfilings@sccourts.org

Re: Josh Hawkins v. American Airlines, et al.
Circuit Court Case No.: 2020-CP-23-01364
Appellate Case No.: 2020-001150

Dear Ms. Kitchings:

Enclosed please find for filing the Return of Respondent American Airlines, Inc. to Appellant's Petition for Rehearing and Proof of Service.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

s/John L. McCants

John L. McCants

Enclosures

cc: All counsel of record