IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

REGINA MCLEAN, an individual,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. N20C-02-159 WCC
	)	
PAUL DILIBERTO, an individual, SANTAPAUL CORPORATION, a foreign corporation, LESHA ELIZABETH BRADLEY, an individual, and RICHARD L. DYTON, an individual,	)	
	)	
Defendants.	)	

Submitted: August 3, 2021
Decided: November 16, 2021

Defendants' Motion to Sever – DENIED

MEMORANDUM OPINION

Marc Sposato, Esquire, and Riley B. MacGray, Esquire, Marks, O'Neill, O'Brien, Doherty & Kelly, P.C., 300 Delaware Avenue, Suite 900, Wilmington, DE 19801. Attorneys for Defendants Paul DiLiberto and Santapaul Corporation.

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CARPENTER, J.

Before the Court is Defendants' Paul DiLiberto and Santapaul Corporation's ("Defendants") Motion to Sever Pursuant to Rule 42(b). For the reasons set forth in this Opinion, Defendants' Motion to Sever is **DENIED**.

1. Factual and Procedural Background

This action arises from two motor vehicle accidents. First, on or about March 13, 2018, Plaintiff, Regina McLean was the driver of a school bus stopped at a red light on westbound Route 273 at the intersection of Ruthar Drive in Newark, Delaware.[1] Simultaneously, Paul DiLiberto was operating a vehicle owned by Santapaul Corporation and struck the rear-end of McLean's school bus ("March 13th Collision").[2] As a result of the March 13th Collision, McLean suffered neck and back injuries that required medical treatment.[3]

Five months later, on or about August 29, 2018, McLean was operating a school bus on Chapel Street when she pulled to the side of the road to drop off children at school.[4] At the same time and place, Lesha Elizabeth Bradley was operating a passenger van owned by Richard L. Dyton and, in an attempt to drive around McLean's school bus, struck its rear-left side ("August 29th Collision").[5] Plaintiff's

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[1] Pl.'s Compl., D.I. 1, ¶ 4 (Feb. 18, 2020)(hereinafter "Compl.").
[2] Pl.'s Resp. to Defs.' Mot. to Sever Pursuant to Rule 42(b), D.I. 25, ¶ 1 (Sept. 9, 2020)(hereinafter "Pl.'s Resp."); Compl. at ¶ 5; Defs.' Answ., D.I. 11, ¶ 5 (July 15, 2020).
[3] Compl. at ¶¶ 9, 38.
[4] *Id*. at ¶ 11.
[5] *Id*. at ¶¶ 12-13.

prior injuries to her neck and back from the March 13th Collision were aggravated by the August 29th Collision.[6]

McLean filed her Complaint against the Defendants and Lesha Elizabeth Bradley and Richard L. Dyton ("Nonmoving Defendants") on February 18, 2020.[7] Defendants filed their Answer on July 15, 2020, and subsequently, on August 31, 2020, moved to sever McLean's claims against them and the Nonmoving Defendants in this matter for all purposes.[8] McLean filed her response opposing the motion on September 9, 2020.[9] The Court stayed the Motion to Sever on September 10, 2020 in order to provide the Nonmoving Defendants with the opportunity to file an answer and obtain counsel.[10]

On September 16, 2020, Plaintiff moved for Default Judgment pursuant to Delaware Superior Court Rule 55(b)(2) against the Nonmoving Defendants for failure to answer within 20 days of service.[11] The Court granted the Motion for

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[6] *Id*. at ¶¶ 14, 38.
[7] Compl. at 1.
[8] Defs.' Answ. at p. 1.; Defs.' Mot. to Sever Pursuant to Rule 42(b), D.I. 23 (Aug. 31, 2020)(hereinafter "Defs.' Mot.").
[9] Pl.'s Resp. to Defs.' Mot. to Sever Pursuant to Rule 42(b), D.I. 25 (Sept. 9, 2020)(hereinafter "Pl.'s Resp.").
[10] Letter to Counsel Staying the Mot. to Sever, D.I. 27, 1 (Sept. 10, 2020).
[11] Pl.'s Mot. for Default J., D.I. 28, ¶¶ 5-6 (Sept. 16, 2020).

Default Judgment in favor of Plaintiff on October 26, 2020.[12] On August 3, 2021, the Court lifted the Stay on the Motion to Sever.[13] The Court now issues its decision.

2. STANDARD OF REVIEW

Under Delaware Superior Court Rule 42(b), the Court may order separate trials of any claims if doing so is "in furtherance of convenience or to avoid prejudice, or…conducive to expedition and economy."[14] Otherwise, claims involving a common issue of law or fact should presumptively be tried together.[15] This decision is within the discretion of the trial court.[16]

3. DISCUSSION

Defendants argue that severance of Plaintiff's claims is appropriate because the collisions are separate, unrelated, and independent incidents, only connected by a similar Plaintiff.[17] Defendants suggest the gap in time and the different facts and people involved support its contentions.[18] Defendants assert that if the two collisions are not separated, "it will almost certainly cause jury confusion."[19]

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[12] Order Granting Default J., D.I. 31, 1 (Oct. 27, 2020).
[13] E-Mail from the Court to Counsel (Aug. 3, 2021, 13:14 EST).
[14] Super. Ct. Civ. R. 42(b).
[15] *Id*. at 42(a).
[16] *Earl D. Smith, Inc. v. Carter*, 2000 WL 972825, *1 (Del. Super. Ct. Apr. 20, 2000).
[17] Defs.' Mot. at ¶ 7.
[18] *Id*. at 7.
[19] *Id*. at ¶ 8.

Plaintiff contends that severance is improper because she intends to establish, through medical expert testimony, that her injuries have combined to form a single indivisible injury incapable of apportionment between the two accidents.[20] McLean argues that her indivisible injury presents a common factual issue as to the extent resulting from the March 13th Collision and the August 29th Collision.[21] Additionally, McLean asserts that the claims should remain joined in order to determine whether the Defendants and Nonmoving Defendants are jointly and severally liable for Plaintiff's injuries or whether fault may be apportioned.[22] McLean also maintains that separate trials would produce unnecessary costs and waste judicial resources because she would have to present the same extensive medical evidence twice.[23] Plaintiff offers that with the proper jury instruction, jury confusion and prejudice can be avoided.[24]

First, as a threshold requirement, the Court must consider whether the claims present a common question of law or fact.[25] That requirement is satisfied when the claims have central issues in common.[26] The Delaware Superior Court examined an identical issue in *Stubbs v. Ringler* and found consolidation of claims was

[20] Pl.'s Resp. at ¶ 6.
[21] *Id.*
[22] *Id.*
[23] *Id.* at ¶ 7.
[24] *Id.* at ¶ 9.
[25] *Hoyle v. Mueller*, 1990 WL 18299, at *4 (Del. Super. Ct. Feb. 13, 1990).
[26] *Henry v. Aaron's Logistics*, 2020 WL 7252979, at *1 (Del. Super. Ct. Dec. 10, 2020).

appropriate where separate and independent accidents involved alleged injury to the same part of plaintiff's body.[27] There, the plaintiff suffered serious injuries from a motor vehicle accident that were aggravated months later in a second, unrelated motor vehicle accident.[28] In *Stubbs*, the common question of fact was: "[t]o what extent did the injuries result from the first accident and to what extent from the second?"[29] Similarly, this Court must consider the same question of fact because McLean's initial injuries from the March 13th Collision were aggravated in the August 29th Collision. Therefore, the preliminary threshold is met because a common question of fact is presented.

Second, "the Court must examine savings in time, effort and cost, in contrast to additional inconvenience, delay and expense."[30] Delaware courts consider the overlap of evidence and witness testimony, double expense, judicial efficiency, undue hardship to the parties, and whether the court can prevent confusion and prejudice.[31] The Court should grant this motion if consolidation would result in undue prejudice or jury confusion.[32] However, "a jury is not likely to suffer

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[27] *Stubbs v. Ringler*, 1988 WL 117284, *2 (Del. Super. Ct. Oct. 6, 1998).
[28] *Id*. at *1.
[29] *Id*. at *2; *See also Connelly v. Kingsland*, 2010 WL 2979049, at *2 (July 30, 2010)("The prerequisite for consolidation has been met-there is a common issue of fact. The two cases share the following common issue: to what extent, if any, did each motor-vehicle accident contribute to plaintiff Connelly's injuries?").
[30] *Henry*, 2020 WL 7252979, at *1.
[31] *Hoyle*, 1990 WL 18299, at *4.
[32] *Henry*, 2020 WL 7252979, at *1.

confusion by simple multiplicity of claims or to be disconcerted by the fact that some evidence will be admissible against some parties, but not others."[33]

In this case, even though the issue of liability is separate for each collision, the relevant evidence will have sufficient overlap because of McLean's indivisible injury. Consequently, many of the same facts will be presented in both cases by the same medical experts and records. Severance would produce duplication, double expense, and judicial inefficiency, all of which conflict with the principles outlined in Rule 42(b).

Moreover, Defendants concede that the issue of liability is separate and unique, and therefore, with proper jury instruction, the potential for jury confusion or prejudice to either defendant with respect to each claim of negligence is minimal.[34] The Court agrees with *Stubbs* that "[p]roper appointment can be more justly accomplished by one jury than by two juries sitting separately, each faced with the argument that the greater portion of the injury was caused by the defendants other than the ones in the case at trial."[35] After considering the parties' arguments, the facts of this case, and the relevant rules and law, the Court does not find that separate trials are warranted. Accordingly, the claims will remain joined.

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[33] *Whaley v. Nationwide Mut. Ins. Co.*, 2014 WL 637868, *1 (Del. Super. Ct. Feb. 10, 2014).
[34] *See Stubbs*, 1988 WL 117284, at *2.
[35] *Id.*

4. CONCLUSION

For the foregoing reasons, Defendants' Motion to Sever is **DENIED**.

IT IS SO ORDERED.

/s/ William C. Carpenter, Jr.
Judge William C. Carpenter, Jr.