



OHIO HIGH COURT UPHOLDS KEY TORT REFORM PROVISION

by

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Earlier this year, the Supreme Court of Ohio upheld another aspect of the state's 2005 tort reforms, finding that bifurcation of the compensatory and punitive stages in a civil trial is a substantive right. *Havel v. Villa St. Joseph*, ____ Ohio St. 3d ____, 2012-Ohio-552 (2012). *Havel* continues the recent trend of Ohio courts affirming portions of the law as constitutional.

As part of tort reforms passed in 2005, the Ohio General Assembly enacted Ohio Revised Code Section 2315.21(B) ("R.C. 2315.21(B)"), providing that in any tort action, the trial of compensatory and punitive damages *shall* be bifurcated upon motion of any party. This provision directly conflicted with Ohio Rule of Civil Procedure 42(B) ("Civ. R. 42(B)"), which vests a trial court with *discretion* to bifurcate compensatory and punitive damages in any civil action.

In *Havel*, the plaintiff alleged that the negligence of several nursing homes and medical facilities caused the death of her decedent. 2012-Ohio-552 at ¶ 7. Two defendants moved to bifurcate the trial pursuant to R.C. 2315.21(B), and the trial court denied the motion. *Id.* The Eighth District Court of Appeals affirmed, holding that "R.C. 2315.21(B) is unconstitutional because it conflicts with Civ. R. 42(B), in violation of the separation of powers required by the Ohio Constitution, Article IV, Section 5(B), by purporting 'to legislate a strictly procedural matter already addressed by the Civil Rules.'" *Id.* at ¶ 8 (quoting 8th Dist. No. 94677, 2010-Ohio-5251). The Tenth District Court of Appeals reached the opposite conclusion in *Hanners v. Ho Wah Genting Wire & Cable SDNBHD*, 2009-Ohio-6481 (10th Dist.), and the Eighth District Court of Appeals certified the conflict to the Supreme Court of Ohio.

In holding that R.C. 2315.21(B) is constitutional, the Supreme Court of Ohio explained that under the Ohio Constitution, courts have authority to promulgate rules relating to matters of procedure, while the General Assembly has authority to establish substantive law. *Havel*, 2012-Ohio-522 at ¶ 2. Therefore, whether R.C. 2315.21(B) is unconstitutional depends on whether it is a substantive or procedural law. *Id.* at ¶ 16. The Court held that "the statements made by the General Assembly in the uncodified language of S.B. 80 compel the conclusion that although R.C. 2315.21(B) may be packaged in procedural wrapping, it is a substantive law because it creates a right to address potential injustice." *Id.* at ¶ 29 (internal quotations omitted). In particular, the Court relied on the following findings of the General Assembly in enacting R.C. 2315.21(B):

(d) While pain and suffering awards are inherently subjective, it is believed that this inflation of noneconomic damages is partially due to the improper consideration of evidence of wrongdoing in assessing pain and suffering damages. * * *

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(f) * * * 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. As additional protection, trial and appellate courts should rigorously review pain and suffering awards to ensure that they properly serve compensatory purposes and are not excessive.

Id. at ¶ 31 (quoting 2004 Am.Sub.S.B. 80, 150 Ohio Laws, Part V, 8028) (emphasis in original).

Based on these findings, the Court stated that the General Assembly “demonstrate[d] its intent to create a **substantive right** to ensure that evidence of misconduct is not inappropriately considered by the jury in its assessment of liability and its award of compensatory damages.” *Id.* at ¶ 32 (emphasis added). The Court concluded that “R.C. 2315.21(B) creates, defines, and regulates a substantive, enforceable right to separate stages of trial relating to the presentation of evidence for compensatory and punitive damages in tort actions and therefore takes precedence over Civ. R. 42(B) and does not violate the Ohio Constitution”

Havel resolves the conflict between the Eighth and Tenth District Courts of Appeals, and there now is no question that a defendant in an Ohio tort action has the right to bifurcation of compensatory and punitive damages upon request.

The federal procedural rule, like Ohio’s procedural rule, provides courts with discretion to bifurcate a trial. Fed. R. Civ. P. 42(b). Prior to *Havel*, federal courts viewed R.C. 2315.21(B) mandating bifurcation as a procedural law, making it irrelevant to the determination of bifurcation in federal courts. *See, e.g., Bennett v. Bd. of Educ. of Washington Cnty.*, No. C2-08-CV-0663, 2011 U.S. Dist. LEXIS 116412 (S.D. Ohio Oct. 7, 2011); *Valley Ford Truck, Inc. v. Phoenix Ins. Co.*, No. 1:10-CV-02170, 2011 U.S. Dist. LEXIS 29210 (N.D. Ohio March 7, 2011); *Steinberger v. State Farm Auto. Ins.*, No. 3:10-cv-015, 2010 U.S. Dist. LEXIS 100552 (S.D. Ohio Sept. 9, 2010). And, federal courts have been reluctant to bifurcate trials. *Bennett*, 2011 U.S. Dist. LEXIS 116412, at *16 (“[F]ederal courts have long adhered to the rule that bifurcation should be ordered only in exceptional cases because the piecemeal trial of separate issues in a single lawsuit or the repetitive trial of the same issue in severed claims is not to be the usual course.”) (quoting *GE Credit Union v. Nat’l Fire Ins.*, No. 1:09-cv-143, 2009 U.S. Dist. LEXIS 69085, *5 (S.D. Ohio Sept. 30, 2009)). In light of the Supreme Court of Ohio’s determination that R.C. 2315.21(B) is a substantive right as opposed to a procedural rule, the *Erie* doctrine compels federal courts applying Ohio law to adhere to the substantive right of bifurcation provided in R.C. 2315.21(B). *Erie R.R. Co. v. Tompkins*, 304 U.S. 64 (1938).

Havel continues the trend in upholding Ohio’s 2005 tort reform. *Arbino v. Johnson & Johnson*, 116 Ohio St. 3d 468, 2007-Ohio-6948 (2007), was the first decision to break from Ohio courts’ long tradition of striking down previous attempts at tort reform. In *Arbino*, the Supreme Court of Ohio upheld the constitutionality of the caps on noneconomic and punitive damages in Ohio Revised Code Sections 2315.18 and 2315.21. Then, in 2008, the Court upheld the constitutionality of the ten-year statute of repose in Ohio Revised Code Section 2305.10. *Groch v. Gen. Motors Corp.*, 117 Ohio St. 3d 192, 2008-Ohio-546 (2008). In 2010, it upheld the constitutionality of the employer intentional tort statute, Ohio Revised Code Section 2745.01, limiting the circumstances under which employees may sue their employers for workplace injuries. *Stetter v. R.J. Corman Derailment Serv.*, 125 Ohio St. 3d 280, 2010-Ohio-1029 (2010); *Kaminski v. Metal & Wire Prod. Co.*, 125 Ohio St. 3d 250, 2010-Ohio-1027 (2010). While constitutional challenges to the 2005 tort reforms continue, these decisions recognized that in enacting reform, the General Assembly cured the deficiencies that rendered the prior attempts at tort reform unconstitutional.