

ORIGINAL

IN THE SUPREME COURT OF OHIO

Sandra Havel, as the Personal Representative of the Estate of John Havel (Deceased), Appellee,

CASE NO. 2010-2148 On Appeal from the Court of Appeals for Cuyahoga County, Eighth Appellate District, Case No. CA 94677

vs.

Villa St. Joseph, et al., Appellants.

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APPELLEE'S BRIEF IN OPPOSITION TO APPELLANTS' JOINT MOTION TO CONSOLIDATE ORAL ARGUMENT DATE

Now comes Appellee Sandra Havel, as the personal representative of the Estate of John Havel (deceased), by and through her attorney, Blake A. Dickson of The Dickson Firm, L.L.C., and respectfully requests that this Honorable Court deny Appellants' Joint Motion to Consolidate Oral Argument Date for the present case with the case of Flynn v. Saber Health Care Group, LLC, Case No. 2010-1881, both of which are currently pending before this Court.

The Havel and Flynn Appellants contend that this Court should hear oral arguments for both of these cases on the same day because the issues presented in both cases share a common nexus. Such an assertion is attenuated at best. While it is true that in both cases the Defendant-Appellants requested motions to bifurcate some aspect of their respective jury trials, and that the respective trial courts denied those motions, that is were the similarities end.

There are serious doubts as to whether the Flynn Appellants properly invoked and pursued the bifurcation of the determination of compensatory damages from punitive damages under R.C. § 2315.21(B). If it is true that the Flynn Appellants did not properly move the trial court to bifurcate

pursuant to R.C. § 2315.21(B), then any decision that this Court reaches in *Flynn* may be limited to a narrow set of facts and may not apply generally to motions to bifurcate pursuant to R.C. § 2315.21(B), like the one denied in *Havel*. Certainly, the construction of the *Flynn* Appellants' requested bifurcation is quite different from the procedures described in R.C. § 2315.21(B). Consolidation of the oral arguments would blur the procedures, rights, and remedies that this Court is faced with in the respective cases.

Moreover, these cases concern quite different issues. In *Flynn v. Saber Health Care Group, LLC*, Case No. 2010-1881, this Court is presented with the question of whether a trial court's denial of a motion to bifurcate pursuant to R.C. § 2315.21(B), or perhaps Civ. R. 42(B), is a final appealable order under R.C. § 2505.02(B)(4) and (6). Meanwhile, in *Havel v. Villa St. Joseph*, Case No. 2010-2148, this Court has certified a conflict between the Eight District Court of Appeals' decision below in *Havel* and the Tenth District Court of Appeals' decision in *Hanners v. Ho Wah Genting Wire & Cable* (10th Dist. 2009), 2009 Ohio 6481, in order to ultimately determine whether R.C. § 2315.21(B) is a procedural law that irreconcilably conflicts with Civ.R. 42(B) and, therefore, violates Section 5(B), Article IV of the Ohio Constitution. Thus, in *Havel*, this Court must determine the nature and constitutionality of R.C. § 2315.21(B).

For the sake of clarity of issues, this Court should deny Appellants' Joint Motion. The respective parties in *Havel* and *Flynn* are not going to be addressing the issues presented in the other's appeal. The parties will largely be citing to different bodies of law and different principles found in the law. Where there is any overlap in the cases referred to by the parties, it will certainly be for different purposes and different legal propositions. Thus, consolidation of the oral arguments to the same date, even with separate oral arguments, may lead to much obfuscation of the issues

presented in these two cases, how these issues are presented at oral argument, how the issues interplay (if at all), and how this Court addresses the subtleties of the issues in the respective appeals.

Accordingly, Appellee Sandra Havel respectfully requests this Court deny Appellants' Joint Motion to Consolidate Oral Argument Date.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing, Appellee's Brief in Opposition to Appellants' Joint Motion to Consolidate Oral Argument Date, was sent via ordinary U.S. mail this **6th day of May, 2011**, to:

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