

[Cite as *Havel v. St. Joseph*, 2010-Ohio-5251.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 94677**

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**SANDRA HAVEL**

PLAINTIFF-APPELLEE

vs.

**VILLA ST. JOSEPH, ET AL.**

DEFENDANTS-APPELLANTS

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**JUDGMENT:  
AFFIRMED**

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Civil Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CV-709632

**BEFORE:**       McMonagle, P.J., Blackmon, J., and Jones, J.

**RELEASED AND JOURNALIZED:**   October 28, 2010

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CHRISTINE T. McMONAGLE, P.J.:

{¶ 1} 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

{¶ 2} 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.<sup>1</sup> She sought compensatory and punitive damages.

{¶ 3} 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

{¶ 4} 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 substantive 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

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

Court has 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).

{¶ 5} 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, 889 N.E.2d 500, ¶28; *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, 616 N.E.2d 1105.

{¶ 6} 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.)

{¶ 7} Civ.R. 42(B) of the Ohio Rules of Civil Procedure also addresses bifurcation 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.)

{¶ 8} Hence, the statute and the rule are in conflict. One requires bifurcation in a tort action; the other does not.

{¶ 9} In *Barnes v. Univ. Hosp. 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,<sup>2</sup> this court specifically addressed the argument that “R.C. 2315.21(B) mandates that compensatory and punitive damages be bifurcated upon request.” *Id.* at ¶34. 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. [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 ¶35. Without

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<sup>2</sup>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.

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.

{¶ 10} Despite this holding in *Barnes*, appellants urge us to follow *Hanners v. Ho Wah Genting Wire & Cable SDN BHD*, 10<sup>th</sup> 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

{¶ 11} Appellate courts in Ohio have jurisdiction to review the final orders or judgments of inferior courts within their 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.

{¶ 12} Under R.C. 2505.02(B), an order is a final order if it is one of the following:

{¶ 13} “(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 \* \* \*.”

{¶ 14} The trial court’s order in this case denying appellants’ motion to bifurcate proceedings did not determine the action or prevent a judgment, was not made in a special proceeding,<sup>3</sup> did not vacate or set aside a judgment or grant a new trial, did not grant or deny a provisional remedy,<sup>4</sup> 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).

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<sup>3</sup>“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).

<sup>4</sup>“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).

{¶ 15} 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 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).

{¶ 16} 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 ¶11. 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.

{¶ 17} 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:

{¶ 18} “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 ‘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 ¶13.

{¶ 19} 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,<sup>5</sup> 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 appellee’s motion to dismiss for lack of a final appealable order is denied.

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<sup>5</sup>The trial court’s order stated only, “Defendants’ Villa St. Joseph and Village of Marymount Motion (#2875841) to Bifurcate is denied.”

#### IV

{¶ 20} 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*.

{¶ 21} 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, ¶16, 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, ¶30. 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

{¶ 22} Moreover, we agree with *Barnes* that bifurcation is procedural and, hence, Civ.R. 42(B) prevails over R.C. 2315.21(B).

{¶ 23} 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, 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.*, ¶16, quoting *Jones*. By contrast, the court stated, “procedural rules concern ‘the machinery for carrying on the suit.’” *Id.*, quoting *Jones*.

{¶ 24} 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:

{¶ 25} “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, 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. \* \* \*

{¶ 26} “[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.*, ¶16-17.

{¶ 27} 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 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.

{¶ 28} 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.*, ¶13, quoting *Carnes v. Kemp*, 104 Ohio St.3d 629, 2004-Ohio-7107, 821 N.E.2d 180, ¶16. 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.*

{¶ 29} Here, however, the legislative intent is clear from the statute: R.C. 2315.21(B) plainly 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,<sup>6</sup> 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. *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.)

{¶ 30} 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 (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.

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<sup>6</sup>An uncodified section of S.B. 80. *Hanners*, ¶25-28.

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

A certified copy of this 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