
In the Supreme Court of Ohio

DOUGLAS GROCH, et al.,

Petitioners

v.

GENERAL MOTORS CORPORATION,

Respondents.

ON ORDER CERTIFYING QUESTIONS OF STATE LAW FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO, WESTERN DIVISION
CASE Nº 3:06-CV-1604

**PRELIMINARY MEMORANDUM OF RESPONDENTS,
KARD CORPORATION AND RACINE FEDERATED, INC., NATIONAL / KARD
DIVISION**

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I.

STATEMENT OF THE CASE AND FACTS

On June 6, 2006, Petitioners, Douglas and Chloe Groch, commenced this action in the Lucas County Court of Common Pleas against Respondents, General Motors Corporation, Kard Corporation and Racine Federated, Inc., National/Kard Division. Petitioners alleged product liability claims against Respondents, Kard Corporation (“Kard”) and Racine Federated, Inc., National/Kard Division (“Racine”) as a result of injuries sustained by Douglas Groch while he was operating a trim process on March 3, 2005.

On July 21, 2006, this case was subsequently removed to the United States District Court for the Northern District of Ohio, Western Division. Ohio Attorney General Jim Petro was named as a party-defendant in an Amended Complaint filed by Petitioners.

On September 20, 2006, Petitioners, Kard, Racine and the Ohio Attorney General filed a joint motion asking the federal district court to certify questions to this Court. On October 16, 2006, the federal district court certified several questions for this Court’s review and consideration. Kard and Racine filed a preliminary memorandum in support of this Court’s review of those questions on November 6, 2006.

On November 27, 2006 the federal district court amended its October 16, 2006 order and certified the following additional question for this Court’s review and consideration: “Does Senate Bill 80 violate the one-subject rule, Article II, Section 15, of the Ohio Constitution?” The order certifying this question was filed with this Court on December 1, 2006. This certified question is a question of Ohio law that is determinative of the Petitioners’ claims against Kard and Racine which are currently pending in United States District Court, Northern District of Ohio, Western Division, Case No. 3:06-CV-1604. Should this Court accept this question for

review, Kard and Racine respectfully request that this Court answer this question in the negative.

II.

SENATE BILL 80 DOES NOT VIOLATE THE ONE-SUBJECT RULE, ARTICLE II, SECTION 15 OF THE OHIO CONSTITUTION

Petitioners maintain that Am. Sub. S. B. No. 80 ("Senate Bill 80") violates the one-subject rule set forth in Article II, Section 15, of the Ohio Constitution.

In enacting Am. Sub. S. B. No. 80, the General Assembly found that the current civil litigation system represents a challenge to the economy of the state of Ohio, which is dependent on business providing essential jobs and creative innovation. See, *Id.* at Section 3 (A)(1). The General Assembly recognized that a fair system of civil justice strikes an essential balance between the rights of those who have been legitimately harmed and the rights of those who have been unfairly sued. *Id.* at Section 3 (A)(2). It further found that this state has a rational and legitimate state interest in making certain that Ohio has a fair, predictable system of civil justice that preserves the rights of those who have been harmed by negligent behavior, while curbing the number of frivolous lawsuits, which increases the cost of doing business, threatens Ohio jobs, drives up costs to consumers, and may stifle innovation. *Id.* at Section 3 (A)(3).

The tort reform legislation found in Senate Bill 80 directly affects the thousands of Ohioans who are plaintiffs or defendants in tort lawsuits. Due to the fact that tort law is important to all Ohioans, questions about Ohio law in this area should be resolved by this Court and not in Federal District Court, which is precisely why this question has been presented to this Court for its review and consideration. Federal courts acknowledge that they frequently err in applying state law that is unclear or unsettled. *Scott v. Bank One Trust Co., NA* (1991), 62 Ohio St.3d 39, 42. Since federal law recognizes Ohio's sovereignty by making Ohio law applicable in federal courts, the state has the power to exercise and the responsibility to protect that

sovereignty. *Id.* In this instance, answering the certified question at issue will further serve Ohio's interest in maintaining a fair system of civil justice that strikes a central balance between the rights of those who have been legitimately harmed and the rights of those who have been unfairly sued. See, Am. Sub. S.B. No. 80, Section 3 (a) (2). Based on this Court's strong belief in the importance of accurately applying Ohio law in federal court, Kard and Racine respectfully request that this Court address the critical issues of Ohio tort law at issue in this case to provide guidance to the Federal Court. See, *Scott* at 43.

Currently, there is uncertainty regarding how this Court's decision in *In re: Ohio Academy of Trial Lawyers v. Sheward*, 86 Ohio St.3d 451, 1999-Ohio-123, will effect Senate Bill 80. In enacting Senate Bill 80, the General Assembly designed the legislation to address the concerns that this Court expressed when it invalidated the previous, broader tort reform effort at issue in *Sheward*. This Court has recognized the necessity of giving the General Assembly great latitude in enacting comprehensive legislation by not construing the one-subject provision so as to unnecessarily restrict the scope and operation of laws, or to multiply their number excessively, or to prevent legislation from embracing in one act all matters properly connected with one general subject. See, *Sheward* at 496, citing, *In re: Dix v. Celeste* (1984), 11 Ohio St.3d 141, 145. In fact, only a handful of cases have held that an act embraces more than one subject. *Id.*

"Before any legislative power, as expressed in a statute, can be held invalid, it must appear that such power is clearly denied by some constitutional provision." *Williams v. Scudder* (1921) 102 Ohio St. 305, 307. It is well accepted that "[t]he legislature is the primary judge of the needs of public welfare, and this court will not nullify the decision of the legislature except in the case of a clear violation of a state or federal constitutional provision." *Beagle v. Walden* (1997), 78 Ohio St. 3d 59, 61.

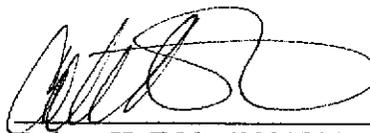
Unlike the tort reform legislation at issue in *Sheward*, Senate Bill 80 complies with the one-subject rule set forth in the Ohio Constitution because the various issues addressed by Senate Bill 80 are linked by a common theme. This case is illustrative of such connection between the various statute provisions implemented by Senate Bill 80. Here, constitutional challenges to both the new workers' compensation subrogation statute and the new statute of repose for products liability are at bar. Issues concerning workers' compensation and products liability occur together with regularity because of the fact that workers are frequently injured by allegedly defective or dangerous products while on the job. Therefore, because a common purpose or relationship exists among the various sections of Senate Bill 80, it does not constitute a manifestly gross and fraudulent violation of the one-subject rule set forth in Section 15, Article II of the Ohio Constitution. Therefore, the enactment of Senate Bill 80 should not be invalidated by this Court. See, *Sheward* at 494, citing, *Pim v. Nicholson* (1856), 6 Ohio St. 176. Should this Court accept the certified question for review, Am. Sub. S. B. No. 80 should be upheld as constitutional.

III.

CONCLUSION

WHEREFORE, Respondents, Kard Corporation and Racine Federated, Inc., National/Kard Division, represent to this Court that the certified question presented for this Court's review and consideration is a question of Ohio law that is determinative of the Petitioners' claims against Kard and Racine which are currently pending in United States District Court, Northern District of Ohio, Western Division, Case No. 3:06-CV-1604. Should this Court accept this question for review, Kard and Racine respectfully request that this Court answer the certified question in the negative.

Respectfully submitted,



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CERTIFICATE OF SERVICE

A copy of the foregoing was sent by regular U.S. Mail postage pre-paid this ^{28th} day of December, 2006 to the following:

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