

SUPREME COURT OF OHIO

COLUMBUS

ANNOUNCEMENT

9:00 A.M.

WEDNESDAY
April 9, 1997

MERIT DOCKET

97-300. State ex rel. Velasquez v. Voinovich.
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.

97-348. State ex rel. Shie v. Wayne Cty. Court of Appeals.
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.

97-359. State ex rel. SuperAmerica Group, Div. of Ashland, Inc.
v. Adzic.

In Mandamus and Prohibition. On answer of respondent, motion
for leave to intervene of Carl Wilkenfeld, James R. Jump and
Mary V. Fellabaum,
and on answer of intervening respondents. The motion for leave
to intervene is granted. Answers 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.

97-366. State ex rel. Hart v. Reece.
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.

97-401. Franklin Iron & Metal Corp. v. Ohio Petroleum
Underground Storage Tank Release Comp. Bd.

Montgomery App. No. 15904. On review of order certifying a
conflict. The court determines that no conflict exists within
the meaning of S.Ct.Prac.R. IV(2)(B). This cause is therefore
dismissed.

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

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

97-442. State ex rel. Brown v. Brogan.
In Mandamus. On answer of respondent. 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.

97-452. State ex rel. Worlds v. Cissell.
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.

97-487. State ex rel. Enoch v. Ohio Adult Parole Auth.
In Mandamus. Sua sponte, 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

96-2440. State v. Ramos.
Ashtabula App. No. 96-A-0008.

96-2786. State v. Cola.
Cuyahoga App. No. 70483.

96-2881. State v. Lawson.
Cuyahoga App. No. 69899.

97-51. State v. Moore.
Wood App. No. WD-96-022.
Douglas and Cook, JJ., dissent.
Resnick, J., not participating.

97-54. State v. Robinson.
Lake App. No. 96-L-017.

97-55. State v. Coffey.
Butler App. No. CA96-07-136.

97-66. Edmondson v. Edmondson.
Montgomery App. No. 15813.

97-79. Celinski v. Benke.
Ashtabula App. No. 96-A-0020.

97-80. State v. Williams.
Richland App. No. 95CA93.

97-81. Celinski v. Benke.
Ashtabula App. No. 95-A-0030.

97-87. State v. Grujicic.
Auglaize App. Nos. 2-96-15 and 2-96-616.

Lundberg Stratton, J., dissents.

97-90. Franklin S. & L. Co. v. West.
Hamilton App. No. C-960937.

97-94. State v. Messer.
Clermont App. No. CA96-01-009.
Moyer, C.J., dissents.

97-96. Lawson v. Unemp. Comp. Bd. of Review.
Cuyahoga App. No. 70256.
Resnick and F.E. Sweeney, JJ., dissent.

97-97. State v. Ballentine.
Lake App. No. 95-L-076.

97-101. State v. Steele.
Hamilton App. No. C-960267.

97-107. State v. Bowsher.
Lucas App. No. L-95-124.
F.E. Sweeney and Cook, JJ., dissent.

97-109. State v. Spisak.
Cuyahoga App. No. 70254.
Douglas, J., dissents.

97-110. State v. Bradley.
Scioto App. No. 95CA2364.

97-111. State v. Alexander.
Trumbull App. No. 93-T-4948.
Douglas, J., would allow on Propositions of Law Nos. I and II.

97-117. Burgess v. Doe.
Warren App. No. CA96-05-047.
Douglas and Pfeifer, JJ., dissent.

97-118. State v. Brown.
Ashtabula App. No. 95-A-0071 and 95-A-0072.

97-122. State v. Rosado.
Cuyahoga App. No. 69619.

97-126. Strange v. Bethesda Hosp.
Hamilton App. No. C-941005. (Appeal of Bethesda Hospital et al.; cross-appeal of Myrtle Strange, admr., and Myrtle Strange, individually.)
Lundberg Stratton, J., dissents.

97-130. State v. New.
Franklin App. No. 94APA10-1547.
Douglas, J., would affirm.

97-132. State v. Garcia.
Cuyahoga App. No. 71580.

97-134. Architectural Interior Products, Inc. v. Heilig-Meyers Furniture Co.
Guernsey App. No. 96CA36.

97-139. State v. Maynard.
Cuyahoga App. No. 71586.

97-140. State v. Brown.
Huron App. No. H-96-023.
Moyer, C.J., and Cook, J., dissent.
Resnick, J., not participating.

97-144. State v. Mikulic.
Cuyahoga App. No. 70269.
Moyer, C.J., Resnick and F.E. Sweeney, JJ., dissent.

97-146. Greco v. Ohio Bur. of Motor Vehicles.
Cuyahoga App. Nos. 70607 and 70689.

97-147. In re Bacorn.
Portage App. No. 96-P-0015.
Pfeifer, J., dissents, would allow the discretionary appeal, and would reverse the cause on authority of In re William S. (1996), 75 Ohio St.3d 95, 661 N.E.2d 738.

97-152. State v. Bradley.
Logan App. No. CA95088015.

97-153. State v. King.
Cuyahoga App. No. 68726.

97-154. Mark's Contr. Group, Inc. v. Jenter Dev.
Medina App. No. 2538-M.

97-159. State v. Calo.
Cuyahoga App. No. 71609.

97-166. State v. Matthews.
Seneca App. No. 13-96-23.
Lundberg Stratton, J., dissents.

97-172. Paul v. Pulskamp.
Clermont App. No. CA96-06-049.
Douglas, J., dissents.

97-178. Butts v. Borrer Corp.
Franklin App. No. 96APE10-1291.
Douglas and Pfeifer, JJ., dissent.

97-181. State v. Hill.
Cuyahoga App. No. 69725.
F.E. Sweeney, J., dissents.

97-182. Westlake v. Shimola.
Cuyahoga App. No. 71443.
Lundberg Stratton, J., dissents.

97-183. Kenneth Hall Realty Co. v. Noel.

Stark App. No. 1996CA00075.

97-184. Taylor v. McCullough-Hyde Mem. Hosp.
Butler App. No. CA96-02-032.

97-193. State v. Holbert.
Cuyahoga App. No. 71601.
Pfeifer, J., dissents.

97-213. State v. Poole.
Mahoning App. No. 94 C.A. 205.

97-214. State v. Whitaker.
Butler App. No. CA96-09-179.

97-242. State v. Garland.
Fayette App. No. CA96-05-011.
Moyer, C.J., and Cook, J., dissent.

97-250. State v. Williams.
Butler App. Nos. CA96-09-180 and CA96-09-181.

97-264. State v. Carter.
Franklin App. No. 86AP-884.

97-297. State v. Marcum.
Butler App. No. CA96-03-049.

97-330. Franklin Iron & Metal Corp. v. Ohio Petroleum
Underground Storage Tank Release Comp. Bd.
Montgomery App. No. 15904.
Moyer, C.J., Pfeifer and Lundberg Stratton, JJ., dissent.

MOTION DOCKET

94-2503. State ex rel. R.E.H. Co. v. Trimble.
Franklin App. No. 93APD09-1339. On request for oral argument.
Request denied.

96-1030. Miller v. Bike Athletic Co.
Belmont App. No. 94-B-52. On motion for admission pro hac vice
of Randolph T. Struk and Phillip M. Davis. Motion granted.

96-2024. State ex rel. Fleming v. Rocky River Bd. of Edn.
Cuyahoga App. No. 66757. On request for oral argument. Request
denied.

96-2078. Scancarello v. Erie Ins. Co.
Franklin App. No. 96APE02-166. Sua sponte, the parties are to
brief the merits; this cause shall be set for oral argument.
Pfeifer, J., dissents.

96-2442. Richwalsky v. ABF Freight Sys., Inc.
Hamilton App. No. C-960064. On motion to consolidate case with
Nos. 96-2364 and 96-2778, Robinson v. B.O.C. Group, Gen. Motors
Corp., Trumbull App. No. 96-T-5419. Motion denied.

97-187. State ex rel. Strothers v. Wertheim.

Cuyahoga App. No. 71185. On request for oral argument. Request denied.

97-312. Williamson v. Ameritech Corp.

Franklin App. No. 96APE07-860. On review of order certifying a conflict. The court determines that a conflict exists; the parties are to brief the following issue:

"[W]hether expenses related to the taking of a deposition are `costs' within the meaning of Civ.R. 54(D)."

The conflict cases are Wiltsie v. Teamor (1993), 89 Ohio App.3d 380, 624 N.E.2d 772, and Carr v. Lunney (1995), 104 Ohio App.3d 139, 661 N.E.2d 246.

F.E. Sweeney, J., dissents.

Resnick, J., not participating.

97-317. Lexie v. Ohio Edison Co.

Trumbull App. No. 96-T-5384. On review of order certifying a conflict. The court determines that a conflict exists; the parties are to brief the issue stated in the court of appeals' Judgment Entry filed January 30, 1997:

"It is the order of this court that the record of the instant appeal shall be certified to the Supreme Court of Ohio for review and determination of the following legal issue: For purposes of determining when a property owner owes a duty of care to an employee of an independent contractor, does the property owner `actively participate' in the performance of the employee's work by exercising exclusive control over an aspect of the employee's working environment?"

The conflict case is DeHass v. Ohio Edison Co. (Sept. 15, 1993), Summit App. No. 15970, unreported, 1993 WL 347059.

F.E. Sweeney, J., dissents.

Cook, J., not participating.

97-383. State v. Anderson.

Cuyahoga App. No. 69620. On motion for leave to file delayed appeal. Motion denied.

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

97-385. State v. Williams.

Franklin App. No. 94APA03-281. On motion for leave to file delayed appeal. Motion denied.

Lundberg Stratton, J., dissents.

97-417. State v. Nolen.

Franklin App. No. 95APA05-569. On motion for leave to file delayed appeal. Motion denied.

97-418. State v. Crump.

Hamilton App. No. C-960171. On motion for leave to file delayed appeal. Motion denied.

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

97-426. State v. Williams.

Summit App. No. 17598. On motion for leave to file delayed appeal. Motion granted.

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

97-439. State v. Arnold.
Lorain App. No. 96CA006605. On motion for leave to file delayed
appeal. Motion denied.

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

97-454. State v. Johnson.
Hamilton App. No. C-950493. On motion for leave to file delayed
appeal. Motion denied.

97-456. State v. Miller.
Montgomery App. No. 15481. On motion for leave to file delayed
appeal. Motion granted.

Douglas and F.E. Sweeney, J.J., dissent.

97-579. State v. Love.
Hamilton App. Nos. C-960498 and C-960499. On motion for stay of
court of appeals proceedings. Motion denied.

Pfeifer, J., dissents.

DISCRETIONARY APPEALS ALLOWED

96-2641. In re Hitchcock.
Cuyahoga App. Nos. 69291 and 69292. (Appeal of Joanne Canitia
Brady on behalf of Shampail and Hastings Hitchcock; and appeal
of Abdul and Mary Abdullah.) The appeals are allowed and the
motion to vacate stay of proceedings is denied.

Resnick and Cook, J.J., dissent.

DISCRETIONARY APPEALS NOT ALLOWED

97-63. White v. Turner.
Scioto App. No. 95CA2392.

97-71. Campbell v. The Daimler Group, Inc.
Franklin App. Nos. 96APE03-291 and 96APE03-295. (Appeal of
Korda/Nemeth Engineering, Inc.; cross-appeal of Katy Corriveau-
Clark.) The discretionary appeal is denied.

Moyer, C.J., and Douglas, J., dissent.

The discretionary cross-appeal is denied.

Douglas, J., dissents.

97-93. Chipko v. D.A. Peterson, Inc.
Stark App. No. 1995CA00384.

97-99. Clark v. Albert Higley Co.
Cuyahoga App. No. 70304.

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

97-102. Manno v. Chardon Local School Dist. Bd. of Edn.
Geauga App. No. 96-G-1985.

Douglas and Resnick, J.J., dissent.

97-108. Wall v. Trimble.
Mahoning App. No. 95 C.A. 45.

Pfeifer and Cook, J.J., dissent.

97-119. Gosden v. Louis.
Summit App. No. 17609. (Appeal of Michael Louis et al.; cross-

appeal of Ian Gosden et al.)
Douglas, J., dissents.

97-120. DePascale & Sons Contracting, Inc. v. Middlefield.
Geauga App. No. 96-G-1988.

97-127. ICSC Partners, L.P. v. Kenwood Plaza L.P.
Hamilton App. No. C-950780.
Pfeifer, J., dissents.

97-129. Ross v. Madison Twp.
Richland App. No. 96CA572.

97-136. Curtis v. Lake Erie Util. Co.
Ottawa App. No. OT-96-002.
Moyer, C.J., and Pfeifer, J., dissent.

97-142. Chiropractic Clinic of Solon v. Kutsko.
Cuyahoga App. No. 70119. (Appeal of Dale Kutsko; cross-appeal
of Chiropractic Clinic of Solon, Inc.)

97-149. State v. Gonzalez.
Lorain App. No. 96CA006330.

97-150. Anderson v. Zavarella Bros. Contr. Co.
Cuyahoga App. No. 70657.

97-171. Kettler v. Rutledge.
Mercer App. No. 10-96-9.

97-179. Cole v. T & G Flying Club, Inc.
Lake App. No. 96-L-029.
Douglas, J., dissents.

97-186. Chic Promotion, Inc. v. Middletown Sec. Sys., Inc.
Butler App. No. CA96-06-109.
Pfeifer, J., dissents.

97-194. Johnson v. Allonas.
Crawford App. No. 3-96-19.

97-196. Firsdon v. Mid-American Natl. Bank.
Wood App. No. WD-96-009.
Resnick, J., not participating.

97-197. Wein v. Seaman Corp.
Wayne App. No. 96CA0024.
Moyer, C.J., dissents.

97-198. State v. Ingram.
Cuyahoga App. No. 70028.

97-200. Lexie v. Ohio Edison Co.
Trumbull App. No. 96-T-5384.
Moyer, C.J., and Pfeifer, J., dissent.
Cook, J., not participating.

97-204. Harris v. Strongsville.
Cuyahoga App. No. 70271.
Moyer, C.J., and Douglas, J., dissent.

97-271. Ross v. Strasser.
Montgomery App. No. 15929.

97-280. State v. Ingram.
Montgomery App. No. 15874.
Douglas, Resnick and Cook, JJ., dissent.

97-311. Williamson v. Ameritech Corp.
Franklin App. No. 96APE07-860. The discretionary appeal fails
for want of four votes on the following vote:
Douglas, F.E. Sweeney and Cook, JJ., vote to deny.
Moyer, C.J., Pfeifer and Lundberg Stratton, JJ., vote to
allowed.
Resnick, J., not participating.

97-332. Green v. Cumberland.
Highland App. No. 95CA893.

97-375. Takacs v. Keller.
Lorain App. No. 96CA006411.

RECONSIDERATION DOCKET

96-2570. State v. Creighton.
Stark App. No. 1996CA0257. Reported at 78 Ohio St.3d 1410, ___
N.E.2d ___. On motion for reconsideration. Motion denied.

96-2636. Loreto Dev. Co. v. Chardon.
Geauga App. Nos. 95-G-1920 and 95-G-1923. Reported at 78 Ohio
St.3d 1410, ___ N.E.2d ___. On motion for reconsideration.
Motion granted; sua sponte, discretionary appeal allowed.
Resnick and Pfeifer, JJ., dissent.

96-2651. Titus v. Marzocco.
Clermont App. No. CA96-02-026. Reported at 78 Ohio St.3d 1410,
___ N.E.2d ___. On motion for reconsideration. Motion denied.

96-2669. KEM Invest., Inc. v. Jackson Twp. Bd. of Zoning
Appeals.
Stark App. No. 1995CA00281. Reported at 78 Ohio St.3d 1411, ___
N.E.2d ___. On motion for reconsideration. Motion denied.

96-2758. State v. Britton.
Hamilton App. No. C-960745. Reported at 78 Ohio St.3d 1412, ___
N.E.2d ___. On motion for reconsideration and on motion for
sanctions. Motions denied.

97-201. Local Union 1886, United Mine Workers of Am. v.
Reclamation Bd. of Review.
Franklin App. No. 96APD04-506. Reported at 78 Ohio St.3d 1418,
___ N.E.2d ___. On motion for reconsideration. Motion denied.
Douglas, J., dissents.