

ATTENTION

DIRECT ANY QUESTIONS ABOUT THE ANNOUNCEMENT TO WALTER S. KOBALKA,
REPORTER OF DECISIONS, AND DEBORAH J. BARRETT AT (614) 466-4961 OR
1-800-826-9010.

SUPREME COURT OF OHIO

COLUMBUS

ANNOUNCEMENT

9:00 A.M.

WEDNESDAY
February 1, 1995

MERIT DOCKET

93-2333. Archbold Truck Lines, Inc. v. Pub. Util. Comm.
Public Utilities Commission, Nos. 89-582-TR-AAC and 89-583-TR-AAC.
On motion to dismiss. Motion to dismiss sustained. Cause dismissed.
Moyer, C.J., Douglas, Wright, Resnick, F.E. Sweeney, Pfeifer
and Cook, JJ., concur.

93-2450. Aberdeen Express, Inc. v. Pub. Util. Comm.
Public Utilities Commission, Nos. 89-582-TR-AAC and 89-583-TR-AAC.
On motion to dismiss. Motion to dismiss sustained. Cause dismissed.
Moyer, C.J., Douglas, Wright, Resnick, F.E. Sweeney, Pfeifer
and Cook, JJ., concur.

94-617. State ex rel. Greenwood Chevrolet, Inc. v. Franklin Cty.
Court of Common Pleas.
Franklin County, No. 93APD12-1654. On motion to dismiss. Motion to
dismiss sustained. Cause dismissed.
Moyer, C.J., Douglas, Wright, Resnick, F.E. Sweeney, Pfeifer
and Cook, JJ., concur.

94-2539. Morgan v. Mengel.
In Mandamus. On motion to dismiss. Motion to dismiss sustained.
Cause dismissed.
Moyer, C.J., Douglas, Wright, Resnick, F.E. Sweeney, Pfeifer
and Cook, JJ., concur.

94-2555. State v. Carpenter.

Franklin County, No. 88AP-1181. On motion to dismiss. Motion to dismiss sustained. Cause dismissed.

Moyer, C.J., Douglas, Wright, Resnick, F.E. Sweeney, Pfeifer and Cook, JJ., concur.

94-2562. State ex rel. Cully v. Sweeney.

In Mandamus. On motion to dismiss or alternative motion for summary judgment. Motion to dismiss sustained. Cause dismissed.

Moyer, C.J., Douglas, Wright, Resnick, F.E. Sweeney, Pfeifer and Cook, JJ., concur.

94-2580. State ex rel. Hall v. Curran.

In Mandamus. On motion to dismiss by Judge Curran and on motion to dismiss of Gerald Fuerst and Deputy Clerk. Motions to dismiss sustained. Cause dismissed.

Moyer, C.J., Douglas, Wright, Resnick, F.E. Sweeney, Pfeifer and Cook, JJ., concur.

94-2595. State ex rel. Fowler v. Stark Cty. Court of Common Pleas.

In Mandamus. Sua sponte, cause dismissed.

Moyer, C.J., Douglas, Resnick and Pfeifer, JJ., concur.

Wright, F.E. Sweeney and Cook, JJ., dissent and would grant an alternative writ.

94-2621. State ex rel. Madison v. Ohio Adult Parole Auth.

In Mandamus. On answer of respondent. Answer treated as motion to dismiss. Motion to dismiss sustained. Cause dismissed.

Moyer, C.J., Douglas, Wright, Resnick, F.E. Sweeney, Pfeifer and Cook, JJ., concur.

94-2635. State ex rel. Turner v. Ghee.

In Mandamus. On answer of respondent. Answer treated as motion to dismiss. Motion to dismiss sustained. Cause dismissed.

Moyer, C.J., Douglas, Wright, Resnick, F.E. Sweeney, Pfeifer and Cook, JJ., concur.

94-2640. Comen v. Durfey.

In Mandamus. On motion to dismiss or alternative motion for summary judgment. Motion to dismiss sustained. Cause dismissed.

Moyer, C.J., Douglas, Wright, Resnick, F.E. Sweeney, Pfeifer and Cook, JJ., concur.

94-2642. State ex rel. Mebane v. Ghee.

In Mandamus. On answer of respondent. Answer treated as motion to dismiss. Motion to dismiss sustained. Cause dismissed.

Moyer, C.J., Douglas, Wright, Resnick, F.E. Sweeney, Pfeifer and Cook, JJ., concur.

94-2644. State ex rel. Starr v. Eighth Dist. Court of Appeals.

In Procedendo. On motion to dismiss. Motion to dismiss sustained. Cause dismissed.

Moyer, C.J., Douglas, Wright, Resnick, F.E. Sweeney and Cook, JJ., concur.

Pfeifer, J., dissents.

94-2670. State ex rel. McFarland v. Ghee.

In Mandamus. On answer of respondent. Answer treated as motion to dismiss. Motion to dismiss sustained. Cause dismissed.

Moyer, C.J., Douglas, Wright, Resnick, F.E. Sweeney, Pfeifer and Cook, JJ., concur.

94-2676. Brenneman v. Curran.

In Mandamus. On motion to dismiss. Motion to dismiss sustained. Cause dismissed.

Moyer, C.J., Douglas, Wright, Resnick, F.E. Sweeney, Pfeifer and Cook, JJ., concur.

94-2691. State ex rel. Bloomfield v. Ohio Adult Parole Auth.

In Mandamus. On answer of respondent. Answer treated as motion to dismiss. Motion to dismiss sustained. Cause dismissed.

Moyer, C.J., Douglas, Wright, Resnick, F.E. Sweeney, Pfeifer and Cook, JJ., concur.

94-2697. State ex rel. Triplett v. Gillie.

On complaint in quo warranto, procedendo and other matters relating to the practice of law. Sua sponte, cause dismissed.

Moyer, C.J., Douglas, Wright, Resnick, F.E. Sweeney, Pfeifer and Cook, JJ., concur.

DISMISSALS, SUA SPONTE, NO SUBSTANTIAL CONSTITUTIONAL QUESTION AND DISCRETIONARY APPEALS, IF APPLICABLE, NOT ALLOWED

94-2092. State v. Main.

Stark County, No. CA-9562.

Wright, J., dissents.

94-2099. Smith v. Cosco, Inc.

Hamilton County, No. C-940289.

94-2113. State v. Pecsì.

Summit County, No. 16539.

Cook, J., not participating.

94-2115. State v. Fitton.

Wood County, No. 93WD118.

Resnick, J., not participating.

94-2120. State v. Buhrman.

Greene County, No. 94-CA-48.

94-2136. State v. Ackerman.

Stark County, No. 94CA00043.

94-2147. Popke v. O'Brian.

Erie County, No. E-93-84.

94-2151. In re Estate of Thompson.

Hamilton County, No. C-930607.

94-2152. In re Estate of Thompson.

Hamilton County, No. C-930606.

Wright, J., dissents.

94-2156. Columbus v. Kneice.
Franklin County, No. 93APC12-1695.

94-2158. State v. Lalezari.
Montgomery County, No. 14177.
Wright, J., dissents.

94-2159. Triplett v. Lieb.
Franklin County, No. 94APE06-954.

94-2165. State v. Combs.
Hamilton County, No. C-930498.

94-2170. State v. Durr.
Cuyahoga County, No. 65958.

94-2180. State v. Daniel.
Franklin County, No. 93APA08-1132.
Douglas and Wright, JJ., dissent.

94-2187. In re Adoption of Wenger.
Stark County, Nos. 1994CA00036 and 9405.
Douglas, J., dissents.

94-2188. Stasiak v. Schindler Elevator Corp.
Richland County, No. 93-CA-104.
Resnick, Pfeifer and Cook, JJ., dissent.

94-2203. Koth v. Burt.
Montgomery County, No. 12391.
Wright and Cook, JJ., dissent.

94-2206. Cox v. Burt.
Montgomery County, No. 13085.
Wright and Cook, JJ., dissent.

94-2209. In re Stokes.
Mahoning County, No. 94 C.A. 36.

94-2214. State v. Dougherty.
Hancock County, No. 5-94-2.
Wright and Cook, JJ., dissent.

94-2215. Estate of Berger v. Riddle.
Cuyahoga County, Nos. 66195 and 66200.

94-2216. Marsala v. Marsala.
Cuyahoga County, No. 67301.

94-2218. State ex rel. Lash v. Trikilis.
Medina County, No. 2339-M.
Cook, J., dissents.

94-2228. State v. Nunn.
Cuyahoga County, No. 66221.

94-2236. Ohio Div. of Wildlife v. Freed.
Hancock County, No. 5-94-19.

94-2246. State v. Lebron.
Cuyahoga County, No. 65441.

94-2258. Ohio Div. of Wildlife v. Freed.
Hancock County, No. 5-94-17.

94-2259. Ohio Div. of Wildlife v. Freed.
Hancock County, No. 5-94-16.

94-2270. Peters v. Burt.
Montgomery County, No. 13087.
Wright and Cook, JJ., dissent.

94-2275. Morgan v. Burt.
Montgomery County, No. 13083.
Wright and Cook, JJ., dissent.

94-2276. Chappell v. Burt.
Montgomery County, No. 13081.
Wright and Cook, JJ., dissent.

94-2286. Harness v. Burt.
Montgomery County, No. 13092.
Wright and Cook, JJ., dissent.

94-2289. Enyart v. Columbus Metro. Area Community Action Org.
Franklin County, No. 93APE12-1658.
Moyer, C.J., and Douglas, J., dissent.

94-2330. Gerstenberger v. Macedonia.
Summit County, No. 16668.
Cook, J., not participating.

94-2335. State v. LeMasters.
Meigs County, No. 512.

94-2336. State v. Luna.
Huron County, No. H-94-28.

94-2338. State v. Thompson.
Sandusky County, No. S-93-39.

94-2341. Belcher v. Lesley.
Franklin County, No. 94APE08-1192.

94-2365. Tomlin v. Burt.
Montgomery County, No. 13099.
Wright and Cook, JJ., dissent.

94-2383. Costin v. F.J. Dettore, Inc.
Lorain County, No. 94CA005820.

94-2391. State v. Isleim.
Cuyahoga County, No. 66201.

Wright, J., dissents.

94-2398. State v. Freeman.
Shelby County, No. 17-94-21.

94-2452. State v. Rivera.
Lorain County, No. 93CA005592.
F.E. Sweeney, J., dissents.
Cook, J., not participating.

94-2453. Dresher v. Burt.
Montgomery County, No. 13088.
Wright and Cook, JJ., dissent.

94-2472. State v. Graves.
Cuyahoga County, No. 66238.

MOTION DOCKET

94-594. State ex rel. Enyart v. O'Neil.
Franklin County, No. 93APD10-1424. On request for oral argument.
Request denied.

94-1413. Malone v. Courtyard by Marriott L.P.
Franklin County, No. 93APE10-1407. On motion to clarify court
order. Motion denied.

94-2104. State ex rel. Edwards v. Toledo City School Dist. Bd. of
Edn.
Lucas County, No. L-94-206. On request for oral argument. Request
denied.

94-2134. State v. Dillon.
Montgomery County, No. 10138. On request for oral argument.
Request granted.
Resnick, F.E. Sweeney and Cook, JJ., dissent.

94-2590. State v. Goney.
Montgomery County, No. 13474. On motion for appointment of
counsel. Motion denied.

94-2612. Dresher v. Burt.
Montgomery County, No. 13088. On review of order certifying
conflict. The court determines that a conflict exists; the parties
are to brief the issue stated on page 2 of the court of appeals'
Decision and Entry, dated November 21, 1994.
Resnick and F.E. Sweeney, JJ., dissent.
Cook, J., not participating.

94-2629. State v. Clinger.
Seneca County, No. 13-93-42. On motion to withdraw motion to
dismiss. Motion to withdraw granted.

94-2659. State v. Vitanovich.
Summit County, No. 16380. On motion for leave to file delayed
appeal. Motion granted.

Resnick and F.E. Sweeney, JJ., dissent.
Cook, J., not participating.

94-2704. State v. Howe.
Montgomery County, No. 13969. On motion for leave to file delayed
appeal. Motion denied.
Moyer, C.J., Douglas and Pfeifer, JJ., dissent.

94-2726. State v. Smith.
Summit County, No. 16027 and 16049. On motion for leave to file
delayed appeal. Motion denied.
Moyer, C.J., and Douglas, J., dissent.
Cook, J., not participating.

94-2765. Girgis v. State Farm Mut. Auto. Ins. Co.
Cuyahoga County, No. 66970. On review of order certifying
conflict. The court determines that a conflict exists; the parties
are to brief the issues stated on page 6 of the court of appeals'
Journal Entry and Opinion, announced December 1, 1994, relative to
the physical contact rule.
Moyer, C.J., and Wright, J., dissent.

DISCRETIONARY APPEALS ALLOWED

94-2139. Mantua Mfg. Co. v. Commerce Exchange Bank.
Cuyahoga County, No. 65861.
Resnick, F.E. Sweeney and Pfeifer, JJ., dissent.

94-2141. Robb v. Chagrin Lagoons Yacht Club, Inc.
Lake County, No. 93-L-064.
Wright, Resnick and Pfeifer, JJ., dissent.

94-2201. Ed Schory & Sons, Inc. v. Francis.
Stark County, No. 9474. On motion and cross-motion to certify the
record. Motions granted.
F.E. Sweeney and Cook, JJ., dissent.
Resnick, J., not participating.

94-2326. Reitz v. Mathews.
Franklin County, No. 94APE01-15.
Moyer, C.J., Wright and F.E. Sweeney, JJ., dissent.

DISCRETIONARY APPEALS NOT ALLOWED

94-1306. Thomas v. Thomas.
Columbiana County, No. 93-C-40.
Moyer, C.J., Douglas and Pfeifer, JJ., dissent.

94-2128. Johnson v. Cincinnati Shaper Co.
Stark County, No. CA-9463.
Wright, J., dissents.

94-2133. Hartman v. Cleveland Hts.
Cuyahoga County, No. 66074.
Moyer, C.J., and Wright, J., dissent.

94-2148. Van Atta v. Gammell.
Franklin County, No. 94APE03-404.
Moyer, C.J., and Resnick, J., dissent.

94-2160. Ramsey v. Hamilton Cty.
Hamilton County, No. C-930532.

94-2164. Gorman v. Cincinnati.
Hamilton County, No. C-930488.

94-2166. Gammons v. O'Neill.
Cuyahoga County, No. 66232.
Wright, J., dissents.

94-2169. State v. Louis.
Franklin County, No. 94APC03-307.

94-2172. Hensley v. New Albany Co.
Franklin County, No. 93APE11-1562.
Pfeifer, J., dissents.

94-2177. State v. Reynolds.
Cuyahoga County, No. 65342.

94-2182. Eiford v. Burt.
Montgomery County, No. 12392.
Cook, J., dissents.

94-2186. Figge v. Ohio L. & M. Co., Inc.
Perry County, No. CA-463.
Pfeifer, J., dissents.

94-2189. Kennard v. Burt.
Montgomery County, No. 12388.
Wright and Cook, JJ., dissent.

94-2199. In re N. Shore Radiology, Inc.
Franklin County, No. 94APH02-169.
Douglas, J., dissents.
Wright, J., not participating.

94-2200. Ravens Metal Products, Inc. v. Harrett Corp.
Tuscarawas County, No. 93AP100068.
Pfeifer, J., dissents.

94-2211. State v. Gray.
Summit County, No. 16367.
Wright, J., not participating.

94-2225. Watkins v. Brown.
Montgomery County, No. CA 14254.
Resnick, J., dissents.

94-2229. Holmes v. Community College of Cuyahoga Cty.
Cuyahoga County, No. 66025.
Resnick and F.E. Sweeney, JJ., dissent.

94-2248. Powell v. Cincinnati.
Hamilton County, No. C-930650.
Douglas and Pfeifer, JJ., dissent.

94-2261. Burnat v. Lake Twp. Bd. of Edn.
Wood County, No. 94WD002.

94-2295. Costidakis v. Park Corp.
Cuyahoga County, No. 66167.

94-2315. Swade v. Serv. Merchandise.
Lucas County, No. L-94-058.

94-2426. Byler v. Hartville Auction, Inc.
Stark County, No. 1994CA00081.

RECONSIDERATION DOCKET

92-2565. State v. Scudder.
Franklin County, No. 91AP-506. Reported at 71 Ohio St.3d 263,
N.E.2d . On motion for reconsideration. Motion denied.
Cook, J., not participating.

92-2628. State v. Johnson.
Summit County, No. 15065. Reported at 71 Ohio St.3d ,
N.E.2d . On motion for reconsideration. The motion fails on
the following vote.
Moyer, C.J., Wright and Pfeifer, JJ., would deny the motion.
Douglas, Resnick and F.E. Sweeney, JJ., would grant the motion.
Cook, J., not participating.

93-1324. Lutheran Social Serv. of the Miami Valley v. Limbach.
Board of Tax Appeals, No. 90-Z-530. Reported at 71 Ohio St.3d
212, N.E.2d . On motion for reconsideration. Motion denied.
Cook, J., not participating.

93-1878. Soc. Natl. Bank v. Security Fed. S. & L.
Cuyahoga County, No. 63141. Reported at 71 Ohio St.3d ,
N.E.2d . On motion for reconsideration. Motion denied.
Pfeifer, J., dissents.
Resnick and Cook, JJ., not participating.

93-2034. Ohio Contractors Assn. v. Bicking.
Franklin County, No. 93AP-939. Reported at 71 Ohio St.3d ,
N.E.2d . On motion for reconsideration. Motion denied.
Cook, J., not participating.

93-2155. State ex rel. DeLong v. Indus. Comm.
Franklin County, No. 92AP-951. Reported at 71 Ohio St.3d ,
N.E.2d . On motion for reconsideration. Motion denied.
Cook, J., not participating.

94-797. In re Estate of Mayer.
Lucas County, No. L-93-131. Reported at 71 Ohio St.3d ,
N.E.2d . On motion for reconsideration. Motion denied.

Resnick and Cook, JJ., not participating.

94-968. Disciplinary Counsel v. Lynch.
Reported at 71 Ohio St.3d , N.E.2d . On motion for
reconsideration. Motion denied.
Cook, J., not participating.

94-1343. State v. Bonnell.
Cuyahoga County, No. 55927. Reported at 71 Ohio St.3d 223,
N.E.2d . On motion for reconsideration. Motion denied.
Cook, J., not participating.

DISCIPLINARY DOCKET

93-1828. In re Resignation of Steffen.
On response to court's order of September 23, 1994 regarding payment
of board costs. Respondent is found in contempt, but the order is
placed in the file.
Moyer, C.J., F.E. Sweeney and Cook, JJ., would find respondent
in contempt and refer this cause to the Attorney General for
collection proceedings.

SUPREME COURT OF OHIO

COLUMBUS

ANNOUNCEMENT

WEDNESDAY
February 1, 1995

MOTION DOCKET

94-2407. State ex rel. Optimum Technology, Inc. v. Fisher.
In Mandamus and Prohibition. This cause originated in this court on
the filing of a complaint for writs of mandamus and prohibition.
Upon consideration of the motion of relator, Optimum Technology, to
clarify this court's order permitting William Cargile to intervene
or, in the alternative, to strike William Cargile's counterclaim and
motion to quash or for protective order,
IT IS ORDERED by the court that relator's motion to strike the

counterclaim be treated as a Civ.R. 12(B)(1) motion to dismiss for lack of jurisdiction to which intervenor shall have until February 6, 1995, to file a response.

IT IS FURTHER ORDERED by the court that a conditional protective order staying the depositions set for February 2, 1995, and February 3, 1995, is granted, pending this court's ruling on the motion to dismiss the counterclaim for lack of jurisdiction.

94-2420. DLZ Corp. v. Fisher.

In Mandamus and Prohibition. This cause originated in this Court on the filing of a complaint for writs of mandamus and prohibition. Upon consideration of the motion of relators, DLZ Corporation et al., to clarify this Court's order permitting William Cargile to intervene or, in the alternative, to strike William Cargile's counterclaim and motion to quash or for protective order,

IT IS ORDERED by the court that relators' motion to strike the counterclaim be treated as a Civ.R. 12(B)(1) motion to dismiss for lack of jurisdiction to which intervenor shall have until February 6, 1995, to file a response.

IT IS FURTHER ORDERED by the court that a conditional protective order staying the depositions set for February 2, 1995, and February 3, 1995, is granted, pending this court's ruling on the motion to dismiss the counterclaim for lack of jurisdiction.