ORIGINAL

IN THE SUPREME COURT OF OHIO

SANDRA HAVEL	)	
	)	
Plaintiff-Appellee,	)	Supreme Court Case No. 10-2148
	)	
vs.	)	On Appeal from the Cuyahoga County
	)	Court of Appeals, Eighth Appellate
VILLA ST. JOSEPH, et al.	)	District Case No. CA 94677
	)	
Defendants-Appellants.	)	
	)	

NOTICE OF CERTIFIED CONFLICT

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FILED
DEC 10 2010
CLERK OF COURT
SUPREME COURT OF OHIO

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DEC 10 2010
CLERK OF COURT
SUPREME COURT OF OHIO

Notice of certified Conflict between Decisions of the Eighth and Tenth Appellate Districts

Pursuant to S. Ct. Prac. R. IV, §1, Appellants Villa St. Joseph and Village of Marymount hereby give notice to the Supreme Court of Ohio that the Eighth Appellate District has issued an order certifying a conflict with the Tenth Appellate District in the following decisions: *Havel v. Villa St. Joseph,* (2010), 8th Dist. No. 94677, 2010 Ohio 5251 and *Hanners v. Ho Wah Genting Wire & Cable,* (2009), 10th Dist. No. 09AP-361, 2009 Ohio 6481.

The Eighth Appellate District certified the following question as being in conflict between the two aforementioned decisions:

> Whether R.C. 2315.21(B), as amended by S.B. 80, effective April 7, 2005 is unconstitutional, in violation of Section 5(B), Article IV of the Ohio Constitution, because it is a procedural law that conflicts with Civ. R. 42(B).

Copies of the Eighth Appellate District's November 22, 2010 Order granting "Appellants' Motion to Certify Conflict" and the corresponding "Journal Entry" are attached hereto. Copies of the aforementioned decisions in *Havel* and *Hanners, supra,* are also attached.

Respectfully submitted,

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CERTIFICATE OF SERVICE

A true copy of the foregoing Motion to Certify a Conflict was served by Regular US Mail, postage prepaid, this 9th day of December, 2010 upon the following:

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Court of Appeals of Ohio, Eighth District

County of Cuyahoga
Gerald E. Fuerst, Clerk of Courts

SANDRA HAVEL

Appellee

COA NO. 94677

LOWER COURT NO. CP CV-709632

COMMON PLEAS COURT

-vs-

VILLA ST. JOSEPH, ET AL.

Appellant

MOTION NO. 438986

Date 11/22/2010

Journal Entry

MOTION BY APPELLANTS TO CERTIFY CONFLICT IS GRANTED. SEE JOURNAL ENTRY OF SAME DATE.

COPIES MAILED TO COUNSEL FOR ALL PARTIES--COSTS TAXED

RECEIVED FOR FILING

NOV 22 2010

GERALD E. FUERST
CLERK OF THE COURT OF APPEALS
BY_____ DEP.

CA10094677

66110849

Judge PATRICIA A. BLACKMON, Concurs

Judge LARRY A. JONES, Concurs

Presiding Judge
CHRISTINE T. MCMONAGLE

VOL 0717 PG 0892

POSTED

CC 97-1 2783

The State of Ohio, Cuyahoga County. } ss.

I, GERALD E. FUERST, Clerk of the Court of Appeals within and for said County, and in whose custody the files, Journals and records of said Court are required by the laws of the State of Ohio, to be, kept, hereby certify that the foregoing is taken and copied from the Journal Entry, Vol. 717 Page 892 Dated: 11-22-10 CA 94677 of the proceedings of the Court of Appeals within and for said Cuyahoga County, and that the said foregoing copy has been compared by me with the original entry on said Journal Entry, Vol. 717 Pg 892 Dated: Nov. 22, 2010 and that the same is correct transcript thereof.

In Testimony Whereof, I do hereunto subscribe my name officially, and affix the seal of said court, at the Court House in the City of Cleveland, in said County, this 9th day of December A.D. 20 10

GERALD E. FUERST, Clerk of Courts

By C. Prusek Deputy Clerk

Court of Appeals of Ohio, Eighth District

County of Cuyahoga
Gerald E. Fuerst, Clerk of Courts

SANDRA HAVEL

Plaintiff/Appellee

COA NO. 94677 | LOWER COURT NO. CP CV-709632

COMMON PLEAS COURT

-vs-

VILLA ST. JOSEPH, ET AL.

Defendants/Appellants

MOTION NO. 438986

Date: 11/22/2010

Journal Entry

Defendants-appellants' motion to certify a conflict is granted. This court's decision in *Havel v. Villa St. Joseph*, 8th Dist. No. 94677, 2010-Ohio-5251, is in conflict with *Hanners v. Ho Wah Genting Wire & Cable*, 10th Dist. No. 09 AP-361, 2009-Ohio-6481. In *Havel*, this court declined to follow the reasoning in *Hanners*, which held that R.C. 2315.21(B) is constitutional and substantive in nature, and thereby prevails over Civ.R. 42(B).

We hereby certify the following issue to the Ohio Supreme Court pursuant to Article IV, Section 3(B)(4) of the Ohio Constitution and App.R. 25:

Whether R.C. 2315.21(B), as amended by S.B. 80, effective April 7, 2005, is unconstitutional, in violation of Section 5(B), Article IV of the Ohio Constitution, because it is a procedural law that conflicts with Civ.R. 42(B).

CA10094677
66110849

COPIES MAILED TO COUNSEL FOR
ALL PARTIES-COSTS TAXED

Judge PATRICIA A. BLACKMON and
Judge LARRY A. JONES, Concur

Presiding Judge
CHRISTINE T. McMONAGLE

RECEIVED FOR FILING
NOV 22 2010
GERALD E. FUERST
CLERK OF THE COURT OF APPEALS
BY _____ DEP.

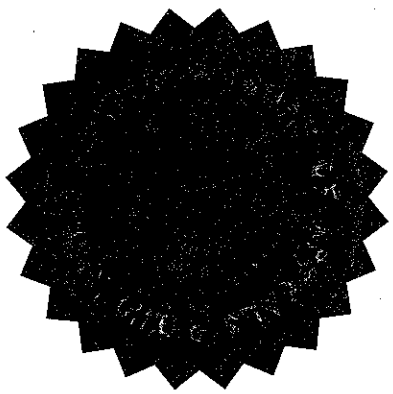
POSTED

VOL 0717 PG 0893

CC 97 / 2783

The State of Ohio,
Cuyahoga County. } ss.

I, GERALD E. FUERST, Clerk of the Court of Appeals within and for said County, and in whose custody the files, Journals and records of said Court are required by the laws of the State of Ohio, to be, kept, hereby certify that the foregoing is taken and copied from the Journal Entry, Vol. 717 Page 893 Dated: 11-22-10 CA 94677 of the proceedings of the Court of Appeals within and for said Cuyahoga County, and that the said foregoing copy has been compared by me with the original entry on said Journal Entry, Vol. 717 Pg 893 Dated: Nov. 22, 2010 and that the same is correct transcript thereof.



In Testimony Whereof, I do hereunto subscribe my name officially, and affix the seal of said court, at the Court House in the City of Cleveland, in said County, this 9th day of December A.D. 20 10

GERALD E. FUERST, *Clerk of Courts*

By C. Prusak Deputy Clerk

LEXSEE 2010 OHIO 5251

SANDRA HAVEL, PLAINTIFF-APPELLEE vs. VILLA ST. JOSEPH, ET AL., DEFENDANTS-APPELLANTS

No. 94677

COURT OF APPEALS OF OHIO, EIGHTH APPELLATE DISTRICT, CUYAHOGA COUNTY

2010 Ohio 5251; 2010 Ohio App. LEXIS 4433

October 28, 2010, Released
October 28, 2010, Journalized

PRIOR HISTORY: [**1]
Civil Appeal from the Cuyahoga County Court of Common Pleas. Case No. CV-709632.

DISPOSITION: AFFIRMED.

COUNSEL: FOR Villa St. Joseph and Village of Marymount, APPELLANTS: Bret C. Perry, Jennifer R. Becker, Donald J. Richardson, Beth A. Sebaugh, Bonezzi Switzer Murphy Polito & Hupp Co. L.P.A., Cleveland, OH.

FOR Maple Wood Care Centre, Northern Health Facilities, Inc. d.b.a Maple Wood Care Centre and Extendicare Health Services, Inc., APPELLANTS: Christopher S. Humphrey, Canton, OH.

FOR APPELLEE: Blake A. Dickson, The Dickson Firm, L.L.C., Beachwood, OH.

JUDGES: BEFORE: McMonagle, P.J., Blackmon, J., and Jones, J. PATRICIA A. BLACKMON, J., and LARRY A. JONES, J., CONCUR.

OPINION BY: CHRISTINE T. McMONAGLE

OPINION

JOURNAL ENTRY AND OPINION

CHRISTINE T. McMONAGLE, P.J.:

[*P1] Defendants-appellants Villa St. Joseph and Village of Marymount appeal from the trial court's order denying their motion to bifurcate the punitive damage phase of the jury trial of this case from the compensatory damage phase of trial. We affirm.

I

[*P2] Plaintiff-appellee, Sandra Havel, as the personal representative of the Estate of John Havel, filed a complaint for medical malpractice, wrongful death, and violation of Ohio's Nursing Home Bill of Rights against defendants-appellants. [**2] [1] She sought compensatory and punitive damages.

1 Her complaint also included claims against defendants Maple Wood Care Centre, Northern Health Facilities, Inc., d.b.a Maple Wood Care Centre and Extendicare Health Services, Inc., who are not parties to this appeal.

[*P3] Appellants answered, denying the allegations of the complaint and asserting various affirmative defenses. They also filed a motion pursuant to R.C. 2315.21(B)(1) to bifurcate the punitive damages phase of the trial from the compensatory damages phase. The trial court subsequently denied the motion and appellants appealed from that order. Havel filed a motion to dismiss the appeal for lack of a final appealable order. For the reasons discussed below, the motion is denied.

II

[*P4] Section 5(B), Article IV of the Ohio Constitution states that the Ohio Supreme Court is vested with exclusive authority to "prescribe rules governing practice and procedure in all courts of the state, which rules shall not abridge, enlarge, or modify any substan-

tive right. * * * All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect." Pursuant to this constitutional authority, the Supreme Court has [**3] adopted the Rules of Civil Procedure, which "prescribe the procedure to be followed in all courts of this state in the exercise of civil jurisdiction." Civ.R. 1(A).

[*P5] Where a conflict arises between a rule and a statute, the court's rule will control for procedural matters; the legislature's statute will control for matters of substantive law. *State ex rel. Sapp v. Franklin Cty. Court of Appeals*, 118 Ohio St.3d 368, 2008 Ohio 2637, P28, 889 N.E.2d 500; *State v. Slatter* (1981), 66 Ohio St.2d 452, 454, 423 N.E.2d 100. A statute is invalid and has no force or effect if it conflicts with the Ohio Rules of Civil Procedure. *Rockey v. 84 Lumber Co.* (1993), 66 Ohio St.3d 221, 223, 611 N.E.2d 789; *In re Coy* (1993), 67 Ohio St.3d 215, 219, 1993 Ohio 202, 616 N.E.2d 1105.

[*P6] The statute at issue here, R.C. 2315.21(B), as amended by S.B. No. 80, effective April 7, 2005, states that "[i]n a tort action that is tried to a jury and in which a plaintiff makes a claim for compensatory damages and a claim for punitive or exemplary damages, upon the motion of any party, the trial of the tort action *shall* be bifurcated * * *." (Emphasis added.)

[*P7] Civ.R. 42(B) of the Ohio Rules of Civil Procedure also addresses bifurcation [**4] and provides that "[t]he court, after a hearing, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, *may* order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims * * *." (Emphasis added.)

[*P8] Hence, the statute and the rule are in conflict. One requires bifurcation in a tort action; the other does not.

[*P9] In *Barnes v. Univ. Hosps. of Cleveland*, 8th Dist. Nos. 87247, 87285, 87710, 87903, and 87946, 2006 Ohio 6266, decided after R.C. 2315.21(B) was amended by S.B. No. 80, [2] this court specifically addressed the argument that "R.C. 2315.21(B) mandates that compensatory and punitive damages be bifurcated upon request." Id. at P34. The court found no error in the trial court's denial of the defendant's motion to bifurcate and held that despite the requirements of R.C. 2315.21(B) regarding bifurcation of the determination of compensatory and punitive damages, "the trial court may exercise its discretion when ruling upon such a motion." The court stated, "[t]he issues surrounding compensatory damages and punitive damages in this case were closely intertwined. [**5] [Defendant's] request to bifurcate would have resulted in two lengthy proceedings where essentially the same testimony given by the same witnesses would be presented. Knowing that bifurcation would require a tremendous amount of duplicate testimony, the presiding judge determined it was unwarranted." Id. at P35. Without specifically addressing the procedural/substantive distinction, this court apparently concluded that the mandatory bifurcation language of R.C. 2315.21(B) addresses a procedural matter governed by Civ.R. 42(B) and, is of no force and effect.

2 Hence, appellant's argument that *Barnes* is not relevant because it was decided prior to the enactment of R.C. 2315.21(B) is without merit.

[*P10] Despite this holding in *Barnes*, appellants urge us to follow *Hanners v. Ho Wah Genting Wire & Cable SDN BHD*, 10th Dist. No. 09AP-361, 2009 Ohio 6481, in which the Tenth District held that (1) the appellants' appeal of the trial court's denial of their motion to bifurcate was a final, appealable order; and (2) R.C. 2315.21(B) is a substantive law that prevails over Civ.R. 42(B).

III

[*P11] Appellate courts in Ohio have jurisdiction to review the final orders or judgments of inferior courts within their [**6] district. Section 3(B)(2), Article IV of the Ohio Constitution; R.C. 2501.02. If a judgment is not final, an appellate court has no jurisdiction to review the matter and it must be dismissed. *Prod. Credit Assn. v. Hedges* (1993), 87 Ohio App. 3d 207, 210, 621 N.E.2d 1360.

[*P12] Under R.C. 2505.02(B), an order is a final order if it is one of the following:

[*P13] "(1) An order that affects a substantial right in an action that in effect determines the action and prevents a judgment; (2) An order that affects a substantial right made in a special proceeding; (3) An order that vacates or sets aside a judgment or grants a new trial; (4) An order that grants or denies a provisional remedy * * *; (5) An order that determines that an action may or may not be maintained as a class action; (6) An order determining the constitutionality of any changes to the Revised Code made by Am. Sub. S.B. 281 of the 124th general assembly * * * or any changes made by S.B. 80 of the 125th general assembly, including the amendments of sections * * * 2315.21 of the Revised Code; (7) An order in an appropriation proceeding * * *."

[*P14] The trial court's order in this case denying appellants' motion to bifurcate proceedings did [**7] not determine the action or prevent a judgment, was not made in a special proceeding, [3] did not vacate or set aside a judgment or grant a new trial, did not grant or deny a provisional remedy, [4] did not make any determination regarding class action status, and was not an order in an

appropriation proceeding. Accordingly, the order is a final, appealable order only if, by denying appellants' motion to bifurcate, it determined the constitutionality of R.C. 2315.21(B).

3 "'Special proceeding' means an action or proceeding that is specially created by statute and that prior to 1853 was not denoted as an action at law or a suit in equity." R.C. 2505.02(A)(2).

4 "'Provisional remedy' means a proceeding ancillary to an action, including, but not limited to, a proceeding for a preliminary injunction, attachment, discovery of privileged matter, suppression of evidence * * *." R.C. 2505.02(A)(3).

[*P15] In *Hanners*, supra, the Tenth District found that the trial court's judgment denying a motion to bifurcate pursuant to R.C. 2315.21(B) implicitly determined the constitutionality of the statute and, therefore, was a final, appealable order. In *Hanners*, plaintiffs filed a wrongful death action seeking compensatory [**8] and punitive damages. Defendants moved to bifurcate the plaintiffs' punitive damages claim pursuant to R.C. 2315.21(B), or, in the alternative, under Civ.R. 42(B). In response, plaintiffs argued that R.C. 2315.21(B) is unconstitutional because it is a procedural law that conflicts with Civ.R. 42(B).

[*P16] In its order denying the motion to bifurcate the trial, the trial court held that R.C. 2315.21(B)(1), which requires bifurcation, and Civ.R. 42(B), which gives the court discretion to bifurcate, "are plainly inconsistent." Id. at P11. Further, "[n]oting the Supreme Court of Ohio's authority to promulgate the rules of civil procedure, and citing Supreme Court precedent, the [trial] court concluded that Civ.R. 42(B) controlled because bifurcation of punitive damages is a procedural matter." Id.

[*P17] The Tenth District found that by this judgment entry, the trial court implicitly determined that R.C. 2315.21(B) was unconstitutional and, therefore, the judgment was a final, appealable order. It stated:

[*P18] "Here, the trial court concluded that a conflict exists between R.C. 2315.21(B), which requires a trial court to grant bifurcation in tort cases, and Civ.R. 42(B), which gives the court discretion [**9] to bifurcate. By also concluding that bifurcation is a matter of procedure and refusing to apply R.C. 2315.21(B), the court necessarily determined that the statute (1) violated the constitutional division of authority between the court and the legislature, and (2) is of no force or effect in this matter. Therefore, although the trial court did not expressly declare the statute unconstitutional, the court 'determine[d] the constitutionality' of R.C. 2315.21(B), and this court has jurisdiction to review the trial court's determination under R.C. 2505.02(B)." Id. at P13.

[*P19] We agree that, as in *Hanners*, the trial court's order in this case denying appellants' motion to bifurcate implicitly determined that the mandatory bifurcation language of R.C. 2315.21(B) is unconstitutional. Although the trial court made no express findings in its judgment entry, [5] by refusing to apply R.C. 2315.21(B) and bifurcate the proceedings, the trial court implicitly determined that R.C. 2315.21(B) conflicts with Civ.R. 42(B) in violation of the separation of powers required by Section 5(B), Article IV of the Ohio Constitution. Accordingly, the judgment is a final appealable order under R.C. 2505.02(B)(6) and [**10] appellee's motion to dismiss for lack of a final appealable order is denied.

5 The trial court's order stated only, "Defendants' Villa St. Joseph and Village of Marymount Motion (# 2875841) to Bifurcate is denied."

IV

[*P20] Appellants argue that R.C. 2315.21(B) is a substantive law and prevails over Civ.R. 42(B); they admit that their appeal is premised on the application and interpretation of R.C. 2315.21(B) by the Tenth District in *Hanners*.

[*P21] That case is not binding on this court. Furthermore, appellants do not mention this court's interpretation of R.C. 2315.21(B) in *Barnes* and make no attempt whatsoever to distinguish *Barnes* from *Hanners*. Under principles of stare decisis, we are required "to follow earlier judicial decisions when the same points arise again in litigation." *Missig v. Civ. Svc. Comm.*, 8th Dist. No. 91699, 2009 Ohio 966, P16, reversed on other grounds, 123 Ohio St.3d 239, 2009 Ohio 5256, 915 N.E.2d 642; *DeMell v. Cleveland Clinic Found.*, 8th Dist. No. 88505, 2007 Ohio 2924, P30. Accordingly, we conclude that *Barnes* is the controlling authority on this issue and, therefore, the trial court did not abuse its discretion in denying appellants' motion to bifurcate.

V

[*P22] Moreover, we [**11] agree with *Barnes* that bifurcation is procedural and, hence, Civ.R. 42(B) prevails over R.C. 2315.21(B).

[*P23] Recently, in *Norfolk S. RR Co. v. Bogle*, 115 Ohio St. 3d 455, 2007 Ohio 5248, 875 N.E.2d 919, the Ohio Supreme Court reiterated its statement from *Jones v. Erie RR Co.* (1922), 106 Ohio St. 408, 412, 1 Ohio Law Abs. 104, 140 N.E.366, that substantive laws or rules are those that "'relate[ ] to rights and duties which give rise to a cause of action.'" *Norfolk S. RR Co.*, P16, quoting *Jones*. By contrast, the court stated, "pro-

cedural rules concern 'the machinery for carrying on the suit.'" Id., quoting *Jones*.

[*P24] Relying on these definitions, in *Norfolk S. RR Co.*, the Ohio Supreme Court analyzed whether R.C. 2307.92 and 2307.93, which codified filing requirements for asbestos claims arising out of the Federal Employers' Liability Act and the Locomotive Boiler Inspection Act, infringed upon the Supremacy Clause of the United States Constitution and were therefore preempted by federal law. The Supreme Court held that the statutes were unequivocally procedural statutes. It stated:

[*P25] "A review of the statutes reveals that they do not grant a right or impose a duty that 'give[s] rise to a cause of action.' Id. Instead, [**12] the impact of these statutes is to establish a procedural prioritization of the asbestos-related cases on the court's docket. Nothing more. Simply put, these statutes create a procedure to prioritize the administration and resolution of a cause of action that already exists. * * *

[*P26] "[T]he provisions of the statutes do not relate to the rights and duties that give rise to this cause of action or otherwise make it more difficult for a claimant to succeed on the merits of a claim. Rather, they pertain to the machinery for carrying on a suit. They are therefore procedural in nature, not substantive." Id., P16-17.

[*P27] Applying the Ohio Supreme Court's analysis in *Norfolk S. RR Co.* to this case, we can only conclude that the mandatory bifurcation language of R.C. 2315.21(B) is unconstitutional because it purports to legislate a strictly procedural matter already addressed by the Civil Rules. It is readily apparent that the language of R.C. 2315.21(B) regarding bifurcation of the damages portion of a trial does not "grant a right or impose a duty that gives rise to a cause of action," or even relate to those rights. Instead, the statute clearly and unambiguously specifies "the machinery for carrying [**13] on the suit" by telling courts the "procedural prioritization" for determining compensatory and punitive damages at trial. Furthermore, it purports to tell courts what evidence a jury may consider, and when -- another area governed by the Civil and Evidence Rules.

[*P28] In *State ex rel. Loyd v. Lovelady*, 108 Ohio St.3d 86, 2006 Ohio 161, 840 N.E.2d 1062, the Ohio Supreme Court analyzed whether R.C. 3119.961 et seq. violates the separation of powers between the judicial and legislative branches. Beginning its analysis of the statute, the court stated that "'[i]n interpreting a statute, a court's principal concern is the legislative intent in enacting the statute.'" Id., P13, quoting *Carnes v. Kemp*, 104 Ohio St.3d 629, 2004 Ohio 7107, P16, 821 N.E.2d 180. The court continued, "ordinarily, we 'must first look at the word of the statute itself' to determine legislative intent." Id., quoting *Carnes*. The court then reasoned that it had to look outside the statute to determine legislative intent because "it [was] not clear from the statute itself whether it was intended to be substantive or procedural." Id.

[*P29] Here, however, the legislative intent is clear from the statute: R.C. 2315.21(B) plainly [**14] and unambiguously regulates the procedure at trial for determining compensatory and punitive damages in a tort action. Thus, the Tenth District's determination in *Hanners*, reached by reference to sources other than this clear and unambiguous statute, [6] conflicts with well-settled rules of statutory construction. See, e.g., *Provident Bank v. Wood* (1973), 36 Ohio St.2d 101, 105, 304 N.E.2d 378 (a court must first look to the language of the statute itself to determine legislative intent, and if that inquiry reveals that the statute conveys a meaning that is clear, unequivocal, and definite, at that point the interpretive effort ends, and the statute must be applied accordingly); *Katz v. Dept. of Liquor Control* (1957), 166 Ohio St. 229, 231, 141 N.E.2d 294 ("Where the language itself clearly expresses the legislative intent, the courts need look no further."); *Sears v. Weimer* (1944), 143 Ohio St. 312, 55 N.E.2d 413 ("[T]he intent of the lawmakers is to be sought first of all from the language employed, and if the words be free from ambiguity and doubt, and express plainly, clearly, and distinctly, the sense of the lawmaking body, there is no occasion to resort to other means of interpretation. [**15] *The question is not what did the general assembly intend to enact, but what is the meaning of that which it did enact.* That body should be held to mean what it has plainly expressed, and hence no room is left for construction.") (Emphasis added.)

6 An uncodified section of S.B. 80. *Hanners*, P25-28.

[*P30] The language of R.C. 2315.21(B) plainly and unambiguously purports to regulate bifurcation procedure in trials of tort cases -- a matter already regulated by Civ.R. 42(B). Where a statute conflicts with a rule of procedure, the rule controls on procedural matters. Accordingly, insofar as R.C. 2315.21(B) conflicts with Civ.R. 42(B), we find it unconstitutional, in violation of Section 5(B), Article IV of the Ohio Constitution. See, also, *Tuttle v. Sears, Roebuck & Co.* (Sept. 4, 2009), N.D.Ohio No. 1:08 CV 333, 2009 U.S. Dist. LEXIS 80980 (rejecting defendants' argument that R.C. 2315.21(B) is a substantive statute).

Affirmed.

Appellants' assignment of error is overruled.

It is ordered that appellee recover from appellants costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this [**16] entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

CHRISTINE T. McMONAGLE, PRESIDING JUDGE

PATRICIA A. BLACKMON, J., and

LARRY A. JONES, J., CONCUR

LEXSEE 2009 OHIO 6481

Kathy S. Hanners et al., Plaintiffs-Appellees, v. Ho Wah Genting Wire & Cable SDN BHD et al., Defendants-Appellants, Big Lots Store, Inc. et al., Defendants-Appellees.

No. 09AP-361

COURT OF APPEALS OF OHIO, TENTH APPELLATE DISTRICT, FRANKLIN COUNTY

2009 Ohio 6481; 2009 Ohio App. LEXIS 5432

December 10, 2009, Rendered

PRIOR HISTORY: [**1]

APPEAL from the Franklin County Court of Common Pleas. (C.P.C. No. 08CVG10-15218).

DISPOSITION: Judgment reversed and cause remanded.

COUNSEL: Cooper & Elliott, Rex H. Elliott, Charles H. Cooper, Jr., and John C. Camillus; Bryan K. Harris, P.C., and Bryan K. Harris; Watts Law Firm, L.L.P., and Mikal C. Watts, for plaintiffs-appellees.

Davis & Young, and Richard M. Garner, for defendants-appellants.

Jacob H. Huebert, Amicus Curiae Ohio Association of Civil Trial Attorneys.

JUDGES: FRENCH, P.J. SADLER, J., concurs. BROWN, J., concurring in part and dissenting in part.

OPINION BY: FRENCH

OPINION

(ACCELERATED CALENDAR)

DECISION

FRENCH, P.J.

I. Introduction

[*P1] This appeal presents the issue of whether a trial court's entry denying a defendant's motion to bifurcate the plaintiff's claims for compensatory damages from the plaintiff's claims for punitive damages in a tort action is a final, appealable order pursuant to R.C. 2505.02(B)(6). We hold that it is. Having done so, we must also address the issue of whether R.C. 2315.21(B), which requires bifurcation upon motion in tort actions, violates the Modern Courts Amendment of 1968, Section 5(B), Article IV of the Ohio Constitution, because it conflicts with Civ.R. 42(B). We conclude that, because the [**2] statute is substantive, it does not violate the separation of powers required by the Constitution.

A. Background

[*P2] Defendants-appellants, Ho Wah Genting Wire & Cable SDN BHD, Ho Wah Genting SDN BHD, Ho Wah Genting International Limited, Ho Wah Genting Trading SDN BHD, Ho Wah Genting Berhad, and Pt. Ho Wah Genting ("appellants"), appeal the judgment of the Franklin County Court of Common Pleas, which, among other things, denied in part their motion for bifurcation. The Ohio Association of Civil Trial Attorneys has filed an amicus curiae brief in support of appellants.

[*P3] On October 27, 2006, Mindy S. Hanners and her three children, Katelynn, Nevaeh, and Austin, died in a house fire. Kathy S. Hanners, individually, and as administrator of the estate of Katelynn and Mindy, and Harry F. Gillespie, III, individually, and as administrator of the estate of Nevaeh and Austin, plaintiffs-appellees ("appellees"), filed a wrongful death action against, among others, appellants, whom appellees contended were the manufacturers of an electrical extension cord that caused the fire. Appellees sought compensatory and punitive damages.

[*P4] On December 12, 2008, appellants filed a motion to bifurcate the punitive [**3] damages proceedings pursuant to R.C. 2315.21(B)(1). On March 12, 2009, the trial court issued a journal entry, in which it, as pertinent to the present appeal, denied appellants' request to bifurcate the punitive damages proceedings.

B. Assignments of Error

[*P5] Appellants appeal the journal entry of the trial court. They assert the following assignments of error:

> I. THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY DECLARING R.C. 2315.21(B) TO BE UNCONSTITUTIONAL.
>
> II. THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY VIOLATING OHIO'S SEPARATION OF POWERS DOCTRINE WHEN IT REFUSED TO APPLY R.C. 2315.21(B) IN THIS CASE.

II. Analysis

A. Final, Appealable Order

[*P6] As an initial matter, we must address whether the journal entry appealed from is a final, appealable order. On May 6, 2009, this court issued a show cause order requesting that appellants show cause as to why this appeal should not be dismissed for lack of a final, appealable order, and appellees filed a memorandum in response. It is well-established that a trial court's bifurcation determination under Civ.R. 42(B) is not a final, appealable order. See, e.g., *Doe v. Univ. of Cincinnati* (1991), 70 Ohio App.3d 354, 358, 591 N.E.2d 9 (a bifurcation order pursuant [**4] to Civ.R. 42(B) is not a final, appealable order); *Finley v. First Realty Property Mgt., Ltd.*, 9th Dist. No. 23355, 2007 Ohio 2888, P12, citing *King v. Am. Std. Ins. Co. of Ohio*, 6th Dist. No. L-06-1306, 2006 Ohio 5774, P19; *Goettl v. Edelstein* (Dec. 5, 1985), 5th Dist. No. CA 2339, 1985 Ohio App. LEXIS 9815.

[*P7] Appellants contend, however, that the trial court's journal entry was a final, appealable order, pursuant to R.C. 2505.02(B)(6), which was added by S.B. No. 80 ("SB 80"), effective April 7, 2005. R.C. 2505.02(B)(6) includes within the definition of a final order "[a]n order determining the constitutionality of any changes" made by SB 80. SB 80 amended R.C. 2315.21(B) to require the bifurcation of the trial of a tort action. The question, then, is whether the trial court's entry "determin[ed] the constitutionality" of R.C. 2315.21. To answer that question, we look more closely at the proceedings below and the trial court's decision.

[*P8] In their complaint, as their thirteenth cause of action, appellees sought a declaration that "current enactments" of SB 80 are unconstitutional. Appellants denied the claim and thereafter moved to dismiss this request for declaratory relief.

[*P9] Appellants also moved to bifurcate [**5] appellees' punitive damage claims based on R.C. 2315.21(B). In the alternative, they argued that the court should exercise its discretion under Civ.R. 42(B) to bifurcate. In response, appellees argued that R.C. 2315.21(B) is unconstitutional because it is procedural and appears to conflict with Civ.R. 42(B). Appellees also argued that, despite R.C. 2315.21(B), bifurcation was not mandatory, and the court should not bifurcate the proceedings under the statute or Civ.R. 42(B).

[*P10] The trial court's March 12, 2009 entry denied appellants' motion to dismiss appellees' constitutional claims. The court expressed "doubt that the proper procedure" had been followed to raise a claim for declaratory relief properly and "bifurcated" the constitutional question. The court stated: "If [appellees] recover a verdict and the tort reform statutes stand in the way of complete relief, the court will examine them -- substantively and as to proper procedure -- at that time. In the meantime, no court should reach-out to offer opinions on constitutional questions that might otherwise never need to be addressed."

[*P11] In the same order, the court addressed and denied appellants' motion to bifurcate the trial. The [**6] court found, first, that R.C. 2315.21(B)(1), which requires bifurcation, and Civ.R. 42(B), which gives the court discretion to bifurcate, "are plainly inconsistent." Noting the Supreme Court of Ohio's authority to promulgate the rules of civil procedure, and citing Supreme Court precedent, the court concluded that Civ.R. 42(B) controlled because bifurcation of punitive damages is a procedural matter. Without expressly declaring R.C. 2315.21(B) unconstitutional, the court denied appellants' motion to bifurcate.

[*P12] Section 5(B), Article IV of the Ohio Constitution, also known as the Modern Courts Amendment, grants to the Supreme Court of Ohio the exclusive authority to "prescribe rules governing practice and procedure in all courts of the state, which rules shall not abridge, enlarge, or modify any substantive right. * * * All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect." More than a rule of construction, the provision ensures the se-

paration of powers between the branches of government. See, e.g., *State ex rel. Loyd v. Lovelady*, 108 Ohio St.3d 86, 2006 Ohio 161, P5, 15, 840 N.E.2d 1062 (describing the issue as whether enactment of the statute [**7] at issue "violates the separation of powers between the judicial and legislative branches" and concluding that the statute did not "violate the separation of powers required by Section 5(B), Article IV of the Ohio Constitution"). Where a conflict arises between a rule and a statute, the court's rule prevails on procedural matters; the legislature's statute prevails on substantive matters. *State ex rel. Sapp v. Franklin Cty. Court of Appeals*, 118 Ohio St.3d 368, 2008 Ohio 2637, P28, 889 N.E.2d 500; *State v. Slatter* (1981), 66 Ohio St.2d 452, 454, 423 N.E.2d 100.

[*P13] Here, the trial court concluded that a conflict exists between R.C. 2315.21(B), which requires a trial court to grant bifurcation in tort cases, and Civ.R. 42(B), which gives the court discretion to bifurcate. By also concluding that bifurcation is a matter of procedure and refusing to apply R.C. 2315.21(B), the court necessarily determined that the statute (1) violated the constitutional division of authority between the court and the legislature, and (2) is of no force or effect in this matter. Therefore, although the trial court did not expressly declare the statute unconstitutional, the court "determin[ed] the constitutionality" of R.C. 2315.21(B), and [**8] this court has jurisdiction to review the trial court's determination under R.C. 2505.02(B).

B. R.C. 2315.21(B) and Civ.R. 42(B)

[*P14] In their first and second assignments of error, appellants contend that the trial court erred by declaring R.C. 2315.21(B) unconstitutional and violated the separation of powers doctrine by refusing to apply it. We will address these assignments together. Because they present constitutional questions, our review is de novo. *State v. Rodgers*, 166 Ohio App.3d 218, 2006 Ohio 1528, P6, 850 N.E.2d 90.

[*P15] As we noted, the Modern Courts Amendment grants to the Supreme Court of Ohio the exclusive authority to prescribe rules for court practice and procedure. To determine whether a statute enacted by the General Assembly infringes on this exclusive authority, we must determine (1) whether there is a conflict between the statute and the rule and, if so, (2) whether the statute is substantive or procedural. If the statute is substantive, then it prevails; if the statute is procedural, the rule prevails, and the statute is of no force and effect. The statute at issue here is R.C. 2315.21(B); the rule at issue is Civ.R. 42(B).

[*P16] R.C. 2315.21(B) provides:

(B)(1) In a tort action that is tried [**9] to a jury and in which a plaintiff makes a claim for compensatory damages and a claim for punitive or exemplary damages, upon the motion of any party, the trial of the tort action shall be bifurcated as follows:

(a) The initial stage of the trial shall relate only to the presentation of evidence, and a determination by the jury, with respect to whether the plaintiff is entitled to recover compensatory damages for the injury or loss to person or property from the defendant. During this stage, no party to the tort action shall present, and the court shall not permit a party to present, evidence that relates solely to the issue of whether the plaintiff is entitled to recover punitive or exemplary damages for the injury or loss to person or property from the defendant.

(b) If the jury determines in the initial stage of the trial that the plaintiff is entitled to recover compensatory damages for the injury or loss to person or property from the defendant, evidence may be presented in the second stage of the trial, and a determination by that jury shall be made, with respect to whether the plaintiff additionally is entitled to recover punitive or exemplary damages for the injury or loss to [**10] person or property from the defendant.

(2) In a tort action that is tried to a jury and in which a plaintiff makes a claim for both compensatory damages and punitive or exemplary damages, the court shall instruct the jury to return, and the jury shall return, a general verdict and, if that verdict is in favor of the plaintiff, answers to an interrogatory that specifies the total compensatory damages recoverable by the plaintiff from each defendant.

(3) In a tort action that is tried to a court and in which a plaintiff makes a claim for both compensatory damages and punitive or exemplary damages, the court shall make its determination with respect to whether the plaintiff is entitled to recover compensatory damages for the injury or loss to person or property from the defendant and, if that determination is in favor of the plaintiff, shall make findings

> of fact that specify the total compensatory damages recoverable by the plaintiff from the defendant.

[*P17] We begin with the principle that, "[w]here the language of a statute is plain and unambiguous and conveys a clear and definite meaning there is no occasion for resorting to rules of statutory interpretation. An unambiguous statute is to [**11] be applied, not interpreted." *Sears v. Weimer* (1944), 143 Ohio St. 312, 55 N.E.2d 413, paragraph five of the syllabus. Thus, "[i]t is only where the words of a statute are ambiguous or are based upon an uncertain meaning or there is an apparent conflict of some provisions that a court has the right to interpret a statute." *Drake-Lassie v. State Farm Ins. Cos.* (1998), 129 Ohio App.3d 781, 788, 719 N.E.2d 64, citing *Kroff v. Amrhein* (1916), 94 Ohio St. 282, 114 N.E. 267, 14 Ohio L. Rep. 204.

[*P18] Here, there is no ambiguity. R.C. 2315.21(B) provides that, in a tort action in which a plaintiff makes a claim for compensatory damages and makes a claim for punitive or exemplary damages, upon any party's motion, the trial "shall be bifurcated" in accordance with the specific requirements in the statute.

[*P19] Civ.R. 42(B) also addresses bifurcation. It provides:

> **(B) Separate trials**
>
> The court, after a hearing, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, or third-party claims, or issues, always preserving inviolate the right [**12] to trial by jury.

[*P20] In short, Civ.R. 42(B) allows a trial court to order separate trials of separate issues whenever bifurcation will further convenience, expedience, and judicial economy and avoid prejudice. The decision of whether to bifurcate the proceedings is a matter within the sound discretion of the trial court. *Sheets v. Norfolk S. Corp.* (1996), 109 Ohio App.3d 278, 288, 671 N.E.2d 1364.

[*P21] Appellants contend that R.C. 2315.21(B), which addresses a specific category of claims by certain claimants, does not conflict with Civ.R. 42(B), a broad rule of general procedure. In support, they cite *Sapp*, in which the court considered whether R.C. 2323.52, which prescribes filing requirements for vexatious litigators, conflicts with general rules of appellate procedure. The court discerned no conflict. "App.R. 3 and 4 define the general requirements of how and when to file an appeal, and R.C. 2323.52 specifies the requirements for persons declared to be vexatious litigators who are filing and continuing legal cases." *Sapp* at P29.

[*P22] Admittedly, Civ.R. 42(B) will not *always* conflict with R.C. 2315.21(B) in *every* case because R.C. 2315.21(B) only requires bifurcation (1) in "tort actions," as defined by the statute, [**13] where (2) a plaintiff brings claims for both compensatory damages and punitive or exemplary damages, and (3) a party moves for bifurcation. In those actions fitting within the confines of R.C. 2315.21(B), however, there is a clear and unavoidable conflict, i.e., R.C. 2315.21(B) removes the discretion granted by Civ.R. 42(B). Therefore, we proceed to consider whether R.C. 2315.21(B) is substantive or procedural. If substantive, the statute prevails whether it conflicts with Civ.R. 42(B) or not.

[*P23] The Supreme Court has defined "substantive" for these purposes as the body of law that " 'creates, defines and regulates the rights of the parties.' " *Proctor v. Kardassilaris*, 115 Ohio St.3d 71, 2007 Ohio 4838, P17, 873 N.E.2d 872, quoting *Krause v. State* (1972), 31 Ohio St.2d 132, 285 N.E.2d 736, overruled on other grounds, *Schenkolewski v. Cleveland Metroparks Sys.* (1981), 67 Ohio St.2d 31, 426 N.E.2d 784, paragraph one of the syllabus.

[*P24] At first blush, R.C. 2315.21(B) appears procedural because it mandates a particular process for certain tort actions. The uncodified language associated with R.C. 2315.21(B), however, suggests a different legislative purpose.

[*P25] In uncodified section 3 of SB 80, the General Assembly made a "statement of findings [**14] and intent." That statement included the General Assembly's findings that the "current civil litigation system represents a challenge to the economy of the state of Ohio," and "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)(1) and (2). The General Assembly also found that "[r]eform to the punitive damages law in Ohio is urgently needed to restore balance, fairness, and predictability to the civil justice system." Id. at section 3(A)(4)(a).

[*P26] Most important for our purposes here, the General Assembly distinguished between non-economic damages, which compensate a plaintiff, and punitive

damages, which punish a defendant. The General Assembly expressed its belief that "inflation of noneconomic damages is partially due to the improper consideration of evidence of wrongdoing in assessing pain and suffering damages." Id. at section 3(A)(6)(d). And it also found that "[i]nflated damage awards create an improper resolution of civil justice claims. The increased and improper cost of litigation and resulting rise in insurance premiums is passed [**15] on to the general public through higher prices for products and services." Id. at section 3(A)(6)(e).

[*P27] On these grounds, the General Assembly concluded that, for certain injuries not subject to statutory caps, courts should instruct juries that evidence of misconduct should only be considered for purposes of awarding punitive damages, not non-economic damages. Then the General Assembly stated: "In cases in which punitive damages are requested, defendants should have the right to request bifurcation of a trial to ensure that evidence of misconduct is not inappropriately considered by the jury in its determination of liability and compensatory damages." Id. at section 3(A)(6)(f).

[*P28] From these expressions of legislative intent, we conclude that R.C. 2315.21(B) [**16] is a substantive law. While it mandates a particular procedure for tort actions, that mandate is for the purpose of creating and defining a defendant's right to request bifurcation to ensure that the jury does not inappropriately consider the defendant's misconduct when also determining questions of liability and compensatory damages. The General Assembly defined this right as important to a fair and balanced system of civil justice.

[*P29] The Supreme Court of Ohio reached a similar conclusion in *Loyd*. In that case, the court considered whether a statute creating a method for obtaining relief from a child support order conflicts with Civ.R. 60(B), which allows relief from a judgment within a reasonable time or within one year, depending on the circumstances. Looking beyond the express language of the statute, the court considered the General Assembly's declaration that " 'it is a person's * * * substantive right to obtain relief " from a child support order. Id. at P14. The court acknowledged that the statutory provisions "are necessarily packaged in procedural wrapping," but nevertheless concluded that "the [**17] General Assembly intended to create a substantive right to address potential injustice." Id. Therefore, the court concluded, the statutes "do not conflict with Civ.R. 60(B) in such a way as to violate the separation of powers required by Section 5(B), Article IV of the Ohio Constitution." Id. at P15.

[*P30] Based on this precedent, we must similarly conclude that R.C. 2315.21(B) is necessarily packaged in procedural wrapping. Nevertheless, based on the General Assembly's express intent to create a right of bifurcation to address potential unfairness, we conclude that the law is substantive. In reaching this conclusion, we do not consider the wisdom of the General Assembly's public policy choices. See *Proctor* at P23, quoting *Bernardini v. Bd. of Edn. for the Conneaut Area City School Dist.* (1979), 58 Ohio St. 2d 1, 4, 387 N.E.2d 1222 (" ' [W]hether an act is wise or unwise is a question for the General Assembly and not this court.' "). Instead, having determined that the General Assembly's intent was to create a substantive right for certain litigants, we conclude that R.C. 2315.21(B) does not conflict with Civ.R. 42(B) in such a way as to violate the separation of powers required by Section 5(B), Article IV of the Ohio Constitution.

III. [**18] Conclusion

[*P31] For all these reasons, we sustain appellants' assignments of error. We reverse the trial court's denial of appellants' motion to bifurcate pursuant to R.C. 2315.21(B). We remand this matter to the Franklin County Court of Common Pleas for further proceedings consistent with this decision and applicable law.

Judgment reversed and cause remanded.

SADLER, J., concurs.

BROWN, J., concurs in part and dissents in part.

CONCUR BY: BROWN (In Part)

DISSENT BY: BROWN (In Part)

DISSENT

BROWN, J., concurring in part and dissenting in part.

[*P32] I concur with the majority's determination that the trial court's entry was a final appealable order under R.C. 2505.02(B)(6). Additionally, I agree R.C. 2315.21(B) conflicts with Civ.R. 42(B). However, because I believe R.C. 2315.21(B) governs a procedural matter expressly reserved for the Supreme Court of Ohio by Section 5(B), Article IV of the Ohio Constitution, I would overrule appellants' assignments of error. Therefore, I must respectfully dissent in this respect.

[*P33] The crux of the majority's decision is that, although Civ.R. 42(B) and R.C. 2315.21(B) conflict, the statute is substantive, not procedural, and, thus, the statute prevails. In considering the meaning of the word "substantive" [**19] as used in the Ohio Constitution, the Supreme Court of Ohio has ruled that "substantive" is in contradistinction to the word "procedural"; "substantive" means that body of constitutional, statutory, and

common law which creates, defines, and regulates the rights of the parties, whereas "procedural" pertains to the method of enforcing rights or obtaining redress. *Krause v. State* (1972), 31 Ohio St.2d 132, 145, 285 N.E.2d 736.

[*P34] As this court has noted before, "[w]hile these general rules are easily stated, they are not so easily applied." *State v. Weber* (1997), 125 Ohio App.3d 120, 130, 707 N.E.2d 1178. The Supreme Court has commented on several occasions that it is sometimes difficult to draw a distinction between substantive and procedural law. See, e.g., *Gregory v. Flowers* (1972), 32 Ohio St.2d 48, 56, 290 N.E.2d 181, citing Chamberlayne, Modern Law of Evidence (1911), 217 ("[t]he distinction between substantive and procedural law is artificial and illusory"); *French v. Dwiggins* (1984), 9 Ohio St.3d 32, 33-34, 9 Ohio B. 123, 458 N.E.2d 827 ("[t]he remedial-procedural versus substantive dichotomy is seldom an easy distinction to make"); *Cook v. Matvejs* (1978), 56 Ohio St.2d 234, 237, 383 N.E.2d 601 (conceding there is a "somewhat muddled distinction" between procedural and substantive [**20] rights). Nevertheless, courts continue to be called upon to draw such a distinction.

[*P35] Here, the majority concludes that, despite the appearance that the statute addresses a procedural issue, the uncodified language associated with R.C. 2315.21(B) suggests the legislative purpose of the statute is to create and define a defendant's right to request bifurcation to ensure that the jury does not inappropriately consider the defendant's misconduct when also determining liability and compensatory damages. The majority reasons that the General Assembly's intent was to address potential unfairness and injustice.

[*P36] However, I would find that R.C. 2315.21(B) addresses a procedural matter. Many authorities have termed bifurcation a procedural matter. For example, in *Martin v. Grange Mut. Ins. Co.*, 11th Dist. No. 2004-G-2558, 2004 Ohio 6950, P49, the court held that the trial court has wide discretion in applying various "procedural devices" used to manage a class action, including bifurcation of common and individual liability issues. This court stated the same in *Grant v. Becton Dickinson & Co.*, 10th Dist. No. 02AP-894, 2003 Ohio 2826, P65, in which we held that various "procedural devices" were [**21] within the trial court's wide discretion in managing a class action, including bifurcation of common and individual liability issues. In addressing the same statute at issue here, the Supreme Court has also couched bifurcation as an issue of procedure, stating "[t]he S.B. 80 amendments to [R.C. 2315.21] included a procedure for bifurcation of proceedings for compensatory and punitive damages." *Arbino v. Johnson & Johnson*, 116 Ohio St.3d 468, 2007 Ohio 6948, P85, 880 N.E.2d 420. In *State ex rel. Ohio Academy of Trial Lawyers v. Sheward* (1999), 86 Ohio St.3d 451, 1999 Ohio 123, 715 N.E.2d 1062, the Supreme Court even more explicitly deemed bifurcation under R.C. 2315.21(B) procedural in nature. In finding H.B. No. 350, a predecessor "tort-reform" attempt, to be unconstitutional in toto, the Supreme Court of Ohio in *Sheward* indicated R.C. 2315.21(B)(1) "governs the procedural matter of bifurcating tort actions into compensatory and punitive damage stages." Id. at 487. The Supreme Court's procedural depiction in *Sheward* is powerfully persuasive.

[*P37] Notwithstanding the above authorities, the majority finds R.C. 2315.21 is substantive because it creates and defines a defendant's right to request bifurcation to ensure fairness and justice. [**22] I disagree on two counts. I do not believe the statute "creates" any right that was not in existence prior to its enactment. The right to request bifurcation existed long before R.C. 2315.21(B), and the right to a fair trial has been in formal existence since at least 1851, when Section 16, Article I of the Ohio Constitution became effective. In addition, Civ.R. 42(B) has already been promulgated by the Supreme Court of Ohio to ensure fairness and justice. Civ.R. 42(B) specifically provides that a court may order a separate trial to avoid prejudice. Further, one of the express purposes of all of the rules in the Ohio Rules of Civil Procedure, per Civ.R. 1(B), is "to effect just results" and administer justice. These purposes address the precise ills that the majority indicates R.C. 2315.21(B) was enacted to ward against. Like Civ.R. 42(B), R.C. 2315.21(B) enacts procedural rules to address a method of enforcing rights in the courtroom. In addition, that R.C. 2315.21(B) was enacted to promote fairness for a specific class of litigants in a specific type of case does not render it any different from the procedural law in Civ.R. 42(B), which promotes fairness for all litigants in all [**23] cases. Under the majority's analysis, the legislature could enact any legislation designed to address fairness and injustice, and the legislation would constitute substantive law that would usurp the Ohio Rules of Civil Procedure. For these reasons, I would find that the bifurcation of court proceedings is procedural as it pertains to the method of enforcing rights and obtaining redress rather than creating, defining or regulating the rights of the parties.

[*P38] Accordingly, I would overrule appellants' assignments of error.