

COURT OF APPEALS  
FAIRFIELD COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

WESTANNCO SERVICES INC., ET  
AL.

Plaintiffs - Appellants

-vs-

PAMELA JOAN BIGHAM

Defendant – Appellee

Case No. 2025 CA 00017

Opinion And Judgment Entry

Appeal from the Court of Common Pleas,  
Case No. 2024-CV-00799

Judgment: Reversed

Date of Judgment Entry: January 2, 2026

**BEFORE:** Andrew J. King; Robert G. Montgomery; Kevin W. Popham, Appellate  
Judges

**APPEARANCES:** PERCY SQUIRE, for Plaintiffs-Appellants; BRIAN M. GARVINE, for  
Defendant-Appellee.

*King, P.J.*

{¶ 1} Plaintiffs-Appellants, Westannco Services, Inc. and Randy Bigham, appeal  
the May 6, 2025 entry of the Fairfield County Common Pleas Court, General Division,  
dismissing their complaint. Defendant-Appellee is Pamela Joan Bigham. We reverse the  
trial court.

FACTS AND PROCEDURAL HISTORY

{¶ 2} Westannco is a company specializing in the servicing of refrigerated  
medical and biomedical equipment. Randy Bigham is the founder, sole shareholder, and  
primary operator of the business. Pamela Joan Bigham married Randy and worked for  
Westannco for a time. On September 23, 2022, Pamela filed a complaint for divorce in

the Fairfield County Common Pleas Court, Domestic Relations Division (Case No. 2022DR00272). Westannco was a named party to the case.

{¶ 3} On September 25, 2024, appellants filed a complaint against Pamela in the Fairfield County Common Pleas Court, General Division, alleging claims for commercial disparagement, trade libel, tortious interference with customer business relationships, tortious interference with the business relationship between Westannco and Chillco (a company that hired Randy for subcontract work), and both intentional and negligent infliction of emotional distress. Basically, appellants alleged Pamela was making false communications and defamatory statements to customers and others in a calculated effort to destroy Westannco. Appellants sought injunctive relief and damages. At the time of this filing, the divorce action was still pending and at times was very contentious.

{¶ 4} On December 9, 2024, Pamela filed a motion to dismiss the complaint under Civ.R. 12(B)(1), challenging subject matter jurisdiction and arguing the Domestic Relations Court had exclusive jurisdiction to hear appellants' claims or in the alternative, the jurisdictional priority rule dictated a dismissal. By entry filed May 6, 2025, the trial court granted the motion, finding the jurisdiction priority rule applied and therefore, it lacked jurisdiction to hear the matter.

{¶ 5} Appellants filed an appeal with the following assignment of error:

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{¶ 6} "THE TRIAL COURT ERRED WHEN IT DETERMINED THE JURISDICTIONAL PRIORITY RULE VESTED EXCLUSIVE JURISDICTION OVER THIS ACTION IN THE FAIRFIELD COUNTY COURT OF DOMESTIC RELATIONS."

{¶ 7} In their sole assignment of error, appellants claim the trial court erred in determining the jurisdictional priority rule applied and therefore, the Domestic Relations Court had exclusive jurisdiction in the matter. We agree.

{¶ 8} Curiously, appellants spend a significant part of their appellate brief arguing that the Domestic Relations Court does not have exclusive jurisdiction over their claims, an argument advanced by Pamela "which the trial court adopted." Appellants' Brief at 15, 17-21. But the trial court never adopted the exclusive jurisdiction argument; in fact, as will be discussed, it specifically found the two courts, the Domestic Relations Division and the General Division, had concurrent jurisdiction.

{¶ 9} "The standard of review for a dismissal pursuant to Civ.R. 12(B)(1) is whether any cause of action cognizable by the forum has been raised in the complaint." *State ex rel. Bush v. Spurlock*, 42 Ohio St.3d 77, 80 (1989). We review an appeal of a motion for dismissal under Civ.R. 12(B)(1) de novo. *Moore v. Franklin County Children Services*, 2007-Ohio-4128, ¶ 15 (10th Dist.).

{¶ 10} The pending divorce case was filed approximately two years prior to the subject complaint. Under the jurisdictional priority rule, "[a]s between courts of concurrent jurisdiction, the tribunal whose power is first invoked by the institution of proper proceedings acquires jurisdiction, to the exclusion of all other tribunals, to adjudicate upon the whole issue and to settle the rights of the parties." *State, ex rel. Phillips v. Polcar*, 50 Ohio St.2d 279 (1977), syllabus, approving and following *John Weenink & Sons Co. v. Court of Common Pleas*, 150 Ohio St. 349 (1948).

{¶ 11} In *State ex rel. Dunlap v. Sarko*, 2013-Ohio-67, ¶ 10-11, the Supreme Court of Ohio explained:

To be sure, it is a condition of the jurisdictional-priority rule that the claims and parties be the same in both cases, so "[i]f the second case is not for the same cause of action, nor between the same parties, the former suit will not prevent the latter." See *State ex rel. Judson v. Spahr*, 33 Ohio St.3d 111, 113, 515 N.E.2d 911 (1987).

Nevertheless, we have also recognized that the jurisdictional-priority rule can apply even when the causes of action and relief requested are not exactly the same, as long as the actions present part of the same "whole issue." *State ex rel. Otten v. Henderson*, 129 Ohio St.3d 453, 2011-Ohio-4082, 953 N.E.2d 809, ¶ 29; *State ex rel. Sellers v. Gerken*, 72 Ohio St.3d 115, 117, 647 N.E.2d 807 (1995).

{¶ 12} In *Neidert v. Neidert*, 2014-Ohio-4369, ¶ 13 (5th Dist.), this court stated in order to determine whether two cases involve the same "whole issue," the trial court must follow a two-part analysis:

"First, there must be cases pending in two different courts of concurrent jurisdiction involving substantially the same parties; and, second, the ruling of the court subsequently acquiring jurisdiction may affect or interfere with the resolution of the issues before the court where suit was

originally commenced." *Holmes Co. Board of Commissioners v. McDowell*, 5th Dist. Holmes No. 05CA007, 2006-Ohio-5017 [¶ 26]. If this test is satisfied, the court whose power was later invoked should dismiss the claims for lack of jurisdiction. *Id.*

{¶ 13} Our first inquiry is whether the two cases are pending in two different courts of concurrent jurisdiction involving substantially the same parties. The trial court answered this question in the affirmative, but we disagree. We begin by noting that both courts are within the Fairfield County Common Pleas Court. As we have previously observed, a common pleas court has wide constitutional jurisdiction but is subject to the General Assembly allotting its subject matter to different divisions within that court. See *State v. Thoen*, 2024-Ohio-5720 (5th Dist.); *Bellar v. Clary Trucking*, 2025-Ohio-932 (5th Dist.). In fact, we have legislation here explicitly stating that Fairfield County judges of the general division and the domestic relations division have the same powers, which the trial court noted. In its May 6, 2025 entry, the trial court determined the Fairfield County Common Pleas Court's Domestic Relations and General Divisions had concurrent jurisdiction. In so finding, the trial court cited R.C. 2301.03(U) [actually (V)] which states in part:

In Fairfield county, the judge of the court of common pleas whose term begins January 2, 1995, and successors, shall have the same qualifications, exercise the same powers and jurisdiction, and receive the same compensation as the other judges of the court of common

pleas of Fairfield county and shall be elected and designated as judge of the court of common pleas, division of domestic relations.

{¶ 14} Under this statute, the Domestic Relations Court in Fairfield County can "exercise the same powers and jurisdiction" as the other judges in the other divisions. Thus, the situation before us is not merely courts with concurrent jurisdiction over two cases; both of these cases invoked the jurisdiction of the same common pleas court.

{¶ 15} Before 2017, the Supreme Court had not affirmatively addressed the question of whether the jurisdictional priority rule applied when cases were filed within the same court. The Supreme Court then answered the question in the negative. See *State ex rel. Consortium For Economic & Community Development for Hough Ward 7 v. Russo*, 2017-Ohio-8133, ¶ 14 ("the jurisdictional-priority rule has no applicability when the cases are pending in the same court"). The Supreme Court went on to note that when cases are filed within the same court but with two different judges, there are superior procedural methods for resolving which judge should have both cases. *Id.* at ¶ 10. Possible resolution could involve the presiding judge assigning a judge into a different division or consolidating the cases under a single judge. *Id.*; See also Sup.R. 3.01(B).

{¶ 16} As explained above, the two cases were filed in the same court, e.g., the Fairfield County Common Pleas Court. Although the Supreme Court did not address two cases in two divisions of the same court, we find, at least in this situation, the rule announced in *Consortium* applies here to thwart the jurisdictional priority rule

{¶ 17} In so concluding, we observe the roots of the rule are found in the doctrine of subject matter jurisdiction. "When a court of competent jurisdiction acquires jurisdiction

of the subject matter of an action, its authority continues until the matter is completely and finally disposed of, and no court of co-ordinate jurisdiction is at liberty to interfere with its proceedings." *John Weenink & Sons Co. v. Court of Common Pleas of Cuyahoga County*, 150 Ohio St. 349 (1948), paragraph three of the syllabus. Here, there are not two different common pleas courts with concurrent subject matter jurisdiction—this is the same court with a case in two of its divisions. Any doubt that both divisions have the same general subject matter jurisdiction is eliminated by R.C. 2301.03(V). In such a situation, the jurisdictional priority rule does not apply.

{¶ 18} Moreover, not applying the jurisdictional priority rule to inter-divisional cases avoids deciding today a constitutional issue that the jurisdictional priority rule may create if applied to cases into divisions of the same court. The Supreme Court admonished us that "Ohio law abounds with precedent to the effect that constitutional issues should not be decided unless absolutely necessary." *Epcon Communities Franchising, L.L.C. v. Wilcox Development Group, L.L.C.*, 2024-Ohio-4989, ¶ 17, quoting *Hall China Co. v. Public Utilities Commission*, 50 Ohio St.2d 206, 210, (1977). Here, the case filed in the general division would entitle appellants to a jury trial, which springs from Article 1, Section 5 of the Ohio Constitution. But if this case proceeded solely within the divorce action, appellants would appear to lose their right to a jury trial. Civ.R. 75(C); See *Davis v. Spriggs*, 2010-Ohio-5802, ¶ 31-32 (5th Dist.); *Koepke v. Koepke*, 52 Ohio App.3d 47, 48 (6th Dist. 1989) ("spouses who wish to bring an action in tort separate from their divorce action inadvertently lose their right to a jury trial for the tort claim when a court chooses to combine the two causes of action").

{¶ 19} We acknowledge this court and the Eighth District reached a different result in cases prior to *Consortium*. See *Morello v. Ferrucio*, 2015-Ohio-1370, ¶ 12 (5th Dist.) ("the jurisdictional priority rule does apply as to cases filed in the general division and in the probate court, where the courts have concurrent jurisdiction" therefore, the trial court "did not err in applying the jurisdictional priority rule as to different divisions of the Stark County Common Pleas Court"); *In re Estate of Scanlon*, 2011-Ohio-1097, ¶ 21 (8th Dist.) ("the general division, common pleas court has concurrent jurisdiction with the probate court to address inter vivos trusts"). We find *Consortium* leads to a different result, at least as to the two divisions at issue before us e.g., the general division and domestic relations divisions.

{¶ 20} The Sixth District reached a different conclusion than this court in *State ex rel. Minshall v. Swift*, 2022-Ohio-2158, ¶ 3 (6th Dist.) ("the jurisdictional priority rule applies when the disputed jurisdiction is pending between two divisions in the same court of common pleas") but we find it distinguishable. The Sixth District cited to *Scanlon* without consideration of how *Consortium* impacted that precedent. We question whether the Sixth District would reach the same decision upon consideration of later Supreme Court precedent.

{¶ 21} In any event, there might be constitutional, statutory, and procedural reasons for treating the probate court differently. See *State v. Brown*, 2013-Ohio-2224, ¶ 13-19 (5th Dist.); Civ.R. 73. Thus, we do not reach the question of whether to overrule *Morello* or hold that *Consortium* extends to probate courts. But we find *Consortium* precludes applying the jurisdictional priority rule when two cases are filed in the same common pleas court, when the judges in different divisions are granted the same statutory

and constitutional subject matter jurisdiction. Because we find the first prong of the jurisdictional priority rule dispositive, we do not proceed to the second.

{¶ 22} On remand, the Fairfield County Common Pleas Court is free to consider appropriate ways to resolve both matters before it.

{¶ 23} Upon review, we find the trial court erred in dismissing the case.

{¶ 24} For the reasons stated in our accompanying Opinion, the judgment of the Fairfield County Court of Common Pleas is REVERSED.

{¶ 25} Costs to Appellee.

By: King, P.J.

Montgomery, J. and

Popham, J. concur.