

IN THE SUPREME COURT OF OHIO

WASSIM EL-HITTI, M.D., <i>et al.</i> ,)	CASE NO. 2025-0333
)	
<i>Appellants,</i>)	ON APPEAL FROM THE CUYAHOGA
)	COUNTY COURT OF APPEALS, EIGHTH
v.)	APPELLATE DISTRICT, CA NO. 24-113650,
)	
AMERICARE KIDNEY INSTITUTE, LLC,)	TRIAL COURT CASE NO. CV-21-955156
<i>et al.</i> ,)	
)	
<i>Appellee.</i>)	
)	

**BRIEF OF APPELLANTS WASSIM EL-HITTI AND SAURABH BANSAL, M.D.
ON WHETHER DENIAL OF MOTION TO BIFURCATE
CONSTITUTES A FINAL APPEALABLE ORDER**

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I. AN ORDER DENYING A MOTION TO BIFURCATE IS A FINAL APPEALABLE ORDER.

A. Denial of Bifurcation Necessarily Determine the Constitutionality of R.C. § 2315.21.

Final appealable orders are defined by statute. *See* R.C. § 2505.02. Under R.C. § 2505.02(B)(6), an order is final when it determines “the constitutionality of any changes to the Revised Code...including the amendment of section...2315.21 of the Revised Code.” *See* R.C. § 2505.02(B)(6).

This Court has interpreted R.C. § 2505.02(B)(6) to find that a trial court’s denial of a motion to bifurcate is a final appealable order under R.C. § 2505.02(B)(6) because an order denying a statutory right to bifurcation inherently questions the constitutionality of R.C. § 2315.21. *See Flynn v. Fairview Vill. Ret. Cmty., Ltd.*, 132 Ohio St. 3d 199, 201.

In *Flynn*, for example, the plaintiffs brought claims for negligence, violation of the Ohio Nursing Home Patients' Bill of Rights, violation of federal law under CFR Title 42, wrongful death, and falsification of medical records. *Flynn*, 132 Ohio St. 3d 199, 200. The defendants moved the trial court to bifurcate the trial on into two separate phases for compensatory damages and punitive damages. *Id.* The trial court denied the motion to bifurcate, and the court of appeals dismissed the appeal for lack of a final appealable order. *Id.* This Court *reversed*, holding that “[b]y denying appellants' motions to bifurcate under R.C. § 2315.21(B), the trial court implicitly determined that the S.B. 80 amendment to the statutory provision is unconstitutional, i.e., that Civ. R. 42(B) prevails over the conflicting statutory provision.” *Flynn*, 132 Ohio St. 3d 199, 201.

Notably, there was no requirement that either the parties or the trial court were required to expressly raise or decide the statute’s constitutionality. *See Flynn*, 132 Ohio St. 3d 199, 201 (citing *Havel*, 131 Ohio St. 3d 235). The denial itself had that effect and therefore triggered appellate

jurisdiction under R.C. § 2505.02(B)(6). *Flynn* cited *Havel* for the proposition that a trial court implicitly determines that R.C. § 2315.21 is unconstitutional when it denies a motion to bifurcate. *See Flynn*, 132 Ohio St. 3d 199, 201 (citing *Havel*, 131 Ohio St. 3d 235)

Because bifurcation under R.C. § 2315.21 is a substantive right, as explained below, a trial court’s refusal to apply the statute amounts to a determination that the legislature lacked authority to impose it – an implicit constitutional ruling within the meaning of R.C. § 2505.02(B)(6).

B. Bifurcation of Punitive Damages is a Substantive Right Beyond Trial Court Discretion.

This Court has unequivocally held that bifurcation of punitive damage claims under R.C. § 2315.21 is a substantive right provided by the legislature. *See Havel*, 131 Ohio St. 3d 235, syllabus at 236. It is not a procedural matter left to the discretion of the judiciary. *Id.*

This Court has rejected previous attempts of trial courts and appellate courts to characterize R.C. 2315.21 as a procedural matter over which the trial court has discretion. *See, e.g., Havel*, 131 Ohio St. 3d 235, syllabus at 236.

This is because bifurcation is a substantive right and a trial court has no discretion to ignore a legislative mandate of substantive law. *Havel*, 131 Ohio St. 3d 235, syllabus at 236. When a trial court refuses to apply a statute on a substantive issue of law for the sake of judicial economy, the trial court goes beyond exercising and abusing discretion—it violates the separation of powers by failing to follow a mandate a matter that is clearly settled as substantive right under Ohio law.

Here, the trial court’s order dated February 15, 2024 cited “identical evidence” and “judicial economy” as the basis for denying the motion to bifurcate and requiring that trial on compensatory damages and punitive damages proceed in a single phase of trial. (Tr. Ct. Doc. 200) The trial court’s reasoning mirrors the approach taken in the now-overruled opinions from the Eighth District in *Havel v. Villa St. Joseph* (8th Dist.), 2010-Ohio-5251, ¶¶ 9, 30, and *Barnes v.*

Univ. Hosps. of Cleveland (8th Dist.), 2006-Ohio-6266, ¶ 35. Both decisions found that trial courts have discretion to treat bifurcation as a procedural matter and inherently ruled that R.C. § 2315.21 is unconstitutional to the extent it attempts to divest trial courts of discretion over a procedural matter of how a trial proceeds.

In *Barnes*, the trial court and Eighth District reasoned:

[I]ssues surrounding compensatory damages and punitive damages in this case were closely intertwined. MedLink's request to bifurcate would have resulted in two lengthy proceedings where essentially the same testimony given by the same witnesses would be presented. Knowing that bifurcation would require a tremendous amount of duplicate testimony, the presiding judge determined it was unwarranted.

2006-Ohio-6266, ¶ 35.

This Court's decision in *Havel* expressly rejected that reasoning, holding that trial courts have no discretion over whether to hear claims for compensatory and punitive damages in separate proceedings. 131 Ohio St. 3d 235, syllabus at 236.

Therefore, under the binding precedent of *Havel* and *Flynn*, a trial court's denial of a motion to bifurcate punitive damages constitutes a final appealable order, as bifurcation is a substantive right established by the legislature and not subject to the trial court's discretion.

II. CONCLUSION

For all these reasons, the trial court's denial of the motion to bifurcate punitive damages constitutes a final appealable order under R.C. 2505.02(B)(6). By refusing to apply the statutory mandate of R.C. 2315.21, the court implicitly determined the constitutionality of the statute, as this Court recognized in *Havel* and *Flynn*. Bifurcation is a substantive right provided by the legislature, not a procedural discretion of the trial court, and the denial here violated that mandate. Accordingly, this Court has jurisdiction to review the February 15, 2024 order.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on December 29, 2025 the foregoing *BRIEF* was filed electronically with the Clerk of Courts and served by email to counsel for Appellee Americare Kidney Institute, LLC pursuant to S.Ct.Prac.R. 3.11(C)(1) as follows:

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