

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

ANGELA DAWN SIMMONS,)
Plaintiff,)

**CONSENT ORDER GRANTING
COMPLEX CASE DESIGNATION**

v.)

SPARTANBURG REGIONAL)
HEALTHCARE SYSTEM, d/b/a)
Spartanburg Regional Medical)
Center, Foothills Anesthesia)
Consultants, P.C. and Adam D.)
Evec, D.O.,)
Defendants.)

C.A. Number: 2012-CP-42-3125

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

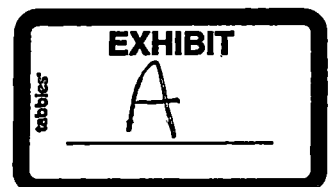
ANGELA DAWN SIMMONS, as)
general guardian for Jerry Dale)
Simmons,)
Plaintiff,)

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SPARTANBURG COUNTY
2014 JUL 29 PM 2:46
M. HOPE BLACKLEY

v.)

SPARTANBURG REGIONAL)
HEALTHCARE SYSTEM, d/b/a)
Spartanburg Regional Medical)
Center, Foothills Anesthesia)
Consultants, P.C. and Adam D.)
Evec, D.O.,)
Defendants.)

C.A. Number: 2012-CP-42-3127



STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG)	
ANGELA DAWN SIMMONS, individually))	
and as general guardian for Jerry Dale))	
Simmons,)	
)	
Plaintiff,)	
)	
v.)	
)	
)	
SPARTANBURG REGIONAL))	
HEALTHCARE SYSTEM d/b/a))	C.A. Number: 2013-CP-42-00509
Spartanburg Regional Medical))	
Center,)	
)	
Defendants.)	

This matter involves three separate actions pending before the Spartanburg County Court of Common Pleas: C/A Nos. 2012-CP-42-3125, 2012-CP-42-3127, and 2013-CP-42-00509. The matter comes before the Court by way of a Motion for Complex Case Designation of Spartanburg Regional Healthcare System d/b/a Spartanburg Regional Medical Center ("SRHS"). Specifically, SRHS seeks an order granting the above actions as complex case designation and assigning them to The Honorable Roger L. Couch for disposition of all pre-trial and trial matters. The parties to all three actions consent to the relief requested by SRHS.

The three actions relate to the same set of operative facts. Civil Action Nos. 2012-CP-42-3125 and 2012-CP-42-3127 allege medical malpractice. Specifically, Plaintiff Angela Simmons, individually and as general guardian of Jerry Dale Simmons, alleges that Defendants SRHS, Foothills Anesthesia Consultants, P.C., and Adam D. Evec, D.O. provided negligent medical care and treatment to Jerry Simmons in 2010.

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Civil Action No. 2013-CP-42-00509 is a declaratory judgment action. The plaintiff, in her Second Amended Complaint in this action, has asked the Court to declare whether there is \$1,200,000.00 cap on the personal injury claim (C/A No. 2012-CP-42-3127) and a separate cap of \$1,200,000.00 on the loss of consortium claim (C/A No. 2012-CP-42-3125), or whether there is a cap of \$1,200,000.00 for both claims. In addition, the plaintiff has asked the Court to "declare the statutory cap or caps that are available with respect to the plaintiff's claims in the event the plaintiff proves that there were multiple occurrences of medical negligence...." See Second Amended Complaint, Civil Action No. 2013-CP-42-00509, Prayer for Relief. Foothills Anesthesia Consultants, P.C., and Adam D. Evec, D.O. are not parties to the declaratory judgment action.

The Court finds that Civil Action Nos. 2012-CP-42-3125, 2012-CP-42-3127, and 2013-CP-42-00509 all involve common questions of fact, law, and application of fact to law. The parties agree that they will all be best served by having one judge preside over the declaratory judgment action and the medical malpractice actions. This will help insure consistent rulings on issues which overlap between the declaratory judgment action and the medical malpractice actions. It will also be more efficient and promote judicial economy if one judge presides over all these actions. The Honorable Roger L. Couch previously has presided over a dispositive motion hearing argued by the parties in C/A No. 2013-CP-42-00509 and already has gained familiarity with some of the issues in these matters.

The Court, therefore, concludes that the interests of justice and judicial economy best will be served if the above three actions are granted complex case designation and assigned to one judge for disposition.

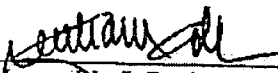
IT IS, THEREFORE, ORDERED:

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1. SRHS's Motion is granted, and Civil Action Nos. 2012-CP-42-3125, 2012-CP-42-3127, and 2013-CP-42-00509 are hereby granted complex case designation.
2. The above cases are assigned to The Honorable Roger L. Couch to dispose of all pre-trial and trial matters pertaining to the cases.
3. Absent further order of the judge set forth in paragraph 2, the above cases shall not be considered as consolidated, shall retain their individual case numbers, and shall be disposed of on an individual basis.
4. The parties, at their election, may conduct joint discovery where the interests of efficiency and judicial economy will be served.

IT IS SO ORDERED.



The Honorable J. Derham Cole
Chief Administrative Judge for Common Pleas,
Seventh Judicial Circuit

Spartanburg, South Carolina

7/29, 2014

(CONSENT SIGNATURE PAGES TO FOLLOW) ✓

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WE SO MOVE:

HOLCOMBE BOMAR, P.A.



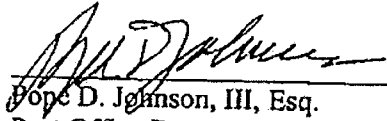
Perry D. Boulter
Joshua T. Thompson
Post Office Drawer 1897
Spartanburg, SC 29304
(864) 594-5300

Attorneys for Defendant Spartanburg
Regional Healthcare System d/b/a
Spartanburg Regional Medical Center

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M. HOPE BLACKLEY

WE CONSENT:

JOHNSON & BARNETTE, LLP



Pope D. Johnson, III, Esq.
Post Office Drawer 11209
Columbia, SC 29211-1209
(843) 881-8644

Attorneys for Plaintiff

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WE CONSENT:

DAVIS & SNYDER, P.A.

Ashby W. Davis (w/ permission)

Ashby W. Davis, Esq.
5 Hawthorne Park Court
Greenville, SC 29615
(864) 335-3500

Attorneys for Defendants Foothills
Anesthesia Consultants, P.C. and
Adam D. Evcc, D.O.

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SPARTANBURG COUNTY
2014 JUL 29 PM 2:46
M. HOPE BLACKLEY

Pope Johnson

From: Couch, Roger L. Law Clerk (John Connell Jr.) [rcouchlc@sccourts.org]
Sent: Friday, May 08, 2015 1:44 PM
To: Ashby Davis; Couch, Roger L.
Cc: Pope Johnson; Keith Knowlton
Subject: RE: Motion to Consolidate

Good afternoon,

After hearing the arguments this morning, Judge Couch will not allow consolidation and will continue forward with just one claim at a time. If you have any questions, please let me know.

Kind regards,

John

From: Ashby Davis [mailto:ADavis@davissnyder.com]
Sent: Thursday, May 07, 2015 1:54 PM
To: Couch, Roger L. Law Clerk (John Connell Jr.); Couch, Roger L.
Cc: Pope Johnson (pope@popejohnsonlaw.com); Keith Knowlton
Subject: Motion to Consolidate

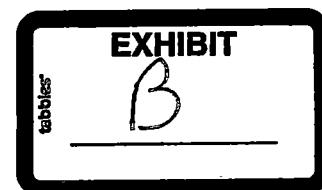
John,

Given the fact that both Amended Complaints are identical, have the same allegations of professional negligence against the same defendants, have the same witnesses and same medical records, Keith Knowlton tomorrow morning will simply make an oral motion to consolidate (Rule 42). We feel strongly that trying both cases together will save substantial costs and time for both parties and will more efficiently dispose of these cases rather than having two separate trials with the same facts, same allegations, and same evidence and witnesses.

Thanks,

Ashby Davis

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5/18/2015

**Pope Johnson**

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**From:** Couch, Roger L. Law Clerk (John Connell Jr.) [rcouchlc@sccourts.org]  
**Sent:** Friday, May 08, 2015 1:58 PM  
**To:** Ashby Davis; Couch, Roger L.  
**Cc:** Pope Johnson; Keith Knowlton; David Williford  
**Subject:** RE: Motion to Consolidate

Ashby,

Judge Couch will issue a written order next week. He felt that he would notify you on his position so that you could prepare accordingly.

Thank you,

John

---

**From:** Ashby Davis [mailto:ADavis@davissnyder.com]  
**Sent:** Friday, May 08, 2015 1:49 PM  
**To:** Couch, Roger L. Law Clerk (John Connell Jr.); Couch, Roger L.  
**Cc:** Pope Johnson (pope@popejohnsonlaw.com); Keith Knowlton; David Williford  
**Subject:** RE: Motion to Consolidate

John,

I would respectfully ask for a written order regarding this so we may appropriately advise our clients whether or not they wish to file an appeal.

Thanks,

Ashby

---

**From:** Couch, Roger L. Law Clerk (John Connell Jr.) [mailto:rcouchlc@sccourts.org]  
**Sent:** Friday, May 08, 2015 1:44 PM  
**To:** Ashby Davis; Couch, Roger L.  
**Cc:** Pope Johnson (pope@popejohnsonlaw.com); Keith Knowlton  
**Subject:** RE: Motion to Consolidate

Good afternoon,

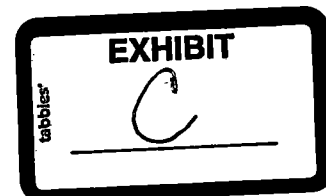
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Kind regards,

John

---

**From:** Ashby Davis [mailto:ADavis@davissnyder.com]  
**Sent:** Thursday, May 07, 2015 1:54 PM  
**To:** Couch, Roger L. Law Clerk (John Connell Jr.); Couch, Roger L.



5/18/2015

**Cc:** Pope Johnson ([pope@popejohnsonlaw.com](mailto:pope@popejohnsonlaw.com)); Keith Knowlton

**Subject:** Motion to Consolidate

John,

Given the fact that both Amended Complaints are identical, have the same allegations of professional negligence against the same defendants, have the same witnesses and same medical records, Keith Knowlton tomorrow morning will simply make an oral motion to consolidate (Rule 42). We feel strongly that trying both cases together will save substantial costs and time for both parties and will more efficiently dispose of these cases rather than having two separate trials with the same facts, same allegations, and same evidence and witnesses.

Thanks,

Ashby Davis

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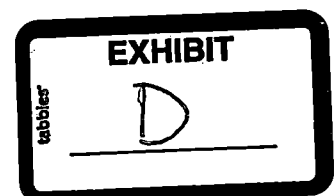
Pope Johnson

From: Pope Johnson
Sent: Thursday, May 14, 2015 2:52 PM
To: 'Couch, Roger L. Law Clerk (John Connell Jr.)'
Cc: 'Ashby Davis'
Subject: Simmons v. Foothills and Evec

Attached is the proposed order denying the motion to consolidate. I sent a copy to Ashby for his comment but have not heard back.

Pope D. Johnson, III
Attorney at Law
1230 Richland Street
Columbia, SC 29201
803-799-9791
803-376-8965 (direct)
803-730-1078 (cell)
803-253-6084 (fax)

5/18/2015



STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

Angela Dawn Simmons)
)
Plaintiff,)

Civil Action No. 2012-CP-42-3125

vs.)
)

Foothills Anesthesia Consultants,)
P.C. and Adam D. Evec, D.O.,)
)
Defendants.)

Angela Dawn Simmons, as general)
guardian for Jerry Dale Simmons,)
)
Plaintiff,)

Civil Action No. 2012-CP-42-3127

vs.)
)

ORDER

Foothills Anesthesia Consultants,)
P.C. and Adam D. Evec, D.O.,)
)
Defendants.)

These actions came before the Court on May 8, 2015 for a hearing on the plaintiff's motion to compel further answers to discovery. During the course of the hearing, the defendants' attorney made a verbal motion pursuant to Rule 42, SCRCF, to consolidate the above-referenced actions for trial. Civil Action No. 2012-CP-42-3125 is an action for loss of consortium. Civil Action No. 2012-CP-42-3127 is an action for personal injury. The actions arise out of the alleged medical negligence on the part of the defendants that allegedly resulted in brain damage to Jerry Dale Simmons. According to the plaintiff's attorney, Jerry Dale Simmons is in a persistent vegetative state and his wife has the sole responsibility for his care.

These cases were assigned to me by an Order dated July 29, 2014 designating the cases

as complex. The Order makes it clear that the cases were not consolidated at that time.

“3. Absent further order of the judge set forth in paragraph 2, the above cases shall not be considered as consolidated, shall retain their individual case numbers, and shall be disposed of on an individual basis.”

No prior motion to consolidate has been made to me.

The defendants' motion was made upon the grounds that the cases have common questions of law and fact and that consolidation would promote judicial economy and would avoid the risk of inconsistent results. The plaintiff's attorney objected, asserting that the actions are independent actions. Further, he asserted that if they were consolidated, there was a real risk of jury confusion in deciding the two cases since the consortium case involves a claim for intangible losses only whereas the personal injury case will include a life care plan in excess of \$10,000,000.00, lost wages in excess of \$1,000,000.00, and medical expenses in excess of \$1,000,000.00. The plaintiff's attorney expressed concern that the consortium claim may well get lost and subsumed by the personal injury action which involves these substantial losses. He argued that if confusion did occur, it would be difficult to correct. The plaintiff's attorney also argued that there was no way to predict with any certainty whether consolidation would actually promote or result in judicial economy or whether a second trial would be needed. Finally, the plaintiff's attorney argued that the motion came too late since trial was scheduled for May 18, 2015.

In the case of *Keels v. Pierce*, 315 S.C. 339, 433 S.E.2d 902 (Ct. App. 1993), the Court of Appeals addressed the issue of consolidation, stating:

“Consolidation under Rule 42(a), SCRCP, may be ordered whenever actions involving a common question of law or fact are pending before the court. *Ellis by Ellis v. Oliver*, 307 S.C. 365, 415 S.E.2d 400 (1992). Under a consolidation order, the parties and the pleadings are not merged, and each action retains its own identity. *Id.* Consolidation is within the broad discretion of the trial court.

Worthy v. Chalk, 44 S.C.L. (10 Rich.) 141 (1856). The moving party has the burden of persuading the court that consolidation is desirable. *Prudential Insurance Co. v. Marine National Exchange Bank*, 55 F.R.D. 436 (E.D. Wis. 1972).”

The following language from the case of *Arnold v. Eastern Air Lines, Inc.*, 681 F.2d 186 (4th Cir. 1982) is often quoted as to what a trial court must weigh and consider in dealing with a Rule 42(a) motion to consolidate.

“The critical question for the district court in the final analysis was whether the specific risks of prejudice and possible confusion were overborne by the risk of inconsistent adjudications of common factual and legal issues, the burden on parties, witnesses and available judicial resources posed by multiple lawsuits, the length of time required to conclude multiple suits as against a single one, and the relative expense to all concerned of the single-trial, multiple-trial alternatives. See Fed.R.Civ.P. 42, see generally (C. Wright & A. Miller, *Federal Practice & Procedure: Civil* s 2383 (1972).”

I find that the defendants have failed to carry the burden of persuading the court that consolidation is desirable. I am not persuaded that consolidation would result in judicial economy or reduce the risk of inconsistent results. Cases consolidated under Rule 42 retain their own separate identity. Thus, consolidation does not insure the results will be consistent. I find that the plaintiff’s attorney has raised real and legitimate concerns regarding the risk of confusion and prejudice if the cases are consolidated. Accordingly.

IT IS ORDERED that the defendants’ motion to consolidate be and hereby is denied.

AND IT IS SO ORDERED.

Roger L. Couch
Circuit Court Judge

_____, South Carolina

_____, 2015

Pope Johnson

From: Pope Johnson
Sent: Friday, May 15, 2015 11:08 AM
To: 'Ashby Davis'
Cc: David Williford
Subject: RE: Simmons v. Foothills and Evec

Ashby, if you have any research that supports the appealability of the order denying your oral motion to consolidate, please send it to me.

I am fine with continuing informal settlement negotiations rather than reschedule a mediation. However, since the case is now continued for next week, I would like to have the informal communications next week while everything is fresh. Please ask Sam to call me as the ball is in his court.

Pope D. Johnson, III
 Attorney at Law
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 Columbia, SC 29201
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 803-730-1078 (cell)
 803-253-6084 (fax)

From: Ashby Davis [mailto:ADavis@davissnyder.com]
Sent: Friday, May 15, 2015 10:29 AM
To: Pope Johnson
Cc: David Williford
Subject: RE: Simmons v. Foothills and Evec

Pope,

My clients would prefer continuing informal settlement negotiations as opposed to mediation next week. Our position is that the trial is stayed.

We would only consent to go forward with a trial if the cases are consolidated for trial.

I look forward to hearing from you in this regard.

Ashby

From: Pope Johnson [mailto:pope@popejohnsonlaw.com]
Sent: Friday, May 15, 2015 9:26 AM
To: Ashby Davis
Subject: Simmons v. Foothills and Evec

Ashby, I have not heard back from Sam regarding settlement but he told me he had more authority and I assume he will get back with me at some point this morning. Assuming he would extend a further offer, I would need to get with Angie, perhaps in person, to go over it with her. Therefore, I am considering sending Judge Couch the below email. Would you look at it and let me know whether you would consent to the request or oppose it.



5/18/2015

"John, would you ask Judge Couch about hearing today the attached motion regarding mediation. We attended a mediation that went no where because the defendants' insurance policy provides that the doctor must consent to the carrier engaging in settlement discussions and Dr. Evec would not consent. No officer of Foothills attended. Yesterday, I learned that Dr. Evec had consented to settlement negotiations and asked that the carrier engage in settlement discussions to try to settle the cases within the policy limits. Yesterday, I received the first offer from the carrier and I provided a counteroffer. The carrier representative told me that he would not pay my demand but that he did have more settlement authority. However, I have heard nothing further from him.

I do not think that the mediation was meaningful for the reasons stated above. I ask that Judge Couch consider pushing the trial date back to the week of May 26 and order the parties back to mediation next week. We are trying the loss of consortium case first which is at the most a 3 to 4 day trial. It could easily be tried the week of May 26 if the cases are not settled in mediation. In the alternative, I ask that Judge Couch not start the trial until Wednesday and that the parties be required to mediate Monday and/or Tuesday."

Pope D. Johnson, III
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