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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

The Honorable B. Alex Hyman
Circuit Court Judge

Appellate Case Number 2025-001759

Timothy Wenzel, Dawud Aswad, Jonathan Wheeler, Drew Winans, Brooke Morris, Jerome Maybank, Christian Decremer, Lee Wilson, Kimberly Davis, William Toomer, Marty Smith, Muryel Sumpter, Taneshia Timmons, Veronica Gibbs, Keona Brunson, Wade Wilder, Carla Harris, Dan Szucha, Edward Joseph Kozma, and Gene Footman, on behalf of themselves and all others similarly situated,

Appellants,

v.

Georgetown County and Georgetown County Sheriff's Department,

Respondents.

APPELLANTS' INITIAL BRIEF

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STATEMENT OF ISSUES ON APPEAL

I. Is the trial court's order immediately appealable?
II. Should the trial court's order be remanded to provide sufficient factual findings and conclusions of law?
III. Did the trial court err in granting Respondents' motion to sever?

STATEMENT OF THE CASE

Appellants brought this action based on the premise that Respondents wrongfully withheld premium pay owed to them under the American Rescue Plan Act of 2021 ("ARPA") for work performed during the COVID-19 public health crisis.

Respondent Georgetown County received ARPA funds, and at the June 22, 2021 Georgetown County Council ("Council") meeting, Council passed Ordinance No. 21-16, the County's budget for Fiscal Year 2021- 2022. As part of that budget, Respondent County provided for payment of ARPA "premium pay" in the form of a one-time payment to employees of both Respondent County and Respondent Georgetown County Sheriff's Office (the "Sheriff's Office") (collectively referred to as "Respondents").

On June 23, 2021, Respondents notified Appellants, and other employees, that "those who worked during the Covid 19 period time at the [Sheriff's Office]" would be getting a one-time bonus in August of 2021. Furthermore, Respondents provided Appellants and other employees – that same day – with a letter that they would "receive with [their] paycheck stub[s] on Friday." That letter provided that "General Government employees" would receive a one-time bonus of $2,131.00, and "Public Safety" employees would receive $4,563.00. Although Respondents claimed in this action that at least one (1) reason for withholding premium pay to Appellants was whether they were employed on August 13, 2021, there was ***nothing*** in the Ordinance or any of Respondents' communications that required Appellants, or any other individual, be employed on that date to receive the bonus.

On March 10, 2023, Respondents filed their motion for summary judgment. On April 10, 2023, the trial court granted Respondents' motion as to Appellants' promissory estoppel claim and denied it as to Appellants' claims for (1) unjust enrichment; and (2) violations of the South Carolina Payment of Wages Act ("SCPWA"), S.C. Code Ann. §§ 41-10-10 to 110 (Supp. 2018). On April 21, 2023, Respondents filed a motion for reconsideration pursuant to Rule 59(e), SCRCP. That motion was denied on November 15, 2023.

On August 12, 2024, Respondents filed a motion to sever "pursuant to Rules 20, 21, and 42(b)" of the South Carolina Rules of Civil Procedure, requesting an "Order severing the claims of each individually named Plaintiff[.]" On May 14, 2025, the trial court granted Respondents' motion via a Form 4 order with no findings, stating that a "formal Order" would follow. Respondents' counsel never provided an order to the trial court, no order was ever filed, and due to the time constraints proscribed by Rule 59(e), SCRCP, Appellants timely filed a motion for reconsideration, which was denied via a Form 4 Order on August 1, 2025 – again with no factual findings or conclusions of law. Appellants timely filed their Notice of Appeal.

STANDARD OF REVIEW

An interlocutory order is not immediately appealable unless it involves the merits of the case or affects a substantial right. S.C. Code Ann. § 14-3-330 (Supp. 2003); *Woodard v. Westvaco Corp.*, 319 S.C. 240, 243, 460 S.E.2d 392, 394 (1995); *Mid-State Distributors, Inc. v. Century Importers,* 310 S.C. 330, 334-35, 426 S.E.2d 777, 780 (1993); *Shields v. Martin Marietta Corp.*, 303 S.C. 469, 470, 402 S.E.2d 482, 483 (1991). To involve the merits of a case, the order must "finally determine some substantial matter forming the whole or a part of some cause of action or defense." *Woodard*, 319 S.C. at 243, 460 S.E.2d at 394. To affect a substantial right, the order

must "determine the action and prevent a judgment from which an appeal might be taken or discontinue the action." *Id.*

South Carolina appellate precedent provides "[a] motion to dismiss a party is addressed to the court's discretion." *Demian v. S.C. Health &Hum. Servs. Fin. Comm'n*, 297 S.C. 1, 5, 374 S.E.2d 510, 512 (Ct. App. 1988) (citing 3A James Wm. Moore et al., Moore's Federal Practice § 21.03[1] (2d ed. 1987)) (reviewing a decision not to dismiss a party for abuse of discretion). Also, federal courts uniformly cite the abuse of discretion standard in situations involving joinder. *See, e.g., DirecTV, Inc. v. Leto*, 467 F.3d 842, 844 (3d Cir. 2006) (explaining district judges have discretion to sever claims or dismiss them without prejudice to remedy misjoinder); *Letherer v. Alger Grp., L.L.C.*, 328 F.3d 262, 266-68 (6th Cir. 2003) (affirming the decision to drop a misjoined party because there was no abuse of discretion), *overruled on other grounds* by *Blackburn v. Oaktree Cap. Mgmt., LLC*, 511 F.3d 633 (6th Cir. 2008).

ARGUMENT

I. THE TRIAL COURT'S ORDER GRANTING RESPONDENT'S MOTION TO SEVER IS IMMEDIATELY APPEALABLE.

The determination of whether a trial court's order is immediately appealable is governed by statute. *Hagood v. Sommerville*, 362 S.C. 191, 194, 607 S.E.2d 707, 708 (2005); see S. C. Code Ann. § 14–3–330 (1976 & Supp. 2014). Pursuant to Section 14–3–330, appellate courts have jurisdiction to immediately review:

> 1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from;

2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action;

3) A final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment; and

4) An interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or granting, continuing, modifying, or refusing the appointment of a receiver.

S.C. Code Ann. § 14–3–330. The provisions of section 14–3–330 have been construed by this Court to serve the underlying policy favoring judicial economy by avoiding "piecemeal appeals." *Hagood*, 362 S.C. at 196, 607 S.E.2d at 709. By its nature, the question of whether an order is immediately appealable is determined on a case-by-case basis. *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 537-38, 773 S.E.2d 144, 145-46 (2015).

Orders denying joinder are generally not immediately appealable. *See Marshall v. Winter*, 250 S.C. 308, 312, 157 S.E.2d 595, 596-97 (1967) (finding an order denying a motion to bring in additional parties was unappealable prior to final judgment); *Crussiah v. Inova Health Sys.*, 688 Fed. Appx. 218, 218 (4th Cir. 2017) (finding an order denying a motion for joinder was neither a final nor an appealable interlocutory order).

Here, however, the circuit court did not deny joinder. Instead, the circuit court dismissed each individual Appellant from the case after they were previously joined. This was a dispositive decision as to the Appellants - it dismissed them from the case-and the grant of a dispositive motion is immediately appealable. *See Link v. Sch. Dist. of Pickens Cnty.*, 302 S.C. 1, 3-6, 393 S.E.2d 176, 177-79 (1990) (explaining an order dismissing one of multiple claims is immediately appealable); *Murphy v. Owens-Corning Fiberglas Corp.*, 346 S.C. 37, 44-45, 550 S.E.2d 589, 593 (Ct. App.

2001) (explaining an order dismissing one of multiple defendants is immediately appealable), *overruled on other grounds* by *Farmer v. Monsanto Corp.*, 353 S.C. 553, 579 S.E.2d 325 (2003).

An interlocutory order which affects a substantial right, and either in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues an action, is immediately appealable under § 14–3–330(2)(a). In this case, the trial court's order is immediately appealable under section 14-3-330 because it is "prevent[s] the [Appellants] from being architects of their own complaint," and deprives them of the ability to bring the case against Respondents in the manner they desire. *See Morrow*, 412 S.C. at 539, 773 S.E.2d at 146. (citing *Neeltec Enters., Inc. v. Long*, 397 S.C. 563, 566, 725 S.E.2d 926, 928 (2012) ("The right of the plaintiff to choose her defendant is a substantial right within the meaning of this subsection.") and *Chester v. South Carolina Dep't of Pub. Safety*, 388 S.C. 343, 698 S.E.2d 559 (2010) (on appeal from order requiring plaintiff to join parties as defendants, Court recognized common law right of tort plaintiff to choose her defendant)); and *Hagood*, 362 S.C. 191, 607 S.E.2d 707 (order disqualifying party's chosen attorney is immediately appealable under § 14–3–330(2))).

Appellants submit that *Morrow* is directly on point, if not substantially on point, as it was an immediate appeal from an order granting a motion to sever. Like the *Morrow* Court held, to prevent Appellants "from appealing the order immediately would encourage piecemeal litigation and limit their appellate remedies[.]" *Id.* For instance, should Appellants be required to proceed individually under the trial court's order, there will be 20 separate trials involving the same witnesses and virtually the same facts, as well as the potential for 20 separate appeals. As the *Morrow* majority indicated, just because "*part* of" any prejudice stemming from the trial court's order may be cured at a later date, that itself does not remove it from the purview of section 14-3-

330(2)(a). *Id.*, 412 S.C. 539, 773 S.E.2d n. 2. For these reasons, the trial court's order granting Respondents' motion to sever is immediately appealable because it affects a substantial right.

II. THIS CASE SHOULD BE REMANDED TO THE CIRCUIT COURT FOR SUFFICIENT FACTUAL FINDINGS AND CONCLUSIONS OF LAW REGARDING RESPONDENTS' MOTION TO SEVER.

Rule 52(a), SCRCP provides that "[i]n all actions tried upon the facts without a jury ... the court shall find facts specially and state separately its conclusions of law thereon...." The South Carolina Supreme Court has held that this rule "is directorial in nature so where a trial court substantially complies with Rule 52(a) and adequately states the basis for the result it reaches, the appellate court should not vacate the trial court's judgment for lack of an explicit or specific factual finding." *In re Treatment and Care of Luckabaugh*, 351 S.C. 122, 131, 568 S.E.2d 338, 342 (2002) (citing *Noisette v. Ismail*, 304 S.C. 56, 58, 403 S.E.2d 122, 123 (1991)).

The requirement for appropriately detailed findings "is designed ... to dispose of the issues raised by the pleadings and to allow the appellate courts to perform their proper function in the judicial system." *Id.* at 132, 568 S.E.2d at 343, citing *Coble v. Coble*, 300 N.C. 708, 712, 268 S.E.2d 185, 189 (N.C. 1980). A lower court is not required to set out findings on all the myriad factual questions arising in a particular case, but the findings must be sufficient to allow this Court, sitting in its appellate capacity, to ensure the law is faithfully executed below. *Id.* When a trial court fails to comply with Rule 52 in an action at law, it is appropriate for this Court to remand for further factual findings. *See In re Treatment and Care of Luckabaugh*, 351 S.C. at 134, 568 S.E.2d at 343-44 (remanding law case for failure to comply with Rule 52(a), SCRCP).

For these reasons, neither Appellants nor this Court can determine the factual bases and/or legal conclusions supporting the trial court's Form 4 orders, and Appellants are left to guess at which issues they should address and/or argue in the absence of such . This Court should remand

this case to the trial court for an order containing findings of fact and conclusions of law as required by Rule 52(a), SCRCP.

III. THE TRIAL COURT ERRED IN GRANTING RESPONDENTS' MOTION TO SEVER.

Although South Carolina has not identified a clear standard on what a trial court should look at in reviewing a motion to sever, South Carolina's federal district court has said the following factors should be considered:

1. Whether the issues sought to be tried separately are significantly different from one another;
2. Whether the separable issues require different witnesses and different documentary proof;
3. Whether the party opposing severance would be prejudiced if granted; and
4. Whether the moving party would be prejudiced if the claims are not severed.

Clements v. Austin, 617 F. Supp. 3d 373, 375 (D.S.C. 2022) (citing *Grayson Consulting, Inc. v. Cathcart*, No. 2:07-2992-DCN, 2014 WL 1512029 at *2 (D.S.C. 2014)).

Under Rule 20(a), SCRCP, a party may join or be joined if he asserts or there is asserted against him "any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action." The "transaction or occurrence" requirement set forth in Rule 20 "is designed to permit all reasonably related claims for relief by or against different parties to be tried in a single proceeding[.]" *Advamtel, LLC v. AT&T Corp.*, 105 F. Supp. 2d 507, 514 (E.D. Va. 2000). "Absolute identity of all events is not necessary, and the rule 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." *Id*.

"Rule 20 grants courts wide discretion concerning the permissive joinder of parties." *Aleman v. Chugach Support Servs. Inc.*, 485 F.3d 206, n.5 (4th Cir. 2007). Additionally, "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." *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 724 (1966).

The decision to sever actions for trial is within the discretion of the trial court. *Arnold v. E. Air Lines, Inc.*, 681 F.2d 186, 192 (4th Cir. 1982). A court should consider whether the risks of prejudice and possible confusion are outweighed by "the risk of inconsistent adjudications of common factual and legal issues, the burden on parties, witnesses and available judicial resources posed by multiple lawsuits, the length of time required to conclude multiple suits as against a single one, and the relative expense to all concerned of the single-trial, multiple-trial alternatives." *Id.* at 193.

South Carolina's misjoinder rule states that a dispensable party "may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just." Rule 21, SCRCP. This court has found misjoinder is proper when the party "fail[s] to satisfy either of the preconditions for permissive joinder of parties set forth in Rule 20(a)." *Farmer v. CAGC Ins. Co.*, 424 S.C. 579, 585, 819 S.E.2d 142, 145 (Ct. App. 2018) (quoting 7 Wright &Miller, Federal Practice and Procedure § 1683 (3d ed.))

Misjoinder therefore "occurs when there is no common question of law or fact or when ... the events that give rise to the plaintiff's claims against defendants do not stem from the same transaction." *Farmer*, 424 S.C. at 586, 819 S.E.2d at 146 (citing *DirecTV, Inc*, 467 F.3d at 844); and *Demian*, 374 S.E.2d at 512, 297 S.C. at 6 (finding no abuse of discretion when the circuit court

denied a defendant's motion to be dismissed for misjoinder when a common question of law applied to all defendants)).

It appears the circuit court was persuaded that the individual plaintiffs were misjoined because, as Respondents argued, "the issues sought to be tried are factually distinctive between [Appellants} and consideration as to liability, damages, and evidentiary proof are not common to all [Appellants]." ***See*** **Resp. Mot. Sever, p. 2, 6.**

In this case, however, Respondents took the position that Appellants would have received the premium payments had they been employees at the time of the disbursement on August 13, 2021. ***See*** **Resps.' Mem. Supp. S.J., at 2, 6 ("As the record reflects there is no genuine issue of material fact of whether [Appellants] were entitled to the ARPA premium pay because they were no longer employees of [Respondent] County when the ARPA payments were dispersed at the discretion of [Respondent] County.").** Thus, there was no individualized assessment necessary for each appellant because the alleged reasons behind any resignation, termination, or other reason an appellant may have left employment with Respondents was not essential to their claims and/or Respondents' defenses. For these reasons, there would not be the need for any separate "mini-trials" addressing complex or different issues between each appellant.

Additionally, there was no specialized or complex calculation used in determining the amount of Premium Pay owed to any appellant – in fact, there were only (2) amounts an employee could have received and that amount was based on whether they were a general government employee or, rather, a public service employee. *See id.*

The issues raised by Appellants against Respondents are identical, both factually and legally. There is no distinction at all. The sole issue to be decided by a jury is whether the Ordinance passed by County Council required Respondents to pay Appellants without regard to

their employment status or whether, as Respondents argue, they had the discretion to refuse to pay employees who were not employed at the time of payment, even if they were during the relevant time period outlined by the Ordinance. The legal issues are the same for all, the witnesses and documents are the same for all, and the damages, if awarded, are already known because they are also outlined in Respondents' filings in this action.

There should not be, and legally cannot be, different rulings by a jury between Appellants because the circumstances of their departures from Respondents are irrelevant to the jury's determination. One jury decision would necessarily apply to all claims of all Appellants. Respondents simply want multiple bites at the same apple, hoping they may be able to obtain separate findings and verdicts in multiple trials. The factors of judicial economy, convenience of the parties and convenience of the witnesses all dictate Appellants should not be severed but should be tried as one case. Respondents are attempting to place additional financial burdens on Appellants by forcing individual trials of the same issue and same evidence.

Rule 42(b) provides the court may order a separate trial when it is "conducive to expedition and economy." Here, severance produces the exact opposite result. The standard for severance has not been met.

As this Court has stated, Rule 21 should be viewed by the company it keeps; its neighbors, Rules 17, 19, and 20, are provisions that also tell us who are proper parties. *Farmer*, 424 S.C. at 586, 819 S.E.2d at 145. Taken together, these rules " 'evidence the general purpose ... to eliminate the old restrictive and inflexible rules of joinder designed for a day when formalism was the vogue and to allow joinder of interested parties liberally to the end that an unnecessary multiplicity of actions thus might be avoided.' " 7 Wright & Miller, Federal Practice and Procedure § 1681 (3d ed.) (quoting *Soc'y of European Stage Authors & Composers v. WCAU Broad. Co.*, 1 F.R.D. 264,

266 (E.D. Pa. 1940)). Although Rule 21 does not define misjoinder, "[t]he cases make it clear that parties are misjoined when they fail to satisfy either of the preconditions for permissive joinder of parties set forth in Rule 20(a)." 7 Wright & Miller, Federal Practice and Procedure § 1683 (3d ed.). For these reasons, in this case, Appellants were not misjoined and the trial court's order granting Respondents' motion to sever should be reversed and this matter remanded to the trial court with an order consistent with the reasoning herein.

CONCLUSION

Based upon the foregoing, Appellants respectfully request the trial court's order granting Respondents' motion to sever be reversed and remanded. Additionally, Appellants would ask that the judgment be reversed for any other reason appearing in the record of the case.

Respectfully submitted,

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