

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2019-000998

RECEIVED

OCT 22 2019

S.C. SUPREME COURT

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SC Court of Appeals

Cecil Rowe..... Appellant,

v.

Family Health Centers, Inc. Respondent.

And

Rebecca Rowe..... Appellant,

v.

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INITIAL BRIEF OF RESPONDENTS

John M. Grantland, Esquire
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Murphy & Grantland, P.A.
P.O. Box 6648
Columbia, SC 29260
(803) 782-4100
jgrantland@murphygrantland.com
Attorneys for Respondent

Other Counsel of Record:

James Eric Cavanaugh, Esquire
Joseph Thickens, Esquire
Cavanaugh & Thickens, LLC
P.O. Box 2409
Columbia, South Carolina 29202
Phone: (803) 888-2200

Clyde Dean, Jr., Esquire
The Dean Law Firm, LLC
146 Centre Street
Orangeburg, South Carolina 29115.

Attorneys for Appellants

STATEMENT OF ISSUES ON APPEAL

- I. Whether the Circuit Court properly exercised its discretion in consolidating for trial the cases of Cecil Rowe v. Family Health Centers, Inc. and Rebecca Rowe v. Family Health Centers, Inc.**

STATEMENT OF THE CASE

This appeal follows an Order of the Circuit Court properly exercising its discretion to consolidate for trial the cases of Cecil Rowe v. Family Health Centers, Inc. [Case No. 2017-CP-38-01232] and Rebecca Rowe v. Family Health Centers, Inc. [Case No. 2017-CP-38-01233]. Both Appellants filed complaints on the same day through the same attorneys against Family Health Centers, Inc. (“FHC”) and Carolina Kwik Dry, LLC.¹ (Rebecca Rowe Compl.); (Cecil Rowe Compl.). Both Complaints allege Appellants fell when standing up from a chair in the waiting room of the Family Health Center located at 7061 Norway Road in Neeses, South Carolina. (Rebecca Rowe Compl. ¶ 7); (Cecil Rowe Compl. ¶¶ 7-8). Rebecca Rowe’s Complaint alleges that the chair slipping away from her caused her to fall. (Rebecca Rowe Compl. ¶ 7). Cecil Rowe’s Complaint alleges that the chair slipping away from him and the arm of the chair breaking caused him to fall. (Cecil Rowe Compl. ¶¶ 7-8). Both Complaints allege that a dangerous condition existed “as a result of the floor having been recently waxed and/or polished.” (Rebecca Rowe Compl. ¶ 9); (Cecil Rowe Compl. ¶ 11).

In their Pre-Trial Brief, Appellants allege that the chair used in the waiting room by Mr. and Mrs. Rowe is “believed to be the same chair.” (Plaintiffs’ Pre-trial Brief, p. 2). In their separate Complaints, the Rowes allege that FHC committed 15 specific acts of

¹ In both cases, Defendant Carolina Kwik Dry, LLC was dismissed without prejudice prior to trial. (September 18, 2018 Dismissal Order – Rebecca Rowe case); (July 18, 2018 Dismissal Order – Cecil Rowe case).

negligence, such alleged acts being identical in each Complaint.² *Compare* (Rebecca Rowe's Compl. ¶ 16 (a)- (o)) *with* (Cecil Rowe's Compl. ¶ 18 (a) – (o)). The parties voluntarily conducted discovery and depositions on a consolidated basis for both of these cases.

Based upon the common issues of law and fact presented by the pleadings of the Appellants, FHC moved to consolidate the two cases for trial. On May 8, 2019, the Circuit Court held a hearing on FHC's Motion. By Order dated May 14, 2019, the Circuit Court ordered that the cases be consolidated for trial. (May 14, 2019 Order). The cases were tried on a consolidated basis. On May 21, 2019, the jury returned a verdict finding FHC was negligent and its negligence was a proximate cause of Mrs. Rowe's and Mr. Rowe's injuries. (Verdict Form). The jury determined that Mrs. Rowe was entitled to \$11,000 in damages and that Mr. Rowe was entitled to \$4,000 in damages. (Verdict Form). The jury found FHC to be 40% at fault for Rebecca Rowe's injuries and Rebecca Rowe to be 60% at fault. (Verdict Form, p. 3). The jury found FHC to be 40% at fault for Cecil Rowe's injuries and Cecil Rowe to be 60% at fault. (Verdict Form, p. 2). Appellants filed their Notice of Appeal on June 18, 2019.

STATEMENT OF FACTS

On September 19, 2017, Rebecca Rowe filed suit in the Orangeburg County Court of Common Pleas against Family Health Centers, Inc. and Carolina Kwik Dry, LLC, Civil

² In fact, these allegations are so identical between the two Complaints that Cecil Rowe's Complaint refers to him by the female pronouns "she" and "herself." *See* (Cecil Rowe's Compl. ¶ 18(l) ("In failing to take precautions to avoid injuries to the Plaintiff when the Defendants knew or should have known that Plaintiff was in a position of peril from which **she** could not extricate **herself**...." (emphasis added))).

Action No. 2017-CP-38-01233. Her Complaint alleges that on March 31, 2016 Mrs. Rowe visited the Family Health Centers, Inc. location at 7061 Norway Road in Neeses, South Carolina. (Rebecca Rowe Compl. ¶ 6). Her Complaint alleges that when she went to stand up from a chair, “the chair slipped away from behind her causing [her] to fall violently on the floor.” (Rebecca Rowe Compl. ¶ 7). At the time of her fall, Mrs. Rowe was in the FHC waiting room. (Plaintiffs’ Pre-trial Brief, p. 1). Her Complaint alleges that Carolina Kwik Dry had just “waxed and/or polished” the floor. (Rebecca Rowe Compl. ¶ 8). Her Complaint alleges that Family Health Centers, Inc. did not take “any action to warn [her] of the dangerous condition that existed as a result of the floor having been recently waxed and/or polished” and “there was no warning of the dangerous condition on the floor.” (Rebecca Rowe Compl. ¶¶ 9-10). Although not clear from her Complaint, according to Mrs. Rowe’s counsel, she takes issue with the “hard plastic feet” of the chair being placed on the “hard tile floor.” (May 8, 2019 Consolidation Hearing Transcript 9:18-25); (Appellants’ Br. p. 10).

On September 19, 2017, Cecil Rowe filed suit in the Orangeburg County Court of Common Pleas against Family Health Centers, Inc. and Carolina Kwik Dry, LLC, Civil Action No. 2017-CP-38-01232. His Complaint alleges that on August 1, 2016 Mr. Rowe visited the Family Health Centers, Inc. location at 7061 Norway Road in Neeses, South Carolina. (Cecil Rowe Compl. ¶ 6). His Complaint alleges that when he went to stand up from a chair in the waiting room, the arm of the chair broke and “at the same time, the chair slipped away from [him], causing him to fall violently on the floor.” (Cecil Rowe Compl. ¶¶ 7-8). His Complaint alleges that Carolina Kwik Dry had just “waxed and/or polished” the floor. (Cecil Rowe Compl. ¶ 9). His Complaint alleges that Family Health Centers, Inc.

did not take “any action to warn [him] of the dangerous condition that existed as a result of the floor having been recently waxed and/or polished” and “there was no warning of the dangerous condition on the floor.” (Cecil Rowe Compl. ¶¶ 11-12).

Inconsistent with his Complaint, Mr. Rowe testified in his deposition that his fall was caused by the chair’s leg coming apart from the chair and that the chair did not slip. (Dep. of Cecil Rowe 27:11-28:8). However, in another part of his deposition, Mr. Rowe testified that “the chair got away from him” and as his right leg went up under the chair, the chair broke. (Dep. of Cecil Rowe 10:19-20; 19:21-24; 21:4-5; 25:17-20). Additionally, in his discovery responses, Mr. Rowe stated that “the chair slid from under him.” (Cecil Rowe’s Answers to Family Health Center Inc.’s First Set of Interrogatories ¶ 14); (Cecil Rowe’s Answers to Carolina Kwik Dry, LLC’s First Set of Interrogatories ¶ 27). At no time did Cecil Rowe amend his Complaint.

STANDARD OF REVIEW

Under Rule 42(a) of the South Carolina Rules of Civil Procedure, courts may consolidate cases for trial that involve a common question of law or fact:

- (a) **Consolidation.** When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all matters in issue in the action; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

Rule 42(a), SCRPC; *see also Keels v. Pierce*, 315 S.C. 339, 342, 433 S.E.2d 902, 904 (Ct. App. 1993) (“Consolidation under Rule 42(a), SCRPC, may be ordered whenever actions involving a common question of law or fact are pending before the court.” (citing *Ellis by Ellis v. Oliver*, 307 S.C. 365, 415 S.E.2d 400 (1992))). “Consolidation is within the broad discretion of the trial court.” *Id.* “An appellate court will not disturb a trial court's ruling

on a motion to consolidate absent an abuse of discretion.” *Id.* (citing *Winchester v. United Insurance Co.*, 231 S.C. 288, 98 S.E.2d 530 (1957)).³

“An abuse of discretion occurs either when a court is controlled by some error of law, or where the order is based upon findings of fact lacking evidentiary support.” *Patel v. Patel*, 359 S.C. 515, 529, 599 S.E.2d 114, 121 (2004). “The burden always rests upon the appellant to show an abuse of discretion.” *Em-Co Metal Prod., Inc. v. Great Atl. & Pac. Tea Co.*, 280 S.C. 107, 110, 311 S.E.2d 83, 85 (Ct. App. 1984). An appellate court may affirm a trial court’s order “on any ground appearing in the record.” *Doe v. Doe*, 286 S.C. 507, 511, 334 S.E.2d 829, 832 (Ct. App. 1985); *I’On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 419, 526 S.E.2d 716, 723 (2000) (“Under the present rules, a respondent—the “winner” in the lower court—may raise on appeal any additional reasons the appellate court should affirm the lower court’s ruling, regardless of whether those reasons have been presented to or ruled on by the lower court.”); Rule 220(c), SCACR.

ARGUMENT

The Circuit Court properly exercised its discretion when it combined these cases for trial. Appellants are bound by their pleadings and cannot make arguments inconsistent with those pleadings for purposes of this appeal – specifically with regard to how each Appellant’s fall allegedly occurred. As demonstrated by their pleadings, these cases raise a common issue of fact or law as required by Rule 42(a), SCRCP. Therefore, Appellants

³ In the first paragraph of its argument section, Appellants’ Brief cites a Northern District of Illinois case and a Fifth Circuit case for standards of review to be applied in this case. (Appellants’ Br. p. 2). Even if these jurisdictions had the same rule for consolidation as Rule 42, SCRCP, South Carolina case law provides its own standards for review of consolidation cases.

can show no abuse of discretion in the Circuit Court's decision to consolidate their cases for trial.

I. APPELLANTS ARE BOUND BY THEIR PLEADINGS AND CANNOT MAKE ARGUMENTS INCONSISTENT THEREWITH.

Appellants' Brief now contends that there are no common issues of fact because Mr. Rowe's fall was solely caused by the leg of the chair breaking⁴, unlike Ms. Rowe's fall which was allegedly caused by the chair sliding out from under her. (Appellants' Br. pp. 3, 5-6, 10).⁵ This contention is inconsistent with Mr. Rowe's Complaint, which alleges that the chair slipping away from him was also a cause of his fall. (Cecil Rowe Compl. ¶¶ 7-8

⁴ Cecil Rowe's Complaint alleges the arm of his chair broke, but he now contends the leg of the chair broke and nothing was wrong with the arm of the chair. *Compare* (Cecil Rowe Compl. ¶ 7-8 ("Plaintiff was standing up from a chair in the waiting room when suddenly, and without warning, the arm of the chair broke. At the same time, the chair slipped suddenly away from Plaintiff Cecil Rowe, causing him to fall violently on the floor.")) *with* (Dep. of Cecil Rowe 26:2-8).

⁵ Appellants' Brief alleges that "Respondent admitted at the [consolidation] hearing that Mrs. Rowe's case arose out of her chair slipping out from behind her as she stood up, whereas Mr. Rowe's chair broke. Transcript 5:11-21." (Appellants' Br. pp. 5-6). This is a gross mischaracterization of the hearing transcript, which actually reads as follows:

Both plaintiffs went there in two separate occasions. Rebecca Rowe went there on March 3rd, 2016, sat in a chair in the lobby. The allegation is that the chair somehow slipped as she was getting up and fell to the floor, suffered injuries.

The Cecil Rowe case, he alleges that he was there in August 1, 2016, and he was sitting in the same location, same chair, **and the chair somehow slipped**, or broke underneath him, and he fell in the same location.

(May 8, 2019 Consolidation Hearing Transcript 5:11-21) (emphasis added). First, counsel for Respondent admitted nothing by the above statement, which is merely a recounting of the Plaintiffs' allegations in their Complaints and discovery responses. Second, like Cecil Rowe's Complaint and discovery responses allege, counsel for Respondent pointed out at the hearing that Cecil Rowe alleged his chair slipped in addition to alleging its arm broke.

(“Plaintiff was standing up from a chair in the waiting room when suddenly, and without warning, the arm of the chair broke. At the same time, the chair slipped suddenly away from Plaintiff Cecil Rowe, causing him to fall violently on the floor.”)).

As the South Carolina Supreme Court and this Court have previously explained:

It is well settled that parties are judicially bound by their pleadings unless withdrawn, altered or stricken by amendment or otherwise. The allegations, statements, or admissions contained in a pleading are conclusive as against the pleader and a party cannot subsequently take a position contradictory of, or inconsistent with, his pleadings and the facts which are admitted by the pleadings are taken as true against the pleader for the purpose of the action.

Postal v. Mann, 308 S.C. 385, 387, 418 S.E.2d 322, 323 (Ct. App. 1992); *Elrod v. All*, 243 S.C. 425, 436, 134 S.E.2d 410, 416 (1964) (same); *Johnson v. Alexander*, 413 S.C. 196, 202, 775 S.E.2d 697, 700 (2015) (same); *Charleston Cty. Sch. Dist. v. Laidlaw Transit, Inc.*, 348 S.C. 420, 425, 559 S.E.2d 362, 364 (Ct. App. 2001) (“Any allegations, statements, or admissions contained in a pleading are conclusive against the pleader, and a party cannot subsequently take a contrary or inconsistent position.”). The South Carolina Supreme Court has also stated: “Evidence contradicting such pleadings is inadmissible.... [A] party is concluded by his own testimony which is favorable to the adverse party.” *Elrod*, 243 S.C. at 436-37, 134 S.E.2d at 416.

At the time the Circuit Court ruled upon the Consolidation Motion, Cecil Rowe’s Complaint and his discovery responses alleged that the cause of his fall was the arm of the chair breaking and the chair slipping away from him. (Cecil Rowe Compl. ¶¶ 7-8 (“Plaintiff was standing up from a chair in the waiting room when suddenly, and without warning, the arm of the chair broke. At the same time, the chair slipped suddenly away from Plaintiff Cecil Rowe, causing him to fall violently on the floor.”)); (Cecil Rowe’s Answers to

Family Health Center Inc.’s First Set of Interrogatories ¶ 14 (stating “the chair slid from under him”).⁶ The Circuit Court Judge even pointed out this inconsistency to Appellants’ counsel at the consolidation hearing:

Mr. Cavanaugh: In Mr. Rowe’s case, he fell to the floor – he alleges he fell to the floor as a result of the failure of the chair. He did not testify that the chair slipped on the floor, but rather the breaking of the chair caused him to fall.

The Court: Well, now his complaint said at the same time the chair slipped suddenly away from Plaintiff Cecil Rowe and caused him to fall violently to the floor, right?

(May 8, 2019 Consolidation Hearing Transcript 10:1-10). Still, Appellants made no attempt to amend Cecil Rowe’s pleadings. Therefore, Appellants are bound by the allegations in Cecil Rowe’s Complaint – including the allegation that the “chair slipped suddenly away from Plaintiff Cecil Rowe, causing him to fall” – and cannot take a position contrary to or inconsistent with his Complaint for purposes of this Appeal.

II. THE CIRCUIT COURT PROPERLY EXERCISED ITS DISCRETION UNDER RULE 42(a) TO CONSOLIDATE THESE CASES AS THEY INVOLVE “A COMMON QUESTION OF LAW OR FACT.”

Under the plain terms of Rule 42(a), only a single common question of law or fact is necessary before a court may order consolidation of the cases. *See* Rule 42(a), SCRCF (“When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all matters in issue in the action...” (emphasis

⁶ It is not the Circuit Court’s job to stay abreast of Plaintiff’s ever-changing theory as to the facts of the alleged incident, but rather it is Plaintiff’s duty to amend his pleadings if they do not conform to his version of events.

added)). These cases involve at least one common question of law or fact. Therefore, the Circuit Court acted properly within its discretion to consolidate the cases for trial.

A. Appellants' actions raise common questions of fact.

The two cases raise at least one common question of fact. "To recover damages for injuries caused by a dangerous or defective condition on a defendant's premises, a plaintiff 'must show either (1) that the injury was caused by a specific act of the respondent which created the *dangerous condition*; or (2) that the respondent had actual or constructive knowledge of the *dangerous condition* and failed to remedy it.'" *Pringle v. SLR, Inc. of Summerton*, 382 S.C. 397, 404, 675 S.E.2d 783, 787 (Ct. App. 2009) (quoting *Anderson v. Racetrac Petroleum, Inc.*, 296 S.C. 204, 205, 371 S.E.2d 530, 531 (1988)) (emphasis added). Appellants' Pre-Trial Brief alleges that Mr. and Mrs. Rowe used the same chair in the FHC waiting room. (Plaintiffs' Pre-trial Brief, p. 2 (stating that the chair used in the waiting room by Mr. and Mrs. Rowe is "believed to be the same chair")). Thus, whether this chair being in the waiting room was a dangerous condition was a common question of fact in both of the cases.

Another common question of fact is whether a specific act of FHC created the alleged dangerous condition. Appellants' Complaints allege that FHC acted negligently by creating an unreasonably dangerous condition on the premises. (Rebecca Rowe's Compl. ¶ 16(a)); (Cecil Rowe's Compl. ¶ 18(a)). In their separate discovery responses, when asked to describe FHC's actions that they contend constitute gross negligence, Mr. Rowe and Mrs. Rowe stated that "by placing the chair in the manner it sdat [sp] when Plaintiff's injury occurred, Defendants created the subject condition." (Cecil Rowe's Answers to Family

Health Center Inc.'s First Set of Interrogatories ¶ 18); (Rebecca Rowe's Answers to Family Health Center Inc.'s First Set of Interrogatories ¶ 18).

Both Appellants' Complaints allege that the chair sliding out from under them was a cause of their falls. (Rebecca Rowe Compl. ¶ 7); (Cecil Rowe Compl. ¶¶ 7-8). Their Pre-Trial Brief alleges it was the same chair – i.e. one with “hard plastic feet which slid easily over hard tile floor.” (Plaintiffs' Pre-trial Brief, p. 2); (Appellants' Br. p. 10). They both also alleged that the chair was positioned in the middle of the room and not against a wall at the time of their falls. (Dep. of Cecil Rowe 24:6-14); (Dep. of Rebecca Rowe 22:7-9). Thus, whether a specific act of FHC – i.e. placing this chair in the middle of the waiting room on a tile floor – created the alleged dangerous condition is a common question of fact.

A third common question of fact would be whether FHC had actual or constructive knowledge of the alleged dangerous condition and failed to remedy it. Appellants' Complaints allege that FHC acted negligently by allowing to exist on its premises an unreasonably dangerous condition of which FHC knew or should have known. (Rebecca Rowe's Compl. ¶ 16(a), (f), (j)); (Cecil Rowe's Compl. ¶ 18(a), (f), (j)). In both of their discovery responses, Appellants state that FHC “knew or should have known about the dangerous condition of the chair and did nothing to fix it.” (Cecil Rowe's Answers to Family Health Center Inc.'s First Set of Interrogatories ¶ 18); (Rebecca Rowe's Answers to Family Health Center Inc.'s First Set of Interrogatories ¶ 18). In both of their depositions, Appellants alleged that they have heard of other persons falling out of these chairs at FHC. (Dep. of Cecil Rowe 15:12-21); (Dep. of Rebecca Rowe 18:8-17; 36:14-37:5). “The entire basis of an invitor's liability rests upon his superior knowledge of the danger that causes

the invitee's injuries.” *Larimore v. Carolina Power & Light*, 340 S.C. 438, 448, 531 S.E.2d 535, 540 (Ct. App. 2000). Thus, whether FHC had knowledge of the allegedly dangerous condition of the chair would also be a common question of fact.

Moreover, in their Complaints, Appellants allege that FHC committed identical acts of negligence to cause their alleged injuries. (Rebecca Rowe’s Compl. ¶ 16 (a)- (o)); (Cecil Rowe’s Compl. ¶ 18 (a) – (o)). These allegations raise the following common questions of fact:

- Did the Family Health Center “fail[] to properly inspect, warn and maintain said area for possible dangers to invitees”? *See* (Rebecca Rowe’s Compl. ¶ 16(b)); (Cecil Rowe’s Compl. ¶ 18(b)).
- Did the Family Health Center “fail[] to properly maintain its facility in a reasonably safe condition”? *See* (Rebecca Rowe’s Compl. ¶ 16(c)); (Cecil Rowe’s Compl. ¶ 18(c)).
- Did the Family Health Center “fail[] to follow reasonable preventative maintenance procedures”? *See* (Rebecca Rowe’s Compl. ¶ 16(d)); (Cecil Rowe’s Compl. ¶ 18(d)).
- Did the Family Health Center “fail[] to give proper and adequate warnings as to the condition existing through signs and other means”? *See* (Rebecca Rowe’s Compl. ¶ 16(g)); (Cecil Rowe’s Compl. ¶ 18(g)).
- Did the Family Health Center “fail[] to take precautions regarding said hazardous and dangerous conditions present”? *See* (Rebecca Rowe’s Compl. ¶ 16(h)); (Cecil Rowe’s Compl. ¶ 18(h)).
- Did the Family Health Center “fail[] to install a nonslip surface on the floor of the store”? *See* (Rebecca Rowe’s Compl. ¶ 16(i)); (Cecil Rowe’s Compl. ¶ 18(i)).
- Did the Family Health Center “fail[] to provide proper care after an injury occurred at the facility”? *See* (Rebecca Rowe’s Compl. ¶ 16(m)); (Cecil Rowe’s Compl. ¶ 18(m)).

Thus, the Appellants’ Complaints raise numerous common questions of fact, and consolidation of the cases for trial was properly within the discretion of the Circuit Court.

B. Appellants' actions raise common questions of law.

Although, only a single common question of fact is required before the Circuit Court may properly exercise its discretion to consolidate the cases for trial, these cases also raise common questions of law. “To establish negligence in a premises liability action, a plaintiff must prove the following three elements: (1) a duty of care owed by defendant to plaintiff; (2) defendant's breach of that duty by a negligent act or omission; and (3) damage proximately resulting from the breach of duty.” *Singleton v. Sherer*, 377 S.C. 185, 200, 659 S.E.2d 196, 204 (Ct. App. 2008). “The court must determine, as a matter of law, whether the law recognizes a particular duty.” *Id.* In their depositions, both Rebecca Rowe and Cecil Rowe testified that on the day of their accidents they went to the Family Health Center to bring a family member for an appointment. (Dep. of Rebecca Rowe 14:1-13; 15:18-16:6); (Dep. of Cecil Rowe 17:12-18:17). Thus, a common question of law would be whether FHC owed a duty of care to persons bringing another family member to the center for an appointment.

If found that a duty of care was owed, the extent of that duty would also be a common question of law. As this Court recognized in *Singleton*, “[t]he nature and scope of duty in a premises liability action, if any, is determined based upon the status or classification of the person injured at the time of his or her injury.” *Id.* at 200, 659 S.E.2d at 204; *Roe v. Bibby*, 410 S.C. 287, 297, 763 S.E.2d 645, 650 (Ct. App. 2014) (same). Here, as to FHC, Appellants both allege the same status – invitee. (Rebecca Rowe Compl. ¶ 6); (Cecil Rowe Compl. ¶ 6). Thus, the Appellants’ pleadings also raise common questions of law such that consolidation was properly within the Circuit Court’s discretion.

III. THE APPELLANTS CANNOT SHOW THAT THE CIRCUIT COURT ABUSED ITS DISCRETION AS REQUIRED TO REVERSE THE CIRCUIT COURT'S RULING.

Appellants have failed to show that the Circuit Court abused its discretion by consolidating their cases for trial. “An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support.” *Clark v. Cantrell*, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000).⁷ It was not an error of law to consolidate the two cases for trial because Rule 42, SCRPC, allows consolidation when there is “a common question of law or fact” and, as shown above, there was at least one common question of law or fact raised by Appellants’ cases.

Moreover, to the extent Appellants argue that “consolidation of matters involving a husband and wife could lead to undue speculation of fabrication by a jury, and in turn infringes Appellants’ constitutional right to fair and impartial trial by a jury,” the jury entered a verdict in favor of Appellants. *See* (Appellants’ Br. p. 9); (Verdict Form). The jury found that Mrs. Rowe was entitled to \$11,000 in damages and that Mr. Rowe was entitled to \$4,000 in damages. (Verdict Form). Thus, the jury did not find that Appellants’ claims were fabricated in this case, and Appellants’ “constitutional right to fair and impartial trial by a jury” was not infringed by the consolidation of the cases for trial. *See* (Appellants’ Br. p. 9). If Appellants’ cases are similar enough that the negligence section of one Complaint can be “copy and pasted” to the other,⁸ then they are similar enough for

⁷ The Circuit Court’s Consolidation Order does not contain any factual conclusions. (May 14, 2019 Order). However, as explained above, Appellants are bound by the factual allegations in their respective pleadings.

⁸ *See supra* note 2.

consolidation for trial under Rule 42(a), which merely requires a single common question of law or fact. *See* Rule 42(a), SCRCP.

CONCLUSION

Pursuant to Rule 42(a), SCRCP, if cases pending before the Circuit Court contain a common question of law or fact, then the Circuit Court may consolidate those cases for trial. As shown above, the Rebecca Rowe and Cecil Rowe cases contained several common questions of law and fact. The Appellants are bound by their nearly-identical pleadings, which allege slip-and-fall accidents at the same FHC location involving the same chair in the same location. Thus, the Circuit Court acted properly within its discretion under Rule 42(a) in consolidating these cases for trial. Therefore, the Respondent respectfully requests that this Court affirm the Circuit Court's Order consolidating these cases for trial.

MURPHY & GRANTLAND, P.A.

John M. Grantland, Esquire
S.C. Bar No. 64158
Megan Walker, Esquire
S.C. Bar No. 103069
Post Office Box 6648
Columbia, South Carolina 29260
(803) 782-4100
(803) 782-4140 (facsimile)
jgrantland@murphygrantland.com
**Attorneys for Respondent Family Health
Centers, Inc.**

Columbia, South Carolina
October __, 2019

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MURPHY & GRANTLAND, P.A.

John M. Grantland
Direct dial 803-454-1237
jgrantland@murphygrantland.com

October 22, 2019

VIA HAND DELIVERY

Jenny A. Kitchings
South Carolina Court of Appeals
1015 Sumter Street (1220 Senate Street)
P.O. Box 11629
Columbia, SC 29211

Re: Cecil Rowe vs. Family Health Centers, Inc.

AND

Rebecca Rowe v. Family Health Centers, Inc.

Appellate Case No.: 2019-000998

Claim No.: 3006054488

Insured: Family Health Centers, Inc.

Our File No.: 1334-0036

Dear Ms. Kitchings:

Enclosed please find herewith for filing with the Court the original and three (3) copies of Brief of Respondent and Designation of Matter to be Included in the Record on Appeal in the above-referenced matter. I would appreciate your filing the original and returning three (3) clocked copies to me by individual delivering same.

By copy of this letter, I am serving same on all counsel.

Yours truly,

John M. Grantland

JMG/rld

Enclosures

cc: Joseph O. Thickens, Esquire

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2019-000998

RECEIVED
OCT 22 2019
SC Court of Appeals

Cecil Rowe..... Appellant,

v.

Family Health Centers, Inc. Respondent.

And

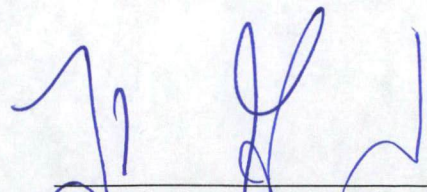
Rebecca Rowe..... Appellant,

v.

Family Health Centers, Inc. Respondent.

PROOF OF SERVICE

I certify that I have served the Initial Brief of Respondent on Appellants by depositing a copy of it in the United States Mail, postage prepaid, on October 22, 2019, addressed to their attorneys of record, James Eric Cavanaugh, Esquire, and Joseph Thickens, Esquire, Cavanaugh & Thickens, LLC, P.O. Box 2409, Columbia, South Carolina 29202 and Clyde Dean, Jr., Esquire, The Dean Law Firm, LLC, 146 Centre Street, Orangeburg, South Carolina 29115.



John M. Grantland, Esquire
S.C. Bar No. 64158
Megan Walker, Esquire
S.C. Bar No. 103069
Murphy & Grantland, P.A.
P.O. Box 6648
Columbia, SC 29260
(803) 782-4100
jgrantland@murphygrantland.com
Attorneys for Respondent

October 21 2019

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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CERTIFICATE

I, John M. Grantland, Esquire, attorney for Respondent, certify that the Respondent's Brief and Designation of Matter comply with the South Carolina Supreme Court Order of August 13, 2007 and Rule 211(b) of the South Carolina Court Rules.

MURPHY & GRANTLAND, P.A.

John M. Grantland, Esquire
S.C. Bar No. 64158

Megan Walker, Esquire
S.C. Bar No. 103069
P.O. Box 6648
Columbia, SC 29260
(803) 782-4100
jgrantland@murphygrantland.com
Attorneys for Respondent

Columbia, South Carolina
October 2019



MURPHY & GRANTLAND, P.A.

John M. Grantland
Direct dial 803-454-1237
jgrantland@murphygrantland.com

October 22, 2019

VIA HAND DELIVERY

Jenny A. Kitchings
South Carolina Court of Appeals
1015 Sumter Street (1220 Senate Street)
P.O. Box 11629
Columbia, SC 29211

RECEIVED

OCT 22 2019

S.C. SUPREME COURT

Re: Cecil Rowe vs. Family Health Centers, Inc.

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