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Jun 01 2026

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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

Appellate Case No. 2026-001054

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, Petitioners,

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 Petitioners.

RETURN TO PETITIONS FOR WRIT OF CERTIORARI

Pursuant to Rule 242 of the South Carolina Appellate Court Rules, Respondents Kent Huntley Oliver and Thompson Construction Group, Inc. submit this Return to the Petitions for Writ of Certiorari filed by Dean and Tamala Arender (the "Arenders") and Dean Arender, US Xpress, Inc., and US Xpress Leasing, Inc. ("US Xpress") seeking review of the decision of the court of appeals in *Cozby v. Oliver*, 447 S.C. 437, 927 S.E.2d 90 (Ct. App. 2026), *reh'g denied* (Mar. 31, 2026) ("Opinion").

This litigation stems from a multi-vehicle accident that occurred on Interstate 26 in Newberry County on November 12, 2020. Four lawsuits were filed after the accident, three of which are relevant to the instant appeal: *Cozby v. Oliver, et al.*, C/A No. 2022-CP-43-01006 ("Cozby Action"); *Arender v. Oliver, et al.*, C/A No. 2023-CP-36-00276 ("Arender Action"); and *Oliver v. Ouellette, et al.*, C/A No. 2023-CP-36-00300 ("Oliver Action").[1] Pursuant to Rule 20(a), SCRCP, the circuit court granted Respondents' motion to join the parties to the Cozby Action, the Arender Action, and the Oliver Action. (R. p. 1-14). Petitioners seek immediate review of the circuit court's order.

In its published decision, the court of appeals correctly held the circuit court's order is interlocutory and not immediately appealable. After carefully considering the effect of the order and the parties' appealability arguments, the court of appeals concluded the order does not involve the merits under section 14-3-330(1) or affect a substantial right and in effect determine the action under section 14-3-330(2)(a). The Opinion is consistent with the plain text of our appealability statute and honors the "underlying policy favoring judicial economy by avoiding 'piecemeal appeals.'" *Stone v. Thompson*, 426 S.C. 291, 295, 826 S.E.2d 868, 870 (2019) (quoting *Hagood*

[1] The fourth action was filed with the Newberry County Arbitration Panel. *See Great West Casualty Company v. Thompson Construction Group, Inc., et al.*, C/A No. 2023-CP-36-00125; (R. p. 2 n.1).

v. Sommerville, 362 S.C. 191, 196, 607 S.E.2d 707, 709 (2005)). The Opinion is also consistent with this Court's previous decisions recognizing that orders adding parties to litigation are not immediately appealable. *See 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).

In their Petitions, the Arenders and US Xpress fail to establish any error in the Opinion warranting this Court's review. Though Petitioners are correct that our appellate courts have not previously addressed the appealability of an order granting joinder under Rule 20(a), SCRCP, the fact that an issue is "novel" does not automatically warrant certiorari. *See* Rule 242(b), SCACR. Because the Opinion below adheres to the text of section 14-3-330 and this Court's appealability precedents, there is no need for further review. Respondents respectfully submit the Petitions should be denied.

STANDARD OF REVIEW AND LEGAL STANDARD

Appealability is a question of law controlled by S.C. Code Ann. § 14-3-330. *Hagood*, 362 S.C. at 195, 607 S.E.2d at 708. The Court reviews questions of law de novo. *Town of Summerville v. City of N. Charleston*, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008).

Section 14-3-330 embodies the final judgment rule: "[a]n appeal ordinarily may be pursued only after a party has obtained a final judgment." *Hagood*, 362 S.C. at 195, 607 S.E.2d at 708. 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 are orders

"involving the merits" under section -330(1) and orders "affecting a substantial right" under section -330(2). These provisions of the appealability statute are "narrowly construed." *Stone*, 426 S.C. at 295, 826 S.E.2d at 870.

ARGUMENT

In their Petitions, the Arenders and US Xpress raise three primary appealability arguments. First, they claim the circuit court's order affects a substantial right—the plaintiff's right of election—by forcing parties to assert new claims against additional defendants. Second, and relatedly, they argue the order violates their right to a particular mode of trial by requiring employees to pursue tort actions against their employers. Third, US Xpress contends the order involves the merits under the Supreme Court of North Dakota's decision in *Wosepka v. Dukart*, 160 N.W.2d 217 (N.D. 1968). Petitioners also devote significant attention to the merits of the circuit court's order, although the court of appeals' decision was limited to appealability.

I. The court of appeals correctly rejected Petitioners' substantial right and mode of trial arguments.

Petitioners' substantial right and mode of trial arguments are based on a mistaken interpretation of the circuit court's order. Petitioners claim that in granting joinder pursuant to Rule 20(a), the circuit court forced parties to maintain claims against defendants they did not choose to sue. *See, e.g.*, Arenders' Pet. at 10 (arguing the order "forces plaintiffs to sue defendants they did not wish to sue"); US Xpress Pet. at 11 (same).

In its order, the circuit court did not suggest—much less require—that the plaintiffs in the joined action must assert claims against each defendant. Such a ruling would directly contravene the text of Rule 20(a): "A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded." The caption of the circuit court's order further confirms that no "new claims" were created by the order; the caption clearly demarks the parties against whom each

plaintiff asserts claims. (R. p. 1). Thus, the court of appeals properly rejected Petitioners' argument that the order forces plaintiffs to assert claims against defendants they did not name, including their employers. Opinion at 5 ("In this case, the plaintiffs are not being forced to sue any defendants against their wishes[.]"); *id.* at 7 ("In reviewing the order on appeal before us, we find no creation of any new claims nor any requirement for an employee to maintain tort actions against an employer.").[2]

The court of appeals correctly recognized that the circuit court's order does not fall within the limited class of rulings that impact a plaintiff's right to choose her defendant within the meaning of section 14-3-330(2)(a). Specifically, the court of appeals identified the key factor distinguishing the circuit court's order from the orders at issue in *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 773 S.E.2d 144 (2015), and *Neeltec Enters., Inc. v. Long*, 397 S.C. 563, 725 S.E.2d 926 (2012). Both *Morrow* and *Neeltec* involved situations where plaintiffs were ***deprived*** of the ability to maintain their lawsuits against certain defendants. *Morrow*, 412 S.C. at 539, 773 S.E.2d at 146 (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"); *Neeltec*, 397 S.C. at 566, 725 S.E.2d at 928 (holding an interlocutory order was appealable under subsection 14-3-330(2) because it "effectively discontinue[d] [plaintiff's] suit against [defendant]"). The Opinion recognized that

[2] Although Petitioners repeatedly insist that the circuit court's order forces parties to sue defendants against their wishes, they also suggest elsewhere in the Petitions that the circuit court merely consolidated the three actions. US Xpress Pet. at 1; Arenders' Pet. at 7-8. The circuit court's order clearly states that the court ordered joinder, not consolidation. (R. p. 5). Regardless, this argument does not help Petitioners' position on appealability, as this Court has already recognized that a consolidation order is not immediately appealable. *S.C. Pub. Serv. Auth. v. Arnold*, 287 S.C. 584, 586, 340 S.E.2d 535, 536 (1986).

because the circuit court's order does not discontinue any party's claim(s), *Morrow* and *Neeltec* provide "no guidance" in this appeal. Opinion at 6.

Although Petitioners rely heavily on the statement in *Neeltec* that "[t]he right of the plaintiff to choose her defendant is a substantial right" under section 14-3-330(2)(a), 397 S.C. at 566, 725 S.E.2d at 928, Petitioners do not identify any defect in the court of appeals' discussion of *Neeltec* or *Morrow*. Instead, Petitioners simply restate their general position that "an order infringing on a plaintiff's right of election is immediately appealable." US Xpress Pet. at 7; *see also* Arenders' Pet. at 16. In sum, Petitioners fail to show that certiorari is warranted to address any errors in the court of appeals' application of this Court's "substantial right" precedents.[3]

Further, although Petitioners claim the court of appeals failed to account for the effect of the circuit court's order, the Opinion correctly notes that the order is akin to an order adding parties to litigation. Opinion at 6. This Court has already determined that such orders are not subject to immediate review. *Duncan*, 331 S.C. at 485, 449 S.E.2d at 580 (order granting a motion to intervene was not immediately appealable); *Edgefield Cnty. Hosp. Trustees*, 273 S.C. at 501, 257 S.E.2d at 501 (order adding third-party defendants was not immediately appealable). Petitioners present no basis for calling those decisions into doubt, and doing so would lead to a flood of interlocutory appeals.

Finally, the Opinion appropriately dispensed with Petitioners' related argument that the order forces employees to sue their employers and thereby violates their right to a particular mode of trial. US Xpress Pet. at 8-9. The court of appeals recognized that this is not a legitimate concern, as the order does not require "an employee to maintain tort actions against an employer," and

[3] In support of their substantial right argument, the Arenders rely heavily on this Court's decision in *Simon v. Strock*, 209 S.C. 134, 39 S.E.2d 209 (1946). Arenders' Pet. at 12-13. As the Opinion recognized, however, the issue of appealability was never raised in *Simon*. Opinion at 7.

"[t]rying the cases together would not require the employee-plaintiffs to add claims against their employers, who are defendants for other drivers involved in the accident." Opinion at 7 (citing Rule 20(a), SCRCP). Because the order does not deprive any party of a mode to trial to which it is entitled, Petitioners are not required to take an immediate appeal, they may do so after final judgment. *See Flagstar Corp. v. Royal Surplus Lines*, 341 S.C. 68, 72, 533 S.E.2d 331, 333 (2000). And contrary to US Xpress's contention that this appeal presents "substantial constitutional issues," Pet. at 4, the order is not one of those limited rulings "which abridge a party's constitutional right to a trial by jury." *Fulmer v. Cain*, 380 S.C. 466, 470, 670 S.E.2d 652, 654 (2008) (citation omitted).

II. The court of appeals correctly rejected Petitioners' argument that the circuit court's order involves the merits.

Section 14-3-330(1) allows for an immediate appeal from an order "involving the merits." This Court has defined the phrase "involving the merits" to mean an order which "finally determine[s] some substantial matter forming the whole or a part of some cause of action or defense[.]" *Mid-State Distributors, Inc. v. Century Importers, Inc.*, 310 S.C. 330, 334, 426 S.E.2d 777, 780 (1993) (quoting *Jefferson by Johnson v. Gene's Used Cars, Inc.*, 295 S.C. 317, 318, 368 S.E.2d 456, 456 (1988)).

Applying this definition of the relevant statutory phrase, the circuit court's order does not involve the merits of this litigation. As the Opinion below recognized, "the order on appeal does not involve the merits of this action, which generally involve allegations of negligence." Opinion at 5. Petitioners have not demonstrated that the order decided a "substantial matter forming the whole or part of a cause of action or defense"—nor could they. The circuit court's order simply does not touch upon the merits of any party's claims or defenses.

Rather than advancing arguments under section 14-3-330(1) and South Carolina precedent, US Xpress argues the circuit court's order involves the merits under the Supreme Court of North Dakota's 1968 decision in *Wosepka*. US Xpress Pet. at 10-11. The court of appeals carefully considered this argument and determined that *Wosepka* is not persuasive. Opinion at 4-5. The court of appeals was correct. *Wosepka* is factually distinguishable; unlike the circuit court's order here, it involved an order that forced a party to sue a defendant against his wishes. 160 N.W.2d at 218-19. The Supreme Court of North Dakota also called *Wosepka* into question in a subsequent case which noted "the general rule that an order joining parties is not an appealable order." *Belden v. Hambleton*, 554 N.W.2d 458, 461 (N.D. 1996). Notably, the "general rule" discussed in *Belden* is not confined to North Dakota; the Opinion below cites several authorities recognizing that an order granting joinder is not immediately appealable. Opinion at 4 n.2, 6.

III. The Court should not address Petitioners' merits arguments.

Finally, both the Arenders and US Xpress devote significant portions of their Petitions to the merits of the circuit court's order, and they request that the Court reverse the order. US Xpress Pet. at 13-14; Arenders' Pet. at 5-12.[4] Because the court of appeals held the order was not appealable, it did not address the merits. Rather, the court of appeals reviewed the order's effect only to the extent necessary to determine appealability. Opinion at 3 ("[A]n appellate court should look to the effect of an interlocutory order to determine its appealability." *Thornton v. S.C. Elec. & Gas Corp.*, 391 S.C. 297, 304, 705 S.E.2d 475, 479 (Ct. App. 2011)).

Because the court of appeals correctly held the order is not appealable, this Court should not decide the merits, i.e., whether the circuit court erred in granting joinder pursuant to Rule 20(a).

[4] Respondents addressed the merits of the circuit court's order at pages 4-16 of their Final Brief in the court of appeals.

Although the Arenders urge otherwise, Pet. at 17-18, it is well-settled that judicial economy is promoted by avoiding piecemeal appeals. *Morrow*, 412 S.C. at 537-38, 773 S.E.2d at 146. Thus, if the Court agrees with the court of appeals' appealability determination, it should simply deny the Petitions and allow this litigation to proceed in the circuit court. If the Court disagrees with the appealability determination below and grants the Petitions, however, it should not accept the questions presented regarding the merits of the circuit court's order. Consistent with the usual appellate procedure, those questions should be addressed by the court of appeals in the first instance. Of course, Respondents submit those questions will have to wait to be decided after final judgment, as the circuit court's order is not immediately appealable.

CONCLUSION

Based on the foregoing, the Petitions should be denied.

[*Signature page to follow*]

Respectfully submitted,

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