

10/29/97

SUPREME COURT OF OHIO

COLUMBUS

ANNOUNCEMENT

1:00 P.M.

WEDNESDAY

October 29, 1997

MERIT DOCKET

97-923. State ex rel. McCoy v. Coyle.

Richland App. No. 97CA8. Sua sponte, cause dismissed.

Moyer, C.J., Resnick, F.E. Sweeney, Pfeifer, Cook and
Lundberg Stratton, JJ., concur.

Douglas, J., would affirm.

97-1798. State ex rel. Hairston v. McMonagle.

In Procedendo. On motion to dismiss. Motion to dismiss
sustained. Cause dismissed.Moyer, C.J., Douglas, Resnick, Pfeifer and Cook, JJ.,
concur.F.E. Sweeney and Lundberg Stratton, JJ., dissent and would
grant the writ.

97-1806. State ex rel. Bird v. Wise.

In Mandamus. On answer of respondents. Answer treated as
motion to dismiss. Motion to dismiss sustained. Cause
dismissed.Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook
and Lundberg Stratton, JJ., concur.97-1821. State ex rel. Fatherly v. Ohio Supreme Court Clerk's
Office.In Mandamus. On motion to dismiss. Motion to dismiss
sustained. Cause dismissed.Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook
and Lundberg Stratton, JJ., concur.

97-1853. State ex rel. Mramor v. Celebrezze.

In Mandamus. On motion to dismiss. Motion to dismiss
sustained. Cause dismissed.Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook
and Lundberg Stratton, JJ., concur.

97-1899. State ex rel. Smith v. Christley.

In Mandamus. On motion to dismiss. Motion to dismiss

sustained. Cause dismissed.

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

97-1900. State ex rel. Short v. Seventh Dist. Court of Appeals. In Procedendo. On motion to dismiss. Motion to dismiss sustained. Cause dismissed.

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

97-1908. State ex rel. Fuqua v. Manon. In Mandamus. On motion to dismiss. Motion to dismiss sustained. Cause dismissed.

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

97-1990. State ex rel. Bates v. Allen Cty. Prosecuting Atty. In Mandamus. On motion to dismiss. Motion to dismiss sustained. Cause dismissed.

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

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

97-1257. State v. Allen.
Greene App. No. 95CA38.
Moyer, C.J., dissents.

97-1395. Leon v. Caroselli.
Hamilton App. Nos. C-960364 and C-960612. (Appeal of Barbara Theis Caroselli and cross-appeal of Margaret Caroselli Colloton.)

97-1453. State v. Becker.
Holmes App. No. 96CA551.

97-1570. State v. Hall.
Cuyahoga App. No. 71055.

97-1580. State v. Lee.
Belmont App. No. 95-BA-58.

97-1588. State v. Ross.
Lorain App. No. 96CA006601.
Douglas, J., not participating.

97-1589. In re Donnell.
Sandusky App. No. S-97-002.
Douglas and Resnick, JJ., not participating.

97-1594. State v. Rivers.
Lorain App. No. 97CA006822.
Moyer, C.J., dissents.

97-1598. State v. Meiser.

Stark App. No. 1996CA00185.

97-1600. Roberts v. Carson.

Perry App. No. 96CA36.

Lundberg Stratton, J., dissents.

97-1601. Carey v. Boone.

Lucas App. No. L-96-274.

Douglas, J., dissents.

Resnick, J., not participating.

97-1602. State v. Knox.

Franklin App. No. 96APA09-1265.

Lundberg Stratton, J., not participating.

97-1603. Cuyahoga Falls v. Stephenson.

Summit App. No. 18011.

97-1604. State v. Auge.

Franklin App. No. 96APA12-1753.

97-1605. Wall v. Ohio Permanente Med. Group.

Cuyahoga App. No. 69841.

Moyer, C.J., dissents.

97-1606. Jones v. Chagrin Falls.

Cuyahoga App. No. 67416.

97-1620. Mennel Milling Co. v. Tracy.

Hancock App. No. 5-96-26.

Moyer, C.J., Douglas and Lundberg Stratton, JJ., dissent.

97-1622. State v. Cotton.

Cuyahoga App. Nos. 71234 and 71235.

97-1623. Clark v. State Bd. of Registration for Professional Engineers & Surveyors.

Summit App. No. 18024.

Cook, J., not participating.

97-1629. State v. Roy.

Franklin App. No. 96APA11-1452.

97-1634. Fowler v. McAninch.

Ross App. No. 97CA2269.

97-1637. State v. Miller.

Hamilton App. No. C-950677.

97-1638. State v. Shie.

Wayne App. No. 96CA0073.

97-1639. State v. Pierce.

Cuyahoga App. Nos. 71462 and 71463.

97-1644. Jones v. Zanesville Council.

Muskingum App. No. CT-9646.

97-1649. State v. Conway.
Lake App. Nos. 95-L-040 and 95-L-043.

97-1650. Nye v. Nye.
Hamilton App. No. C-960461.

97-1652. State v. Underwood.
Hamilton App. No. C-960834.

97-1653. State v. Payne.
Madison App. No. CA96-11-053.

97-1656. Williams v. Flanigan.
Guernsey App. No. 96CA21.
Resnick, J., would allow on Proposition of Law No. I only.
F.E. Sweeney and Pfeifer, JJ., would allow.

97-1658. State v. Stanley.
Hamilton App. No. C-950392.
Lundberg Stratton, J., dissents.
97-1659. State v. Kroetz.
Seneca App. No. 13-97-02.

97-1661. State v. Scott.
Franklin App. No. 96APA04-492.

97-1663. State v. Brumley.
Hamilton App. No. C-960889.

97-1665. State v. Hutcherson.
Lucas App. No. L-96-351.
Lundberg Stratton, J., dissents.

97-1667. State v. Cuthbertson.
Hamilton App. No. C-960657.

97-1671. Wyant v. Marble.
Hamilton App. No. C-960655.

97-1672. Krygsman v. Gerken.
Montgomery App. No. 16062.
Moyer, C.J., and F.E. Sweeney, J., dissent.

97-1676. State v. Drain.
Hamilton App. No. C-960747.

97-1683. State v. Faulconer.
Hamilton App. No. C-960511.

97-1684. Akers v. Trimble.
Highland App. No. 96CA900.
Resnick and Pfeifer, JJ., dissent.

97-1685. State v. Scott.
Hamilton App. No. C-960557.

97-1687. Jancuk v. Jancuk.
Mahoning App. Nos. 94 C.A. 221, 95 C.A. 131, 95 C.A. 246, 95
C.A. 5, 96 C.A. 129, 96 C.A. 206 and 96 C.A. 258.

97-1690. State v. McGee.
Lorain App. No. 96CA006507.

97-1691. State v. Jackson.
Cuyahoga App. No. 71348.

97-1696. State v. Freeman.
Shelby App. Nos. 17-96-18 and 17-96-19.

97-1701. State v. Dere.
Ross App. No. 96CA2247.
Douglas, J., would allow and combine this cause with 97-
1694, *infra*, for briefing and argument.
Pfeifer, J., would allow.

97-1702. State v. Wallace.
Franklin App. No. 96APA11-1561.
Pfeifer, J., dissents.

97-1703. State v. Terrell.
Montgomery App. No. 15937.

97-1705. State v. Ramos.
Cuyahoga App. No. 70129.

97-1706. State v. O'Neil.
Lucas App. No. L-97-1223.
Resnick, J., not participating.

97-1709. State v. Taylor.
Montgomery App. No. 16115.

97-1711. State v. Jeffery.
Franklin App. No. 96APA08-986.
Moyer, C.J., and Douglas, J., dissent.

97-1712. State v. Kimbler.
Franklin App. No. 97APA04-526.

97-1715. Sallach v. United Airlines, Inc.
Franklin App. No. 96APE09-1236.
Lundberg Stratton, J., dissents.

97-1716. State v. Gibson.
Portage App. No. 95-P-0125.
Moyer, C.J., dissents.

97-1719. Davis v. Big Bear Store Corp.
Franklin App. No. 96APE12-1720.

97-1722. State v. Porter.
Summit App. No. 18073.

97-1723. Cowen v. Lucas.
Scioto App. No. 96CA2456.
Pfeifer, J., dissents.

97-1726. State v. Rock.
Fairfield App. No. 96CA30.

97-1729. Chambers v. St. Mary's School.
Geauga App. No. 96-G-2013.
Moyer, C.J., would allow on Proposition of Law No. II only.
Douglas and F.E. Sweeney, JJ., would allow.

97-1731. State v. Jolly.
Cuyahoga App. No. 70482.
Moyer, C.J., dissents.

97-1733. State v. Young.
Adams App. No. 97CA645.
Moyer, C.J., dissents.

97-1740. State v. Ratliff.
Cuyahoga App. No. 71045.

97-1743. Canton Realty & Dev. Distrib., Inc. v. Stark Cty. Bd.
of Revision.
Stark App. No. 1996CA00403.

97-1756. State v. Turner.
Allen App. No. 1-96-27.

97-1776. In re Petition for a Writ of Habeas Corpus for James.
Wayne App. No. 96CA0069.
Moyer, C.J., dissents.

97-1784. Skinner v. N. Market Dev. Auth., Inc.
Franklin App. No. 96APE12-1655.
F.E. Sweeney, J., dissents.

97-1794. State v. Gerhardt.
Franklin App. No. 96APA12-1671.

97-1841. State v. Young.
Portage App. No. 95-P-0139.

MOTION DOCKET

96-309. State v. Plassman.
Fulton App. No. F-95-025. On motion for relief from judgment.
Motion denied.
Resnick, J., not participating.

96-2346. State v. Getsy.
Trumbull C.P. No. 95CR399. On motion for leave to supplement
the record. Motion granted.
96-2384. Ron Scheiderer & Assoc. v. London.
Madison App. No. CA95-08-022. On motion for leave to
participate in oral argument. Motion denied.

Pfeifer and Lundberg Stratton, JJ., dissent.

97-341. *Bunger v. Lawson Co.*

Butler App. No. CA96-05-107. On motion to strike second supplement of Administrator, Bureau of Workers' Compensation. Motion granted.

Pfeifer and Lundberg Stratton, JJ., dissent.

97-474. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision.*

Board of Tax Appeals No. 95-A-1224. On motion to remand. Motion granted.

Moyer, C.J., dissents and would dismiss.

97-630. *State ex rel. Serv. Emp. Internatl. Union, Dist. 925 v. State Emp. Relations Bd.*

In Mandamus. On motion to dismiss University of Cincinnati Hospital House Staff Association. Motion denied.

Moyer, C.J., Cook and Lundberg Stratton, JJ., dissent.

On motion to substitute Dr. Susanne Sumida et al. for University of Cincinnati Hospital Staff Association. Motion granted.

Moyer, C.J., and Cook, J., dissent.

97-1052. *Smith v. Smith.*

Summit App. No. 17964. On petition for clarification and for declaratory judgment. Petition denied.

97-1295. *State v. Plassman.*

Fulton App. No. F-95-025. On motion for leave to file delayed appeal. Motion denied.

Resnick, J., not participating.

97-1309. *Cleveland Bar Assn. v. Rossi.*

On motion for leave to participate in oral argument. Motion denied.

Douglas, Resnick and Lundberg Stratton, JJ., dissent.

97-1791. *State ex rel. Hillside Dairy Co. v. Conrad.*

In Mandamus and Procedendo. Sua sponte, alternative writ granted.

Pfeifer, J., dissents and would dismiss the cause.

97-1967. *Chambers v. St. Mary's School.*

Geauga App. No. 96-G-2013. On review of order certifying a conflict. The court determines that a conflict exists; the parties are to brief the issue stated at page 2 of the court of appeals' Judgment Entry filed September 8, 1997:

"Whether a violation of the Ohio Basic Building Code may constitute negligence per se."

The conflict cases are *Nemer v. Kerkian* (Feb. 7, 1990), Summit App. No. 14143, unreported, 1990 WL 11714, and *Carpas v. Carpas* (Nov. 15, 1989), Summit App. No. 14043, unreported, 1989 WL 139457.

Pfeifer, J., dissents.

97-1980. *State v. Artis.*

Franklin App. No. 96APA12-1730. On motion for leave to file

delayed appeal. Motion denied.

Moyer, C.J., Pfeifer and Lundberg Stratton, JJ., dissent.

97-1991. State v. Spencer.

Franklin App. No. 96APA09-1226. On motion for leave to file delayed appeal. Motion denied.

Moyer, C.J., and Pfeifer, J., dissent.

DISCRETIONARY APPEALS ALLOWED

97-1615. Cleveland Police Patrolmen's Assn. v. Cleveland.

Cuyahoga App. No. 71201.

Moyer, C.J., and Cook, J., dissent.

97-1670. Williams v. ITT Fin. Serv.

Hamilton App. Nos. C-960234 and C-960255.

Douglas, Resnick and Pfeifer, JJ., dissent.

97-1738. Ormandy v. Mechenbier.

Franklin App. No. 96APE12-1651.

Moyer, C.J., Cook and Lundberg Stratton, JJ., dissent.

97-1831. Leber v. Buckeye Union Ins. Co.

Erie App. No. E-96-014.

Moyer, C.J., Cook and Lundberg Stratton, JJ., dissent.

DISCRETIONARY APPEALS NOT ALLOWED

97-1339. Krygsman v. Gerken.

Montgomery App. No. 16062.

Moyer, C.J., and F.E. Sweeney, J., dissent.

97-1597. Thompson v. R & R Serv. Sys., Inc.

Franklin App. No. 96APE10-1277. (Appeal of R & R Service Systems, Inc., Mark L. Rochester and James L. Ergon, and appeal of Rebecca H. Cook.)

Moyer, C.J., dissents.

97-1608. Nowak v. Elyria City School Dist. Bd. of Edn.

Lorain App. No. 96CA006516.

Pfeifer, J., dissents.

97-1609. Lewis v. Sabina Bank.

Clinton App. No. CA96-10-019.

97-1616. Kilbarger v. Anchor Hocking Glass Co.

Fairfield App. No. 96CA44.

Moyer, C.J., dissents.

97-1621. Taylor v. U.S. Health Corp.

Scioto App. No. 96CA2457.

97-1624. Gober v. Thomas & King, Inc.

Montgomery App. No. 16248.

Lundberg Stratton, J., dissents.

97-1627. In re Estate of Jerome.

Perry App. No. 96CA41.

Moyer, C.J., dissents.

97-1628. Clifton v. Porterfield.

Franklin App. No. 96APE10-1437.

Resnick and F.E. Sweeney, JJ., dissent.

97-1633. Kemmerer v. Waste Mgt. of Ohio, Inc.

Perry App. No. 9632.

97-1642. King v. Farmers Ins. of Columbus, Inc.

Lake App. No. 96-L-166.

Douglas, F.E. Sweeney and Pfeifer, JJ., dissent.

97-1645. Mains v. State Auto. Mut. Ins. Co.

Franklin App. No. 96APE10-1434.

97-1646. Geiser v. Merillat Industries, Inc.

Franklin App. No. 96APE11-1547.

97-1654. Werth v. Davies.

Hamilton App. No. C-960133.

Lundberg Stratton, J., dissents.

97-1657. Shockey v. Our Lady of Mercy Mariemont.

Hamilton App. No. C-960492.

F.E. Sweeney, J., dissents.

97-1669. Allore v. Flower Hosp.

Lucas App. No. L-96-329.

Douglas, J., dissents.

Resnick, J., not participating.

97-1675. Fawn v. Heritage Mut. Ins. Co.

Franklin App. No. 96APE12-1678.

97-1678. Baker v. Hadley.

Franklin App. No. 97APE05-721.

Douglas, Resnick and F.E. Sweeney, JJ., dissent.

97-1679. Johnson v. Hadley.

Franklin App. No. 97APE05-720.

Douglas, Resnick and F.E. Sweeney, JJ., dissent.

97-1686. Kemmerer v. Waste Mgt. of Ohio, Inc.

Perry App. No. 9631.

97-1694. State v. Vance.

Clark App. No. 96CA84.

Douglas, J., would allow on Proposition of Law No. I only.

Pfeifer, J., would allow.

97-1708. Hughes v. Plastivax, Inc.

Lake App. No. 96-L-174.

97-1714. Jones v. Reiter Dairy, Inc.

Portage App. No. 96-P-0176.

97-1718. Haynie v. Haynie.
Franklin App. No. 96APF11-1610.
Moyer, C.J., Resnick and Lundberg Stratton, JJ., dissent.

97-1721. Williamson v. Rodenberg.
Franklin App. No. 96APE10-1395.
Pfeifer, J., dissents.
Resnick, J., not participating.

97-1728. Culberson Transp. Serv., Inc. v. John Alden Life Ins.
Co.
Franklin App. No. 96APE11-1501.

97-1737. Worytko v. Feng.
Cuyahoga App. No. 72049.
Douglas and F.E. Sweeney, JJ., dissent.

97-1818. Elwing v. Columbus.
Franklin App. No. 96APE10-1424.
Douglas and Pfeifer, JJ., dissent.

RECONSIDERATION DOCKET

96-930. State v. Williams.
Hamilton App. No. C-950530. Reported at 79 Ohio St.3d 459, ____
N.E.2d _____. On motion for reconsideration. Motion denied.

97-1167. State v. Rock.
Hardin App. Nos. 6-97-10 and 6-97-9. Reported at 79 Ohio St.3d
1508, ____ N.E.2d _____. On motion for reconsideration. Motion
denied.
Lundberg Stratton, J., dissents.

97-1170. State v. Cox.
Warren App. Nos. CA96-07-069 and CA96-08-075. Reported at 79
Ohio St.3d 1504, ____ N.E.2d _____. On motion for reconsideration.
Motion denied.
Douglas and Pfeifer, JJ., dissent.

97-1201. Smith v. E.G. Baldwin & Assoc., Inc.
Franklin App. No. 96APE07-948. Reported at 79 Ohio St.3d 1509,
____ N.E.2d _____. On motion for reconsideration. Motion denied.
____ Douglas, Resnick and Pfeifer, JJ., dissent.

97-1243. Campbell v. Governor of the State of Ohio.
Franklin App. No. 96API11-1445. Reported at 79 Ohio St.3d 1506,
____ N.E.2d _____. On motion for reconsideration. Motion denied.

97-1330. State v. Fox.
Wood App. No. WD-96-031. Reported at 79 Ohio St.3d 1506, ____
N.E.2d _____. On motion for reconsideration. Motion denied.
Pfeifer, J., dissents.
Resnick, J., not participating.

97-1418. State ex rel. Palmer v. McQuade.
In Prohibition. Reported at 79 Ohio St.3d 1503, ____ N.E.2d ____.

On motion for reconsideration. Motion denied.