

STATE OF SOUTH CAROLINA
COUNTY OF HAMPTON

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
2019-CP-25-00111

RENEE S. BEACH, as Personal
Representative of the Estate of MALLORY
BEACH,

Plaintiff,

v.

GREGORY M. PARKER, INC. d/b/a
PARKER'S CORPORATION, RICHARD
ALEXANDER MURDAUGH, RICHARD
ALEXANDER MURDAUGH, JR., JOHN
MARVIN MURDAUGH, as P.R. of the Estate
of MARGARET KENNEDY
BRANSTETTER MURDAUGH, and
RANDOLPH MURDAUGH, IV, as P.R. of the
Estate of PAUL TERRY MURDAUGH,

Defendants.

**DEFENDANT GREGORY M. PARKER,
INC.'S SECOND MOTION TO SEVER**

Defendant Gregory M. Parker, Inc. d/b/a Parker's Corporation ("Parker's") moves this Court under S.C.R. Civ. P. 20(b) and 42(b) to exercise its discretion and sever Parker's from the remaining defendants in this action (collectively, "the Murdaugh Defendants").¹

Parker's initially sought severance in August 2022. After extensive briefing and argument, this Court issued a detailed, five-page order, granting Parker's motion to sever. In particular, this Court agreed with Parker's assessment of the hazards of facing trial with the Murdaugh Defendants:

[T]he Court is well aware of the local, regional, national, and international interest and focus of the Murdaugh family, each of whom are codefendants with Parker's in the instant action. Most of the Murdaugh defendants, individually and/or collectively, have been or are currently being accused of misconduct or various crimes, including,

¹ Plaintiff recently moved to dismiss Paul Murdaugh's Estate as a defendant, and the Court approved a settlement resolving Plaintiff's claims against the two other Murdaugh defendants. *See generally* Plf.'s Mot. to Dismiss as to Defendant Randolph Murdaugh, IV (June 29, 2023); Order (Jan 24, 2023). So, although formal dismissals have not yet been entered as to most of the Murdaugh Defendants, only one Murdaugh Defendant likely remains as a potential defendant at trial: Alex Murdaugh.

inter alia, murder, intentional misconduct, obstruction of justice, computer crimes, money laundering, tampering with the investigation of the very boat crash involved in this action, theft, fraud, and extortion. Alex Murdaugh, a codefendant, has been indicted for allegedly murdering two codefendants in this case, Maggie and Paul. The entire jury venire in Hampton County, South Carolina likely will be aware of the Murdaugh name, family, and news surrounding them. The media has written and continues to write about the Murdaugh defendants involving the above allegations.

Order (Sept. 13, 2022) at 4. In this Court’s view, the legal maelstrom swirling around the Murdaughs “involve[d] potentially the most reactionary and publicized proceedings in the history of the South Carolina judiciary and legal system.” *Id.*

In that light, this Court reached an apt conclusion: “[I]f there was ever a case in which a Court may exercise its sound discretion to order separate trials to prevent delays or prejudice, this is it.” *Id.* at 5. None of the Murdaugh-related chaos “is due to any conduct of Parker’s” and it has “nothing to do with Plaintiff’s allegations against Parker’s in this case.” *Id.* The Court thus held that “Parker’s undoubtedly will be prejudiced” if it is “not severed away from the Murdaugh defendants and remains tethered to any of them at trial in the instant case.” *Id.* Severance was “sound and necessary.” *Id.*

Two weeks later, the Court undid its extensively-reasoned order and granted Plaintiff’s motion for reconsideration. *See* Order (Sept. 27, 2022). This Court did not explain why.

With trial scheduled for August 14, 2023, Parkers stares down the barrel of “potentially the most reactionary and publicized proceedings” in South Carolina legal history, stuck at a defense table with the Murdaugh Defendants. Nothing has alleviated the “undoubtedly” prejudicial circumstances which the Court eloquently explained in its original order. Just the opposite—things have gotten worse. Most notably, Alex Murdaugh (“Alex”) has now been convicted of the murders of codefendants Margaret (“Maggie”) and Paul Murdaugh (“Paul”), receiving consecutive life sentences. The accusations of misconduct noted by the Court remain, with Alex standing as a defendant in multiple pending actions involving alleged theft of client funds and other financial

crimes. Moreover, the prejudice the Court observed has concentrated. Plaintiff has settled with two of the Murdaugh codefendants, Maggie's Estate and Richard Murdaugh, Jr. ("Buster"), and she has recently moved to dismiss a third, Paul's Estate. Maggie and Buster were the only Murdaugh defendants who likely possessed assets to contribute to a judgment here. Parker's thus faces trial tethered to a likely judgment-proof codefendant who has been convicted of murdering two other codefendants.

The Court's initial analysis of the prejudice Parker's faces was correct at the time. It is more correct now. The Court should therefore sever Parker's from the Murdaugh Defendants and try Plaintiff's claims against them separately.

BACKGROUND

This case arises out of a boating accident in February 2019. In March 2019, Plaintiff Renee Beach sued Parker's and others in Beaufort County on behalf of the Estate of her daughter, Mallory Beach, for acts which occurred substantially in Beaufort County. Plaintiff dismissed that action without prejudice soon after filing before any defendants had appeared in the case. Plaintiff then filed suit in Hampton County, suing the same defendants, as well as Richard Alexander Murdaugh and Richard Alexander Murdaugh, Jr. Subsequent amendments continued to alter the parties, adding the Estates of Margaret and Paul Murdaugh and removing all defendants who were sued in the Beaufort County complaint except Parker's. *See generally* Third Am. Compl.

In August of 2022, Parker's asked the Court to sever it from the Murdaugh Defendants. Parker's was prepared for trial (at that point scheduled for October 3, 2022) and pressed for that trial to go forward. Parker's was the *only* party seeking to keep that trial date. Upon Parker's urging, Plaintiff's counsel claimed an October trial no longer fit with his schedule. Meanwhile, the Murdaugh

Defendants sought to delay trial to accommodate the new attorneys joining as a result of Alex's indictment for the murders of Maggie and Paul.

As discussed, the Court initially granted Parker's motion, concluding that Plaintiff's claims against Parker's were "separate and distinct" enough that they could be tried separately from the claims against the Murdaugh Defendants. Order (Sept. 13, 2022) at 4. Considering "the local, regional, national, and international interest and focus [on] the Murdaugh family" and the accusations of "obstruction of justice" and "tampering with the investigation of the very boat crash involved in this action," the Court held that severance was thus "sound and necessary" to "prevent prejudice to Parker's." *Id.* The Court reversed itself two weeks later, granting Plaintiff's motion for reconsideration and denying severance. *See* Order (Sept. 27, 2022).

Since then, Alex was tried for the murders of Maggie and Paul earlier this year, resulting in his conviction for both murders on March 2, 2023. That trial was extensively televised, as the significant media attention the Court noted when it originally granted Parker's motion to sever has exploded nationally and internationally. The Murdaughs themselves continue to draw public attention, and much of this coverage treats Parker's and the boat crash as inseparable from Alex's crimes. For example, CourtTV published an article about this Court's recent decision on Parker's motion for summary judgment which mostly talks about the Murdaughs, includes a picture of Alex Murdaugh being sentenced following his murder convictions, and embeds a video of a TV segment discussing the fairness of trying Parker's alongside the Murdaugh Defendants.² A slew of TV specials, documentaries, and podcasts about the Murdaughs and the murder trial have come out in the last two

² *See* Lauren Silver, *Judge denies motion in wrongful death suit tied to Murdaugh boat crash*, CourtTV (May 22, 2023 9:55 PM), <https://www.court tv.com/news/judge-denies-motion-in-wrongful-death-suit-tied-to-murdaugh-boat-crash/>.

years, including a Netflix-released, three-part documentary series in February 2023.³ In an interview, that series' showrunner posited that the boat crash "was the moment that shined a light on all these other crimes" of the Murdaughs, such that the documentary oriented its audience "not with the 2021 double-murder, but rather with a mysterious boat accident that took place two years earlier."⁴ Other media continues to connect this case to the murder trial, including through statements from Plaintiff's counsel suggesting that Mallory Beach's death was a catalyst for revealing Alex Murdaugh's criminality.⁵ And media observers readily note the prejudice Parker's will face if it is tried alongside the Murdaugh Defendants. As one CourtTV commentator put it, Parker's is "going to get the stink all over [it] from Alex Murdaugh" if Alex is also at the defense table, and "the fact that you're at the same defense table with Alex Murdaugh will really resonate with the jury."⁶

ARGUMENT

Parker's faces a trial (1) alongside a codefendant who has been convicted for murdering his wife and son, who were codefendants in the case; (2) in a lawsuit that Plaintiff's counsel has asserted encouraged the investigation of that codefendant's criminal conduct (including the murders); (3) while being harried by the media circus inevitably drawn to the drama of that codefendant's locally-

³ See *Murdaugh Murders: A Southern Scandal* (Netflix Feb. 22, 2023).

⁴ Libby Hill, "Murdaugh Murders" Storyline Snowballed for the Producers, Too: "More You Started Getting Into It, the Crazier it Got", Yahoo! Entertainment (May 31, 2023 3:53 PM), <https://www.yahoo.com/entertainment/murdaugh-murders-storyline-snowballed-producers-195349779.html>.

⁵ See Audrey Conklin, *Alex Murdaugh to face questioning in Mallory Beach boating death case*, Fox News (May 23, 2023 6:08 PM), <https://www.foxnews.com/us/alex-murdaugh-face-questioning-mallory-beach-boating-death-case> (embedding video of interview with Mark Tinsley recounting story of how, after Murdaugh's conviction, Beach family was "pleased" that "there's been some justice as a result of [Mallory Beach's] death").

⁶ "Murdaugh Deposition to be Done in Jail," *CourtTV*, at 7:50-8:20 (June 20, 2023), available at <https://www.court tv.com/title/murdaugh-deposition-to-be-done-in-jail/>. The commenter here is Eric Bland, an attorney representing a different plaintiff in a suit against Alex.

prominent family. To ensure that Parker's receives a fair trial for the wholly separate claims Plaintiff has asserted against it, the Court should sever Parker's from the Murdaugh Defendants.

Under Rule 20(b), this Court is empowered to "make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom he asserts no claim and who asserts no claim against him." This includes "order[ing] separate trials . . . to prevent delay or prejudice." Likewise, Rule 42(b) authorizes the Court to, "in furtherance of convenience or to avoid prejudice," order separate trials of any claims or issues. The decision of whether or not severance is necessary "is addressed to the sound discretion of the trial court." *Senter v. Piggly Wiggly Carolina Co., Inc.*, 341 S.C. 74, 77, 533 S.E.2d 575, 577 (2000).

A. Severance is necessary to ensure that Parker's can receive a fair trial.

Here, severance is necessary to avoid prejudice to Parker's from being tethered to the Murdaugh Defendants—Alex in particular. All of Parker's prior arguments regarding prejudice (and all of the arguments with which this Court initially agreed) remain true: local, regional, national, and international media is still deeply interested in any event involving the Murdaughs; the jury pool in Hampton County is aware of the media frenzy surrounding them; and there is a grave risk that a jury will not be able to fairly parse Alex Murdaugh's conduct from Parker's conduct.

Events since Parker's prior motion have exponentially enhanced the reasons which originally compelled the Court to grant severance. Alex Murdaugh is now a convicted murderer, and perhaps the most notorious criminal defendant in the last fifty (50) years of South Carolina legal history. The jury there rapidly determined his guilt after a six-week trial where Alex himself testified. His case, not to mention the rest of the tempest of litigation surrounding him, has achieved national and international notoriety. That publicity will not slow down: A civil trial involving Alex presents even more grist for the content mill as a companion piece to an internationally-televised murder trial. It is

fair to say that this Court will not be able to seat a jury who does not come in the door with a very strong negative opinion of Alex Murdaugh.

That “stink” will rub off on Parker’s, tainting it by association. Under these circumstances, Parker’s cannot receive a fair trial. Given Plaintiff’s settlement earlier this year and her intent to dismiss Paul’s Estate, the defense side of this case at trial will consist *only* of Parker’s and Alex Murdaugh. This leaves the jury with an undiluted unfair association of Parker’s with someone convicted of murdering two other parties in this case. And in the likely event a jury finds Alex liable, the ensuing verdict will inevitably seek to punish Alex. Parker’s—stuck at the table with Alex and tied to his anchor through joint and several liability—will bear the brunt of that punitive verdict, should the jury also find Parker’s liable, too. South Carolina law provides a way to divert this freight train of prejudice: try the claims against Parker’s separately and leave the Murdaugh circus for another day. The Court should sever Parker’s from the Murdaugh Defendants and separately try those claims.

B. Severance provides no harm to Plaintiff.

Severance poses no threat to Plaintiff’s rights in this action. As Parker’s explained in its response to Plaintiff’s motion for reconsideration,⁷ a separate trial would ask a jury to determine whether Parker’s was negligent and whether that negligence was a direct and proximate cause of Mallory Beach’s death. The Court can then hold a separate trial regarding the liability of the Murdaugh Defendants (Alex Murdaugh). If both trials result in findings of liability, the Court could then hold a trial to determine the damages for which the remaining defendants are jointly and severally liable. Thus, nothing about severance deprives Plaintiff of her right to a jury trial or her ability to recover the full measure of whatever damages are appropriate (if any).

⁷ See generally Def. Parker’s Mem. in Opp. to Plf.’s Mot. for Reconsideration (September 22, 2022).

In seeking reconsideration, Plaintiff asserted that severance would abrogate joint and several liability, denying her the ability to “hold the Murdaughs accountable” by inflicting a judgment upon them. *See* Plf.’s Mot. for Reconsideration (Sept. 12, 2022) at 6-10 & n. 5. That argument ignores (a) the admitted improbability of Alex paying anything, *see id.* at 6 n.5, and (b) that, outside of the narrow context of punitive damages, tort damages exist to compensate a plaintiff, not to punish a defendant or determine moral accountability. *See Clark v. Cantrell*, 339 S.C. 369, 378, 529 S.E.2d 528, 533 (2000) (“The purpose of actual or compensatory damages is to compensate a party for injuries suffered or losses sustained.”). More importantly, it wrongfully conflates Plaintiff’s ability to obtain two *verdicts* with her ability to obtain two *satisfactions*. South Carolina law allows plaintiffs to separately sue joint tortfeasors, pursue those claims to judgment, and obtain separate judgments against each tortfeasor. *See E.A. Prince & Son, Inc. v. Selective Ins. Co. of Se.*, 818 F. Supp. 910, 917 (D.S.C. 1993) But a plaintiff may obtain “only one satisfaction of the damages assessed in those judgments.” *Id.* Plaintiff even cited law stating this proposition: “Tortfeasors may be sued separately and a judgment rendered against each. If this is the case, the plaintiff must elect which judgment to collect.” *See* Plf.’s Mot. for Reconsideration (Sept. 12, 2022) at 8 (quoting *Garner v. Wyeth Labs., Inc.*, 585 F. Supp. 189, 192 (D.S.C. 1984)). Plaintiff is thus fully aware of how joint and several liability can apply to these tortfeasors if separate trials take place.

If this structure is permissible for entirely separate lawsuits, there is no reason why it is impermissible for severed trials arising out of the *same* lawsuit. Indeed, the only harm Plaintiff feared was that Parker’s might choose to satisfy whatever judgment Plaintiff was able to obtain. *Id.* at 9. In other words, Plaintiff feared *receiving what she would be owed*. That is not prejudice: Plaintiff would have gained a full recovery of her damages and lost only whatever feeling of personal vindication she

might gain from a well-publicized trial against Alex Murdaugh. And she would not even lose that. Severance would only separate the trial against Alex, not eliminate it.⁸

In short, Plaintiff will remain fully able to choose the defendants from whom she seeks relief. She will just have to seek that relief in a way that also vindicates Parker's fundamental right to a fair trial. Of course, if a jury in a separate trial finds that Parker's is *not* liable, Plaintiff loses nothing to which she was entitled—no prejudice occurs when a plaintiff loses a case based on the law and evidence. In the end, the only thing severance would deny Plaintiff is her ability to bind Parker's to Alex Murdaugh and let him drag Parker's down with him.

CONCLUSION

Forcing Parker's to stand trial alongside Alex Murdaugh risks casting Parker's into an even greater media feeding frenzy and subjecting it to a jury pool ready to wish a plague over *all* defendants' houses. The only way to ensure that Parker's receives a fair trial on the factually distinct claims against it is to try Plaintiff's claims against Parker's separately from those against the Murdaugh Defendants. Parker's, therefore, hereby respectfully requests this Court to sever Parker's as a defendant and order a separate trial.

Respectfully submitted,

/s/ David L. Williford

David L. Williford, Esq. (S.C. Bar # 73129)
Huff, Powell & Bailey, LLC
15 South Main Street, Suite 602
Greenville, SC 29601
(864) 400-5949
dwilliford@huffpowellbailey.com

⁸ Plaintiff has already obtained relief from the Murdaughs, following her settlement with Maggie's Estate and Buster. And she states that she has no need to obtain relief from Paul's Estate—she seeks to dismiss that party because “there are no assets in the Estate that belong to or are owed to [Alex] and the Estate was not opened in an effort to hide or dispose of assets of or belonging to [Alex].” Plf.'s Mot. to Dismiss (June 29, 2023) at 1.

Pankaj "PK" Shere, Esq. (*Pro Hac Vice*)
Joshua M. Hiller (*Pro Hac Vice*)
Huff, Powell & Bailey, LLC
3737 Glenwood Drive, Suite 370
Raleigh, NC 27612
(984) 238-2380
pkshere@huffpowellbailey.com
jhiller@huffpowellbailey.com

Sharonda B. Barnes, Esq. (*Pro Hac Vice*)
Huff, Powell & Bailey, LLC
999 Peachtree Street, Suite 950
Atlanta, GA 30309
(404) 892-4022
sbarnes@huffpowellbailey.com

G. Murrell Smith, Jr., Esq. (S.C. Bar # 66263)
Austin T. Reed (S.C. Bar # 102808)
Smith | Robinson
P.O. Box 580
Sumter, SC 29151-0580
(803) 778-2471
murrell@smithrobinsonlaw.com
austin.reed@smithrobinsonlaw.com

Attorneys for Gregory M. Parker, Inc. d/b/a Parker's Corporation

July 7, 2023
Greenville, South Carolina