

STATE OF SOUTH CAROLINA)
 COUNTY OF SUMTER)
 Clinton Junior Humphries, as)
 Personal Representative for the Estate)
 of Becky Humphries,)

Plaintiff,

vs.

Santee Hematology and Oncology,)
 Inc. and Billy W. Clowney, M.D.,)

Defendants.

IN THE COURT OF COMMON PLEAS
 THIRD JUDICIAL CIRCUIT

C/A NO: 2014-CP-43-2383

FILED
 AUG 20 11:10
 CLERK OF COURT
 FLORENCE COUNTY, SC

STATE OF SOUTH CAROLINA)
 COUNTY OF FLORENCE)
 Clinton Junior Humphries, as)
 Personal Representative for the Estate)
 of Becky Humphries,)

Plaintiff,

vs.

Sexton Dental Clinic, Inc., John R.)
 Clark, Jr., DMD, Robert W. Scott,)
 DDS, Clark Dental Associates, and)
 Dr. John R. Clark, Sr.,)

Defendants.

IN THE COURT OF COMMON PLEAS
 TWELFTH JUDICIAL CIRCUIT

C/A NO: 2014-CP-21-2396

ORDER ON PLAINTIFF'S MOTION FOR JOINDER

This matter came for hearing on July 30, 2015 in the county of Florence, South Carolina pursuant to Plaintiff's amended motions (filed both in Sumter and Florence Counties) to consolidate and change venue, or, in the alternative for permissive joinder pursuant to Rules 42

or 20 respectively of the South Carolina Rules of Civil Procedure (SCRCP) and applicable statutes.

These cases involve the alleged negligent conduct of the Defendants (in both cases) during Decedent's (Becky Humphries') treatment beginning October 21, 2010 and lasting until January, 2014. The pleadings mentioned above, filed in Sumter and Florence Counties, contain allegations spanning an identical time period, and contain similar allegations of over-lapping negligence (medical malpractice). Plaintiff has alleged various causes of action in the two actions for negligence, gross negligence, medical neglect, and malpractice against Defendants, all of whom were in some fashion responsible for the care of Plaintiff's Decedent. Plaintiff asserts the cases involve common questions of law and fact as well as theories of concurrent liability, and that Defendants are each likely to blame or "point the finger" at the party/Defendant who is in the other case if the cases are not tried together. The Plaintiff further asserts that trying these cases at the same time would be more efficient and judicially economical. Defendants contend that this Court has no authority to join or consolidate these two cases because they were filed in two separate counties. Defendants further argued that Plaintiff would not be prejudiced if the cases were tried separately.

ANALYSIS

As explained in *Ellis v. Oliver*, 307 S.C. 365, 367, 415 S.E.2d 400, 401 (1992):

Under the South Carolina Rules of Civil Procedure there is a distinction between joinder under Rule 20 and consolidation under Rule 42 as the test for each is quite different. Under the rules "All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences *and* if any question of law or fact common to all defendants will arise in the action." SCRCP Rule 20(a). (Emphasis added.) In contrast, consolidation may be ordered whenever actions involving a common question of law or fact are pending before the court. SCRCP Rule 42(b). Since joinder requires the additional requirement that the claims must arise out of the

same transaction or occurrence, some cases may be consolidated that could not be joined.

Here, Plaintiff's suits allege that the acts and omissions of Defendants each contributed to the pain and suffering experienced by Decedent (in addition to the extensive medical treatment incurred to treat her problems caused by the medical professionals of the Defendants) as a result of their medical malpractice. The acts and commissions complained of in both suits form a continuous chain of somewhat overlapping events leading to the resulting harm. It is well-settled that:

[T]he law recognizes that there may be several proximate causes to an event and anyone who is guilty of an act which contributes as a proximate cause and without which the injury complained of would not have occurred is responsible under the doctrine of proximate cause. There may be more than one proximate cause of an injury, and more than one person may be held responsible for the plaintiff's injuries. The acts and omissions of two or more persons may operate concurrently as efficient causes of an injury. In such case, each of the contributing acts or omissions is regarded in law as a proximate cause for which each of the participants may be held responsible. Two or more separate and distinct acts of negligence operating concurrently may both constitute proximate causes of an injury. Causes are concurrent if they act contemporaneously to produce a given result. In other words, the individual acts of negligence must combine to cause the injury.

SC JI CIVIL § 20-3 (Jury charge on causation). Here, while a jury could easily find only one of the Defendants liable, it could also find a combination of some or all of the Defendants liable. This is precisely the type of situation where joinder is appropriate, given the allegations of joint, several, concurrent, or alternative liability. Moreover, Plaintiff's right to relief arises out of the same series of transactions or occurrences, and, given the allegations to be proven, there are common questions of law and fact applicable to all Defendants.

Defendants argued that this Court has no authority to order joinder or consolidation of cases that have been filed in separate counties. The Defendants rely on S.C. Code Section 15-7-30 and the *Ellis* case cited above. This Court notes the *Ellis* case itself permitted consolidation

of cases where Defendants were in separate counties and invited that Plaintiff to move to change the venue of one case to bring them for trial in a single county on the theory of convenience of witnesses and judicial economy. Clearly, the Court has the power to join or consolidate actions where the actions involving a common question of law or fact and neither Rule 42 nor Rule 20 has any limitations based on venue. Additionally, this Court is persuaded that if these cases are tried separately there is a high likelihood that Defendants in each case would blame or "point the finger" at the Defendants in the other case. Employing the "empty chair" on these facts is fundamentally unfair and prejudicial to Plaintiff. Trying these cases at the same time would be more efficient and judicially economical. Additionally, as cited in *Ellis*, S.C. Code Section 15-7-30(B) states "If there is more than one defendant, the action may be tried in any county where the action properly may be maintained against one of the defendants pursuant to this section".

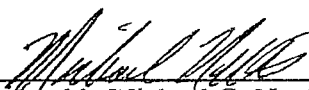
Based on all of the above, this Court finds permissive joinder under Rule 20 is both appropriate under Rule 20, SCRCF, and necessary to further the orderly and efficient administration of justice. Having found joinder appropriate, it is not necessary for the Court to address Plaintiff's request for consolidation which requires only that the claims must arise out of the same transaction or occurrence.

WHEREFORE, based on the foregoing, Plaintiff's Motion for **JOINDER** is **GRANTED**. Plaintiff shall file a motion in this court allowing all parties to be heard on the issue of venue.

AND IT IS SO ORDERED.

Florence, South Carolina

Dated: 8-19-15


Honorable Michael G. Nettles
Circuit Court Judge

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CONNIE FEE-SHEARIN
Clerk of Court
& GS
FLORENCE COUNTY, SC