# STATE OF MICHIGAN

# COURT OF APPEALS

| | |
|---|---|
| GRAND TRUNK WESTERN RAILROAD, INC.,<br><br>Plaintiff,<br><br>v<br><br>37TH CIRCUIT COURT JUDGE,<br><br>Defendant. | UNPUBLISHED<br>September 11, 2008<br><br>No. 273411<br>Calhoun Circuit Court<br>LC No. 04-004370-NO |

Before: Murray, P.J., and Whitbeck and Talbot, JJ.

MURRAY, P.J. (*dissenting*).

Although I agree with the majority that the trial court's decision to hold joint trials in these two asbestos cases is not the type of "bundling" that occurred prior to the promulgation of Administrative Order 2006-6, I respectfully dissent from the majority's conclusion that the trial courts joining of these two cases for purposes of trial was permissible under AO 2006-6.

As the administrative order makes clear, in 2006 the Supreme Court "determined that trial courts should be precluded from 'bundling' asbestos-related cases for settlement or trial." The administrative order provides that bundling should be precluded because "each case should be decided on its own merits, and not in conjunction with other cases." Hence, as the majority recognizes, the *purpose* of the administrative order was to preclude "bundling" and ensure that each case is decided on its own merits, rather than settled based upon the outcome of other cases. See 476 Mich xlv, opinion of Markman, J. (concurring). The trial court in this case has attempted to comply with this purpose by impaneling two juries to decide the cases of two individual plaintiffs who have filed separate suits against Grand Trunk Western Railroad, Inc. There is also no suggestion that resolution of these two cases will be used as leverage to settle other asbestos cases with Grand Trunk.

Court rules are to be interpreted like statutes, and because this administrative order is promulgated by the Supreme Court, as are the court rules, similar rules of construction should apply. *Rafferty v Markovitz*, 461 Mich 265, 270; 602 NW2d 367 (1999). In accordance with these principles, we cannot speculate as to the intent of the Supreme Court beyond the words employed in this administrative order. *In re Schnell*, 214 Mich App 304, 310; 543 NW2d 11 (1995). This is because we must always apply the plain and unambiguous language of the rule or order, since such language "speaks for itself." *Id.*, quoting *National Expedition Co v Detroit*, 169 Mich App 25, 29; 425 NW2d 497 (1988).

Although the trial court's action is consistent with the purpose of the administrative order, it is nevertheless still in violation of the order. That is because AO 2006-6 establishes the exclusive means for accomplishing the anti-bundling purpose. In particular, the administrative order provides that "no asbestos-related disease personal injury action *shall be joined* with any other such case for settlement or *for any other purpose*, with the exception of discovery." (Emphasis added.) Thus, according to the order, to ensure that each case is decided on its own merits, no asbestos-related case can be joined with any other such case for any purpose except discovery. The final sentence of the administrative order confirms this fact, as it provides that the order "in no way precludes or diminishes the ability of a court to consolidate asbestos-related disease personal injury actions *for discovery purposes only*." (Emphasis added.) Again, the order clearly indicates that the only joining or consolidation that can occur in asbestos-related personal injury actions can be for discovery purposes.

In my view, AO 2006-6 precludes trial courts from joining or consolidating two or more asbestos-related personal injury actions for any purpose other than discovery. That straightforward rule is the means by which the Supreme Court has decided the anti-bundling purpose can best be accomplished. Here, the trial court has "joined" two asbestos-related personal injury actions for purposes of trial.[1] Although the trial court's purpose in doing so was not to "bundle" these cases for settlement or other purposes, the "joining" of these two asbestos cases for trial nevertheless violated the plain language of the order.

Stated differently, "bundling" under the order occurs when two or more asbestos related personal injury cases are joined (or consolidated) together for any purpose other than discovery, as the only joining that can be done under the order is for discovery purposes. Any order that joins two such cases together is thus "bundling" the cases in violation of the order.

Application of these straightforward words is not easy in this case because, as noted already, I have no doubt that the esteemed and busy trial court judge was not trying these cases together for any of the purposes detailed in Justice Markman's concurring opinion, which was joined in by a majority of the Court. See 476 Mich xlv. But, as noted, my conclusion is that the Supreme Court has outlined how to avoid any bundling concerns in these cases, and that is by not allowing any such cases to be "joined" for any purpose other than discovery.

---

[1] The administrative order uses both "joined" and "consolidate" in the last two sentences of the second paragraph. As the Supreme Court remand order makes clear, the trial court never entered an order regarding plaintiffs' motion to consolidate, let alone one of consolidation under MCR 2.505 (or any other court rule), and never stated on the record that the cases were "consolidated." Thus, the trial court did not consolidate these two asbestos cases. This was also not a case involving the joinder of a party into an ongoing lawsuit, and the administrative order does not utilize "joined" in the sense of joinder of parties as provided in the court rules. See MCR 2.205 and 2.206. Nonetheless, the trial court has joined these cases together to the extent they are being tried together before separate juries.

I would therefore grant the complaint.

/s/ Christopher M. Murray