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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.

RETURN TO PETITIONS FOR REHEARING

Both sets of Appellants in this matter—Dean and Tamala Arender (the "Arender Appellants") and Dean Arender, US Xpress, Inc., and US Xpress Leasing, Inc. (the "US Xpress Appellants")—have petitioned this Court for rehearing of the published decision in *Cozby v. Oliver*, Op. No. 6134 (S.C. Ct. App. Feb. 4, 2026). Respondents Kent Huntley Oliver and Thompson Construction Group, Inc. submit this Return pursuant to the Court's request.

In its opinion, the Court properly held that the circuit court's order granting permissive joinder is interlocutory and not immediately appealable. The Court analyzed the effect of the circuit court's order, the parties' appealability arguments, and numerous authorities interpreting section 14-3-330. After correctly concluding that the order does not involve the merits or affect a substantial right, the Court dismissed the appeal.

Appellants have not demonstrated that the Court "overlooked or misapprehended" any of their arguments in holding the order is not appealable. *See* Rule 221(a), SCACR. Instead, Appellants use their petitions primarily to repeat arguments the Court already considered and rejected. *See Kennedy v. S.C. Ret. Sys.*, 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001) (noting the purpose of a petition for rehearing is not to "have the case tried in the appellate court a second time" (citation omitted)). Because there are no legitimate grounds for rehearing and the opinion properly applies South Carolina appealability law, Appellants' petitions should be denied.

ARGUMENT

I. The Court properly analyzed the effect of the circuit court's order and held it is not immediately appealable under S.C. Code Ann. § 14-3-330(1) or (2).

This is an appeal from the circuit court's February 13, 2024 order granting permissive joinder pursuant to Rule 20(a), SCRCP. In deciding whether the order is immediately appealable, this Court performed the appropriate analysis. The Court looked to the effect of the order, not just the way it is styled. *See 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."). The Court then examined whether the order involves the merits under subsection 14-3-330(1) or affects a substantial right under subsection 14-3-330(2). The Court correctly concluded the order does not fall within either provision of the appealability statute, and the Court dismissed the appeal.

Contrary to Appellants' arguments, the Court did not misinterpret the circuit court's order. Rather, the opinion properly rejects Appellants' recurring argument that the order forces plaintiffs to assert claims against parties they did not choose to sue. Op. at 4 ("In this case, the plaintiffs are not being forced to sue any defendants against their wishes[.]"). That finding is consistent with the circuit court's order, which clearly demarks the parties against whom each plaintiff asserts claims. (R. p. 1; Order Granting Joinder). It is also consistent with the language of Rule 20, which provides that a "plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded." Rule 20(a), SCRCP. Thus, it was also correct for the Court to reject Appellants' related argument that the circuit court's order forces employees to pursue tort actions against their employers. Op. at 7.

After dispensing with Appellants' strawman argument that the order forces plaintiffs to pursue new claims, the Court accurately described the order's effect: "We find the effect of this order is akin to adding parties to litigation or granting a motion to change venue[.]" Op. at 6. The Court then correctly held that whether the focus is upon the order's effect or its title, the result is the same: the order is not appealable under section 14-3-330. *See* Op. at 4-5 (holding the order does not involve the merits of the action, "which generally involve allegations of negligence"); Op. at 5-6 (holding the order does not affect a substantial right by determining the action and preventing a judgment from which an appeal may be taken); Op. at 6 (citing authorities recognizing

that orders granting or denying joinder are not appealable). Indeed, the authorities cited in the opinion confirm that the Court's holding is proper. With that background, Respondents will now discuss the specific points raised in Appellants' petitions.

II. The appealability arguments raised in Appellants' petitions were properly rejected, and Appellants' merits arguments are not before the Court.

The arguments raised in Appellants' petitions generally fall into three categories. First, Appellants repeat their contention that the circuit court's order forces plaintiffs to sue defendants against their wishes, which Appellants claim affects a substantial right. Second, Appellants reassert arguments based on cases discussed in the opinion. Third, the Arender Appellants look beyond the appealability issue and argue the merits of the circuit court's order. Respondents will address these arguments in turn.

A. The Court properly rejected Appellants' "substantial right" argument.

As discussed above, the main through line in Appellants' petitions is their mistaken argument that the order forces plaintiffs to sue defendants against their wishes. *See, e.g.*, Arender Pet. at 11; US Xpress Pet. at 3-5. In particular, the US Xpress Appellants complain that the order forces Plaintiff Cozby to sue Arender and US Xpress although they were not named in his complaint. US Xpress Pet. at 3-4. Appellants contend this aspect of the circuit court's order affects a substantial right under subsection 14-3-330(2); namely, the plaintiff's right of "election."

Appellants' arguments rest on the erroneous premise that because the order joins plaintiffs and defendants in a single action, it necessarily requires *each* plaintiff to pursue claims against *each* defendant. As explained above, neither the circuit court's order nor the language of Rule 20(a) support Appellants' position. The Court was correct to reject Appellants' reading and confirm that the order does not force plaintiffs "to sue any defendants against their wishes[.]" Op. at 4.

Regardless, even assuming the circuit court's order operated as Appellants envision, the opinion correctly notes the prior decisions in this State holding that various orders adding defendants to litigation are not immediately appealable. Op. at 6; *Duncan v. Gov't Emps. Ins. Co.*, 331 S.C. 484, 485, 449 S.E.2d 580, 580 (1994) (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); *see also* Wallace K. Lightsey, 15 S.C. Jur. Appeal and Error § 23(a) (Dec. 2025 Update) ("An order joining a party as an additional defendant in an action is not directly appealable."). The Court correctly recognized that an order affects a plaintiff's substantial right to choose her defendants within the meaning of subsection 14-3-330(2)(a) only where it effectively *discontinues* the plaintiff's suit against a chosen defendant. Op. at 5-6; *Neeltec Enters., Inc. v. Long*, 397 S.C. 563, 566, 725 S.E.2d 926, 928 (2012) (holding an interlocutory order was appealable under subsection 14-3-330(2) because it "effectively discontinue[d] [plaintiff's] suit against [defendant]"); *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 539, 773 S.E.2d 144, 146 (2015) (holding an interlocutory order was appealable under subsection 14-3-330(2) because it "effectively grants the [defendant entities] potential summary judgment on the issues of direct corporate liability").[1] Plainly, the circuit court's order here does not discontinue the plaintiffs' claims against their chosen defendants. For these reasons, the Court did not err in rejecting Appellants' position that the order affects their substantial rights.

[1] *See also Dorn v. Cohen*, 418 S.C. 126, 138-39, 791 S.E.2d 313, 319-20 (Ct. App. 2016) (holding an order adding a party to probate litigation did not affect any substantial right to choose defendants and noting "[u]nlike 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"), *aff'd as modified,* 421 S.C. 517, 809 S.E.2d 53 (2017).

B. The Court appropriately considered and rejected Appellants' reliance on the *Wosepka*, *Belden*, and *Simon* decisions.

Next, Appellants use the petitions to present further discussion of caselaw the Court analyzed in its opinion. The US Xpress Appellants rely upon the Supreme Court of North Dakota's decisions in *Wosepka v. Dukart*, 160 N.W.2d 217 (N.D. 1968), and *Belden v. Hambleton*, 554 N.W.2d 458 (N.D. 1996). US Xpress Pet. at 4. The Arender Appellants rely upon the South Carolina Supreme Court's decision in *Simon v. Strock*, 209 S.C. 134, 39 S.E.2d 209 (1946). Arender Pet. at 9-10. Because the Court properly considered and rejected Appellants' reliance on these decisions, they do not present a basis for rehearing.

Once again, the US Xpress Appellants' arguments concerning *Wosepka* and *Belden* are rooted in their mistaken belief that the circuit court's order forces plaintiffs to sue defendants against their wishes. The Court properly dispensed with that argument and explained that the circuit court's order is distinguishable from the order at issue in *Wosepka*. Op. at 5. Further, the Court noted that *Wosepka* was called into question by *Belden*, a subsequent case that noted the development of North Dakota's "finality doctrine" and the "general rule that an order permitting or refusing the joinder of additional parties is not appealable[.]" 554 N.W.2d at 460 (quoting *Revoir v. Kansas Super Motels of N. Dakota, Inc.*, 224 N.W.2d 549, 550 (N.D. 1974)). Thus, it was proper for the Court to conclude that *Wosepka* is not persuasive. Op. at 5. There is no reason for the Court to grapple with the issue of whether the North Dakota Court's decision in *Wosepka* remains good law, particularly because the law in South Carolina is settled. As explained above, our appellate courts have consistently held that orders adding parties to litigation are not immediately appealable. *See Duncan*, 331 S.C. at 485, 449 S.E.2d at 580; *Edgefield Cnty.*, 273 S.C. at 501, 257 S.E.2d at 501.

The Arender Appellants' arguments concerning *Simon* can also be easily dealt with. Although that case involved an appeal from an order joining defendants to an action, the Court properly identified the flaw in Appellants' argument: the issue of immediate appealability was never raised in *Simon*. Op. at 7. Thus, the Court correctly found *Simon* is not instructive in determining whether the circuit court's order here is immediately appealable. *See Breland v. Love Chevrolet Olds, Inc.*, 339 S.C. 89, 95, 529 S.E.2d 11, 14 (2000) ("The fact that an appellate court may have decided an appeal of a particular type of order on the merits is not dispositive of whether the order is appealable when the issue of appealability was not raised."); *State v. Austin*, 306 S.C. 9, 19, 409 S.E.2d 811, 817 (Ct. App. 1991) ("[A]ppellate courts in this state, like well-behaved children, do not speak unless spoken to and do not answer questions they are not asked." (citation omitted)).

C. The Arender Appellants' merits arguments are not before the Court.

Finally, the Arender Appellants spend the vast majority of their petition addressing the merits of the circuit court's order rather than the appealability question the appeal was decided upon. These arguments are unavailing and improper for several reasons. As an initial matter, as Respondents explained in their brief, the circuit court did not abuse its discretion in ordering permissive joinder pursuant to Rule 20(a).[2] More importantly, however, the Arender Appellants' arguments seek to turn established appealability principles on their head. As the Court's opinion details, "[t]he right of appeal arises from and is controlled by statutory law." Op. at 3 (quoting *Hagood v. Sommerville*, 362 S.C. 191, 194, 607 S.E.2d 707, 708 (2005)). The relevant statute, section 14-3-330, reflects South Carolina's policy against allowing piecemeal appeals from most classes of pre-trial orders. *Breland*, 339 S.C. at 94, 529 S.E.2d at 13 ("The basic policy behind

[2] Respondents incorporate the arguments made in their final brief at pages 4-16.

denying immediate review of pretrial motions is avoidance of piecemeal litigation where the rights of the parties have not been substantially impacted.").

Consistent with this policy of limiting interlocutory appeals, our appellate courts carefully consider whether the requirements of section 14-3-330 are satisfied before passing upon the merits of a lower court's ruling. The Court was correct to follow that approach in this appeal. Because the circuit court's order is not appealable, it would be improper for the Court to reach the merits of the circuit court's decision. Thus, the Arender Appellants' merits arguments are not a proper ground for rehearing.

CONCLUSION

For the foregoing reasons, Appellants' petitions for rehearing should be denied.

[*Signature page to follow*]

Respectfully submitted,

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PROOF OF SERVICE

I, the undersigned attorney of the law offices of Smith Robinson Holler DuBose and Morgan, LLC, do hereby certify that on March 9, 2026, I have served all counsel in this action

with a copy of the below documents in accordance with the Supreme Court's May 29, 2020 Administrative Order by emailing a copy to each attorney listed below using their primary email address listed in the Attorney Information System.

Documents Served: Return to Petitions for Rehearing

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Subject: Arender v Oliver 2024-000742
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Good afternoon. Attached for your service is the Return to Petitions for Rehearing in the above matter. Thank you.

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