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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas
R. Kirk Griffin, Circuit Court Judge

Appellate Case No. 2024-000742

Jerry Cozby, Plaintiff,

vs.

Kent Huntley Oliver, Thompson Construction Group, Inc., Curtis Ouellette, and Quality Haulers, Inc., Defendants,

of which Kent Huntley Oliver and Thompson Construction Group, Inc. are Respondents.

AND

Dean Alan Arender and Tamala Arender, Appellants,

vs.

Kent Huntley Oliver, Thompson Construction Group, Inc., Curtis Kent Ouellette, and DMX Transportation Services, Inc., Defendants,

of which Kent Huntley Oliver and Thompson Construction Group, Inc. are Respondents.

AND

Kent Huntley Oliver, Respondent,

vs.

Curtis Kent Ouellette, Quality Haulers, Inc., Dean Alan Arender, US XPRESS Leasing, Inc., and US XPRESS, Inc., Defendants,

of which Dean Alan Arender, US XPRESS Leasing, Inc., and US XPRESS, Inc. are Appellants.

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STATEMENT OF ISSUES

I. Whether the circuit court abused its discretion in ordering permissive joinder of the parties in the Cozby Action, the Arender Action, and the Oliver Action.

II. Whether the circuit court's order of permissive joinder is immediately appealable.

STATEMENT OF THE CASE

This litigation arises from a multi-vehicle accident that occurred on Interstate 26 in Newberry County on November 12, 2020. (R. p. __; Cozby Am. Compl. at 2; Arender Third Am. Compl. at 3; Oliver Compl. at 1). Four motorists were involved in the accident: Jerry Cozby, Kent Oliver, Curtis Ouellette, and Dean Arender. (*Id.*). At the time of the accident, Oliver was operating a passenger vehicle owned by his employer, Thompson Construction Group, Inc. (R. p. __; Oliver and Thompson Construction Answer to Cozby Am. Compl. at 3).[1] Ouellette was operating a commercial vehicle for Quality Haulers, Inc. (R. p. __; Ouellette and Quality Haulers Answer to Arender Third Am. Compl. at 3). Arender was operating a commercial vehicle for US Xpress Inc. and/or US Xpress Leasing, Inc. (collectively, "US Xpress"). (R. p. __; Oliver Compl. at 11). After the accident, the following lawsuits were filed:

- *Cozby v. Oliver, et al.* ("Cozby Action")
  - C/A No. 2022-CP-43-01006
  - Filed on June 24, 2022
  - Plaintiff: Jerry Cozby
  - Defendants: Kent Huntley Oliver; Thompson Construction Group, Inc.; Curtis Ouellette; and Quality Haulers, Inc.
  - Venue: Sumter County Court of Common Pleas

[1] In their brief, the Arenders state that Respondent Oliver was acting within the course and scope of his employment at the time of the collision. (Arender Br. at 5). Respondents dispute that assertion at this stage of the litigation.

- *Arender v. Oliver, et al.* ("Arender Action")
  - C/A No. 2023-CP-36-00276
  - Filed on May 17, 2023
  - Plaintiffs: Dean Arender and Tamala Arender
  - Defendants: Kent Huntley Oliver; Thompson Construction Group, Inc.; Curtis Ouellette; Quality Haulers, Inc.; and DMX Transportation Services Inc.
  - Venue: Newberry County Court of Common Pleas

- *Oliver v. Ouellette, et al.* ("Oliver Action")
  - C/A No. 2023-CP-36-00300
  - Filed on June 2, 2023
  - Plaintiff: Kent Huntley Oliver
  - Defendants: Curtis Kent Ouellette; Quality Haulers, Inc.; Dean Arender; U.S. XPRESS Leasing, Inc.; and U.S. XPRESS, Inc.
  - Venue: Newberry County Court of Common Pleas

Accordingly, Cozby elected to file his suit in Sumter County where Thompson Construction maintains its principal place of business. (R. p. __; Cozby Am. Compl. at 1-2; Exhibit 4 to Oliver and Thompson Construction Memorandum of Law). The Arenders and Oliver chose to file their actions in Newberry County where the collision took place. (R. p. __; Arender Third Am. Compl. at 3; Oliver Compl. at 5). No party is a resident of Newberry County. (R. p. __; Cozby Am. Compl. at 1-2; Arender Third Am. Compl. at 1-2; Oliver Compl. at 2-3).

On August 18, 2023, Thompson Construction and Oliver moved to join and consolidate the Cozby Action, the Arender Action, and the Oliver Action for discovery and trial under Case No. 2022-CP-43-01006, the number assigned to the Cozby Action. (R. p. __; Motion for Joinder). On October 9, 2023, the circuit court held a hearing on the motion. (R. p. __; Hearing Transcript). Counsel for each of the parties to the Cozby Action, the Arender Action, and the Oliver Action participated in the hearing. (R. p. __; Order Granting Joinder at 3; Hearing Transcript at 4, 19, 27, 33-34). During the hearing, counsel for Thompson Construction and Oliver informed the circuit court that they sought an order of permissive joinder, not consolidation. (R. p. __; Order Granting Joinder at 5; Hearing Transcript at 4, 34).

On February 13, 2024, the circuit court issued an order granting Thompson Construction and Oliver's motion. (R. p. __; Order Granting Joinder). The circuit court ruled permissive joinder of the parties in the Cozby Action, the Arender Action, and the Oliver Action was permitted under Rule 20(a), SCRCP. (*Id.* at 7). The circuit court further ruled that venue over the joined action was proper in Sumter County and that permissive joinder for discovery and trial was desirable for the parties and the court. (*Id.* at 8-12).

On February 23, 2024, Dean and Tamala Arender (the "Arenders") filed a motion to reconsider. (R. p. __; Arender Mot. Reconsider). US Xpress and Dean Arender (collectively, "US Xpress") filed a separate motion to reconsider the same day. (R. p. __; US Xpress Mot. Reconsider). The circuit court denied the motions to reconsider by orders dated April 4, 2024. (R. p. __; Orders Denying Mot. Reconsider). On May 3, 2024, the Arenders and US Xpress ("Appellants") served and filed their notices of appeal from the circuit court's February 13 and April 4, 2024 orders.

On May 28, 2024, Thompson Construction and Oliver ("Respondents") moved to dismiss this appeal, arguing the circuit court's permissive joinder order was not immediately appealable. By order dated August 26, 2024, the Court denied Respondents' motion. However, the Court instructed the parties to "address the issue of appealability in their briefs."

STANDARD OF REVIEW

A circuit court's rulings respecting permissive joinder under Rule 20, SCRCP, are reviewed under an abuse of discretion standard. *Demian v. S.C. Health & Hum. Servs. Fin. Comm'n*, 297 S.C. 1, 6, 374 S.E.2d 510, 512 (Ct. App. 1988); *Farmer v. CAGC Ins. Co.*, 424 S.C. 579, 586, 819 S.E.2d 142, 146 (Ct. App. 2018). "An abuse of discretion occurs when the judge issuing the order was controlled by some error of law or when the order, based upon factual, as distinguished from legal conclusions, is without evidentiary support." *Sundown Operating Co. v. Intedge Indus., Inc.*, 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009).

ARGUMENT

I. The circuit court's joinder order was proper.

Pursuant to Rule 20(a), the circuit court ordered permissive joinder of the parties to the Cozby Action, the Arender Action, and the Oliver Action for discovery and trial in Sumter County. The circuit court found permissive joinder was appropriate because the various actions arose from the same November 12, 2020 multivehicle accident and involved common questions of law and fact. *See* Rule 20(a), SCRCP. The circuit court determined that venue for the joined action was proper in Sumter County, and the court ruled that joinder was desirable to avoid duplicative litigation, inconsistent judgments, and the application of collateral estoppel.

Appellants take different approaches in arguing for reversal of the circuit court's order. The Arender Appellants claim Rule 20 does not permit circuit courts to order joinder of parties; they argue Respondents could only "compel" joinder under Rule 19, SCRCP. (Arender Br. at 7-9). The Arenders also argue the circuit court erred by (i) considering "consolidation factors," (ii) failing to explain the parties' alignment after joinder, and (iii) impermissibly transferring venue of the Arender Action and the Oliver Action from Newberry County. (Arender Br. at 10-14).

The US Xpress Appellants, on the other hand, devote little more than a page of their brief to arguing for reversal of the circuit court's order. (US Xpress Br. at 15-16). Without citations to any supporting authority, US Xpress declares that Rule 20(a) "wholly does not apply or allow the court to join the parties as it did in its Order granting Permissive Joinder." (US Xpress Br. at 15). Otherwise, US Xpress simply references its appealability arguments, claiming the order should be reversed for the same reasons that it is subject to immediate review. (US Xpress Br. at 15).

Because US Xpress presents only conclusory arguments with no supporting authority, it has abandoned any argument that the circuit court erred in joining the parties in the Cozby Action. *See Ellie, Inc. v. Miccichi*, 358 S.C. 78, 99, 594 S.E.2d 485, 496 (Ct. App. 2004) ("Numerous cases have held that where an issue is not argued within the body of the brief but is only a short conclusory statement, it is abandoned on appeal."); *Wayne's Auto. Ctr., Inc. v. S.C. Dep't of Pub. Safety*, 431 S.C. 465, 480 n.6, 848 S.E.2d 56, 65 n.6 (Ct. App. 2020) (holding arguments were abandoned on appeal where they were either "conclusory, not supported by cited authority, or otherwise vague").[2] Nevertheless, to the extent Respondents are able to identify US Xpress's substantive arguments for reversal, Respondents discuss those arguments below in Section I.D.

A. The circuit court was authorized to order joinder.

As noted above, the Arender Appellants argue the circuit court lacked authority to order permissive joinder of the parties in the Cozby Action. The Arenders claim that because a plaintiff is not required to join all parties in one action, Rule 20 provides no mechanism for the court to

[2] To the extent US Xpress intends to argue the merits of the circuit court's order in its reply brief, it is procedurally barred from doing so. *See ABB, Inc. v. Integrated Recycling Grp. of SC, LLC*, 432 S.C. 545, 553, 854 S.E.2d 171, 175 (Ct. App. 2021) ("[A] party cannot raise an issue for the first time in an appellate reply brief."); *Glasscock, Inc. v. U.S. Fid. & Guar. Co.*, 348 S.C. 76, 81, 557 S.E.2d 689, 692 (Ct. App. 2001) ("[A]n argument made in a reply brief cannot present an issue to the appellate court if it was not addressed in the initial brief.").

compel the joinder of parties. (Arender Br. at 7-8). The Arenders assert that joinder is only compelled when the requirements of Rule 19, SCRCP, are satisfied. (Arender Br. at 8-9).

The Arenders' arguments relating to Rule 19 are misplaced. As the circuit court noted in its order, Respondents "plainly moved for 'permissive joinder' under Rule 20(a)" and "never suggested that either the parties or the Court were *required* to join the claims in one action." (R. P. __; Order Granting Joinder at 6 (emphasis added)). Instead, Respondents argued the circuit court had discretion to order joinder because the requirements of Rule 20(a) were satisfied. (*Id.*). The circuit court agreed. After finding Rule 20(a)'s requirements were met, the circuit court concluded it had the option to "exercise its discretion to join these cases." (*Id.* at 7).

Although the Arender Appellants claim Rule 20 does not provide the circuit courts with authority to order permissive joinder, this Court has held otherwise on at least two occasions. Most recently, in *Hoyler v. State*, this Court affirmed an order of the Master-In-Equity joining, *sua sponte*, numerous adjacent property owners as defendants pursuant to Rule 20(a). 428 S.C. 279, 833 S.E.2d 845 (Ct. App. 2019). There, Hoyler instituted an action against the State seeking a declaration that he owned certain tidelands in Beaufort County. 428 S.C. at 287-88, 833 S.E.2d at 849-50. Merry Land Properties, LLC, a developer, had obtained permits to construct a marina in the disputed tidelands and moved to intervene in Hoyler's action. *Id.* After granting Merry Land's motion to intervene, the master "ruled, *sua sponte*, that several additional owners of property adjacent to the disputed marsh would be joined as defendants." *Id.* at 288, 833 S.E.2d at 850. "[T]he master concluded the adjacent property owners were being joined pursuant to Rule 20(a), SCRCP, because they could lose their right of access to the Beaufort River upon a declaration that Hoyler held title to the disputed marsh." *Id.*

After failed interlocutory appeals (which Respondents discuss below in their appealability argument), the master ruled Hoyler did not hold title to the disputed marsh. *Id.* at 288-89, 833 S.E.2d at 850-51. On appeal, this Court reviewed the master's order joining the adjacent property owners as defendants pursuant to Rule 20(a). *Id.* at 302-03, 833 S.E.2d at 857-58. The Court held the master's addition of the adjacent property owners satisfied Rule 20(a)'s requirements. Specifically, the Court found Hoyler's action asserted a right to relief relating to the adjacent property owners' ability to use the disputed marsh. *Id.* The Court also held "the legal question of ownership of the disputed marsh was a question that was common to all of the defendants." *Id.* at 303, 833 S.E.2d at 858. Accordingly, this Court held "the master properly joined the adjacent property owners as defendants in this action." *Id.*

This Court also recognized lower courts' authority to order permissive joinder of parties in *Chan v. Thompson*, 302 S.C. 285, 395 S.E.2d 731 (Ct. App. 1990). *Chan* arose from a business arrangement between Chan, a foreign artificial flower manufacturer, and Thompson, a local distributor. Thompson also acted as a sales agent for Chan's business, Lisa Floral Import and Export Company, Inc. After a disagreement regarding commissions owed to Thompson, Thompson seized certain Lisa Floral inventory. Chan then sued Thompson, and Thompson filed a counterclaim against Chan for breach of contract.

The master hearing the case decided to join additional parties to the action. 302 S.C. at 288, 395 S.E.2d at 733. Specifically, the master added Chan's wife, three other businesses owned by the Chans, and Frances Stewart, who was holding the disputed inventory as a secured creditor of Thompson. *Id.* On appeal, this Court affirmed the master's decision to permissively join these additional parties. *Id.* at 291, 395 S.E.2d at 735. The Court noted there was evidence demonstrating that the companies added by the master "were set up by the Chans and utilized to

channel sales away from Lisa Floral in such a way as to deprive the Thompsons of sales commissions." *Id.* Accordingly, citing Rule 20, the Court held "[p]ermissive joinder of these companies was proper." *Id.*

Hoyler and *Chan* dismantle the Arenders' argument that "Rule 20, SCRCP, does not give the court discretion to join plaintiffs, defendants, or actions upon a motion by a defendant or *sua sponte*." (Arender Br. at 9). Although the Arenders claim only a plaintiff may utilize permissive joinder, *Hoyler* and *Chan* prove otherwise. In each case, this Court recognized that courts have discretion to permissively join parties to a case where the requirements of Rule 20(a) are satisfied. And the Court upheld the lower courts' exercise of that discretion. *See Hoyler*, 428 S.C. at 302-03, 833 S.E.2d at 857-58 (affirming permissive joinder of adjacent property owners whose rights could be impaired during proceedings); *Chan*, 302 S.C. at 291, 395 S.E.2d at 735 (affirming permissive joinder of companies involved in a scheme to deprive party of commissions).

Instead of discussing these authorities, the Arender Appellants rely on federal cases to support their position that only plaintiffs may invoke permissive joinder. (Arender Br. at 9-10). Of course, those cases do not involve the South Carolina Rules of Civil Procedure and, even if they did, they are not binding on this Court. *See Laffitte v. Bridgestone Corp.*, 381 S.C. 460, 473 n.9, 674 S.E.2d 154, 161 n.9 (2009). Nevertheless, the cases are distinguishable because each involved a *defendant* attempting to use Rule 20 to join *additional, non-party defendants* who were not required parties under Rule 19. *See, e.g.*, *Hefley v. Textron, Inc.*, 713 F.2d 1487, 1498-99 (10th Cir. 1983) (defendant could not use Rule 20 to join additional defendants whose presence was not required under Rule 19); *Moore v. Cooper*, 127 F.R.D. 422, 422 (D.D.C. 1989) (same); *Gen. Inv. Co. of Conn. v. Ackerman*, 37 F.R.D. 38, 41 (S.D.N.Y. 1964) (same).

The situation here is far different. Respondents are not simply defendants seeking to add additional, non-party defendants under Rule 20. Respondent Oliver is plaintiff in the Oliver Action and a counterclaim plaintiff in the Arender Action. (R. p. __; Oliver Compl. at 1; Thompson Construction and Oliver Answer and Counterclaims in Arender Action at 12). Additionally, the parties joined by the circuit court's order were not strangers to the litigation—all were existing parties to either the Cozby Action, the Arender Action, or the Oliver Action. Accordingly, Respondents' motion below should not be viewed as an attempted end-run around the requirements of Rule 19. Because Respondents sought joinder for legitimate purposes, such as avoidance of duplicative litigation and collateral estoppel, the cases the Arenders rely upon are inapposite.

For these reasons, the circuit court possessed authority to order permissive joinder.

B. The circuit court did not abuse its discretion in ordering permissive joinder.

Having established that circuit courts are authorized to order permissive joinder, Respondents will now show that the circuit court did not abuse its discretion in doing so here. As noted above, the circuit court found the requirements of Rule 20(a) were satisfied because the Cozby Action, the Arender Action, and the Oliver Action (i) arose from the same "occurrence" or "series of . . . occurrences" and (ii) involved common questions of law and fact. (R. p. __; Order Granting Joinder at 7). The circuit court further found that permissive joinder was desirable under the circumstances. Recognizing that "it would be incredibly inefficient to litigate these claims separately," the circuit court ruled joinder would "reduce cost to the parties, conserve judicial resources, eliminate the need for repetitive discovery, reduce the burden on witnesses, and prevent inconsistent judgments." (*Id.* at 11). Relatedly, the circuit court determined that joinder would "eliminate the risk of collateral estoppel applying to prevent adjudication on the merits." (*Id.*).

Appellants do not dispute the numerous benefits associated with permissive joinder of the actions below. Indeed, Appellants do not deny that joinder eliminates the need for duplicative litigation and the potential for inconsistent judgments. Nor could they. Instead, Appellants' only argument regarding these findings is that the "general considerations of efficiency or convenience" are not relevant to the Rule 20 analysis. (Arender Br. 10-11).

As this Court has recognized, however, procedural tools like permissive joinder and intervention are "premised upon the theory that when claims or defenses have a question of law or fact common to each other, sound administrative procedures encourage the disposition of all of the claims or defenses in one action rather than a multiplicity of actions." *S.C. Tax Comm'n v. Union Cnty. Treasurer*, 295 S.C. 257, 263, 368 S.E.2d 72, 75 (Ct. App. 1988). Flanagan's *South Carolina Civil Procedure*, which the Arenders rely upon heavily, also recognizes that "[j]udicial efficiency, trial convenience and the desire to resolve as many controversies as possible are the goals" of Rule 20.[3] Federal courts also encourage the resolution of related claims in a single proceeding. *See Defs. of Wildlife v. U.S. Fish & Wildlife Serv.*, 539 F. Supp. 3d 543, 553 (D.S.C. 2021) ("Rule 20[, Fed. R. Civ. P.] gives courts broad discretion regarding the permissive joinder of parties, and it should be construed in light of its purpose, which is to promote trial convenience and expedite the final determination of disputes, thereby preventing multiple lawsuits." (quotation marks and citation omitted)); *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 724 (1966) (stating that, under the Federal Rules of Civil Procedure, "the impulse is toward entertaining the broadest possible scope of action consistent with fairness to the parties; joinder of claims, parties and remedies is strongly encouraged").

[3] James F. Flanagan, *South Carolina Civil Procedure*, 168 (3d ed. 2010).

For these reasons, there can be no dispute that considerations of efficiency and convenience are highly relevant under Rule 20. The circuit court correctly determined that litigating the Cozby Action, the Arender Action, and the Oliver Action separately would be incredibly burdensome and inefficient. The circuit court's order granting permissive joinder furthered the purposes of Rule 20, and it is entitled to substantial deference.

C. Venue of the joined action is proper in Sumter County.

The circuit court correctly determined venue is proper in Sumter County. As the starting point for its venue analysis, the circuit court noted that "an order of permissive joinder merges previously separate actions into one." (R. p. __; Order Granting Joinder at 9) (citing Rule 20(a), SCRCP; *Ellis by Ellis v. Oliver*, 307 S.C. 365, 367, 415 S.E.2d 400, 401 (1992) (discussing the difference between an order of consolidation and an order of permissive joinder)). Thus, the circuit court determined that it was appropriate to consider "the residency of each defendant in each of the merged actions" in determining where venue was proper. (*Id.*) (citing S.C. Code Ann. § 15-7-30(B) ("If there is more than one defendant, the action may be tried in any county where the action properly may be maintained against one of the defendants pursuant to this section."); *cf. Ellis*, 307 S.C. at 367-68, 415 S.E.2d at 401-02 (holding "consolidation should not be deemed to create multiple defendants under the venue statutes")). The circuit court ruled venue over the joined action was proper in Sumter County because of Thompson Construction's residence there. (*Id.*) (citing S.C. Code Ann. § 15-7-30(E) (stating an action tried against a domestic corporation may be brought and tried in the county in which the corporation has its principal place of business)); (R. p. ____; Ex. 4 to Thompson Construction and Oliver's Memorandum of Law).

Notably, Appellants do not dispute the circuit court's conclusion that venue over the joined action is proper in Sumter County. Instead, the Arender Appellants raise only two narrow

arguments relating to venue. They claim the circuit court erred in utilizing Rule 20 to "change" the venue of the Arender Action and the Oliver Action. (Arender Br. at 12-13). The Arenders also argue the circuit court erred in referencing Thompson Construction's right to be tried in its county of residence in analyzing venue. (Arender Br. at 13-14).

The Arenders' first argument—that Rule 20 cannot impact a litigant's chosen venue—lacks merit. As an initial matter, the circuit court's order did not simply transfer venue of the Arender Action and the Oliver Action; the circuit court ordered for the parties and claims in those actions to be permissively joined with the Cozby Action. Although the circuit court acknowledged that its order "effectively change[d] the venue of the Arender Action and the Oliver [Action]," the circuit court found that doing so was necessary to avoid duplicative litigation and the concerns associated with the actions proceeding separately. (R. p. __; Order Granting Joinder at 9-10). The circuit court properly exercised its discretion in doing so. *See S.C. Tax Comm'n*, 295 S.C. at 263, 368 S.E.2d at 75 (explaining that Rule 20 encourages the disposition of "all of the claims or defenses in one action rather than a multiplicity of actions").

Although the Arenders contend the circuit court's order improperly changed the venue of their action, none of the cited authority supports that position. Rule 82(a), which the Arenders rely on, simply provides that the Rules of Civil Procedure shall not be construed to "extend or limit" the venue of an action. Rule 82(a), SCRCP. Although Rule 82 would prevent the court from ordering permissive joinder in a county where venue would not be proper under section 15-7-30, that is not a concern here because venue over the joined case is proper in Sumter County. The Arender Appellants also cite *Jeter v. South Carolina Department of Transportation* for the proposition that "where an action is properly instituted in a county other than that of the defendant's residence, a defendant has no right to request a change of venue to the county of his or her residence

on the ground that the action was not brought in a proper county[.]" 369 S.C. 433, 442, 633 S.E.2d 143, 148 (2006). Of course, Respondents never requested—and the circuit court did not order—a change of venue based on the Arender Action or the Oliver Action being instituted in an improper county. Accordingly, Appellants provide no support for their claim that the circuit court lacked authority to order permissive joinder in Sumter County.

Finally, the circuit court did not err in determining that "Cozby's decision to sue Thompson [Construction] in its county of residence is significant to the venue analysis." (R. p. __; Order Granting Joinder at 10). The Arenders argue the circuit court overlooked the 2005 amendments to section 15-7-30 in concluding Thompson Construction has a "substantial right" to be tried in its county of residence.[4] (Arender Br. at 13-14). Consistent with the 2005 amendments, the circuit court never suggested Thompson Construction had an *absolute* right to a trial in its county of residence; the circuit court concluded Thompson Construction had a substantial right to a trial in Sumter County *because Cozby elected to bring suit there*. (R. p. __; Order Granting Joinder at 10) ("Thompson's substantial right to be tried in Sumter County vested when Cozby elected to bring suit there."). Although the Arenders contend otherwise, the Supreme Court recognized in *Jeter* that the 2005 amendments did not eliminate this substantial right.[5]

[4] Prior to 2005, section 15-7-30 provided that an action "shall be tried in the county in which the defendant resides at the time of the commencement of the action." After the amendments, section 15-7-30 provides that an action must be tried in the county where the defendant resides or in the county where the most substantial part of the alleged act or omission giving rise to the cause of action occurred.

[5] In *Jeter*, the South Carolina Supreme Court cited the 2005 version of section 15-7-30 when discussing defendants' substantial right relating to venue. 369 S.C. at 442, 633 S.E.2d at 147 ("The defendant has a substantial right to be tried in the county of his residence pursuant to S.C. Code Ann. § 15-7-30 (2005)."). Accordingly, while the Arenders are correct that *Jeter* was decided under the previous version of the statute, nothing in *Jeter* (or any other case) suggests the 2005 amendments eliminated defendants' substantial right.

The Arenders' arguments also overstate the significance the circuit court attached to Thompson Construction's residence. Again, the circuit court did not conclude Thompson Construction had an absolute right to a trial in its county of residence. Instead, the circuit court carefully weighed Respondents' request for permissive joinder in Sumter County against Appellants' preferred venue. (R. p. __; Order Granting Joinder at 10) (noting "Arender and U.S. Xpress desire for these cases to be consolidated in Newberry County"). In resolving the parties' dispute, the circuit court considered the fact that Thompson Construction was the only defendant to be sued in its county of residence. (*Id.*). Exercising its discretion under Rule 20, the circuit court found that fact "further support[ed]" its decision to order permissive joinder in Sumter County. (*Id.*). Accordingly, the circuit court did not err in considering Thompson Construction's residence as one factor in ruling upon Respondents' motion.

D. Appellants' remaining arguments misconstrue the circuit court's order.

Appellants' other arguments also lack merit. Appellants argue the captions of the orders on appeal suggest that the circuit court did not order permissive joinder, as the captions show "three separate actions." (Arender Br. at 11); (US Xpress Br. at 13). Alternatively, Appellants contend that if the circuit court did order permissive joinder, the order "forces plaintiffs into litigation with defendants they did not wish to sue." (Arender Br. at 12); (US Xpress Br. at 9). By doing so, Appellants claim the circuit court's order forces Arender and Oliver to assert claims against their employers in violation of the workers' compensation exclusivity doctrine. *See Posey v. Proper Mold & Eng'g, Inc.*, 378 S.C. 210, 223, 661 S.E.2d 395, 402 (Ct. App. 2008).

Plainly, the circuit court ordered permissive joinder of the parties and claims in the Cozby Action, the Arender Action, and the Oliver Action. (R. p. __; Order Granting Joinder at 13) ("[T]he Court grants Thompson's motion and joins the Cozby Action, the Arender Action and the Oliver

Action around Case Number 2022-CP-43-01006, the number assigned to the Cozby Action."). The circuit court understood that "an order of permissive joinder merges previously separate actions into one," and unambiguously ruled that the actions were joined "for both discovery and trial." (*Id.* at 9, 11).

Although Appellants argue the case caption on the circuit court's order suggests otherwise, the caption simply reflects the claims asserted by Cozby, the Arenders, and Oliver. (*Id.* at 1). In other words, consistent with Rule 20(a), the caption identifies the relief demanded by each plaintiff. Rule 20(a), SCRCP ("A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded.").

The plain language of Rule 20(a) also negates Appellants' alternative argument that the circuit court's order forces plaintiffs to assert new claims against new parties, including their employers. Again, under an order of permissive joinder, plaintiffs are not required to assert identical claims against identical parties. Rule 20(a), SCRCP. The case caption confirms that the circuit court's order has not resulted in any new claims—and certainly not any that would violate the workers' compensation exclusivity doctrine.[6]

[6] As part of their argument on appealability, US Xpress argues trial of the joined cases will be difficult for jurors to follow and understand. (US Xpress Br. at 14). Responding to this argument below, the circuit court noted that trials involving numerous claims and parties are common and that "the benefits of joinder outweigh any concerns associated with a single trial." (R. p. __; Order Granting Joinder at 12). Importantly, the circuit court also noted that Rule 20(b) provides the trial court with "flexibility to ensure an efficient trial process." (*Id.*); Rule 20(b), SCRCP ("The court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom he asserts no claim and who asserts no claim against him, and may order separate trials or make other orders to prevent delay or prejudice."). Because Rule 20(b) vests the trial court with broad discretion over the trial process, US Xpress's arguments lack merit—particularly at this early stage of proceedings. *See* Flanagan, *South Carolina Civil Procedure* at 171 ("Liberal joinder of parties is most beneficial at the pleading and pre-trial stage when the presence of all interested persons may assist in the settlement of all or a substantial portion of the controversy.").

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The circuit court had authority under Rule 20 to grant permissive joinder on Respondents' motion. And the circuit court properly exercised its discretion in ordering permissive joinder under the circumstances presented in the actions below. Therefore, if the Court reaches the merits of the circuit court's order, it should affirm. However, as Respondents will now explain, the Court should recognize that the circuit court's order is not immediately appealable.[7]

II. The circuit court's joinder order is not immediately appealable.

"The determination of whether a trial court's order is immediately appealable is governed by statute." *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 537, 773 S.E.2d 144, 145 (2015). Section 14-3-330 of the South Carolina Code embodies the final judgment rule: "[a]n appeal ordinarily may be pursued only after a party has obtained a final judgment." *Hagood v. Sommerville*, 362 S.C. 191, 195, 607 S.E.2d 707, 708 (2005). However, section 14-3-330 also provides appellate courts with jurisdiction to review certain categories of intermediate—or interlocutory—orders. *See EnerSys Delaware, Inc. v. Hopkins*, 401 S.C. 615, 617, 738 S.E.2d 478, 479 (2013) (noting "an order must fall within one of the enumerated subsections [of 14-3-330] to be immediately appealable"). Two such categories of intermediate orders that are immediately appealable are orders "involving the merits" under section -330(1) and orders "affecting a substantial right" under section -330(2).

Appellants' primary argument is that the circuit court's order is appealable under subsection 14-3-330(2) because it affects their substantial right to choose which defendants to pursue claims

[7] Because the appealability analysis hinges on an understanding of the order in question, Respondents address appealability after their merits discussion. Of course, if the Court agrees that the circuit court's order is not immediately appealable, the Court should not reach the merits.

against. (Arender Br. at 17-20); (US Xpress Br. at 9-10). In support of that argument, Appellants rely heavily on the South Carolina Supreme Court's decisions in *Morrow*[8] and *Neeltec*.[9] US Xpress also argues the order violates its substantial right to a particular mode of trial—a workers' compensation action—by requiring employees to pursue tort actions against their employers. (US Xpress Br. at 11-12). Finally, and in less detail, Appellants contend the order is appealable because it "involves the merits" and because it falls within a discrete portion of the Supreme Court's opinion in *Morrow*. (US Xpress Br. at 12-14); (Arender Br. at 19).

A. The order does not affect a substantial right by depriving Appellants of the ability to pursue claims against their chosen defendants.

According to Appellants, the circuit court's order is immediately appealable because it joined defendants in one action, thereby violating Appellants' right to sue the defendants of their choosing.[10] Appellants' argument misconstrues both the circuit court's order and the caselaw discussing subsection 14-3-330(2).

Once again, Appellants erroneously contend that because the order joins plaintiffs and defendants in a single action, it necessarily requires *each* plaintiff to pursue claims against *each* defendant. (Arender Br. at 20); (US Xpress Br. at 9). The plain language of Rule 20(a) demonstrates otherwise: "A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded." Consistent with the Rule, the caption of the circuit court's order clearly demarks the parties against whom each plaintiff asserts claims. (R. p. __; Order Granting

[8] 412 S.C. 534, 773 S.E.2d 144 (2015).

[9] *Neeltec Enterprises, Inc. v. Long*, 397 S.C. 563, 725 S.E.2d 926 (2012).

[10] Of course, US Xpress is not a plaintiff and does not have standing to challenge any alleged violation of a plaintiff's "substantial right to name its defendants." (US Xpress Br. at 9). Nevertheless, this argument fails for the reasons discussed below.

Joinder at 1). Accordingly, Appellants' suggestion that the order requires plaintiffs to sue additional defendants is without merit. Importantly, the order also did not preclude any plaintiff from asserting claims against the defendants they chose to sue.

With those clarifications, it becomes clear that the order is not immediately appealable under subsection 14-3-330(2). Although Appellants are correct that "the right of a plaintiff to choose her defendant is a substantial right" under 14-3-330(2), *Neeltec* and *Morrow*—the cases that recognized that right—involved orders of a completely different character. Those cases involved orders that deprived plaintiffs of the ability to maintain their suits against particular defendants. The same is not true here.

In *Neeltec*, the South Carolina Supreme Court held an order substituting an individual defendant for two corporate defendants was immediately appealable. 397 S.C. at 566-67, 725 S.E.2d at 928-29. There, the plaintiff filed suit against an individual, alleging he unlawfully interfered with the plaintiff's business. *Id.* at 565, 725 S.E.2d at 927. On the individual defendant's motion, the special referee ordered that two corporations be substituted as defendants. *Id.* at 565, 725 S.E.2d at 928. After this Court dismissed the plaintiff's appeal as interlocutory, the Supreme Court reversed, concluding the order was appealable under subsection 14-3-330(2)(a). The Supreme Court found the order affected the plaintiff's right to choose her defendant because it "effectively discontinues [plaintiff's] suit against [the individual defendant.]" *Id.* at 566, 725 S.E.2d at 928.

In *Morrow*, the plaintiff filed suit against a nursing home and various entities related to the nursing home (the "Fundamental Entities") after he was injured. 412 S.C. at 536, 773 S.E.2d at 145. The plaintiff alleged direct negligence against the nursing home and vicarious liability and corporate negligence against the Fundamental Entities. *Id.* The Fundamental Entities filed a

motion to bifurcate, arguing the issues of direct negligence and corporate negligence were distinct, such that the plaintiff could only recover against the Fundamental Entities if he was first successful against the nursing home. *Id.* The trial court granted the motion, finding the plaintiff had to prove negligence against the nursing home before the corporate negligence claim could proceed. *Id.*

In holding the order of bifurcation was immediately appealable, the Supreme Court ruled the corporate negligence claim did not depend upon the success of the direct negligence claim. *Id.* at 538-39, 773 S.E.2d at 146. Accordingly, the Supreme Court found "the trial court's order effectively grants the Fundamental Entities potential summary judgment on the issues of direct corporate liability." *Id.* at 539, 773 S.E.2d at 146. Because the order therefore "deprives [the plaintiffs] of bringing their case against the defendant of their own choosing," the Supreme Court held the order was immediately appealable. *Id.*

While *Neeltec* and *Morrow* hold that an order is appealable when it effectively dismisses a plaintiff's claims against a particular defendant, the cases are not controlling here. In fact, this Court rejected Appellants' exact argument in *Dorn v. Cohen*, 418 S.C. 126, 791 S.E.2d 313 (Ct. App. 2016), holding an order adding a party did not affect any substantial right to choose defendants. Although the Supreme Court ultimately affirmed this Court's appealability determination on different grounds and vacated this Court's analysis, 421 S.C. 517, 809 S.E.2d 53 (2017), the Court's reasoning remains instructive.

Dorn arose from a probate court action to remove the Cohens as cotrustees of a trust. 418 S.C. at 130, 791 S.E.2d at 315. At trial, after the conclusion of Dorn's case-in-chief, the probate court issued an order adding Abbie, Dorn's former wife, as a party to the action. *Id.* at 135, 791 S.E.2d at 318. Dorn immediately appealed the order, contending it affected his "substantial right

to name his own defendants and control the presentation of evidence at trial." *Id.* at 136, 791 S.E.2d at 318.

Addressing the order's appealability, this Court acknowledged the holdings in *Neeltec* and *Morrow* that "an order depriving a plaintiff of his or her ability to determine the defendant against whom he or she brings a cause of action can affect a substantial right[.]" *Id.* at 137, 791 S.E.2d at 319. Importantly, however, the Court recognized "the fact that the probate court's order, on its face, added Abbie as a party to Dorn's petition is not inherently dispositive of whether the probate court's order was immediately appealable." *Id.* at 138, 791 S.E.2d at 319. The Court conducted a thorough analysis of *Neeltec* and *Morrow* and found those decisions did not support Dorn's "substantial right" argument: "Unlike the orders in *Neeltec* and *Morrow*, the probate court's order in this case neither substituted Abbie for the Cohens nor deprived Dorn of the ability to maintain his petition to remove the Cohens as the Trust's cotrustees." *Id.* at 139, 791 S.E.2d at 320. Instead, the Court found the order "had the effect of an order granting a motion to intervene" and was therefore not immediately appealable. *Id.* (citing *Duncan v. Gov't Emps. Ins. Co.*, 331 S.C. 484, 485, 449 S.E.2d 580, 580 (1994)).

This Court should follow the reasoning in *Dorn* and recognize that because the order below did not discontinue any plaintiff's claims against any defendant, it does not impact a substantial right under subsection 14-3-330(2). Indeed, the Supreme Court has long recognized that orders are not immediately appealable simply because they have the result of adding parties to litigation. *See Duncan*, 331 S.C. at 485-86, 449 S.E.2d at 580 (holding order granting a motion to intervene was not immediately appealable); *Edgefield Cnty. Hosp. Trustees v. Cannon Const. & Supply Co.*, 273 S.C. 500, 501, 257 S.E.2d 501, 501 (1979) (holding order adding third-party defendants was not immediately appealable).

Finally, this Court's decision in *Hoyler* further demonstrates that the permissive joinder order is not immediately appealable. As explained above, *Hoyler* involved a master's *sua sponte* order that thirty-two adjacent property owners be permissively joined as defendants in an action. 428 S.C. 279, 833 S.E.2d 845. Although this Court affirmed the merits of the master's order in a 2019 published opinion after final judgment, the Court previously dismissed an interlocutory appeal of the master's order, finding it was not immediately appealable. Appellate Case No. 2011-190650; Sept. 26, 2011 Order.[11] Thus, albeit in an unpublished order, this Court has previously recognized that an order granting permissive joinder is not immediately appealable.[12]

B. Appellants' remaining appealability arguments lack merit.

US Xpress also contends the circuit court's order is immediately appealable because it (i) denies their right to a particular mode of trial and (ii) involves the merits under subsection 14-3-330(1). (US Xpress Br. at 11-14). The Arenders claim the order is somehow appealable under the Supreme Court's decision in *Morrow* because the circuit court "misapprehended the nature of the plaintiffs' claims." (Arender Br. at 19). Each argument may be quickly dispensed with.

US Xpress's "mode of trial" argument fails because it rests on a mischaracterization of the circuit court's order. The order of permissive joinder did not create any new claims—and it

[11] The Court's order and other appellate materials are available in C-Track under Appellate Case No. 2011-204526. The Supreme Court denied Hoyler's petition for a writ of certiorari to review this Court's order dismissing the appeal.

[12] *Hoyler* also dispenses with US Xpress's argument that an immediate appeal of the circuit court's order is required. (US Xpress Br. at 10). Although the Court dismissed Hoyler's immediate appeal of the permissive joinder order, the Court reviewed the order after final judgment. More importantly, US Xpress's reliance on *Watts v. Copeland*, 170 S.C. 449, 170 S.E. 780 (1933) is misplaced. As our Supreme Court has explained, "*Watts* holds that a party who does not immediately appeal an order of substitution may not appeal this interlocutory order after final judgment." *Neeltec*, 397 S.C. at 567, 725 S.E.2d at 928. As Respondents have demonstrated, the circuit court did not order substitution of any parties like the courts in *Neeltec* and *Watts*.

certainly does not require any employee to maintain tort claims against his employer. *See supra* section I.D.; Rule 20(a), SCRCP. Again, the caption of the circuit court's order confirms there is no violation of the workers' compensation exclusivity doctrine. (R. p. __; Order Granting Joinder at 1). Because the circuit court's order does not implicate mode of trial—under the workers' compensation act or otherwise—the Court should reject US Xpress's alternative subsection 14-3-330(2) argument.

US Xpress's argument under 14-3-330(1) also fails. US Xpress acknowledges that an order involving the merits is one that "finally determine[s] some substantial matter forming the whole or a part of some cause of action or defense." (US Xpress Br. at 12) (quoting *Mid-State Distributors, Inc. v. Century Importers, Inc.*, 310 S.C. 330, 334, 426 S.E.2d 777, 780 (1993)). Rather than attempting to demonstrate that the order meets that standard, however, US Xpress relies only on (i) a 1968 decision by the Supreme Court of North Dakota and (ii) the claim that the order "failed to identify if the parties are joined as Plaintiffs or Defendants." (US Xpress Br. at 12-14). US Xpress's reliance on the *Wosepka* decision is misplaced for two reasons. First, in that decision, the Supreme Court of North Dakota acknowledged the "general proposition that orders permitting or refusing the joinder of additional parties are not appealable." 160 N.W.2d 217, 218 (N.D. 1968). Second, and more importantly, South Carolina cases have recognized that orders adding parties to litigation do not involve the merits under 14-3-330(1). *See Duncan*, 331 S.C. at 485-86, 449 S.E.2d at 580; *Edgefield Cnty. Hosp. Trustees*, 273 S.C. at 501, 257 S.E.2d at 501. Finally, US Xpress's argument that the order somehow fails to identify whether the parties were joined as plaintiffs and defendants is simply incorrect. *See supra* section I.D. And even if that was not the case, US Xpress fails to articulate how such a deficiency in the order would "finally

determine some substantial matter forming the whole or a part of some cause of action or defense." *See Mid-State Distributors*, 310 S.C. at 334, 426 S.E.2d at 780.

Finally, the Arenders contend the circuit court's order is appealable because the circuit court "misapprehended the applicability of Rule 20[.]" (Arender Br. at 19). Essentially, the Arenders cite *Morrow* for the proposition that a party may take an immediate appeal to correct "misapprehension" by the lower courts. If the Arenders' reading of *Morrow* were correct, it would effectively eliminate the policies against piecemeal appeals and the narrow construal of 14-3-330. *See Hagood*, 362 S.C. at 196, 607 S.E.2d at 709. Instead, as noted above, *Morrow* involved an appeal from an order that "effectively grant[ed]" a defendant summary judgment. 412 S.C. at 539, 773 S.E.2d at 146. And of course, Respondents have already explained that the circuit court's order complies with the provisions of Rule 20.

CONCLUSION

Because the circuit court's permissive joinder order is not immediately appealable, the Court should remand this action for further proceedings below. However, if the Court reaches the merits of the circuit court's order, it should affirm and find the circuit court properly exercised its discretion in ordering permissive joinder.[13]

[*Signature page to follow*]

[13] In addition to the arguments raised herein, Respondents request that the Court affirm the order of the circuit court for any ground(s) appearing in the record pursuant to Rule 220(c), SCACR.

Respectfully submitted,

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January 3, 2025