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

Cecil Rowe..... Appellant,

v.

Family Health Centers, Inc. ..... Respondent.

And

Rebecca Rowe..... Appellant,

v.

Family Health Centers, Inc. ..... Respondent.

FINAL BRIEF OF RESPONDENT

John M. Grantland, Esquire
S.C. Bar No. 64158
Megan Walker, Esquire
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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] (R. pp. 13-32). 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. (R. p. 28 ¶ 7); (R. p. 18 ¶¶ 7-8). Rebecca Rowe's Complaint alleges that the chair slipping away from her caused her to fall. (R. p. 28 ¶ 7). Cecil Rowe's Complaint alleges that the chair slipping away from him and the arm of the chair breaking caused him to fall. R. p. 18 ¶¶ 7-8). Both Complaints allege that a dangerous condition existed "as a result of the floor having been recently waxed and/or polished." (R. p. 28 ¶ 9); (R. p. 18 ¶ 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." (R. p. 73). In their separate Complaints, the Rowes allege that FHC committed 15 specific acts of negligence, such alleged acts being identical in each Complaint.[2] *Compare* (R. pp. 29-30 ¶ 16 (a)- (o)) *with*

[1] In both cases, Defendant Carolina Kwik Dry, LLC was dismissed without prejudice prior to trial. (R. pp. 6-9).

[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* (R. p. 20 ¶ 18(l) ("In failing to take precautions to avoid injuries to the Plaintiff when the Defendants knew

(R. pp. 19-20 ¶ 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. (R. pp. 3-4). 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. (R. pp. 10-12). The jury determined that Mrs. Rowe was entitled to $11,000 in damages and that Mr. Rowe was entitled to $4,000 in damages. (R. pp. 11-12). The jury found FHC to be 40% at fault for Rebecca Rowe's injuries and Rebecca Rowe to be 60% at fault. (R. p. 12). The jury found FHC to be 40% at fault for Cecil Rowe's injuries and Cecil Rowe to be 60% at fault. (R. p. 11). 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 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. (R. p. 28 ¶ 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." (R. p. 28 ¶ 7). At the time of her fall, Mrs. Rowe was in the FHC waiting room. (R. p. 72). Her

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or should have known that Plaintiff was in a position of peril from which **she** could not extricate **herself**...." (emphasis added)).

Complaint alleges that Carolina Kwik Dry had just "waxed and/or polished" the floor. (R. p. 28 ¶ 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." (R. p. 28 ¶¶ 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." (R. p. 83, lines 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. (R. p. 18 ¶ 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." (R. p. 18 ¶¶ 7-8). His Complaint alleges that Carolina Kwik Dry had just "waxed and/or polished" the floor. (R. p. 18 ¶ 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." (R. p. 18 ¶¶ 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. (R. p. 136, line 11-p. 137, line 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. (R. p. 119, lines 19-20; p. 128, lines 21-24; p. 130, lines 4-5; p. 134, lines 17-20). Additionally, in his discovery responses, Mr. Rowe stated that "the chair slid from under him." (R. p. 69 ¶ 14); (R. p. 60 ¶ 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), SCRCP; *see also Keels v. Pierce*, 315 S.C. 339, 342, 433 S.E.2d 902, 904 (Ct. App. 1993) ("Consolidation under Rule 42(a), SCRCP, 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

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[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.

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 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 breaking[4], unlike Ms. Rowe's fall

[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* (R. p. 18 ¶ 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* (R. p. 135, lines 2-8).

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. (R. p. 18 ¶¶ 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.")).

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.

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[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.

(R. p. 79, lines 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.

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. (R. p. 18 ¶¶ 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.")); (R. p. 69 ¶ 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

[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.

> Rowe and caused him to fall violently to the floor, right?

(R. p. 84, lines 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), SCRCP ("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 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. (R. p. 73 (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 these 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. (R. p. 29 ¶ 16(a)); (R. p. 19 ¶ 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." (R. p. 70 ¶ 18); (R. p. 49 ¶ 18).

Both Appellants' Complaints allege that the chair sliding out from under them was a cause of their falls. (R. p. 28 ¶ 7); (R. p. 18 ¶¶ 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." (R. p. 73); (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. (R. p. 133, lines 6-14); (R. p. 168, lines 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. (R. pp. 29-

30 ¶ 16(a), (f), (j)); (R. pp. 19-20 ¶ 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." (R. p. 70 ¶ 18); (R. p. 49 ¶ 18). In both of their depositions, Appellants alleged that they have heard of other persons falling out of these chairs at FHC. (R. p. 124, lines 12-21); (R. pp. 164, lines 8-17; p. 182, line 14-p. 183, line 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. (R. pp. 29-30 ¶ 16 (a)- (o)); (R. pp. 19-20 ¶ 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* (R. p. 29 ¶ 16(b)); (R. p. 19 ¶ 18(b)).
- Did the Family Health Center "fail[] to properly maintain its facility in a reasonably safe condition"? *See* (R. p. 29 ¶ 16(c)); (R. p. 19 ¶ 18(c)).
- Did the Family Health Center "fail[] to follow reasonable preventative maintenance procedures"? *See* (R. p. 29 ¶ 16(d)); (R. p. 19 ¶ 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* (R. p. 29 ¶ 16(g)); (R. p. 20 ¶ 18(g)).
- Did the Family Health Center "fail[] to take precautions regarding said hazardous and dangerous conditions present"? *See* (R. p. 30 ¶ 16(h)); (R. p. 20 ¶ 18(h)).
- Did the Family Health Center "fail[] to install a nonslip surface on the floor of the store"? *See* (R. p. 30 ¶ 16(i)); (R. p. 20 ¶ 18(i)).

- Did the Family Health Center "fail[] to provide proper care after an injury occurred at the facility"? *See* (R. p. 30 ¶ 16(m)); (R. p. 20 ¶ 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. (R. p. 160, lines 1-13; p. 161, line 18-p. 162, line 6); (R. p. 126, line 12-p. 127, line 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. (R. p. 28 ¶ 6); (R. p. 18 ¶ 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, SCRCP, 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); (R. pp. 10-12). The jury found that Mrs. Rowe was entitled to $11,000 in damages and that Mr. Rowe was entitled to $4,000 in damages. (R. pp. 11-12). 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

[7] The Circuit Court's Consolidation Order does not contain any factual conclusions. (R. pp. 3-4). However, as explained above, Appellants are bound by the factual allegations in their respective pleadings.

can be "copy and pasted" to the other,[8] then they are similar enough for 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.

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[8] *See supra* note 2.

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CERTIFICATE

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

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