

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Angela Dawn Simmons,
Plaintiff,

v.

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

Angela Dawn Simmons, as general guardian of
Jerry Dale Simmons
Plaintiff,

v.

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

IN THE COURT OF COMMON PLEAS

Civil Action No. 2012-CP-42-3125
(Loss of Consortium Action)

Civil Action No. 2012-CP-42-3127
(Medical Malpractice Action)

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M. HERRON, CLERK

ORDER GRANTING DEFENDANTS' MOTION FOR RECONSIDERATION

This matter came before the Court upon the Defendants' Motion for Reconsideration of the Court's order denying the defendants' Motion to Consolidate. On May 8, 2015, Defendants moved, pursuant to Rule 42(a), SCRCP, to consolidate the two 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 medical malpractice. These actions arise out of the alleged medical negligence on the part of the defendants which 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 sole responsibility for his care.



Initially, this Court denied Defendants' motion to consolidate and, after Defendants took an immediate appeal and the appeal was dismissed, this Court issued a written order denying consolidation on May 21, 2015 (the Order). As stated in the Order, I was not persuaded that consolidation would reduce the risk of inconsistent results, and I found that the Plaintiff had raised concerns regarding the risk of confusion and prejudice if the cases were consolidated. Defendants, pursuant to Rule 59(e), SCRCF, moved the court to reconsider its May 21, 2015 Order, and their Motion for Reconsideration was heard on May 26, 2015. For the reasons set forth below, this Court will grant Defendants' Motion and order that the two actions be consolidated for trial.

Plaintiff's medical malpractice and loss of consortium actions involve substantial common questions of fact, namely, the ultimate question of whether or not Dr. Evec, an anesthesiologist, is liable for medical negligence in treating Jerry Dale Simmons.¹ The allegations of medical negligence in the two amended complaints are identical. The only questions of fact which differ between the two cases concern damages. These cases were designated as complex and assigned to me. The parties conducted discovery in the two actions simultaneously. Discovery is complete, and both cases are ready for trial.

Defendants bear the burden, as the moving party, of persuading the Court that consolidation is desirable.² To determine if consolidation is desirable and proper, a trial court should weigh the risks of consolidation, including prejudice to the parties and possible juror confusion, against the risks of not consolidating, including "common factual and legal issues being decided inconsistently, burdening the parties, witnesses and the judiciary with multiple lawsuits, the time required to

¹ Plaintiff alleges only vicarious liability against Foothills, so its liability hinges on the liability of Evec.

² *Keels v. Pierce*, 315 S.C. 339, 342, 433 S.E.2d 902, 904 (Ct. App. 1993).



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conclude several actions as opposed to one, and the expense of conducting multiple trials as opposed to a single trial.”³

Here, the risks of prejudice and possible confusion are outweighed by the risks of inconsistent adjudications of common factual and legal issues; the burden on parties, witnesses, and available judicial resources posed by multiple lawsuits; and the added time and expense required to try the cases separately. Trying these cases together would save time. The parties estimate that, tried together, the cases could be concluded in approximately six or seven trial days. Tried separately, each case would likely require one week or more. These cases involve the same parties, the same witnesses, and the same judge. It would effectively double the burden—the cost and inconvenience—on the parties, witnesses (including four expert witnesses), and this Court to separately try these cases.

Moreover, this Court is especially concerned about the significant risk of inconsistent adjudications of common factual and legal issues if these cases were tried separately. The consortium claim was filed first and was scheduled to be tried first. If the first jury determined that defendants were not negligent (i.e. did not breach the standard of care) and hence were not liable on Mrs. Simmons’ consortium claim and a second jury returned a verdict for the plaintiff on Mr. Simmons’ medical malpractice claim, the results of the two actions would be patently inconsistent. Conversely, if the first jury found in favor of Mrs. Simmons on her consortium claim and a second jury returned a verdict for the defendants on Mr. Simmons’ medical malpractice claim, the results likewise would be patently inconsistent. While under South Carolina law consortium actions are independent, not derivative, our Supreme Court stated in *Lee v. Bunch*, “Generally, a plaintiff spouse’s claim for loss of consortium fails if the impaired spouse’s claim fails, whether the claim is


³ *Asher v. Duke Energy Carolinas, LLC*, 2013 U.S. Dist. LEXIS 68836, *5-6 (May 15, 2013) (citing *Arnold v. Eastern Air Lines, Inc.*, 681 F.2d 186, 193 (4th Cir. 1982)).

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SOUTH CAROLINA
COLUMBIA

IT IS HEREBY ORDERED:

1. The Defendants' Motion for Reconsideration is **GRANTED**.
2. The Court's prior Order denying Defendants' motion to consolidate is **WITHDRAWN**.
3. The two above-referenced actions shall be consolidated for trial.

IT IS SO ORDERED.



Roger L. Couch
Circuit Court Judge

~~NO~~ 6/3, 2015
Spartanburg, South Carolina

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M. HERRICK-BAILEY