

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

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

Appellate Case No. 2026-001251
Case No. 2022-CP-43-728

Jawana Wilson, as Personal Representative of the
Estate of Janet Wilson, Appellant

v.

Sumter County Sheriff's Office, Respondent.

PETITION FOR REHEARING

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Pursuant to Rules 221 and 240, SCACR, Appellant Jawana Wilson, as Personal Representative of the Estate of Janet Wilson (Decedent), petitions this Court to rehear this matter, withdraw its order dismissing this appeal, reinstate this appeal, and permit this appeal to move forward. Petitioner asserts the Court overlooked or misapprehended the following points in issuing its order dismissing this appeal.

The Court held that the order on appeal was an unappealable interlocutory order of bifurcation pursuant to *Flagstar Corp. Royal Surplus Lines*, 341 S.C. 68, 533 S.E.2d 331 (2000), and that the matter was not controlled by *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 773 S.E.2d 144 (2015). The Court found this case distinguishable from *Morrow*; however, the Court overlooked that the distinction between this case and *Morrow* is not meaningful and is one without a difference.

In *Morrow*, the Supreme Court reversed this Court's order dismissing the appeal pursuant to *Flagstar*. The Court first held "the two theories of vicarious liability and corporate liability can coexist in a lawsuit, and a finding of one does not necessary preclude a finding of the other." *Morrow*, at 538, 412 S.E.2d at 146. The Court found the order fit within S.C. Code Ann. § 14-3-330(2)(a) since a substantial right was implicated, adding, "[t]he effect of this order is to prevent the Morrows from being the architects of their own complaint, and deprives them of bringing their case against the defendant of their own choosing." *Id.*, at 539, 412 S.E.2d at 146. The Court observed "[t]o prevent the Morrows from appealing 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, 412 S.E.2d at 146-147.

The Court also overlooked the nature of the precise ruling in the orders on appeal. In this

case, Appellant stated separate and independent, but related, theories against one defendant, Sumter County Sheriff's Office (SCSO).¹ The first derives from respondeat superior for the actions of SCSO's employee, Deputy Dominick West, in the wreck that killed Decedent. The second claim is akin to corporate liability, that is, negligent hiring, training, supervision and retention of Deputy West by SCSO. It is a separate basis for holding SCSO responsible, and amounts to a separate occurrence under the South Carolina Tort Claims Act. By severing that claim until the separate wreck claim is tried to verdict, the trial court interfered with the long-standing principle that the Appellant as plaintiff is the architect of her lawsuit and instead shifted that role to the defendant, SCSO.

The Court overlooked or misapprehended that the order in this case effectively “discontinues [Petitioner’s] suit” for separate corporate liability, bringing the order under S.C. Code Ann. § 14-3-330(2)(a) (2015). *Morrow*, at 566, 725 S.E.2d at 928. It also has the *effect* of striking this claim from Plaintiff’s Complaint, which brings the order within Section 14-3-330(2)(c). *See Morrow*, at 539, 773 S.E.2d at 147 (“Our review of trial court orders is not constrained by how the order is styled.”). The trial court initially stated “[t]he jury could award less than the statutory cap for the value of decedent’s life, which would prevent the jury from hearing several days of testimony related to negligent hiring, training, and retention.” (Order of Dece. 15, 2025, p. 1). On reconsideration, the circuit court amended its order by speculating that the evidence would “likely be inadmissible in a trial relating only to a single vehicle accident,”

¹ Under the South Carolina Tort Claims Act, Plaintiff may not bring the case directly against Deputy West for actions taken within the scope of his employment. S.C. Code Ann. § 15-78-70(a) (2005); *Whetstone v. Office of Governor*, 448 S.C. 102, 931 S.E.2d 322 (Ct. App. 2026).

citing to *Dawon v. Prince George's County*, 896 F.Supp. 537 (D. Md. 1995), a US District Court case out of Maryland. (Order of April 27, 2026, p. 2). A later Maryland District Court observed “[r]egardless of the latitude given the district courts in their decision to bifurcate trials, separate trials remain the exception, rather than the rule.” *Hayat v. Fairley*, C.A. No. WMN-08-3029 (D. Md. 2010), 2010 WL 11549898. And these cases generally involve bifurcation of claims pursuant to 42 U.S.C. § 1983 against an individual police officer (allowed under federal law, unlike state law) versus the employer to avoid “prejudice to the individual defendants that would otherwise arise from the introduction of evidence of prior incidents of police brutality in order to make the case against the municipality.” *Taylor v. Maryland*, C.A. No. DKC-10-2167 (D. Md. 2010), 2010 WL 5247903.

The trial court relied heavily on other cases from other jurisdictions. (Order of April 26, 2026, p. 2). The Court overlooked that each of those cases is meaningfully distinct (they are federal cases from Louisiana and) and would not control the decision in this case. See *Mardell v. Harleysville Life Ins. Co.*, 65 F.3d 1072, 1074 n. 2 (3rd Cir. 1995) (Court actually stated, “While bifurcation may sometimes be advisable as a vehicle to insure that *after-acquired* evidence not be improperly used during the liability phase, *in other cases cautionary instructions or stipulations may render it unnecessary*” (emphasis added); trial court truncated this quote by removing italicized words, changing its meaning); *Laitram Corp. v. Hewlett-Packard Co.*, 791 F.Supp. 113, 116 (E.D. La. 1992) (district court actually denied bifurcation of issues of patent infringement (i.e., liability) and damages); *Id.* at 114 (Court observed “In patent cases, as in others, separate trials should be the exception, not the rule” and “courts should not order separate trials unless a disposition is clearly necessary”); *Id.* at 115 (Court also observed, “The Court is

mindful of the advantages that bifurcation of the issues in this case could bring. Certainly, some economy in the cost of discovery would be accomplished. But that does not outweigh the significant problems that would arise if the Court were to order two wholly separate trials before two different juries (on the jury issues).”).

Finally, the trial court relied on a misreading of this Court’s opinion in *Magnolia North Property Owners’ Ass’n, Inc. v. Heritage Communities, Inc.*, 397 S.C. 348, 725 S.E.2d 112 (Ct. App. 2012), which addressed admissibility “other bad act” evidence and actually *affirmed* a trial court’s admission of evidence regarding construction defects at other projects. The trial court in this case erroneously found “[t]he evidence of Deputy West’s employment history is the kind of evidence that would likely be inadmissible under Rule 404(b),” (Order of April 27, 2026, p. 2), again a speculation about admissibility before the evidence is even offered. This was precisely the situation Judge Cole created in *Morrow* - his order effectively rendered judgment for the employer on this separate claim (respondeat superior liability remained intact in *Morrow*). The Supreme Court reversed.

Like the order in *Morrow*, the order in this appeal is not truly an order of bifurcation in the classic sense. *See Flagstar* (order held not immediately appealable where it bifurcated issues of exclusion under contract from issue of occurrence; the two issues were fully distinct from each other since a finding for the insurer under the exclusion precluded recovery for the occurrence; the order was therefore truly bifurcation); *Senter v. Piggly Wiggly Carolina Co.*, 341 S.C. 74, 533 S.E.2d 575 (2000) (order bifurcated issues of liability from damages, a common manner of true bifurcation; Supreme Court held order not immediately appealable); *Durham v. Vinson*, 360 S.C. 639, 602 S.E.2d 760 (2004) (encouraging bifurcation of actual damage from punitive damages in

complex medical malpractice cases; by statute such bifurcation is now required upon defense motion).

Under South Carolina law, a plaintiff is entitled to control how litigation is styled. *Franke Associates by Simmons v. Russell*, 295 S.C. 327, 368 S.E.2d 462 (1988) (reversing a trial court order requiring a plaintiff to elect between a contract claim and a quantum meruit claim before trial); *Morrow* (order prevented plaintiff from being the architect of her own complaint). The Court should not have limited *Morrow* to those situations where plaintiff is being deprived of the choice of defendant for being the architect of the complaint includes pleading as many causes of action as plaintiff may have against the defendant. See Rule 8(e), SCRPC (“A party may set forth two or more statements of a cause of action or defense alternatively or hypothetically.... A party may also state as many separate causes of action or defenses as he has regardless of consistency and whether based on legal or on equitable grounds or on both.”).

In citing to *Senter*, the Court overlooked that the issues the defendant sought to be bifurcated in that case were liability versus damages, again a very common method, and that the Court was reviewing the denial of that motion. In this case, however, the trial court granted bifurcation of different theories of liability (vicarious versus direct) that are related. Interestingly, the Supreme Court in *Senter* observed that to find the order denying bifurcation of liability and damages was immediately appealable would “require this court to predetermine the admissibility of the evidence in advance of the trial. This, of course, we decline to do.” *Senter*, at 77, 533 S.E.2d at 577. The order in this case, however, does precisely what the Supreme Court warned against in *Senter*, ruling on the admissibility of evidence prior to trial.

As this Court held previously “[a] trial should be bifurcated only if the issues are so

distinct that trial of each alone would not result in injustice.” *Wright v. Heister Const. Co., Inc.*, 389 S.C. 504, 516, 698 S.E.2d 822, 828 (Ct. App. 2010). The issues in each claim in this case against SCSO do not meet that test, and the trial court’s ruling (and this Court’s dismissal of the appeal) will require Plaintiff to try the same and related issues twice, which is an injustice.

For the reasons stated Appellate requests that the Court grant this Petition, withdraw its order and permit this appeal to move forward.

Respectfully submitted,

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