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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,

**PETITIONERS DEAN ALAN ARENDER AND TAMALA ARENDER'S
REPLY TO RETURN TO PETITION FOR WRIT OF CERTIORARI**

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Argument

Respondents Kent Huntley Oliver and Thompson Construction Group, Inc. (hereinafter “the Thompson Defendants”) predicate their defense of the court of appeals’ opinion (*Cozby v. Oliver*, 447 S.C. 437, 927 S.E.2d 90 (Ct. App. 2026) (hereinafter “the opinion”)) on the premise that the circuit court’s order (hereinafter, “the order”) is an ordinary order “adding parties to litigation,” one that “did not suggest—much less require—that the plaintiffs in the joined action must assert claims against each defendant,” and that therefore created no new claims and forced no one to sue anyone. (Return at 2–4.) Every argument the Thompson Defendants make depends on that premise. It is wrong as a matter of procedure and fact.

That premise is wrong as a matter of procedure because Rule 20(a), SCRPC, is an instrument of the plaintiff’s election; a defendant that has asserted no counterclaim or crossclaim cannot invoke Rule 20(a), SCRPC, to compel the joinder of whole actions or additional parties. The Thompson Defendants never confront that defect; they simply assume the order is a routine joinder and reason from there. Moreover, that premise is wrong as a matter of fact because the order’s own text places “Arender and U.S. Xpress’ negligence” “at issue” in actions in which neither was ever named a defendant. (R. p. 7.) The caption on which the Thompson Defendants rely does not say otherwise; the order’s reasoning does. Once the order is examined for what it is, as *Morrow* requires, rather than for what it “appears to be,” the appealability analysis can follow. *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 538–40, 773 S.E.2d 144, 146 (2015). The Thompson Defendants’ reliance on cases involving proper procedural vehicles, their narrow reading of *Morrow* and *Neeltec*, and their appeals to judicial economy all collapse against the actual character and effect of this order. *Id.*; *Neeltec Enters., Inc. v. Long*, 397 S.C. 563, 566, 725 S.E.2d 926, 928 (2012). The Petition should be granted.

I. The Thompson Defendants Defend the Opinion by Repeating Its Threshold Error of Treating a Defendant-Driven Rule 20 Order as a Routine Order.

The Thompson Defendants characterize the order as “akin to an order adding parties to litigation” and invoke the line of authority holding such orders un-appealable in an interlocutory posture. (Return at 4–5 (citing *Duncan v. Gov’t Emps. Ins. Co.*, 331 S.C. 484, 485, 449 S.E.2d 580, 580 (1994) and *Edgefield Cnty. Hosp. v. Cannon Constr. & Supply Co.*, 273 S.C. 500, 501, 257 S.E.2d 501, 501 (1979)).) However, those authorities prove the point of Petitioners Dean and Tamala Arender (hereinafter “the Arenders”) rather than the Thompson Defendants’. The *Duncan* case concerned intervention under Rule 24 and the addition of a third-party defendant, mechanisms the Rules expressly authorize. Likewise, *Edgefield* concerned third-party defendants brought in under proper third-party practice. In each, the joinder was unremarkable because a recognized procedural vehicle authorized joinder. The orders in *Duncan* and *Edgefield* did no more than the Rules permitted, so those allegations of ordinary errors could await final judgment.

No such vehicle exists here. Rule 20(a) permits *plaintiffs* to join in one action and permits a plaintiff to join multiple defendants. Rule 20(a) confers no power on a defendant—or on the court at a defendant’s behest—to compel the joinder of plaintiffs, defendants, or whole actions. That is why “[o]rordinarily, the defendant cannot force another joint tortfeasor into the litigation,” and why a defendant who wishes to enlarge the action over the plaintiff’s objection must proceed, if at all, under Rule 22 or Rule 24, not Rule 20. James F. Flanagan, *South Carolina Civil Procedure* 168–69 (3d ed. 2010); *see generally* 7 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Proc.* §§ 1651–1653 (3d ed.) (permissive joinder of parties under Rule 20 is a device of the party asserting the claims); 4 James Wm. Moore et al., *Moore’s Federal Practice* § 20.02 (3d ed. 2012) (same). The federal courts construing the analogous federal rule are unanimous: “[A] defendant can not [sic] use rule 20 to join a person as an additional

defendant . . . joinder of defendants under rule 20 is a right belonging to plaintiffs.” *Hefley v. Textron, Inc.*, 713 F.2d 1487, 1499 (10th Cir. 1983); *accord Moore v. Cooper*, 127 F.R.D. 422 (D.D.C. 1989) (“Rule 20(a) is a rule by which plaintiffs decide who to join as parties and is not [a] means for defendants to structure a lawsuit.”); *United States v. Bigley*, 2014 WL 6801764, at *8 (D. Ariz. Dec. 3, 2014).

This is not an academic distinction. It is the reason, as the court of appeals itself acknowledged, that “no published opinion in South Carolina review[s] the appealability of an order granting permissive joinder.” (Op. at 6.) The Thompson Defendants treat that silence as ordinary. It is not. The undersigned has been unable to locate any order—appealed or unappealed—or any motion—granted or denied—of like kind and premised upon Rule 20(a), SCRCP. The case law is silent because the procedure is foreign to the Rules. An order that should have never been predicated upon Rule 20 cannot be classified by analogy to orders that are routinely predicated upon Rules 14 and 24.

That is also why *Morrow* forecloses the central principle of the court of appeals’ opinion. The *Morrow* Court held appellate review is “not constrained by how the order is styled,” that “an appellate court should look to the effect of an interlocutory order to determine its appealability,” and appellate courts are “free to evaluate [a] trial court’s order as what it is—not merely what it appears to be.” *Morrow*, 412 S.C. at 538–40, 773 S.E.2d at 146. The court of appeals did the opposite. It looked to what the order “appears to be,” an order adding parties or changing venue, and stopped there. (Op. at 6.) The Thompson Defendants do not meaningfully defend that analysis; they simply repeat it. That is the central defect in the court of appeals’ reasoning. The court declined to evaluate the order as what it is, even while quoting *Thornton* for the proposition that it was required to. *See Thornton v. S.C. Elec. & Gas Corp.*, 391 S.C. 297, 304, 705 S.E.2d 475, 479

(Ct. App. 2011) (Op. at 3). *Morrow* asks what the order does, not which convenient label can be affixed to it.

II. The Thompson Defendants’ “No New Claims” Premise Is Contradicted by the Circuit Court’s Order.

The Thompson Defendants insist “the circuit court did not suggest—much less require—that the plaintiffs in the joined action must assert claims against each defendant,” and “[t]he caption of the circuit court’s order . . . clearly demarks the parties against whom each plaintiff asserts claims.” (Return at 3–4). The order’s reasoning says otherwise. In explaining why the Rule 20(a), SCRCF requirements were supposedly satisfied, the circuit court wrote: “Arender and U.S. Xpress’ negligence is also at issue in the Cozby Action, where defendants have asserted that Cozby’s injuries were caused by the fault of others, and in the Arrender Action, where defendants have asserted comparative negligence defenses.” (R. p. 7). Neither Arrender nor U.S. Xpress was ever a party to the Cozby Action, and Cozby pleaded no claim against either. (R. pp. 26–33). Yet the order treats their “negligence” as “at issue” in that action as a basis for joining it. It places the conduct of parties at issue as between litigants who never asserted claims against them. The order does not merely add Arrender and U.S. Xpress as entities in a caption; it draws their liability into actions in which they were never parties.

The caption cannot resolve this. First, the order nowhere states that the caption defines how the joined claims proceed; the Thompson Defendants’ submission that the caption performs that work is their assumption, not the court’s holding. Second, the caption is contradicted by the order’s text, as it places Arrender’s and U.S. Xpress’s negligence “at issue” in actions where the caption shows them asserting and defending nothing. (R. p. 7). The parties are thus left unable to determine how the claims operate within the single action that Rule 20(a) requires joinder to produce. Rule

20(a), SCRCP (on joinder, “all persons [are] joined in *one action*”). A joinder order that leaves the parties guessing how their claims proceed has not complied with the Rule it purports to apply.

The Thompson Defendants cannot escape this through the clause they quote that “[a] plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded.” (Return at 3). That clause presupposes a *valid* Rule 20 joinder initiated by a plaintiff exercising the election the Rule confers. It does not authorize a defendant to assemble three actions around itself and then disclaim the resulting entanglements by pointing to a caption the order’s own reasoning contradicts.

The order’s text leaves the Thompson Defendants on the horns of a dilemma, and they embrace neither horn. *Either* the order did not merge the three actions into “one action,” in which case it is not a Rule 20 joinder at all but a consolidation in substance, the very relief the Thompson Defendants expressly abandoned. (R. pp. 5, 281). *See* Rule 42(a), SCRCP; *Keels v. Pierce*, 315 S.C. 339, 342, 433 S.E.2d 902, 904 (1993). Or, the order did merge the three actions into one, and the action it produced cannot stand, because these parties cross. Kent Huntley Oliver is a plaintiff in the Oliver Action but a defendant in the Cozby and Arender Actions; Dean Arender is a plaintiff in the Arender Action but a defendant in the Oliver Action. The only way to seat these parties in a single caption is to align every plaintiff against every defendant, which makes each crossing party a litigant against himself and casts each employee as a plaintiff against his own employer—Arender against U.S. Xpress and Oliver against Thompson—in violation of the exclusive-remedy bar of the Workers’ Compensation Act. *See* S.C. Code Ann. § 42-1-540; *Posey v. Proper Mold & Eng’g, Inc.*, 378 S.C. 210, 224, 661 S.E.2d 395, 403 (Ct. App. 2008) (exclusivity “precludes an employee from maintaining a tort action against an employer”). And anything short of that fully merged caption is not joinder but rather the consolidation the Thompson Defendants expressly did

not request. The Thompson Defendants do not say which horn they embrace. They cannot, because the order does not say.

III. The Thompson Defendants Misread *Morrow* and *Neeltec*; the Right of Election Is a Substantial Right Whether or Not a Claim Is Formally Discontinued.

The Thompson Defendants distinguish *Morrow* and *Neeltec* on the ground that those orders “deprived plaintiffs of the ability to maintain their suits against particular defendants,” effectively discontinuing a claim or granting summary judgment, whereas the order discontinues nothing. (Return at 4–5). Neither decision drew the line the Thompson Defendants draw.

Neeltec held that “[t]he right of the plaintiff to choose her defendant is a substantial right” within the meaning of section 14-3-330(2). *Neeltec*, 397 S.C. at 566, 725 S.E.2d at 928. It did not hold that the right is protected only when a claim is extinguished. Claim-extinguishment was how the right was burdened on those facts, but it was not a precondition to the right’s existence. *Morrow* is broader still. The protected interest it identified was the plaintiffs’ right to be “architects of their own complaint” and to “bring[] their case against a defendant of their own choosing.” *Morrow*, 412 S.C. at 539, 773 S.E.2d at 146. *Morrow* expressly refused to let the appealability question turn on the order’s form, instructing that the effect controls. *Id.* at 538–40, 773 S.E.2d at 146.

The Thompson Defendants do not dispute the right of election is a substantial right; they dispute only whether the order touches it. (Return at 5). For the reasons identified, *supra*, it does. The order reorganizes who is adverse to whom, draws non-parties’ liability into suits they never joined, forces the Arenders into a single action they did not structure, and forces the Arenders into a forum they did not choose. Therefore, this is not saved from review because it stops short of formally striking a claim. *Morrow* warned against precisely that reasoning, holding “[j]ust because part of the prejudice stemming from the order may be cured at a later date does not remove it from the purview of section 14-3-330(2).” 412 S.C. at 539 n.2, 773 S.E.2d at 147 n.2.

This Court reaffirmed the breadth of that right in 2017. In *Smith v. Tiffany*, the Court traced the plaintiff’s right to choose her defendant through “almost two hundred years” of South Carolina jurisprudence and rejected a defendant’s effort to force an additional, settled tortfeasor into the case under Rule 14 and Rule 19, SCRPC. 419 S.C. 548, 553–55, 563–64, 799 S.E.2d 479, 481–83, 487–88 (2017). The Thompson Defendants offer no reason that the right *Smith* reaffirms should be enforceable when a defendant invokes Rule 14 or Rule 19, yet unenforceable when a defendant invokes Rule 20 to accomplish an even more sweeping rearrangement of the parties.

This Court has already applied that right in the joinder context. In *Chester v. South Carolina Department of Public Safety*, it recognized that an order requiring a plaintiff to join parties as defendants when the requirements of Rule 19, SCRPC, are not met violates the plaintiff’s common-law right to choose her defendant. 388 S.C. 343, 345, 698 S.E.2d 559, 560 (2010). If compelling joinder contrary to Rule 19 invades that right, compelling the wholesale assembly of three separate actions contrary to Rule 20—over the plaintiffs’ objection and at a defendant’s instance—invades it *a fortiori*. The Thompson Defendants’ position would leave the right *Chester* protects enforceable against an improper Rule 19 joinder but defenseless against an improper Rule 20 joinder that sweeps far more broadly. Nothing in section 14-3-330 supports that asymmetry.

IV. The Circuit Court’s Order Is Independently Appealable Under Section 14-3-330(1) Because It Involves the Merits.

The Thompson Defendants frame appealability as rising or falling on the substantial-right prong of section 14-3-330(2)(a) and contend, in passing, that the order does not “involve the merits” under subsection (1). (Return at 5–6). But the two subsections “are not mutually exclusive; the order is immediately appealable if it falls within one or both.” *Link v. Sch. Dist. of Pickens Cnty.*, 302 S.C. 1, 6, 393 S.E.2d 176, 178 (1990). The order satisfies subsection (1) as well.

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.” *Mid-State Distribs., Inc. v. Century Imps., Inc.*, 310 S.C. 330, 334, 426 S.E.2d 777, 780 (1993). The circuit court’s order does precisely that. By declaring “Arender and U.S. Xpress’ negligence is . . . at issue” the order resolves, as the predicate to joinder, a substantial matter going to the heart of each plaintiff’s cause of action and to the defenses available to each party by defining who may be called to answer for the collision, and in what configuration. (R. p. 7). It likewise determines, *sub silentio*, that each plaintiff must litigate against that plaintiff’s own employer, notwithstanding the exclusivity bar of the Workers’ Compensation Act. *See* Section II, *supra*; *Gordon v. Phillips Utilities, Inc.*, 362 S.C. 403, 407, 608 S.E.2d 425, 427 (2005). These are not case-management details properly deferred to final judgment; they are antecedent rulings on the structure of liability that the order treats as settled.

Stone v. Thompson confirms the point through the very decision the Thompson Defendants invoke for the policy against piecemeal appeals. *See* Part VI, *infra*. In *Stone*, the Court reversed a court of appeals decision that had dismissed an appeal as interlocutory, holding the order immediately appealable under subsection (1) because it “finally determined a substantial matter forming part of the cause of action” and a defense to it, applying the same *Mid-State* test set out above. *Stone v. Thompson*, 426 S.C. 291, 826 S.E.2d 868 (2019). The circuit court’s order does the same. It determines, as a predicate to joinder, a substantial matter common to the merits of each action—whose negligence is “at issue,” and against whom. If the bifurcated common-law-marriage finding in *Stone* involved the merits, so does the order here.

The Thompson Defendants’ contrary view depends, once again, on the caption. They reason that because the caption leaves each plaintiff’s nominal claims intact, nothing on the merits

has been decided. However, section 14-3-330(1) looks to what the order *determines*, not to what the caption *preserves*—and the order determines, on its face, that the negligence of parties never sued is “at issue” in actions those parties never joined. That is a ruling involving the merits within the meaning of section 14-3-330(1), and it is immediately appealable on that ground independent of the substantial-right analysis in Section III, *supra*.

V. The Thompson Defendants’ Treatment of *Simon* Is Mistaken.

The Thompson Defendants observe that “the issue of appealability was never raised in *Simon*,” and that a decision is not an authority on a question it did not consider. (Return at 5 n.3 (citing *Simon v. Strock*, 209 S.C. 134, 39 S.E.2d 209 (1946))). That is true but immaterial. The Arenders do not cite *Simon* as an appealability holding.¹ They cite it for the substantive right it announces, the right of the injured party, “and not the defendant,” to elect whom to sue and with whom to litigate. *Simon*, 209 S.C. at 138–39, 39 S.E.2d at 211. That right supplies the “substantial right” that *Neeltec* and *Morrow*, decisions in which appealability *was* squarely decided, hold to be immediately appealable under section 14-3-330(2). *Simon* furnishes the right; *Neeltec* and *Morrow* furnish the appellate consequences. The Thompson Defendants’ effort to neutralize *Simon* on appealability grounds leaves the actual argument untouched.

Simon is instructive for a second reason the Thompson Defendants ignore. The joinder condemned in *Simon* also offended the Workers’ Compensation Act: one of the parties the defendant tried to draw into the case had paid benefits and had been “expressly relieved of any common law liability by the provisions of the [Workers’] Compensation Act.” *Simon*, 209 S.C. at

¹ While not controlling, and while not the predicate of the Arenders’ argument, the procedural posture of *Simon* is insightful.

140, 39 S.E.2d at 211–12. The same exclusivity concern is present here. *Simon* thus supports the Arenders on both the right of election and its workers’ compensation dimension.

VI. Immediate Review Serves, Rather Than Defeats, Judicial Economy.

The Thompson Defendants close with the policy against piecemeal appeals, citing *Stone v. Thompson*, 426 S.C. 291, 295, 826 S.E.2d 868, 870 (2019), and urging that this litigation be allowed to proceed to final judgment before any review. (Return at 2, 7–8.) That policy is sound in the ordinary case, where an order issues under a proper procedure and an error can be corrected on appeal from the judgment. This is not that case. Moreover, *Stone* itself granted immediate review under section 14-3-330(1), confirming that the policy against piecemeal appeals yields when an order resolves a matter going to the merits. *See* Section IV, *supra*.

The order here rests on a procedure the Rules do not authorize. If it is permitted to stand, the parties will try a single, pseudo-joined action assembled by defendants under a rule that does not allow it, and the probable result is reversal and a wasted trial. Settlement, favored by the strong public policy of this State, will be far more difficult among parties forced together against their election and across forums they did not choose. *See Poston v. Barnes*, 294 S.C. 261, 363 S.E.2d 888 (1987). Furthermore, the parties will labor under the unresolved exclusivity problem the order’s own text creates. Correcting the error now is not piecemeal litigation; it is the avoidance of a foreseeable and unnecessary waste of judicial resources. As *Morrow* recognized, the final-judgment rule does not require the appellate courts to ignore an order’s true effect in service of a formal label. 412 S.C. at 538–40, 773 S.E.2d at 146.

The Thompson Defendants’ remaining point, “the fact that an issue is ‘novel’ does not automatically warrant certiorari” inverts the very Rule it invokes. (Return at 2 (citing Rule 242(b), SCACR)). Rule 242(b) enumerates the “character of reasons” that support review, and the first is

“[w]here there are novel questions of law.” Rule 242(b)(1), SCACR. The novelty of the question is therefore not a reason to withhold certiorari but one of the enumerated reasons to grant it. The Arenders do not contend that novelty alone compels review—certiorari is always discretionary—but novelty is hardly the disqualifier the Thompson Defendants suggest. They seek review because the court of appeals committed legal error in the appealability analysis by narrowly construing section 14-3-330 while declining to examine the order’s actual effect, contrary to *Morrow* and *Thornton*. Moreover, the Arenders seek further review because the question presented, whether a defendant may use Rule 20, SCRCF, a plaintiff’s election device, to compel the joinder of multiple actions and parties and to fix venue, is important. The significance of the error warrants immediate reversal in an interlocutory posture.

VII. The Court May, and Should, Reach the Effect of the Order.

Finally, the Thompson Defendants urge that, if certiorari is granted, the merits of the Rule 20, SCRCF, question be remitted to the court of appeals in the first instance. (Return at 7–8.) However, the appealability question the Thompson Defendants ask this Court to resolve cannot be answered without examining the order’s effect, and the effect cannot be understood without recognizing that Rule 20, SCRCF, does not authorize what the order did. *Morrow* makes the inquiry into effect part of the appealability analysis itself. 412 S.C. at 538, 773 S.E.2d at 146. The Arenders do not ask this Court to resolve the underlying allegations of negligence. They ask the Court to recognize the order for what it is, to hold it immediately appealable, and—because the procedural defect is plain on the face of the Rules—to correct it at the interlocutory stage, so that the error does not propagate through a trial the final-judgment rule was never meant to protect.

Conclusion

For the foregoing reasons, the Arenders respectfully request that this Court grant the Petition for a Writ of Certiorari, reverse the court of appeals' holding that the order is not immediately appealable, and correct the errors in the circuit court's order at this interlocutory stage so that they may be promptly and efficiently resolved.

Respectfully submitted,

s/ James D. George, Jr.

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