[Cite as *Bland v. Ajax Magnethermic Corp.*, 2011-Ohio-1247.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 95249

RAYMOND S. BLAND, EXECUTOR OF THE ESTATE OF ALBERT E. BLAND, ET AL.

PLAINTIFFS-APPELLANTS

vs.

AJAX MAGNETHERMIC CORP., ET AL.

DEFENDANTS-APPELLEES

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-701709

BEFORE: Keough, J., Cooney, P.J., and Rocco, J.

RELEASED AND JOURNALIZED: March 17, 2011

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KATHLEEN ANN KEOUGH, J.:

{¶ 1} Plaintiffs-appellants, Raymond S. Bland, Executor of the Estate of Albert E. Bland, and Mary L. Bland ("the Blands") appeal the trial court's

decision to administratively dismiss their complaint.[1] Finding no merit to the appeal, we affirm.

{¶ 2} In August 2009, Albert and Mary Bland filed an asbestos-related complaint against several companies, including Dana Companies, LLC, Foseco, Inc., Industrial Holdings Corporation, Trane US, Inc., and Traco Construction Services, Inc. f.k.a. The Rust Engineering Company, as well as "John Does 1-100 Manufacturers, Sellers, or Installers of Asbestos-Containing Products" (collectively "appellees"). The complaint alleged injury to Albert Bland from workplace exposure to products containing asbestos from 1959 through 1993.

{¶ 3} The appellees moved to administratively dismiss the Blands' complaint for failure to provide the required prima facie evidence to establish a claim for asbestosis as set forth in R.C. 2307.92(B).[2] Appellees argued that the medical records produced by the Blands did not contain the necessary B-read report to constitute "radiological evidence of asbestosis" as required by the statute. In response, the Blands claimed that the requirements of R.C. 2307.92(B) are inconsistent with current medical standards. Specifically, the

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[1]Albert E. Bland passed away November 2, 2009, and this court granted appellants' motion for substitution of parties.

[2]Defendants Flowserve Corp., f.k.a. Durametallic Corp., Gardner Denver Inc., Bosch Rexroth Corporation, and Eaton Hydraulics, LLC and its Char-Lynn Hydraulic Motors Division joined in the motion to administratively dismiss.

Blands argued that R.C. 2307.92(B) does not provide for a treating physician's use of the most modern imaging methods available to aid in the diagnosis of asbestosis, i.e., a high resolution CT scan ("HRCT"), and punishes the claimant who seeks out a physician who uses the most modern imaging methods by administratively dismissing his claim. Albert Bland's physician had ordered an HRCT scan to substantiate his initial opinion that asbestosis was a likely diagnosis. His physician concluded that the HRCT scan showed "diffuse bullous changes as well as interstitial changes consistent with the diagnosis of asbestosis."

{¶ 4} Following a hearing on appellees' motion, the trial court issued an order administratively dismissing the Blands' complaint without prejudice.

{¶ 5} The Blands appeal, arguing in their sole assignment of error that the trial court erred when it granted appellees' motion to administratively dismiss their complaint.

Standard of Review

{¶ 6} R.C. 2307.93(A)(1) requires a plaintiff in an asbestos action to file, "within thirty days after filing the complaint or other initial proceeding, a written report and supporting test results constituting prima-facie evidence of the exposed person's physical impairment that meets the minimum medical requirements specified in division (B), (C), or (D) of * * * [R.C.] 2307.92, whichever is applicable." When a defendant in an asbestos action challenges

the adequacy of the prima facie evidence of the exposed person's physical impairment, the trial court, using the standard for resolving a motion for summary judgment, must determine whether the proffered prima facie evidence meets the minimum medical requirements specified in R.C. 2307.92. R.C. 2307.93(B).

{¶ 7} Appellate review of summary judgment is de novo. *Grafton v. Ohio Edison Co.* (1996), 77 Ohio St.3d 102, 105, 671 N.E.2d 241. Summary judgment is proper only when the movant demonstrates that, viewing the evidence most strongly in favor of the non-movant, reasonable minds must conclude that no genuine issue of material fact remains to be litigated, and the moving party is entitled to judgment as a matter of law. *Hoover v. Norfolk S. Ry. Co.*, Cuyahoga App. Nos. 93479 and 93689, 2010-Ohio-2894, _12, citing *Doe v. Shaffer*, 90 Ohio St.3d 388, 2000-Ohio-186, 738 N.E.2d 1243.

{¶ 8} We are mindful in this appeal that we are not determining whether the appellees are ultimately liable to the Blands or whether Albert Bland had asbestosis; we are determining whether the Blands have satisfied the minimum medical requirements of R.C. 2307.92 to maintain their asbestos claim.

Prima Facie Showing

{¶ 9} R.C. 2307.92 establishes the minimum medical requirements that a plaintiff with an asbestos claim must satisfy to maintain the action and requires the plaintiff to make a prima facie showing of those minimum medical requirements.

{¶ 10} The case before us involves a plaintiff who alleged an asbestos claim based on a nonmalignant condition. Therefore, the claim is governed by R.C. 2307.92(B). In order to maintain a tort action alleging damages from a nonmalignant injury based on exposure to asbestos, R.C. 2307.92(B) requires, in pertinent part:

{¶ 11} "(B) No person shall bring or maintain a tort action alleging an asbestos claim based on a nonmalignant condition in the absence of a prima-facie showing, in the manner described in division (A) of section 2307.93 of the Revised Code, that the exposed person has a physical impairment, that the physical impairment is a result of a medical condition, and that the person's exposure to asbestos is a substantial contributing factor to the medical condition. That prima-facie showing shall include all of the following minimum requirements:

{¶ 12} "* * *

{¶ 13} "(3) A diagnosis by a competent medical authority, based on a medical examination and pulmonary function testing of the exposed person, that all of the following apply to the exposed person:

{¶ 14} "(a) The exposed person has a permanent respiratory impairment rating of at least class 2 as defined by and evaluated pursuant to the AMA guides to the evaluation of permanent impairment.

{¶ 15} "(b) Either of the following:

{¶ 16} "(i) The exposed person has asbestosis or diffuse pleural thickening, based at a minimum on radiological or pathological evidence of asbestosis or radiological evidence of diffuse pleural thickening. The asbestosis or diffuse pleural thickening described in this division, rather than solely chronic obstructive pulmonary disease, is a substantial contributing factor to the exposed person's physical impairment, based at a minimum on a determination that the exposed person has any of the following:

{¶ 17} "(I) A forced vital capacity below the predicted lower limit of normal and a ratio of FEV1 to FVC that is equal to or greater than the predicted lower limit of normal;

{¶ 18} "(II) A total lung capacity, by plethysmography or timed gas dilution, below the predicted lower limit of normal;

{¶ 19} "(III) A chest x-ray showing small, irregular opacities (s, t) graded by a certified B-reader at least 2/1 on the ILO scale.

{¶ 20} "(ii) If the exposed person has a chest x-ray showing small, irregular opacities (s, t) graded by a certified B-reader as only a 1/0 on the ILO scale, then in order to establish that the exposed person has asbestosis,

rather than solely chronic obstructive pulmonary disease, that is a substantial contributing factor to the exposed person's physical impairment the plaintiff must establish that the exposed person has both of the following:

{¶ 21} "(I) A forced vital capacity below the predicted lower limit of normal and a ratio of FEV1 to FVC that is equal to or greater than the predicted lower limit of normal;

{¶ 22} "(II) A total lung capacity, by plethysmography or timed gas dilution, below the predicted lower limit of normal."

{¶ 23} Both parties agree that the Blands' prima facie showing does not literally comply with the R.C. 2307.92(B). Therefore, the issue before this court is whether the medical evidence presented satisfies the Blands' burden to make a prima facie showing of physical impairment from asbestos exposure.

{¶ 24} The crux of this appeal centers around the requirement in R.C. 2307.92(B)(1)(b) that a plaintiff have a chest x-ray graded by a certified B-reader. Appellees contend that without the graded chest x-ray and evaluation, the Blands cannot make a prima facie showing and their complaint must be administratively dismissed. The Blands argue that the report of Mr. Bland's treating physician, who utilized an "HRCT scan" in his diagnosis of asbestosis, constitutes substantial compliance with the

requirements of R.C. 2307.92(B)(1)(b), and thus satisfied the prima facie showing.

{¶ 25} In support of their claim that R.C. 2307.92(B) permits substantial compliance, the Blands cite *Sinnott v. Aqua-Chem, Inc.*, Cuyahoga App. No. 88062, 2008-Ohio-3806. In *Sinnott*, the issue was whether a doctor-patient relationship was established to satisfy the requirement that the diagnosis of asbestosis be rendered by a "competent medical authority." This court held that a claimant who is treated by a team of doctors at a Veterans Administration hospital sufficiently demonstrates a doctor-patient relationship for purposes of R.C. 2307.91(Z). Id. at _23-24. See, also, *Rossi v. Consol. Rail Corp.*, Cuyahoga App. No. 94628, 2010-Ohio-5788. Contrary to the Blands' assertion, *Sinnott* did not adopt a "substantial compliance" standard. Rather, this court found that the doctor-patient relationship, which is not statutorily defined, varies depending on the treatment context. Specifically, this court found that "[R.C. 2307.92] is not in place to penalize veterans or other nontraditional patients who were properly diagnosed by competent medical authority personnel and have the medical records and other evidence to support their claim." *Sinnott* at _23. Accordingly, the Blands' reliance on *Sinnott* for the proposition that R.C. 2307.92(B) permits substantial compliance is misplaced.

{¶ 26} We find that R.C. 2307.92(B) does not permit substantial compliance. The Ohio Supreme Court held that "in cases of statutory construction, 'our paramount concern is the legislative intent in enacting the statute.'" *State v. Buehler*, 113 Ohio St.3d 114, 2007-Ohio-1246, 863 N.E.2d 124, ¶29, quoting *State ex rel. Steele v. Morrissey*, 103 Ohio St.3d 355, 2004-Ohio-4960, 815 N.E.2d 1107, ¶21. In determining intent, we look to the plain "language of the statute and the purpose that is to be accomplished by the statute, see *Rice v. CertainTeed Corp*. (1999), 84 Ohio St.3d 417, 419, 704 N.E.2d 1217, and 'when its meaning is clear and unambiguous,' we apply the statute 'as written.'" *Boley v. Goodyear Tire & Rubber Co.*, 125 Ohio St.3d 510, 2010-Ohio-2550, 929 N.E.2d 448, _20, quoting *Cheap Escape Co., Inc. v. Haddox, L.L.C.*, 120 Ohio St.3d 493, 2008-Ohio-6323, 900 N.E.2d 601, ¶9.

{¶ 27} Looking at the plain language of R.C. 2307.91 et seq., we note that the General Assembly expressly used the word "shall" in directing how a plaintiff bringing an action alleging an asbestos claim must proceed. See R.C. 2307.93. It also uses the word "shall" in dictating what the prima facie showing must include. See R.C. 2307.92. It is axiomatic that the word "shall" denotes mandatory compliance. *Ohio Dept. of Liquor Control v. Sons of Italy Legion*, 65 Ohio St.3d 532, 535, 1992-Ohio-17, 605 N.E.2d 368.

{¶ 28} R.C. 2307.92(B) clearly and unambiguously mandates that a chest x-ray graded by a certified B-reader is required. Nothing in R.C.

2307.92 indicates that the General Assembly intended for substantial compliance because it definitively requires a plaintiff alleging a nonmalignant injury caused by asbestos exposure to submit a B-reading of the chest x-ray. Furthermore, the chest x-ray must be graded by a certified B-reader according to the ILO scale. The statute does not allow for other types of radiologic tests or other interpretations of the chest x-ray. This exclusion of alternate tests and interpretations indicates strict compliance with the requirements of R.C. 2307.92. Utilizing one general and measurable standard establishes uniformity for all plaintiffs in a non-discriminatory manner. It is unclear how an application of substantial compliance would render or generate the same standards or results as required under the statute.

{¶ 29} It appears that the Blands are asking this court to modify R.C. 2307.92(B) by expanding the law to allow another medical diagnostic tool for the courts to rely on when determining whether a party has made a prima facie showing. We decline to act so boldly.

{¶ 30} As the Ohio Supreme Court has stated: "It is not a court's function to pass judgment on the wisdom of the legislation, for that is the task of the legislative body which enacted the legislation. The Ohio General Assembly, and not this court, is the proper body to resolve public policy

issues." (Internal citations and quotations omitted.) *State ex rel. Triplett v. Ross*, 111 Ohio St.3d 231, 2006-Ohio-4705, 855 N.E.2d 1174, ¶55.

{¶ 31} Accordingly, we find that R.C. 2307.92(B) does not permit substantial compliance as it pertains to the minimum medical requirements needed to maintain an action for a nonmalignant injury from asbestos exposure.

Constitutional Challenges

{¶ 32} The Blands also challenge the constitutionality of R.C. 2307.92(B), claiming that requiring a plaintiff to secure a B-reading evaluation of a chest x-ray in order to maintain an action based on a nonmalignant condition resulting from asbestos exposure punishes the claimant who seeks out a physician who uses the most modern imaging methods to aid in the diagnosis of asbestosis, i.e., an HRCT scan.

{¶ 33} The Blands advance three constitutional arguments for this court to consider: (1) R.C. 2307.92(B) deprives them of their property right to redress for injury in violation of the open courts provision in the Ohio Constitution; (2) R.C. 2307.92(B) deprives them of their property right to redress for injury in violation of the Due Process Clauses of the United States and Ohio Constitutions; and (3) R.C. 2307.92(B) deprives them of equal protection under the law in violation of the United States and Ohio Constitutions. After carefully reviewing the relevant law and the intent of

the General Assembly in enacting Amended Substitute House Bill 292 ("H.B. 292"), we find that these three challenges fail.

{¶ 34} "[Ohio] statutes enjoy a strong presumption of constitutionality. An enactment of the General Assembly is presumed to be constitutional, and before a court may declare it unconstitutional it must appear beyond a reasonable doubt that the legislation and constitutional provisions are clearly incompatible. A regularly enacted statute of Ohio is presumed to be constitutional and is therefore entitled to the benefit of every presumption in favor of its constitutionality. That presumption of validity of such legislative enactment cannot be overcome unless it appear[s] that there is a clear conflict between the legislation in question and some particular provision or provisions of the Constitution." (Internal citations and quotations omitted.) *State v. Cook* (1998), 83 Ohio St.3d 404, 409, 700 N.E.2d 570. Furthermore, any constitutional analysis must begin with "the understanding that it is not this court's duty to assess the wisdom of a particular statute." *Groch v. Gen. Motors Corp.*, 117 Ohio St.3d 192, 2008-Ohio-546, 883 N.E.2d 377, _141, citing *Brennaman v. R.M.I. Co.* (1994), 70 Ohio St.3d 460, 468, 639 N.E.2d 425.

{¶ 35} The Ohio Supreme Court has previously considered various constitutional challenges surrounding H.B. 292 and its statutory enactments, and has concluded that the requirements of R.C. 2307.91, 2307.92, and

2307.93 are procedural and remedial in nature and are not substantive and punitive. See *Norfolk S. Ry. Co. v. Bogle*, 115 Ohio St.3d 455, 2007-Ohio-5248, 875 N.E.2d 919 (holding that the prima facie filing requirements of R.C. 2307.92 are procedural in nature, and their application to federal claims brought in state court does not violate the Supremacy Clause); *Ackison v. Anchor Packing Co.*, 120 Ohio St.3d 228, 2008-Ohio-5243, 897 N.E.2d 1118 (holding that the requirements of R.C. 2307.91, 2307.92, and 2307.93 are remedial and procedural and may be applied without offending the Retroactivity Clause of the Ohio Constitution).

{¶ 36} With these presumptions of constitutionality and holdings by the Ohio Supreme Court in mind, we address the Blands' constitutional challenges.

Open Courts and Right to a Remedy

{¶ 37} The Blands claim that by refusing to allow a physician to rely on an HRCT scan to establish the prima facie showing, R.C. 2307.92(B) violates the open courts provision of the Ohio Constitution.[3]

{¶ 38} Section 16, Article I, of the Ohio Constitution provides, "[A]ll courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and

[3]The Blands do not challenge the requirement of submitting a prima facie showing; rather, they challenge the type of medical diagnostic testing the statute requires.

shall have justice administered without denial or delay." This provision contains two distinct guarantees. First, legislative enactments may restrict individual rights only "by due course of law," a guarantee equivalent to the Due Process Clause of the Fourteenth Amendment to the United States Constitution. *Groch* at _108, citing *Sedar v. Knowlton Const. Co.* (1990), 49 Ohio St.3d 193, 199, 551 N.E.2d 938. The second guarantee in Section 16 is that "all courts shall be open to every person with a right to a remedy for injury to his person, property, or reputation, with the opportunity for such remedy being granted at a meaningful time and in a meaningful manner." Id. at _109, quoting *Sedar* at 199.

{¶ 39} "The right-to-a-remedy provision of Section 16, Article I applies only to existing, vested rights, and it is state law which determines what injuries are recognized and what remedies are available * * * ." Id. at _150, quoting *Sedar* at 202. "A right is not regarded as vested in the constitutional sense unless it amounts to something more than a mere expectation or interest based upon an anticipated continuance of existing law." *In re Special Docket No. 73958*, Cuyahoga App. Nos. 87777 and 87816, 2008-Ohio-4444, _29, quoting *In re Emery* (1978), 59 Ohio App.2d 7, 11, 391 N.E.2d 746. Furthermore, the legislature may not enact laws that take away a remedy to an injured person. *State ex rel. Ohio Academy of Trial Lawyers v. Sheward* (1999), 86 Ohio St.3d 451, 476, 1999-Ohio-123, 715 N.E.2d 1062.

{¶ 40} This court has previously concluded that the enactment of H.B. 292 does not take away a remedy to an injured party; it "merely affects the method and procedure by which the cause of action is recognized, protected, and enforced, not the cause of action itself." *In re Special Docket No. 73958* at _31, citing *Wilson v. AC&S, Inc.*, 169 Ohio App.3d 720, 2006-Ohio-6704, 864 N.E.2d 682. The Ohio Supreme Court has characterized the medical evidence criteria, including R.C. 2307.92(B), as mere administrative procedures, not substantive limits on a plaintiff's access to the courts. See, generally, *Bogle* and *Ackison*. Because it has been found that H.B. 292 does not take away a remedy, its statutory enactments are equally sound.

{¶ 41} R.C. 2307.92 and 2307.93 "do not relate to the rights and duties that give rise to [the] 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." *Bogle* at _17, quoting *Jones v. Erie RR. Co.* (1922), 106 Ohio St. 408, 412, 140 N.E. 366.

{¶ 42} R.C. 2307.92(B) does not deny a plaintiff a remedy; it merely changes the procedure in which a plaintiff can obtain a remedy. The General Assembly requires that a plaintiff obtain a chest x-ray and have it graded by a certified B-reader as the minimum medical requirement to maintain an action for a nonmalignant injury from asbestos exposure. This is the

mandatory minimum. Although a physician may utilize advanced imaging technology for diagnosis and treatment, the basic test of a chest x-ray needs to be performed to maintain a cause of action related to asbestos exposure in Ohio courts. This basic test gives all plaintiffs equal access to the courts because it is a baseline test.

{¶ 43} Accordingly, the Blands have not been denied access to the courts. The statutory provisions of H.B. 292, including R.C. 2307.92(B)(1)(b), do not prevent the Blands from pursuing their claim. Moreover, H.B. 292 was enacted in 2004, prior to Mr. Bland's diagnosis of asbestosis. Therefore, the requirements had been established; the Blands merely needed to follow them to maintain their cause of action. The fact that Mr. Bland's physician chose to order an HRCT scan for diagnosis did not alleviate the Blands' burden to obtain the necessary chest x-ray and reading to satisfy their prima facie showing. The Blands' argument that they are being denied access to the courts is without merit.

{¶ 44} Accordingly, we find that R.C. 2307.92(B)'s requirement of a chest x-ray read by a certified B-reader does not violate the open courts provision of the Ohio Constitution because it does not shut the courthouse doors on plaintiffs with a nonmalignant condition caused by asbestos exposure.

Due Process and Equal Protection Under the Law

{¶ 45} The Blands submit that R.C. 2307.92(B) violates their right to due process and equal protection under the law.

{¶ 46} As previously stated, Section 16, Article I of the Ohio Constitution, also guarantees a person the right to "due course of law." Section 2, Article I, of the Ohio Constitution, which governs a person's right to equal protection under the law, provides, "[A]ll political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform, or abolish the same, whenever they may deem it necessary; and no special privileges or immunities shall ever be granted, that may not be altered, revoked, or repealed by the general assembly."

{¶ 47} The Blands propose that the distinction between individuals with a nonmalignant injury from asbestos exposure diagnosed using an HRCT scan versus those diagnosed using a B-reading of a chest x-ray, is both arbitrary and irrational and bears no relationship to the legislature's goal of prioritizing the claims of those most severely injured from asbestos exposure.

{¶ 48} We find that no fundamental right or suspect class is involved in this case, and, therefore, we review R.C. 2307.92(B) under the rational-basis test. See *Groch* at _156-157. Under this test, a challenged statute will be upheld if it is rationally related to a legitimate government purpose and is not unreasonable or arbitrary. *Mominee v. Scherbarth* (1986), 28 Ohio St.3d 270,

274, 503 N.E.2d 717. In conducting this review, we must consider whether the General Assembly's purpose in enacting the legislation at issue provides adequate support to justify the statute's effects. *Groch* at _157. Additionally, the challenged statute will be upheld if the classifications it creates bear a rational relationship to a legitimate government interest or are grounded on a reasonable justification, even if the classifications are not precise. Id. See, also, *Arbino v. Johnson & Johnson*, 116 Ohio St.3d 468, 2007-Ohio-6948, 880 N.E.2d 420, ¶49.

{¶ 49} Due process and equal protection challenges to legislation require us to review the legislative purpose behind the enactments. In Section 3 of H.B. 292, the General Assembly made a "statement of findings and intent" explaining its purpose and intent for the enactment.

{¶ 50} Statistical evidence was presented to the legislature that a vast majority of the asbestos claimants were not sick or did not suffer from asbestos-related impairment. Section 3(A)(5). Recognizing that asbestos litigation was growing exponentially and that compensatory resources were quickly being depleted, the General Assembly's primary intent was to "give priority to those asbestos claimants who can demonstrate actual physical harm or illness caused by exposure to asbestos * * *." Section 3(B). In determining how to achieve this goal, the legislature established minimum

medical criteria a plaintiff needed to show to maintain a cause of action alleging injury from asbestos exposure:

{¶ 51} "(5) * * * As a result, the General Assembly recognizes that reasonable medical criteria are a necessary response to the asbestos litigation crisis in this state. Medical criteria will expedite the resolution of claims brought by those sick claimants and will ensure that resources are available for those who are currently suffering from asbestos-related illnesses and for those who may become sick in the future. As stated by Dr. James Allen, a pulmonologist, Professor and Vice-Chairman of the Department of Internal Medicine at The Ohio State University, the medical criteria included in this act are reasonable criteria and are the first step toward ensuring that impaired plaintiffs are compensated. In fact, Dr. Allen noted that these criteria are minimum medical criteria. In his clinical practice, Dr. Allen stated that he always performs additional tests before assigning a diagnosis of asbestosis and would never rely solely on these medical criteria." Section 3(A)(5), H.B. 292.

{¶ 52} For purposes of both due process and equal protection, we find that the above findings adequately demonstrate that R.C. 2307.92 bears a rational relationship to a legitimate government purpose and is not unreasonable or arbitrary. The General Assembly recognized that the "costs of compensating exposed individuals who were not sick jeopardizes the ability

* * * to compensate people with cancer and other serious asbestos-related diseases, now and in the future." Section 3(A)(6). Establishing the minimum medical criteria for bringing a claim bears a rational relationship to the General Assembly's goal of prioritizing existing claims and preserving future claims.

{¶ 53} The classes the Blands have created involve those individuals who obtain a chest x-ray and those who obtain an HRCT scan. We find that reasonable justification exists for drawing the distinction. The legislature provides one means of imaging technology, a chest x-ray graded by a certified B-reader. As we previously stated, this requirement is the mandatory minimum that the General Assembly requires to be performed to maintain a nonmalignant action due to asbestos exposure. This is a baseline test.

{¶ 54} The Blands' argument could be persuasive if the General Assembly required a medical test not available to all physicians or a procedure limited only to those who could afford such procedure. We could then see how this medical testing requirement would deny plaintiffs access to the courts, and their rights to due process, and violate the Equal Protection Clause. However, the requirement of a chest x-ray graded by a certified B-reader is the mandatory minimum medical requirement, and we glean from the parties and legislative findings that this procedure is available to all physicians and affordable to all potential claimants. This minimum allows

access to the courts and creates uniformity to treat all claims equally. It establishes an unbiased threshold for courts to apply in preserving the General Assembly's intent to give priority to the most injured, fully preserve the rights of claimants, enhance the ability of the courts to supervise and control litigation, and conserve the resources available to those in need now and in the future.

{¶ 55} Accordingly, we find that the R.C. 2307.92(B)'s requirement of obtaining a chest x-ray graded by a certified B-reader does not violate the Due Process or Equal Protection Clauses of the United States and Ohio Constitutions because it is a minimum medical procedure available to all potential plaintiffs with a nonmalignant condition caused by asbestos exposure.

Conclusion

{¶ 56} There are a litany of medical techniques the General Assembly could have included in R.C. 2307.92(B), but it is clear the General Assembly intended that a chest x-ray be performed and graded by a certified B-reader before a claimant may maintain an action for nonmalignant injury due to asbestos exposure. We find that this is the minimum medical procedure a physician would use to start a diagnosis of asbestosis. We encourage the medical community to utilize state of the art technology in treatment and detection of cancers and other injury. However, for litigation, the General

Assembly requires a chest x-ray and evaluation as the mandatory test needed to maintain an action in Ohio courts.

{¶ 57} As now Chief Justice O'Connor stated in her concurring opinion in *Boley,* "[A]s judges, we are not to impose our views as to the best policies to address asbestos claims." *Boley* at _35. We agree. Merely because a litigant believes that a medical diagnostic tool is insufficient or that another is better suited does not render an otherwise constitutional law unconstitutional.

{¶ 58} Accordingly, we find that R.C. 2307.92(B) does not permit substantial compliance when establishing a prima facie showing for claims based on a nonmalignant condition from asbestos exposure. Moreover, the requirements of R.C. 2307.92(B) as they pertain to the Blands do not violate the open courts provision, or the Due Process or Equal Protection Clauses of the United States and Ohio Constitutions.

{¶ 59} The trial court did not err in administratively dismissing the Blands' complaint, and the Blands' sole assignment of error is overruled.

Judgment affirmed.

It is ordered that appellees recover from appellants costs herein taxed.

The court finds there were reasonable grounds for this appeal.

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.

KATHLEEN ANN KEOUGH, JUDGE

COLLEEN CONWAY COONEY, P.J., and
KENNETH A. ROCCO, J., CONCUR