

11-0779

IN THE SUPREME COURT OF OHIO

MONICA J. PLAUGER, et al.,)

Plaintiffs-Appellees,)

vs.)

JACOB O. ONIALA, et al.,)

Defendants,)

and)

ETHAN DAVID KNOWLES,)

Defendant-Appellant.)

On Appeal from the Stark
County Court of Appeals,
Fifth Appellate District

Court of Appeals
Case No. 2010 CA 00204

**NOTICE OF CERTIFIED CONFLICT OF
APPELLANT ETHAN DAVID KNOWLES**

Donald P. Wiley (0016389)
Baker, Dublikar, Beck, Wiley & Mathews
400 South Main Street
North Canton, Ohio 44720
Telephone: (330) 499-6000
Fax: (330) 499-6423
E-mail: dwiley@bakerfirm.com
Counsel for Appellant
Ethan David Knowles

Vivianne Whalen (0061788)
Michael D. Demchak (0029317)
Suite 206 Belden Village Tower
4450 Belden Village Street, NW
Canton, Ohio 44718
Telephone: (330) 454-2136
Fax: (330) 454-3224
Counsel for Appellees
Monica J. Plauger, et al.

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MAY 09 2011
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**NOTICE OF CERTIFIED CONFLICT OF
APPELLANT ETHAN DAVID KNOWLES**

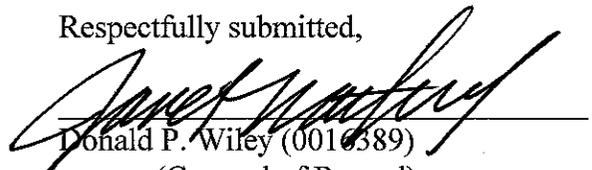
Appellant, Ethan David Knowles, hereby gives notice, pursuant to Supreme Court Rule of Practice 4.1, that the Fifth District Court of Appeals has issued an order certifying a conflict in this case with the decision of the Tenth District Court of Appeals in Hanners v. Ho Wah Genting Wire and Cable (Dec. 10, 2009), Franklin App. No. 09AP-361, 2009-Ohio-6481. A certified copy of the appellate court's order in the within appeal is attached hereto. Copies of the decisions rendered in this case and the identified conflict case are also attached hereto. Plaughter v. Oniala (Mar. 14, 2011), Stark App. No. 2010 CA 00204, 2011-Ohio-1207, 2011 Ohio App. LEXIS 1041; Hanners v. Ho Wah Genting Wire and Cable (Dec. 10, 2009), Franklin App. No. 09AP-361, 2009-Ohio-6481, 2009 Ohio App. LEXIS 5432.

The question of law certified in conflict is as follows:

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).

See, Havel v. Villa St. Joseph, (Supreme Court Case No. 2010-2148), 127 Ohio St. 3d 1530, 2011-Ohio-376. This issue is also pending before this Court in Myers v. Brown (Supreme Court Case No. 2011-0529), (Feb. 22, 2011), Stark App. No. 2010 CA 00238, 2011-Ohio-892. See also, Monica Plaughter v. Jacob Oniala (Supreme Court Case No. 2011-0688).

Respectfully submitted,


Donald P. Wiley (0016389)

(Counsel of Record)

James F. Mathews (0040206)
BAKER, DUBLIKAR, BECK
WILEY & MATHEWS

400 South Main Street
North Canton, Ohio 44720
Phone: (330) 499-6000
Fax: (330) 499-6423
E-mail: dwiley@bakerfirm.com
Counsel for Appellant
Ethan David Knowles

PROOF OF SERVICE

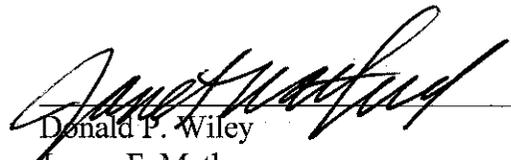
Copies of the foregoing notice of certified conflict were served by ordinary U. S. mail this 6TH day of May, 2011, to:

Vivianne Whalen, Esq.
Michael D. Demchak, Esq.
Suite 206 Belden Village Tower
4450 Belden Village Street, NW
Canton, Ohio 44718
Counsel for Plaintiffs-Appellees

Cari Fusco Evans, Esq.
Fischer, Evans, Robbins & Geiser, Ltd.
4505 Stephen Circle, NW - Suite 100
Canton, Ohio 44718
Counsel for Defendant Jacob O. Oniala

Robert J. Olender, Esq.
Strachan Miller & Olender Co., LPA
1940 Huntington Building
925 Euclid Avenue
Cleveland, Ohio 44115-1407
Counsel for Defendant State Farm Mutual
Automobile Insurance Company

Kimberly K. Wyss, Esq.
Marshall, Dennehey, Warner,
Coleman and Goggin
The Everett Building
39 East Market Street, Suite 301
Akron, Ohio 44308
Counsel for Defendant State Farm Mutual
Automobile Insurance Company



Donald P. Wiley

James F. Mathews

BAKER, DUBLIKAR, BECK,

WILEY & MATHEWS

Counsel for Appellant

NANCY S. FEINBOLD
CLERK OF COURT OF APPEALS
STARK COUNTY, OHIO
11 MAY -3 AM 8:54

IN THE COURT OF APPEALS
FIFTH APPELLATE DISTRICT
STARK COUNTY, OHIO

MONICA J. PLAUGER, et al.,) CASE NO. 2010 CA 00204
Plaintiffs-Appellees,)
vs.)
JACOB O. ONIALA, et al.,) JUDGMENT ENTRY
Defendants,)
and)
ETHAN DAVID KNOWLES,)
Defendant-Appellant.)

This matter is before the Court on the Motion to Certify a Conflict pursuant to Ohio R. App. P. 25 and Ohio Const. Art. IV, Section 3(B)(4), of appellant, Ethan David Knowles. The appellant asserts that our judgment is in conflict with a judgment rendered by another Ohio court of appeals on the following issue:

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).

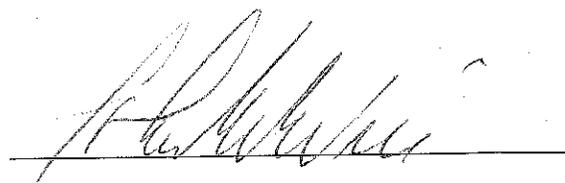
The Court finds that our decision rendered in this case is in direct conflict, upon the same question of law, with Hanners v. Ho Wah Genting Wire and Cable Co. (Dec. 10, 2009), Franklin App. No. 09AP-361, 2009-Ohio-6481. Accordingly, the appellant's Motion to Certify a Conflict is granted, and this issue is, therefore, hereby certified to the Ohio Supreme Court for review and final determination.

A TRUE COPY TESTE:
NANCY S. FEINBOLD, CLERK
J. Flickinger
5/4/11

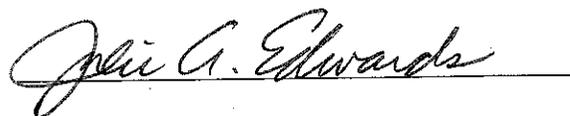
4

We further find the identical issue is already pending before the Ohio Supreme Court in Havel v. Villa St. Joseph, Supreme Court Case No. 2010-2148.

IT IS SO ORDERED.







JUDGES

Copies to:

Donald P. Wiley, Esq.
Vivianne Whalen, Esq./Michael D. Demchak, Esq.
Cari Fusco Evans, Esq.
Robert J. Olender, Esq.
Kimberly K. Wyss, Esq.



1 of 100 DOCUMENTS

MONICA J. PLAUGHER, et al., Plaintiffs-Appellees -vs- JACOB O. ONIALA, et al., Defendants And ETHAN DAVID KNOWLES, Defendant-Appellant

Case No. 2010 CA 00204

COURT OF APPEALS OF OHIO, FIFTH APPELLATE DISTRICT, STARK COUNTY

2011 Ohio 1207; 2011 Ohio App. LEXIS 1041

March 14, 2011, Date of Judgment Entry

PRIOR HISTORY: [**1]

CHARACTER OF PROCEEDING: Civil Appeal from the Court of Common Pleas, Case No. 2009 CV 01992.

DISPOSITION: Affirmed.

COUNSEL: For Plaintiffs-Appellees: VIVIANNE WHALEN, MICHAEL D. DEMCHAK, Canton, Ohio.

For Defendant-Appellant: DONALD P. WILEY, BAKER, DUBLIKAR, BECK, WILEY & MATHEWS, North Canton, Ohio.

JUDGES: Hon. Sheila G. Farmer, P. J., Hon. John W. Wise, J., Hon. Julie A. Edwards, J. Farmer, J. and Edwards, J. concur.

OPINION BY: John W. Wise

OPINION

Wise, J.

[*P1] Appellant Ethan David Knowles appeals from the August 2, 2010, Judgment Entry entered in the Stark County Court of Common Pleas denying Appellant's motion to bifurcate the punitive damages claim from the liability and compensatory damages claims.

[*P2] Appellees are Monica J. Plaugher and Gary J. Plaugher.

STATEMENT OF THE FACTS AND CASE

[*P3] On December 10, 2007, Plaintiff-Appellee Monica J. Plaugher was involved in a motor vehicle accident with Defendant-Appellant Ethan Knowles.

Knowles vehicle struck Plaugher's vehicle broadside at the intersection of Cleveland Avenue and Mt. Pleasant. Witnesses to the accident stated that it appeared that Knowles accelerated through the red light without even looking in the direction of the traffic light, and that he and his teenage passengers were engaged [**2] in horseplay.

[*P4] Plaugher brought a personal injury action against Knowles. In addition to seeking compensation for personal injuries caused by the motor vehicle accident, the complaint also alleges that Knowles engaged in such conduct so as to qualify for an award of punitive damages.¹

1 Appellee's Complaint also included personal injury claims against Jacob Oniala resulting from a separate automobile collision. No punitive damages claims were asserted against Oniala. Both injury claims were scheduled to be tried together.

[*P5] This matter was scheduled for trial to begin during the week of August 2, 2010.

[*P6] On July 26, 2010, Appellant Knowles filed a motion to bifurcate the punitive damages claim from the claims for compensatory damages. Appellees filed a memorandum in opposition on the same day.

[*P7] By Judgment Entry filed August 2, 2010, the trial court denied Appellant Knowles' motion to bifurcate.

[*P8] It is from this decision that Appellant now appeals, raising the following assignment of error for review:

ASSIGNMENT OF ERROR

[*P9] "I. DOES R.C. § 2315.21(B) (AS AMENDED BY SB 80 -- EFFECTIVE APRIL 7, 2005) SUBSTANTIVELY CONFLICT WITH CIVIL RULE 42(B) SO AS TO VIOLATE ARTICLE IV, § 5(B) OF THE OHIO CONSTITUTION?"

I.

[*P10] [*3] In Appellant's sole assignment of error, Appellant contends that the trial court erred in denying his motion to bifurcate. We disagree.

[*P11] Appellant herein relies on a Tenth District case, *Hanners v. Ho Wah Genting Wire & Cable, Franklin App. No. 09AP-361, 2009 Ohio 6481*, for the proposition that the trial court's refusal to apply R.C. § 2315.21(B) because of a conflict with a civil rule amounts to a declaration of unconstitutionality.

[*P12] This Court recently reviewed this exact issue in *Myers v. Brown, Stark App.No. 2010-CA-00238, 2011 Ohio 892*, wherein we found that R.C. § 2315.21 (B) insofar as it mandates bifurcation, is unconstitutional because it violates Section 5 (B) Article IV of the Ohio Constitution.

[*P13] In reaching this decision, this Court found:

[*P14] "R.C. 2315.21 (B) makes bifurcation of a tort action mandatory if there are claims for both compensatory and punitive and exemplary damages and if any party requests it. By contrast, Civ.R. 42 (B) provides a court may order a separate trial of a claim, cross-claim, counterclaim or third-party claim or of any separate issue or of any number of claims. Thus, the Rule expressly vests the trial court with discretion in deciding whether bifurcation [*4] is necessary. The Rule contains no exception for tort actions. The statute and Rule are clearly in conflict.

[*P15] "The *Ohio Constitution, Section 5 (B), Article IV* gives the Ohio Supreme Court exclusive authority to prescribe rules governing the practice and procedure in all courts of the state. The Constitution provides where a law conflicts with a rule promulgated by the Supreme Court, the law has no force or effect. This section articulates one of the basic concepts of United States jurisprudence, the separation of powers of the judicial and legislative branches. *State ex rel. Loyd v. Lovelady, 108 Ohio St. 3d 86, 2006 Ohio 161, 840 N.E. 2d 1062*.

[*P16] "If there is a conflict between the Rule and the statute, the court's Rules prevail on procedural matters, but the legislature's statutes prevail on substantive matters. *State ex rel. Sapp v. Franklin County Court of Appeals, 118 Ohio St. 3d 368, 2008 Ohio 2637, 889 N.E. 2d 500*. Substantive laws or rules relate to rights

and duties giving rise to a cause of action, while procedural rules concern the "machinery" for carrying on the suit. *Norfolk Southern Railroad Company v. Bogle, 115 Ohio St. 3d 455, 2007 Ohio 5248, 875 N.E. 2d 919*, citing *Jones v. Erie Railroad Company (1922), 106 Ohio St. 408, 1 Ohio Law Abs. 104, 140 N.E. 366*.

[*P17] [*5] "The *Hanners* court found R.C. 2315.21 (B) is a substantive law because even though it mandates particular procedures for tort actions, the legislative intent was to create and define a defendant's right to insure the jury does not inappropriately consider the defendant's misconduct when determining questions of liability or compensatory damages. *Hanners, supra, at paragraph 28*.

[*P18] "By contrast, the *Havel*² court found the statute is procedural, because it "plainly and unambiguously regulates the procedure at trial for determining compensatory and punitive damages in a tort action" *Havel* at paragraph 29. We agree.

2 *Havel v. Villa St. Joseph, Cuyahoga App. No. 94677, 2010 Ohio 5251*.

[*P19] "We find R.C.2315.21 (B) is not substantive, because it does not create or define rights and duties giving rise to a cause of action. The statute gives defendants no additional rights, but sets out the procedural rules whereby courts can better protect the rights to a jury and to due process that the parties have always possessed.

[*P20] "We find R.C. 2315.21 (B) clearly conflicts with the Supreme Court's Rules and the Rule controls. We also conclude insofar as R.C. 2315.21 (B) mandates bifurcation, it is unconstitutional, [*6] because it violates Section 5 (B) Article IV of the Ohio Constitution."

[*P21] Based on this Court's decision in *Myers, supra*, we hereby affirm the decision of the trial court.

[*P22] Appellant's sole assignment of error is overruled.

[*P23] For the foregoing reasons, the judgment of the Court of Common Pleas, Stark County, Ohio, is affirmed.

By: Wise, J.

Farmer, J. and

Edwards, J. concur

JUDGES JUDGMENT ENTRY

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas, Stark County, Ohio, is affirmed.

Costs assessed to Appellant.



1 of 100 DOCUMENTS

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 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 separation 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. Dwiggin* (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.