

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

LOUISE A. MYERS	:	JUDGES:
	:	Hon. W. Scott Gwin, P.J.
Plaintiff-Appellee	:	Hon. Sheila G. Farmer, J.
	:	Hon. Julie A. Edwards, J.
-vs-	:	
	:	Case No. 2010-CA-00238
DAVID L. BROWN, JR., ET AL	:	
	:	
Defendant-Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Civil appeal from the Stark County Court of Common Pleas, Case No. 2009CV03124

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: February 22, 2011

APPEARANCES:

For Plaintiff-Appellee For Defendant-Appellant

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Gwin, P.J.

{¶1} Plaintiff-appellant Louise A. Myers appeals a judgment of the Court of Common Pleas of Stark County, Ohio, which overruled her motion to bifurcate her claim for punitive damages from her claim for compensatory damages filed against defendants-appellees David L. Brown, Jr. and AMCO Insurance Company. Appellant assigns a single error to the trial court:

{¶2} “I. THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN IT DENIED APPELLANT’S MOTION TO BIFURCATE PLAINTIFF’S PUNITIVE DAMAGES CLAIM PURSUANT TO R.C. 2315.21 (B).”

{¶3} The record indicates this case arose out of a traffic accident. Appellant alleged appellee Brown caused an accident while under the influence of alcohol and/or drugs, which resulted in personal injury to her. She alleged appellee Brown acted in malice, hatred, ill-will, a spirit of revenge, and/or a conscious disregard for the rights and safety of other persons, and she sought punitive damages. Her claim against AMCO is for uninsured/underinsured motorist coverage and medical payment coverage.

{¶4} On October 9, 2009, appellant filed a motion to bifurcate her punitive damages claim from her compensatory damages claim pursuant to R.C. 2315.21. The court overruled the motion, finding the case appellant relied on, *Hanners v. Ho Wah Genting Wire & Cable*, Franklin App. No. 09AP-361, 2009-Ohio-6481, was not binding on the trial court because it arose out of the Tenth District, and there was no case law out of the Fifth District yet.

{¶5} Appellee relies on a conflicting case out of the Eighth District, *Havel v. Villa St. Joseph*, Cuyahoga App. No. 94677, 2010-Ohio-5251.

{¶6} The first question which arises is whether the denial of a motion to bifurcate is a final appealable order. On this issue, the *Hanners* case and *Havel* case both found the order is final and appealable. We agree.

{¶7} R.C. 2315.21 (B), as amended effective April 7, 2005, requires that in a tort action that will be tried to a jury, where there is a claim for compensatory damages and for punitive and exemplary damages, then if any party moves for bifurcation, the trial court shall bifurcate the matter.

{¶8} This court has jurisdiction to review the final orders or judgments of trial courts pursuant to Section 3 (B)(2), Article IV of the Ohio Constitution and R.C. 2501.02. R.C. 2505.02 lists the circumstances under which an order is final. Subsection 6 is the provision pertinent here: “An order determining the constitutionality of any changes to the Revised Code *** made S.B.80 of 125th General Assembly, including the amendments of *** 2315.21 of the Revised Code.”

{¶9} Both the *Hanners* court and the *Havel* court found a trial court’s order denying a motion to bifurcate implicitly determines that the mandatory bifurcation language in R.C. 2315.21(B) is unconstitutional. *Hanners* at paragraph 13; *Havel*, supra, at paragraph 19.

{¶10} We find the order appealed from, implies the bifurcation language in the statute is unconstitutional, although it does not do so expressly. We conclude we have jurisdiction to review the matter.

{¶11} 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 is necessary. The Rule contains no exception for tort actions. The statute and Rule are clearly in conflict.

{¶12} 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.

{¶13} 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, 140 N.E. 366.

{¶14} 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.

{¶15} By contrast, the *Havel* 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.

{¶16} 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.

{¶17} 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, because it violates Section 5 (B) Article IV of the Ohio Constitution.

{¶18} The assignment of error is overruled.

{¶19} For the foregoing reasons, the judgment of the Court of Common Pleas of Stark County, Ohio, is affirmed.

By: Gwin, P. J.,

Farmer, J., and

Edwards, J., concur

HON. W. SCOTT GWIN

HON. SHEILA G. FARMER

HON. JULIE A. EDWARDS

WSG:clw 0209

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

LOUISE A. MYERS	:	
	:	
Plaintiff-Appellee	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
DAVID L. BROWN, JR., ET AL	:	
	:	
	:	
Defendant-Appellant	:	CASE NO. 2010-CA-00238

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

HON. W. SCOTT GWIN

HON. SHEILA G. FARMER

HON. JULIE A. EDWARDS