

LEXSEE 2004 OHIO 515

**JEFFREY DAVIS, Plaintiff-Appellant vs. COWAN SYSTEMS, ET AL.,
Defendants-Appellees**

NO. 83155

**COURT OF APPEALS OF OHIO, EIGHTH APPELLATE DISTRICT,
CUYAHOGA COUNTY**

2004 Ohio 515; 2004 Ohio App. LEXIS 474

February 5, 2004, Date of Announcement of Decision

PRIOR HISTORY: **[**1]** CHARACTER OF PROCEEDINGS: Civil appeal from Common Pleas Court. Case No. CV-498015.

DISPOSITION: Judgment affirmed.

COUNSEL: For Plaintiff-Appellant: MICHAEL J. ROURKE, ESQ., Rourke & Blumenthal, Columbus, Ohio.

For Defendant-Appellee: JOHN F. McINTYRE, ESQ., Cowan Systems, et al., MICHAEL F. SCHMITZ, ESQ., Reminger & Reminger Co., LPA, Cleveland, Ohio.

For Defendant-Appellee: ROGER H. WILLIAMS, ESQ., Pamela J. Miranda, Williams, Sennett & Scully Co., Twinsburg, Ohio.

JUDGES: DIANE KARPINSKI and SEAN C. GALLAGHER, JJ., concur. FRANK D. CELEBREZZE, JR., PRESIDING JUDGE.

OPINION BY: FRANK D. CELEBREZZE, JR.

OPINION

JOURNAL ENTRY and OPINION

FRANK D. CELEBREZZE, JR., J.

[*P1] The appellant, Jeffrey Davis, appeals the trial court's decision to dismiss his lawsuit against the appellees, Cowan Systems, L.L.C., Leland Crocker and Pamela Miranda, because of the jurisdictional priority rule. After reviewing the arguments of the parties and the pertinent law, we affirm the decision of the lower court.

[*P2] This case involves a three-car motor vehicle accident, which occurred on November 19, 2001 in Portage County. The accident involved three drivers: plaintiff Jeffrey Davis, tortfeasor Pamela **[**2]** Miranda and defendant Leland Crocker. Plaintiff Jeffrey Davis resides in Lakewood, Ohio, tortfeasor Pamela Miranda resides in Alliance, Ohio, and defendant Leland Crocker resides in Ravenna, Ohio. At the time of the accident, defendant Leland Crocker was operating a motor vehicle owned by his employer, Cowan Systems, a limited liability company.

[*P3] On April 1, 2003, Davis filed a complaint in the Cuyahoga County Common Pleas Court against Cowan

Systems, Leland Crocker, and Pamela Miranda. The complaint alleges he sustained serious personal injuries in the November 19, 2001 motor vehicle accident.

[*P4] However, on January 6, 2003, *prior to the filing of the Cuyahoga County action*, Cowan Systems had already filed a complaint against tortfeasor Pamela Miranda in *Portage County*. In the Portage County action, Cowan Systems averred a claim of property damage resulting from Miranda's negligence in the same November 19, 2001 motor vehicle accident.

[*P5] On April 9, 2003, in response to Davis's complaint filed in Cuyahoga County, defendants Cowan Systems and Leland Crocker filed a motion with the Cuyahoga County Common Pleas Court to consolidate [**3] the Cuyahoga action with the previously filed Portage County action. However, on May 6, 2003, the defendants withdrew their motion to consolidate and instead filed a motion to dismiss the Cuyahoga County action. On June 13, 2003, the Cuyahoga County Common Pleas Court granted the defendants' motion to dismiss based on the jurisdictional priority rule. The trial court held in its June 16, 2003 memorandum of opinion and order:

[*P6] "In this instance, the two actions do in fact involve the 'whole issue' between the parties. First, the suits concern substantially the same parties.

[*P7] ****

[*P8] "Maintaining two separate actions in two separate courts will likely result in inconsistent rulings - particularly with respect to discovery, scheduling, and the merits of the cases. Thus, in order to avoid inconsistent rulings, and due to the facts that the parties are substantially similar, that the Cuyahoga County case was filed subsequent to the Portage County action, and that Plaintiff Davis will not be prejudiced as he may intervene in Portage County, the Court hereby grants Defendants' Motion to Dismiss pursuant to the jurisdictional priority rule. [**4] "

[*P9] Davis now appeals the trial court's decision to grant the defendants' motion to dismiss and presents one assignment of error for review:

[*P10] "The trial court erred in dismissing the lawsuit by Plaintiff-Appellant Jeffrey Davis against Defendants-Appellees Cowan Systems, LLC, Leland Crocker, and former Defendant Pamela Miranda in the Court of Common Pleas of Cuyahoga County and granting Defendant-Appellees Cowan and Crocker's Motion to Dismiss pursuant to the jurisdictional priority rule."

[*P11] The jurisdictional priority rule prevents the prosecution of two actions involving the same controversy in two courts of concurrent jurisdiction at the same time. "The jurisdictional priority rule provides that 'as between [state] 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. Racing Guild of Ohio v. Morgan (1985)*, 17 Ohio St.3d 54, 56, 17 Ohio B. 45, 476 N.E.2d 1060, 1062, quoting *State ex rel. Phillips v. Polcar (1977)*, 50 Ohio St.2d 279, 364 N.E.2d 33, [**5] syllabus.

[*P12] It is usually a condition of the operation of the state jurisdictional priority rule that the claims or causes of action be the same in both cases. Therefore, if the second case does not involve the same cause of action or the same parties, the first suit will normally not prevent the second case. *State ex rel. Red Head Brass v. Holmes Cty. Court of Common Pleas (1997)*, 80 Ohio St.3d 149, 1997 Ohio 143, 684 N.E.2d 1234.

[*P13] The general rule above is subject to an exception. Where a suit is commenced in one jurisdiction which involves the "whole issue" between the parties, *a second court may not interfere with the resolution of the issue filed in the first court.* *CWP Ltd. Pshp. v. Vitano (May 15, 1997)*, Cuyahoga App. No. 71314, 1997 Ohio App. LEXIS 2116.

[*P14] The determination of whether two cases concern the same "whole issue" is a two-step 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 [**6] commenced. Id.*

[*P15] In the instant matter, we find the two lawsuits in question involve substantially the same parties and liability witnesses, and arise out of the same occurrence, the November 19, 2001 motor vehicle accident.

[*P16] First, the two actions involve substantially the same parties. The Cuyahoga County action was brought by the appellant against defendants, Cowan Systems, Pamela Miranda and Leland Crocker. The Portage County case was brought by Cowan Systems against Pamela Miranda. It is clear that of the four parties in the Cuyahoga County case, two are also principal parties in the Portage County litigation. In addition, the appellant would have undoubtedly been called as a witness in the Portage County action. The jurisdictional priority rule does not require that both actions involve identical parties, allege the same causes of action, or request the same types of relief. Moreover, it may have been improper to proceed with the Portage County action without adding the appellant to the action.

[*P17] Second, in addition to the two suits involving substantially the same parties, a ruling in the Cuyahoga County case could certainly [**7] affect or interfere with the resolution of the issues in the case pending in Portage County. In the Cuyahoga action, the appellant seeks compensation for injuries resulting from the very same motor vehicle accident which caused Cowan Systems to bring suit against the tortfeasor for property damage in Portage County. The issue of liability has yet to be determined. Accordingly, it is difficult to imagine how the Cuyahoga action determination of liability would not affect the Portage County litigation or vice versa. Allowing the Cuyahoga action to proceed could lead to different juries coming to opposite conclusions on the issue of liability as it relates to the same accident, causing inconsistent rulings. This result is exactly what the jurisdictional priority rule was designed to prevent.

[*P18] Finally, we note that the appellant would not be prejudiced by dismissal of the Cuyahoga County because he could intervene as a plaintiff in the Portage County action. Because both elements of the jurisdictional priority rule are present, the Portage County Court has priority of jurisdiction to "adjudicate upon the whole issue and to settle the rights of the parties."

[*P19] [**8] The record clearly establishes that the underlying Cuyahoga County action involves substantially the same parties as the previously filed Portage County action, and any ruling by the Cuyahoga County Court will affect or interfere with the resolution of the same issues before the Portage County Court. Therefore, we find that the trial court properly granted appellees' motion to dismiss pursuant to the jurisdictional priority rule. Appellant's sole assignment of error is overruled.

[*P20] The judgment is affirmed.

Judgment affirmed.

DIANE KARPINSKI and SEAN C. GALLAGHER, JJ., concur.

It is ordered that appellees recover of appellant their costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas 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*. FRANK D. CELEBREZZE, JR.

PRESIDING JUDGE

N.B. This entry is an announcement of the court's decision. See *App.R. 22(B), 22(D) and 26(A)*; *Loc.App.R. 22*.

This decision will be journalized [**9] and will become the judgment and order of the court pursuant to *App.R. 22(E)* unless a motion for reconsideration with supporting brief, per *App.R. 26(A)*, is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per *App.R. 22(E)*. See, also, *S. Ct. Prac.R. II, Section 2(A)(1)*.