THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

The Honorable 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 Hunley 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 Hunley 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.

APPELLANTS DEAN ALAN ARENDER, U.S. XPRESS LEASING, INC., AND U.S. XPRESS, INC.'S FINAL INITIAL BRIEF

Mark S. Barrow, SC Bar No. 7821
Marshall C. Crane, SC Bar No. 102679
Madison K. Kea, SC Bar No. 105791
Sweeny, Wingate & Barrow, P.A.
Post Office Box 12129
Columbia, SC 29211
(803) 256-2233

ATTORNEYS FOR APPELLANTS DEAN ALAN ARENDER, U.S. XPRESS LEASING, INC., AND U.S. XPRESS, INC.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

South Carolina

Other Jurisdictions

STATUTES

South Carolina

Other Jurisdictions

STATEMENT OF ISSUES ON APPEAL

I. **ARE THE CIRCUIT COURT ORDERS IMMEDIATELY APPEALABLE PURSUANT TO S.C. CODE ANN. § 14-3-330?**

II. **DID THE CIRCUIT COURT ERR IN GRANTING RESPONDENTS' MOTION FOR PERMISSIVE JOINDER AND DENYING APPELLANTS' MOTION TO RECONSIDER WHEN IT FOUND THAT PERMISSIVE JOINDER WAS PROPER?**

STATEMENT OF THE CASE

This matter arises from a multi-vehicle accident that occurred on Interstate 26 in Newberry County on November 12, 2020. (R. p. 2). Four individuals were involved in the accident: (1) Jerry Cozby; (2) Curtis Ouellette, driving for Quality Haulers, Inc. and/or DMX Transportation Services Inc.; (3) Kent Huntley Oliver, driving for Thompson Construction Group, Inc.; and (4) Dean Arender, driving for U.S. Xpress, Inc. and/or U.S. Xpress Leasing, Inc. (R. p. 2). Following the accident, four lawsuits were filed, three of which are relevant to this appeal. (R. pp. 2-3).

The first lawsuit was filed on June 24, 2022, by Jerry Cozby in Sumter County, bearing Case No. 2022-CP-43-01006 (hereinafter "Cozby Action"). (R. pp. 18-25). The Cozby Action named the following Defendants: Kent Huntley Oliver; Thompson Construction Group, Inc.; Curtis Ouellette; and DMX Transportation, Inc. (R. p. 18). On July 26, 2022, an Amended Complaint was filed, replacing DMX Transportation, Inc. with Quality Haulers, Inc. (R. pp. 26-33). Therefore, the Cozby Action, prior to joinder, named the following Defendants: Kent Huntley Oliver; Thompson Construction Group, Inc.; Curtis Ouellette; and Quality Haulers, Inc. (R. pp. 26-33).

The second lawsuit was filed on May 17, 2023, by Dean Arender and Tamala Arender in Newberry County, bearing Case No. 2023-CP-36-00276 (hereinafter "Arender Action"). (R. pp. 55-80). The Arender Action named the following Defendants: Kent Huntley Oliver; Thompson Construction Group, Inc; Curtis Kent Ovellette; and DMX Transportation Services Inc. (R. p. 55). On November 9, 2023, the Third Amended Complaint was filed, adding Quality Haulers, Inc. as a Defendant. (R. pp. 81-107). Therefore, the Arender Action, prior to joinder, named the following Defendants: Kent Huntley Oliver; Thompson Construction Group, Inc; Curtis Kent Ouellette; Quality Haulers, Inc.; and DMX Transportation Services Inc. (R. p. 81).

The third lawsuit was filed on June 2, 2023, by Kent Huntley Oliver in Newberry County, bearing Case No. 2023-CP-36-00300 (hereinafter "Oliver Action"). (R. pp. 140-169). The Oliver Action named the following Defendants: Curtis Kent Ouellette; Quality Haulers, Inc.; Dean Arender; U.S. XPRESS Leasing, Inc; and U.S. XPRESS, Inc. (R. p. 140).[1]

On August 18, 2023, Thompson Construction Group, Inc. (hereinafter "Thompson") and Kent Huntley Oliver (hereinafter "Oliver") filed a Motion for Permissive Joinder and Consolidation. (R. pp. 187-90).

On October 6, 2023, Dean Arender (hereinafter "Arender") and Tamala Arender (hereinafter collectively as the "Arenders") filed a Memorandum in Opposition to Defendants Oliver and Thompson's Motion for Permissive Joinder and Consolidation in the Arender Action. (R. pp. 199-212).

On October 8, 2023, U.S. XPRESS Leasing, Inc and U.S. XPRESS, Inc. (hereinafter collectively as "USX") along with Arender filed a Memorandum in Opposition to Defendants Oliver and Thompson's Motion for Permissive Joinder and Consolidation in the Oliver Action. (R. pp. 213-20).

The Circuit Court conducted a hearing on the Motion for Permissive Joinder and Consolidation on October 9, 2023. At the hearing, counsel for Oliver and Thompson asked only for joinder under Rule 20, SCRCP, dropping the "consolidation" part of their initial and written motion. (R. pp. 5, 281).

On January 9, 2024, Judge Griffin emailed a ruling to all counsel, granting the Motion for Permissive Joinder *and* Consolidation. (R. pp. 299-300). On February 13, 2024, the Circuit Court

[1] The fourth action is before the Newberry County Arbitration Panel. *See Great West Casualty Company v. Thompson Construction Group, Inc. et al*, bearing Case No. 2023-CP-36-00125. Respondents did not seek to join this action. (R. p. 2).

entered an Order granting Thompson and Oliver's Motion for Permissive Joinder in the Oliver Action. (R. pp. 1-14). As a result of the Order, the three lawsuits were joined as one action in Sumter County, bearing Case No. 2022-CP-43-01006. (R. pp. 1-14). The Order joining these matters together did not show the matters joined in the caption. (R. p. 1). To the contrary, it showed only the Sumter County civil action number while all three lawsuits maintained their separate captions. (R. p. 1).

The Order granting the Motion for Permissive Joinder was filed in the Oliver Action on February 21, 2024. (R. pp. 315-28). The Order was also filed in the Arender Action on the same date. (R. pp. 301-14).

USX and Arender filed a Motion to Reconsider on February 23, 2024. (R. pp. 239-47). The Arenders also filed a Motion to Reconsider on February 23, 2024. (R. pp. 221-38). The Court denied the Motions to Reconsider on April 4, 2024. (R. pp. 15-17).

USX and Arender filed a Notice of Appeal on May 3, 2024, appealing both the Order granting the Motion for Joinder and Order denying the Motions to Reconsider. The Arenders also filed a Notice of Appeal on May 3, 2024, appealing both the Order granting the Motion for Joinder and Order denying the Motions to Reconsider. On May 16, 2024, the Court issued a letter consolidating the appeals under Appellate Case No. 2024-000742. Respondents filed a Motion to Dismiss on May 28, 2024. USX and Arender as well as the Arenders filed their Returns to the Motion to Dismiss on June 14, 2024. The Court denied the Motion to Dismiss on August 26, 2024.[2]

[2] Appellant is omitting a fact section as this matter is solely focused on the procedural framework and Appellate Rules 208 and 211 do not require a fact section.

STANDARD OF REVIEW

"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). The appellate courts shall review the following on appeal:

> (1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas …
> (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 …

See S.C. Code Ann. § 14-3-330. An appellate court's "review of trial court orders is not constrained by how the order is styled." *Morrow*, 412 S.C. at 539, 773 S.E.2d at 147; *see also Thornton v. S.C. Elec. & Gas Corp.*, 391 S.C. 297, 304, 705 S.E.2d 475, 479 (Ct. App.2011) ("[A]n appellate court should look to the effect of an interlocutory order to determine its appealability."). "By its nature, the question of whether an order is immediately appealable is determined on a case-by-case basis." *Id*. at 538, 773 S.E.2d at 146.

If an order is immediately appealable, then the analysis turns on whether the trial court erred. Deciding whether to "grant or deny a motion to join an action . . . lies within the sound discretion of the trial court." *Ex Parte Gov't Emp.'s Ins. Co. v. Goethe*, 373 S.C. 132, 135, 644 S.E.2d 699, 701 (2007). Generally, a ruling on joinder must be overturned when an "abuse of discretion is found resulting in an error of law." *Id.* (quoting *Jeter v. South Carolina Dep't of Transp.*, 369 S.C. 433, 438, 633 S.E.2d 143, 145 (2006)); *see also Demian v. South Carolina Health and Hum. Servs. Fin. Comm'n*, 297 S.C. 1, 374 S.E.2d 510 (Ct. App. 1988).

However, this appeal does not involve any disputed facts or inferences to be drawn in favor of one party or another. This appeal raises only errors of law for the Court to review with no

deference to the circuit court. *See Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 327, 534 S.E.2d 672, 675 (2000).

ARGUMENTS

I. THE ORDER GRANTING PERMISSIVE JOINDER AND ORDER DENYING THE MOTIONS TO RECONSIDER ARE IMMEDIATELY APPEALABLE UNDER S.C. CODE ANN. § 14-3-330.

a. The Circuit Court Orders are Immediately Appealable Because They Affect Substantial Rights of the Appellants.

To appeal an intermediate order under S.C. Code Ann. § 14-3-330(2)(a), the order must (1) affect a substantial right and (2) determine the action and prevent a judgment from which an appeal might be taken.

i. South Carolina Has Never Addressed Whether an Order Granting Permissive Joinder Involves a Substantial Right.

As an initial matter, there is no South Carolina case law that addresses whether an order granting permissive joinder pursuant to Rule 20 of the *South Carolina Rules of Civil Procedures* is immediately appealable under S.C. Code Ann. § 14-3-330(2)(a). However, there are cases that shed light on and assist in determining appealability.

In *Neeltec Enterprises, Inc. v. Long*, the Supreme Court of South Carolina held that an order requiring the plaintiff, at the request of the named defendant, to remove the named defendant from the suit and substitute two different defendants was immediately appealable under S.C. Code Ann. § 14-3-330(2)(a), 397 S.C. 563, 725 S.E.2d 926 (2012). The named defendant's motion and the Circuit Court's order was made pursuant to Rule 21, SCRCP. *See id.* at 565, 725 S.E.2d at 928. The order required plaintiff to discontinue its SCUTPA suit against the named defendant, affecting plaintiff's substantial right to name its defendant. *See id.* at 567, 725 S.E.2d at 929. The Supreme Court, therefore, found that "this order effectively discontinues petitioner's suit against [the named

defendant], thus bringing the order under 2(a) [of S.C. Code Ann. § 14-3-330]." *Id*. at 566, 725 S.E.2d at 928.

Moreover, in *Neeltec*, when the Court analyzed appealability, it cited to *Watts v. Copeland*, 170 S.C. 449, 170 S.E. 780, 783 (1933). *Watts* is a case from 1933, where the South Carolina Supreme Court "considered an appeal by the defendant from an order substituting an individual plaintiff for a corporate plaintiff." *Id.* at 566, 725 S.E.2d at 928. Here, the defendant did not immediately appeal the substitution order, but instead sought to appeal it after judgment." *Id.* The Court held:

> [F]rom the court's order no appeal was taken by [the defendant]. On the contrary, as stated, she elected to file an answer and go to trial on the issues made by the pleadings. Clearly, in these circumstances, the question here made is res adjudicata. [Defendant], by her failure to appeal from the court's order of substitution, is now estopped to deny that [the individual] was the proper party to prosecute the action.

Watts, 170 S.C. at 456-57, 170 S.E. at 783.

Therefore, "*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.

Next, in *Morrow v. Fundamental Long-Term Care Holdings, LLC*, the South Carolina Supreme Court held that an order to bifurcate a trial pursuant to Rule 42(b), SCRCP was immediately appealable as it affected a substantial right and deprived plaintiffs of bringing their case against the defendant of their choosing, 412 S.C. 534, 773 S.E.2d 144. In this case, plaintiffs brought suit against various entities, alleging personal injuries suffered by a nursing home resident. *See id.* at 535, 773 S.E.2d at 144. Plaintiffs brought nursing home negligence claims as well as corporate negligence claims. *See id.* at 536, 773 S.E.2d at 145. The entities filed a motion to bifurcate, arguing that "the issues of nursing home negligence and corporate negligence were

distinct, and the [plaintiffs] could only move forward on the corporate negligence claims if they were first successful against [the nursing home]." *Id.* The Court thereafter granted the motion to bifurcate.

In addressing the immediate appealability of the order, the Court looked to the effect—"[t]he effect of this order is to prevent the Morrows from being architects of their own complaint, and deprives them of bringing their case against the defendant of their own choosing." *Id.* 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)). Therefore, the Court found that the trial court's order implicated a substantial right and stated that "[t]o prevent the [plaintiffs] from appealing the order immediately would encourage piecemeal litigation and limit their appellate remedies after the first trial on nursing home negligence and its subsequent appeal." *Id.* at 539, 773 S.E.2d at 146–47.

Lastly, *Dorn v. Cohen* involved a probate court action where the father, on his children's behalf (remainder beneficiaries), sought to remove the mother's parents as co-trustees of the special needs trust established to provide for the mother's medical needs (mother was the primary beneficiary), 418 S.C. 126, 791 S.E.2d 313 (Ct. App. 2016), aff'd as modified, 421 S.C. 517, 809 S.E.2d 53 (2017). During the litigation, petitions were filed by both the father and the mother's parents as co-trustees, and the probate court decided to hear the petitions in a single trial. *See id.* at 131, 791 S.E.2d at 315. During the trial, there was a discussion as to whether the mother was a named party to the petitions. *See id.* at 133, 791 S.E.2d at 317. The probate court believed that the mother was an "indispensable party," *see id.*, and later issued an "order adding [the mother] as a party to both petitions pursuant to Rule 19, SCRCP," *Id.* at 135, 791 S.E.2d at 318. The father appealed to the Circuit Court, which held that the matter was not immediately appealable. *See id.* at 136, 791 S.E.2d at 318.

Although the order, on its face, added the mother as a party, that was "not inherently dispositive of whether the probate court's order was immediately appealable." *Id.* at 138, 791 S.E.2d at 319. Rather, as in *Morrow*, the court had to look to the order's effect on the proceeding. *See id.* The Court of Appeals found that unlike the orders in *Neeltec* and *Morrow*, the order did not substitute any parties. *See id.* at 139, 791 S.E.2d at 320. "Rather, the probate court's order had the effect of an order granting a motion to intervene because it allowed for [the mother's] full participation as a party in the action seeking to remove the trustees of the trust created for her benefit." *Id.* Moreover, "[i]n this case, determination of the issues before the probate court had serious consequences for [the mother], whose welfare and care depended directly on the prudent use of the Trust's funds." *Id.* at 140, 791 S.E.2d at 320. Therefore, the Court of Appeals held that the order did not affect the father's substantial right to choose his own defendant and was, therefore, not immediately appealable. *See id.* at 139, 791 S.E.2d at 320.[3]

The cases above outline principles regarding whether an order is immediately appealable and provide general insight into the effect of certain orders. However, none of these cases provide clear insight into whether the orders at hand—the Order granting the Motion for Permissive Joinder and the Order denying the Motions to Reconsider—are immediately appealable. Moreover, the cases cited above continue to recognize that "the question of whether an order is immediately appealable is determined on a case-by-case basis." *See id.* at 138, 791 S.E.2d at 319 (citing *Morrow*, 412 S.C. at 538, 773 S.E.2d at 146.) Therefore, the orders at hand must be dealt with as such.

[3] The Court of Appeals' decision was then appealed to the South Carolina Supreme Court. *See Dorn v. Cohen*, 421 S.C. 517, 809 S.E.2d 53 (2017). The Supreme Court stated that appeals from the probate court are governed by S.C. Code Ann. § 62-1-308 rather than S.C. Code Ann. § 14-3-330. *See id.* at 520, 809 S.E.2d at 54. The Supreme Court affirmed the dismissal of the appeal but "**vacate[d] the court of appeals' analysis**." *Id.* (emphasis added).

ii. The Plaintiffs' Right of Election is a Substantial Right.

The Order granting Permissive Joinder severely impedes a plaintiff's right of election—a substantial right. This right "has been recognized in South Carolina jurisprudence for almost two hundred years." *Smith v. Tiffany*, 419 S.C. 548, 563, 799 S.E.2d 479, 487 (2017) (citing *Little v. Robert G. Lassiter & Co.*, 156 S.C. 286, 287, 153 S.E. 128, 128 (1930)). Although the *Smith* court did not need to rely on the right of election as the basis for appellate review, the South Carolina Supreme Court recognized and affirmed a right in which a plaintiff "should not be required to sue someone against whom [he] makes no claim." *Id.* It is the plaintiff's choice, and as such, South Carolina courts have "offered various reasons for refusing to allow defendants to bring in alleged joint tortfeasors a plaintiff has opted not to sue." *Id.* at 562, 799 S.E.2d at 487. A plaintiff is the architect of their case—not a defendant.

First, the Order forces a Plaintiff to sue someone against whom he makes no claim, which involves the same principles addressed in *Neeltec* and *Watts*. As in *Neeltec*, the order here affects Plaintiff Cozby's substantial right to name its defendants. If Cozby had an interest in determining Arender and USX's negligence, then he should have alleged claims against Arender and USX directly as it would be his right under the right of election. Moreover, if Cozby wanted to make a motion to amend his pleadings to add claims against Arender and USX, then he should have. However, Cozby took neither of these actions. On the other hand, if Respondents were concerned with Arender and USX's negligence in the Cozby Action, they could have asserted third-party claims. However, Respondents did not take this action either. It is not the Court's responsibility or right to manufacture this scenario—it is the parties in their pleadings. Therefore, when the Order states, "Arender and U.S. Xpress' negligence is also at issue in the Cozby Action," it is forcing Cozby to make claims against Appellants when it did not have any claims against them previously.

(*See* R. p. 7). This is not simply joining parties as defendants; this is forcing a plaintiff to file suit against parties it chose not to name.

Moreover, unlike the Appellant in *Dorn*, the Appellants in this case are the parties being brought into this other action. The prejudice can be easily understood—Appellants are now facing additional claims and liability from another party it did not face prior to the Order. The Appellants did not seek to be added to the Cozby Action, and no other party took action to add them through traditional means of making a Motion to Amend under Rule 15, SCRCP or a Third-Party Claim under Rule 14, SCRCP. Furthermore, unlike the mother in *Dorn*, the Appellants are clearly not necessary parties—determination of the issues in the Cozby Action prior to joinder did not have any consequences on Appellants and were not needed for just adjudication. A complete determination of the Cozby Action can be had without USX or Arender.

Second, if Appellants decided to not appeal the Order Granting Permissive Joinder until after judgment, the question on appeal would be res adjudicata because any trial would determine whether Appellants were proper parties in the joined action, similar to the defendant in *Watts*. As one joined action, a factfinder will determine whether USX and Arender were negligent even though Cozby never named them as Defendants or brought any claims or made any allegations against them. As such, Appellants' appellate remedies would be severely impeded, similar to the Plaintiffs in *Morrow*.

Therefore, this matter is immediately appealable under S.C. Code Ann. § 14-3-330(2)(a) because the Plaintiff's right of election is a substantial right and the failure to immediately appeal the Orders would bar consideration of the orders in an appeal from final judgment.

iii. The Appellants' Right to a Particular Mode of Trial is a Substantial Right.

"[T]he denial of a party's right to a particular mode of trial is immediately appealable as a substantial right under Section 14–3–330(2)." *Hagood v. Sommerville*, 362 S.C. 191, 196, 607 S.E.2d 707, 709 (2005) (citing *Flagstar Corp. v. Royal Surplus Lines*, 341 S.C. 68, 72, 533 S.E.2d 331, 333 (2000)). "These cases not only permit, but indeed require, immediate appeal in the event of denial of a mode of trial to which one is entitled as a matter of right." *Flagstar Corp. v. Royal Surplus Lines*, 341 S.C. 68, 72, 533 S.E.2d 331, 333.

Under South Carolina law, "[t]he exclusivity provision of the [Workers' Compensation] Act precludes an employee from maintaining a tort action against an employer where the employee sustains a work-related injury." *Posey v. Proper Mold & Eng'g, Inc.*, 378 S.C. 210, 224, 661 S.E.2d 395, 403 (Ct. App. 2008). At the time of the incident, Arender was driving for USX, Oliver was driving for Thompson, and Curtis Oullette was driving for Quality Haulers, Inc. Prior to joinder, neither Oliver nor Arender maintained tort actions against their employers due to the Workers' Compensation Exclusivity Doctrine. However, now that the parties are joined into one action, Arender is a Plaintiff and USX is a Defendant, running afoul to the Workers' Compensation Exclusivity Doctrine; the same issue arises between Oliver and Thompson.

First, USX is entitled to a specific mode of trial in which their employee cannot maintain a tort action against them. However, this right to a particular mode of trial is denied as Arender is a Plaintiff and USX is a Defendant in the same action. Second, as discussed above, if Appellants decided to not appeal the Orders until after judgment, the question on appeal would be res adjudicata because any trial would determine whether Appellants were proper parties in the joined action.

Therefore, this matter is immediately appealable under S.C. Code Ann. § 14-3-330(2)(a) because the Orders deny Appellants' right to a particular mode of trial and the failure to immediately appeal the Orders would bar consideration of the orders in an appeal from final judgment.

b. The Circuit Court Orders are Immediately Appealable Because They Involve the Merits of the Action.

A party may file an immediate appeal when an order involves the merits of the action. *See* S.C. Code Ann. § 14-3-330(1). An order involves the merits when it "finally determine[s] some substantial matter forming the whole or a part of some cause of action or defense." *Mid-State Distribs., Inc. v. Century Importers, Inc.*, 310 S.C. 330, 334, 426 S.E.2d 777, 780 (1993). South Carolina courts have never determined whether an order granting joinder involves the merits of an action. However, when South Carolina courts are faced with determining whether an order is immediately appealable, they may look to and adopt the reasoning of other jurisdictions that have addressed the appealability of specific orders. *See Hagood v. Sommerville*, 362 S.C. 191, 197, 607 S.E.2d 707, 710 (2005).

In *Wosepka v. Dukart*, the Supreme Court of North Dakota addressed whether an order granting joinder under Rule 19 of the *North Dakota Rules of Civil Procedure*[4] was immediately appealable, 160 N.W.2d 217 (N.D. 1968). In this case, Plaintiff's son was driving Plaintiff's car when it collided with Defendant's truck. *See id.* at 217. Defendant asserted that Plaintiff's son's negligence was the proximate cause of the accident. *See id.* The trial court, therefore, compelled joinder under Rule 19 of the *North Dakota Rules of Civil Procedure* because Plaintiff's son "ought to be a party in order to accord complete relief between those who were already parties." *Id.* at

[4] Rule 19 of the *North Dakota Rules of Civil Procedure* and Rule 19 of the *South Carolina Rules of Civil Procedure* mirror one another.

218. In determining whether the grant of joinder was immediately appealable, the Court looked to whether the order involved the merits of the action. *See id.* The North Dakota Supreme Court held that an order granting a motion to force joinder was an order that involves the merits of an action and was, therefore, appealable pursuant to N.D. Cent. Code Ann. § 28-27-02(5)[5]. *See id.* at 217.

The Court, in this case, is faced with a similar question—whether the order granting permissive joinder under Rule 20 of the *South Carolina Rules of Civil Procedure* involves the merits of the action and is, therefore, appealable. Although the *Wosepka* case involves a different joinder rule, permissive joinder under Rule 20, SCRCP and compulsory joinder under Rule 19, SCRCP both result in the joinder of parties in one action.

Here, the Order Granting Permissive Joinder and the Order Denying the Motion to Reconsider involve the merits of the action because the Orders failed to identify if the parties are joined as Plaintiffs or as Defendants, resulting in a lack an understanding of how the claims are proceeding. When the Court orders joinder, the parties and pleadings are merged, and "all persons are joined in *one action*." Rule 20(a), SCRCP (emphasis added). However, the joinder of these three separate actions does not constitute a situation where persons are simply joining as plaintiffs or defendants; this is evidenced by the case caption in the Circuit Court's Orders. (R. pp. 1, 15). The case caption shows that there are three separate actions as if they were consolidated; the only difference following the grant of joinder is that there is only one case number. (R. pp. 1, 15). The orders fail to identify how the parties are joined and how the various claims work together in one action.

[5] N.D. Cent. Code Ann. § 28-27-02(5) provides that "[a]n order which involves the merits of an action or some part thereof" is an order that "may be carried to the supreme court," which is notably similar to S.C. Code Ann. § 14-3-330(1) ("The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal … [a]ny intermediate … order … in a law case involving the merits in actions…")

For example, a joined action has only one verdict form. *See Sarvghad v. Sitton Buick Co.*, 312 S.C. 429, 430, 440 S.E.2d 894, 895 (Ct. App. 1994). If there is only one verdict form, the factfinder must "apportion one-hundred percent of the fault between the plaintiff and each defendant whose actions are the proximate cause of the indivisible injury." *Smith*, 419 S.C. at 553, 799 S.E.2d at 481 (citing S.C. Code Ann. § 15-38-15(C)(3)). "[A] plain reading of the words 'defendant' and 'defendants' in section 15-38-15(C) reveals the legislature's intent to allow only a 'defendant' or 'defendants' to be listed on the jury form and included in the allocation of fault." *Id.* at 559–60, 799 S.E.2d at 485.

First, the convoluted nature of this verdict form, the explicit questions on the verdict form, and the various parties and their positions on the verdict form will be difficult to draft and understand—if not impossible based on the arguments discussed herein. From the Order, there is not a clear understanding of how the claims operate as one joined case. Second, Cozby has not alleged any causes of action against Appellant Arender or USX; therefore, it would be improper under South Carolina statutory law to include these parties as defendants on the verdict form with Cozby as plaintiff as there are no claims pending against them. Lastly, as referenced above, Arender cannot pursue a tort claim against USX and, therefore, cannot be on the same verdict form as USX as one of the Defendants given South Carolina's worker's compensation exclusive remedy; the same can be said for Oliver as plaintiff and Thompson as defendant.

Lastly, the Order Granting Permissive Joinder and the Order Denying the Motion to Reconsider involve the merits of the action by interfering with the Plaintiff's right of election and the Workers Compensation exclusivity doctrine for the reasons stated above. Therefore, the Circuit Court's Orders affect the merits of the action and are, therefore, immediately appealable pursuant to S.C. Code Ann. § 14-3-330(1).

II. THE CIRCUIT COURT ERRED IN GRANTING RESPONDENTS' MOTION FOR PERMISSIVE JOINDER AND DENYING APPELLANTS' MOTIONS TO RECONSIDER WHEN IT FOUND THAT PERMISSIVE JOINDER WAS PROPER.

When the Court orders joinder, the parties and pleadings are merged, and "all persons are joined in *one action*." Rule 20(a), SCRCP (emphasis added). South Carolina Rule of Civil Procedure 20(a) provides:

> All persons may **join in one action as plaintiffs** if they assert 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. All persons may be **joined in one action as defendants** if there is asserted against them jointly, severally, or in the alternative, any right to relief 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 defendants will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

(emphasis added). However, as discussed above, this is not a situation where persons are simply joining as plaintiffs or defendants. Respondents may rely upon Rule 20(b), SCRCP as a solution for any issues that arise later on, which would allow the court to 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." However, the issue in front of the Court is not whether the parties can later rely on Rule 20(b), SCRCP—the issue is whether the court erred in joining the parties in the first place. It is Appellants' view that Rule 20(a), SCRCP wholly does not apply or allow the court to join the parties as it did in its Order granting Permissive Joinder.

The reasons set forth in the appealability section constitute the same arguments Appellants rely on to show why the Court erred in finding that permissive joinder was proper in these actions.

As such, the Circuit Court erred in granting Respondents' Motion for Permissive Joinder and denying Appellants' Motions to Reconsider.

CONCLUSION

For the reasons set forth above, Appellants request that this Court reverse the Circuit Court's order granting Thomspon Construction and Kent Oliver's Motion for Permissive Joinder.

Respectfully submitted,

SWEENY, WINGATE & BARROW, P.A.

s/ Madison K. Kea
Mark S. Barrow, SC Bar No. 7821
Marshall C. Crane, SC Bar No. 102679
Madison K. Kea, SC Bar No. 105791
Sweeny, Wingate & Barrow, P.A.
Post Office Box 12129
Columbia, SC 29211
(803) 256-2233

ATTORNEYS FOR APPELLANTS DEAN ALAN ARENDER, U.S. XPRESS LEASING, INC., AND U.S. XPRESS, INC.

Columbia, South Carolina

February 21, 2025

RECEIVED
Feb 21 2025
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

The Honorable 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 Huntly 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.

PROOF OF SERVICE

I, the undersigned of the law offices of Sweeny, Wingate & Barrow, PA, attorney for Appellants Dean Alan Arender, U.S. Xpress Leasing, Inc., and U.S. Xpress, Inc., do hereby certify that the Final Initial Brief has been served on all counsel to this appeal. The brief has been served by email sent to the addresses below:

G. Murrell Smith, Jr., Esquire
Frederick Newman Hanna, Jr, Esquire
2530 Devine St., Third Floor
Columbia, SC 29205
murrell@smithrobinsonlaw.com
fred.hanna@smithrobinsonlaw.com

Attorneys for Respondents Kent Huntly Oliver and Thompson Construction Group, Inc.

Justin Arenas, Esquire
The Derrick Law Firm, PA
Post Office Box 28
Conway, SC 29528
justin.arenas@derricklawfirm.com

Joseph V. Camerlengo, Esquire
Jessica Lanifero, Esquire
The Truck Accident Law Firm
1200 Riverplace Blvd., Suite 902
Jacksonville, FL 32207
jvc@truckcrashlaw.com
jll@truckcrashlaw.com

Attorneys for Respondent Kent Huntley Oliver

Jacob Born, Esquire
James Sproat, Esquire
James George, Esquire
Smith, Born, Leventis, Taylor & Vega, LLC
Post Office Box 5070

Columbia, SC 29250
jborn@sbltv.law
jsproat@sbltv.law
jgeorge@sbltv.law

Attorneys for Appellant Dean Arender and Tamala Arender

Andrew Clifton Evans, Esquire
Hawk Law
PO Box 5048
Andrew.evans@hawklaw.com

Attorney for Plaintiff Jerry Cozby

Curtis Lyman Ott, Esquire
Edward Hood Dawson, III, Esquire
Gallivan White Boyd
PO Box 7368
Columbia, SC 29202
cott@gwblawfirm.com
hdawson@gwblawfirm.com

Attorney for Defendants Curtis Kent Oulette and Quality Haulers, Inc.

s/ Madison K. Kea
Mark S. Barrow, SC Bar No. 7821
Marshall C. Crane, SC Bar No. 102679
Madison K. Kea, SC Bar No. 105791
Sweeny, Wingate & Barrow, P.A.
Post Office Box 12129
Columbia, SC 29211
(803) 256-2233

ATTORNEYS FOR APPELLANTS DEAN ALAN ARENDER, U.S. XPRESS LEASING, INC., AND U.S. XPRESS, INC.

Columbia, South Carolina

February 21, 2025

RECEIVED
Feb 21 2025
SC Court of Appeals

S·W·B

SWEENY WINGATE & BARROW

February 21, 2025

Reply to: Main Office

Madison K. Kea
(803) 256-2233
mkk@swblaw.com

VIA E-MAIL: ctappfilings@sccourts.org
The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

RE: Oliver v. Arender and U.S. Xpress, Inc.
Appellate No.: 2024-000742
Our File: 3729-13492

Dear Ms. Kitchings:

Enclosed please find electronic versions of Appellants Final Initial Brief, Final Reply Brief, and Record on Appeal. Physical copies of which are being delivered to the court today.

Please do not hesitate to contact me if you have any questions or concerns.

Sincerely,

SWEENY, WINGATE & BARROW, P.A.

Madison K. Kea

MKK/tnn

cc: All counsel of record