

From: Tim Fitzgerald

Date: Thu 6/14/2012 3:55 PM

Gallagher Sharp Newsflash:

Denial of Motion to Bifurcate Trial Involving Punitive Damages in Ohio Is Immediately Appealable

Today, June 14, 2012, the Supreme Court of Ohio held that a trial court's denial of a motion filed pursuant to R.C. 2315.21(B) to bifurcate a jury trial of a tort case seeking an award of punitive damages is final and immediately appealable pursuant to R.C. 2505.02(B)(6). See, *Flynn v. Fairview Village Retirement Community, Ltd.*, Slip Opinion No. 2012-Ohio-2582.

The appellate court had dismissed a defendant's appeal from the trial court's denial of a pretrial motion to bifurcate the punitive damage claim in a nursing home tort case. In reversing the court of appeals, the Supreme Court stated that, by denying the motion to bifurcate under R.C. 2315.21(B), the trial court "implicitly" determined that the amendment in 2004 to R.C. 2315.21(B) making bifurcation mandatory was unconstitutional on the grounds that the statute conflicts with the bifurcation rule found in the Ohio Rules of Civil Procedure. While Civ.R. 42(B) gives trial court's the discretion to bifurcate trials generally, the statutory provision makes bifurcation of a jury trial involving a punitive damage claim in a tort action mandatory upon the filing of a motion. The appellate court's rationale for dismissing the appeal was rejected earlier this year in *Havel v. Villa St. Joseph*, 131 Ohio St.3d 235, 2012-Ohio-552, where the Supreme Court held that the bifurcation mandated by R.C. 2315.21(B) is constitutional and does not conflict with Civ.R. 42(B).

Justice Paul Pfeifer was the lone dissenter from the Court's per curiam opinion.

A link to the *Flynn* opinion is here:

<http://www.supremecourtohio.gov/rod/docs/pdf/0/2012/2012-ohio-2582.pdf>

If you have any questions, please contact:

Timothy J. Fitzgerald

Appellate Practice Group Manager

Certified Appellate Specialist, Ohio State Bar Association

Gallagher Sharp

Sixth Floor, Bulkley Bldg.

1501 Euclid Avenue

Cleveland, OH 44115

Phone: (216) 241-5310

tfitzgerald@gallaghersharp.com

www.gallaghersharp.com