

SUPREME COURT OF OHIO

COLUMBUS

ANNOUNCEMENT

1:00 P.M.

WEDNESDAY
April 29, 1998

MERIT DOCKET

98-445. State ex rel. Martin v. Bradley.

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.

**98-463. State ex rel. Simms v. Cuyahoga Cty. Dept. of Children &
Family Serv.**

In Mandamus. On motion for default judgment. *Sua sponte*, cause
dismissed.

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

Pfeifer, J., dissents.

98-532. State ex rel. Fisher v. Sandusky Cty. Court of Common Pleas.

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.

98-635. State ex rel. Phillips v. Money.

In Habeas Corpus. *Sua sponte*, cause dismissed.

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

98-696. Landrie v. Carter.

In Habeas Corpus. *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**

97-2562. State v. Ackison.

Fairfield App. No. 96CA0064.

Discretionary appeal denied.

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

Lundberg Stratton, J., not participating.

On motion for admission *pro hac vice* of Anne Rowell Noble. Motion denied for want of four votes on the following vote:

Resnick, Pfeifer and Cook, JJ., vote no.

Moyer, C.J., Douglas and F.E. Sweeney, JJ., vote yes.

Lundberg Stratton, J., not participating.

97-2626. State v. Tisdell.

Cuyahoga App. No. 71054.

F.E. Sweeney, J., dissents.

98-263. State v. Weber.

Franklin App. No. 97APA03-322. (Appeal of state of Ohio and cross-appeal of Louis E. Weber.)

Lundberg Stratton, J., not participating.

98-267. Hull v. Dietrich.

Miami App. No. 97CA32.

Pfeifer, J., dissents.

98-273. State v. Jenkins.

Cuyahoga App. No. 68961.

98-277. State v. Beach.

Hamilton App. No. C-971031.

98-303. State ex rel. Royal v. McAninch.

Ross App. No. 97CA2352.

98-310. State v. Schilling.

Delaware App. No. 97CAC03010.

98-324. State v. Mackey.

Clark App. No. 97CA42.

98-325. Easterling v. Miller.

Lawrence App. No. 97CA16.

98-329. Gardner v. Hidden Harbour Partners.

Lucas App. No. L-97-1182.

98-333. State v. Blonski.

Medina App. No. 2654-M.

98-334. State ex rel. Donovan v. Zajac.

Geauga App. No. 96-G-2006.

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

98-335. State v. Hemsath.

Hamilton App. No. C-960961.

98-340. State v. Weber.

Franklin App. No. 97APA06-777.

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

98-345. State v. Johnson.

Clinton App. No. CA97-07-006.

98-349. State v. Ajamu.

Hamilton App. Nos. C-830935 and C-840056.

98-350. State v. Jones.

Allen App. No. 1-97-59.

98-355. In re Santiago.

Delaware App. No. 97CAF03008.

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

98-359. State v. Jones.

Cuyahoga App. No. 71922.

98-361. State v. Nicodemus.

Franklin App. No. 97APA10-1318.

98-362. State v. Norton.

Franklin App. No. 97APA05-677.

98-375. State v. Hecker.

Pickaway App. No. 97CA50.

98-380. Barnhart v. Sonny Emrick Excavating.

Fayette App. No. CA97-03-008.

98-389. State v. Lewis.

Lorain App. Nos. 97CA006687 and 97CA006688.

98-391. State v. Wilson.

Darke App. No. 1439.

98-392. State v. Young.

Erie App. No. E-96-088.

Moyer, C.J., dissents.

98-395. State v. Gulosh.

Stark App. No. 1996CA00381.

98-397. Beard v. State.

Summit App. No. 18713.

98-406. State v. Fisko.

Cuyahoga App. No. 71685.

98-407. Guy v. Steubenville.

Jefferson App. No. 97JE22.

98-408. State v. Schoenberger.

Delaware App. No. 89CA13.

Lundberg Stratton, J., dissents.

98-410. State v. Ross.

Lucas App. No. L-96-266.

Resnick, J., not participating.

98-416. Nozik v. Dalheim.

Lake App. No. 97-L-125.

Pfeifer and Lundberg Stratton, JJ., dissent.

98-418. Neil v. Shook, Inc.

Montgomery App. No. 16422.

Douglas and Resnick, JJ., dissent.

98-419. State v. Giffin.

Fairfield App. No. 96CA82.

98-420. State v. Warren.

Cuyahoga App. No. 71196.

98-421. State v. Manos.

Cuyahoga App. No. 64616.

98-422. State v. Mitchell.

Clark App. Nos. 97CA0048 and 97CA0049.

98-426. Butzer v. Butzer.

Wayne App. Nos. 97CA0018 and 97CA0021.

Douglas and Resnick, JJ., dissent.

98-433. State v. Woodard.

Cuyahoga App. No. 71912.

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

98-436. State v. Lemons.

Warren App. No. CA98-01-007.

98-450. State v. Kimble.

Columbiana App. No. 95CO11.

Douglas and Pfeifer, JJ., dissent.

98-453. State v. Pegram.

Mahoning App. No. 95 C.A. 80.

98-464. State v. Williams.

Cuyahoga App. No. 73814.

98-470. Mustric v. Williams.

Franklin App. Nos. 97APE09-1174, 97APE09-1175, 97APE09-1176 and 97APE10-1309.

98-477. State v. Eads.

Cuyahoga App. No. 73524.

98-479. State v. Hall.

Lucas App. No. L-96-387.

Resnick, J., not participating.

98-480. State v. Cannon.

Hamilton App. No. C-950710.

98-488. State v. Bush.

Trumbull App. No. 97-T-0035.

98-513. State v. Grover.
Cuyahoga App. No. 72250.

98-516. State v. Barksdale.
Greene App. No. 97CA12.

98-528. Haupricht v. Davis Farms Serv., Inc.
Fulton App. No. F-97-022.

98-541. State v. Conaway.
Highland App. No. 97CA936.

MOTION DOCKET

93-1374. State v. Webb.
Clermont App. No. CA91-08-053. On motion to set execution date.
Motion granted.

97-1831. Leber v. Buckeye Union Ins. Co.
Erie App. No. E-96-014. On motion to strike brief of *amicus curiae* Ohio
Association of Civil Trial Attorneys. Motion denied.
F.E. Sweeney, J., dissents.
Resnick, J., not participating.

97-1954. State v. Fitzpatrick.
Montgomery App. No. 16008. On motion for leave to file delayed appeal.
Motion denied.
Cook, J., dissents.

97-2008. State v. Middlebrooks.
Montgomery App. No. 15671. On motion to strike appellee's merit brief.
Motion denied.
F.E. Sweeney, J., dissents.

97-2211. Tongren v. Pub. Util. Comm.
Public Utilities Commission, No. 95-656-GA-AIR. On motion for admission
pro hac vice of Jeffrey A. Gollump. Motion granted.
Moyer, C.J., not participating.

98-21. Delli Bovi v. Pacific Indemn. Co.

Certified State Law Question, No. 497CV0094. On request for oral argument. Request granted.

98-23. Delli Bovi v. Auto-Owners Mut. Ins. Co.

Certified State Law Question, No. 497CV0147. On request for oral argument. Request granted.

98-37. State v. Conti.

Lucas App. No. L-97-1237. On motion for leave to file delayed appeal. Motion denied.

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

98-71. State v. Marker.

Seneca App. No. 13-97-39. On motion for appointment of Kent D. Nord as counsel. *Sua sponte*, cause remanded to the court of appeals for appointment of Kent D. Nord as counsel.

Cook, J., dissents.

98-276. State v. Irizarry-Romero.

Licking App. No. 95CA121. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

98-440. State v. Hamilton.

Franklin App. No. 97APA10-1350. On motion for leave to file delayed appeal. Motion denied.

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

98-461. State v. McCants.

Cuyahoga App. Nos. 73601, 73602, 73603 and 73604. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

98-483. State v. Sunnycalb.

Butler App. No. CA97-05-100. On motion for leave to file delayed appeal. Motion granted.

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

98-499. Galt Alloys, Inc. v. Keybank Natl. Assn.

Stark App. No. 97CA00264. On review of order certifying a conflict. The court determines that a conflict exists; the parties are to brief the issue stated at page two of the court of appeals' Judgment Entry filed March 2, 1998:

"Must actual notice of the date, time, and location of a sheriff's sale be afforded to a defaulting defendant in a foreclosure action?"

The conflict cases are *Martin v. M & S Dev. Co.* (Dec. 29, 1995), Lake App. No. 94-L-072, unreported; *Equitable Life Assur. Soc. of the United States v. Ruggeri* (Mar. 22, 1996), Trumbull App. No. 94-T-5175, unreported, 1996 WL 200560; and *Hall v. Trapper John's Canoe Livery, Inc.* (Oct. 31, 1996), Franklin App. No. 96APE04-519, unreported.

Sua sponte, cause consolidated with 98-437, *infra*.

Resnick, J., not participating.

98-517. State v. Creasy.

Franklin App. No. 94APA03-376. On motion for leave to file delayed appeal. Motion denied.

98-538. State v. McMillian.

Hamilton App. No. C-950523. On motion for leave to file delayed appeal. Motion denied.

98-546. Hillyer v. Painesville Twp. Local Bd. of Edn.

Lake App. No. 97-L-161. 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 dated March 10, 1998:

"[I]t is the order of this Court that the record of the instant appeal shall be certified to the Supreme Court of Ohio for review in the determination of the following legal issue: Whether R.C. 2501.02 and 2744.02(C), as amended effective January 27, 1997, may be applied to a case that is commenced prior to that date in which the trial court overruled a motion for summary judgment asserting sovereign immunity after the effective date of the statute."

The conflict case is *Kagy v. Toledo-Lucas Cty. Port Auth.* (Nov. 10, 1997), Fulton App. Nos. F-97-006 and F-97-009, unreported, 1991 WL 416344.

Sua sponte, cause consolidated with 98-387, *infra*, and cause held for the decision in 97-1870, *infra*; briefing schedule stayed.

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

Resnick, J., not participating.

98-560. State v. Runnels.

Montgomery App. No. 16273. On motion for leave to file delayed appeal. Motion denied.

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

98-564. State v. Rutan.

Franklin App. No. 97APA03-389. On motion for leave to file delayed appeal. Motion granted.

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

98-565. State v. Beason.

Hamilton App. No. C-960833. On motion for leave to file delayed appeal. Motion denied.

98-574. State v. Coleman.

Lucas App. No. L-95-258. On motion for leave to file delayed appeal. Motion denied.

Resnick, J., not participating.

98-588. State v. Robbins.

Muskingum App. No. CA9355. On motion for leave to file delayed appeal. Motion denied.

98-598. State v. Shelley.

Medina App. No. 2676-M. On review of order certifying a conflict. The court determines that a conflict exists; *sua sponte*, cause held for the decision in 97-1778, *State v. Rush*, Stark App. No. 96CA419; briefing schedule stayed.

98-630. State ex rel. O'Brien v. Powerfone, Inc.

Franklin App. No. 97APC05-639. On review of order certifying a conflict. The court determines that a conflict exists, as stated in the court of appeals' Journal Entry dated March 10, 1998:

“On motion of appellants, it is the order of this court that the motion to certify the judgment of this court as being in conflict with the judgment of the Ninth District Court of Appeals in *Adam v. Bd. of Zoning Appeals of Bath Twp.* (July 23, 1997), No. 18144, unreported [1997 WL 423040], is sustained and pursuant to Section 3(B)(4), Article IV, Ohio Constitution, the record of this case is certified to the Supreme Court of Ohio for review and final determination on the following question:

“Whether a finding that an entity provides an essential good or service to the general public is a necessary prerequisite to that entity’s being a public utility exempt from zoning regulation.”

Sua sponte, cause consolidated with 98-148, *infra*, and cause held for the decision in 98-46 and 98-94, *infra*; briefing schedule stayed.

98-644. Mundy v. Bohman.

Greene App. No. 97CA89. On motion for stay. Motion denied.

98-652. Folger v. State Farm Mut. Ins. Co.

Greene App. No. 97CA48. On motion for stay. Motion granted.

F.E. Sweeney, J., dissents.

98-693. Srail v. RJF Internatl. Corp.

Cuyahoga App. No. 72050. On motion for stay. Motion denied.

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

DISCRETIONARY APPEALS ALLOWED

98-148. State ex rel. O’Brien v. Powerfone, Inc.

Franklin App. No. 97APC05-639. *Sua sponte*, cause consolidated with 98-630, *State ex rel. O’Brien v. Powerfone, Inc.*, Franklin App. No. 97APC05-639, and held for the decision in 98-46 and 98-94, *Campanelli v. AT&T Wireless Serv.*, Stark App. Nos. 1997CA00109 and 1997CA00110; briefing schedule stayed.

98-330. Gregory v. W. Res. Mut. Cas. Co.

Wayne App. No. 97CA0020. Discretionary appeal allowed; *sua sponte*, cause held for the decision in 97-402 and 97-551, *Ross v. Farmers Ins. Group of Cos.*, Montgomery App. No. 15865; briefing schedule stayed.

98-387. Hillyer v. Painesville Twp. Local Bd. of Edn.

Lake App. No. 97-L-161. *Sua sponte*, cause consolidated with 98-546, *Hillyer v. Painesville Twp. Local Bd. of Edn.*, Lake App. No. 97-L-161, and held for the decision in 97-1870, *Burger v. Cleveland Hts.*, Cuyahoga App. No. 72675; briefing schedule stayed.

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

98-390. State v. Brewer.

Clermont App. No. CA97-03-030.

Pfeifer, J., dissents.

98-403. Sheet Metal Workers' Internatl. Assn. Local Union No. 33 v. Mohawk Mechanical, Inc.

Knox App. No. 97CA13.

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

98-405. Hamilton Ins. Serv., Inc. v. Nationwide Ins. Cos.

Richland App. Nos. 97CA27 and 97CA42. Discretionary appeal allowed on Propositions of Law Nos. I and II.

F.E. Sweeney, Pfeifer and Lundberg Stratton, JJ., would allow all Propositions of Law.

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

98-437. Galt Alloys, Inc. v. Keybank Natl. Assn.

Stark App. No. 1997CA00264. *Sua sponte*, cause consolidated with 98-499, *Galt Alloys, Inc. v. Keybank Natl. Assn.*, Stark App. No. 97CA00264.

Resnick, J., not participating.

98-442. Scott-Pontzer v. Liberty Fire Ins. Co.

Stark App. No. 1997CA00152.

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

98-522. Northwood v. Wood Cty. Regional Water Sewer Dist.

Wood App. No. WD-97-010.

Pfeifer, J., dissents.

Resnick, J., not participating.

DISCRETIONARY APPEALS NOT ALLOWED

98-242. Griffith v. Hoile.

Hancock App. No. 5-97-23. (Appeal of Harrison L. Griffith and cross-appeal of Gerald F. Hoile.)

Douglas and Resnick, JJ., dissent.

98-323. Gunsorek v. Heartland Bank.

Franklin App. No. 97APE03-393.

Douglas, J., dissents.

98-328. Quill v. R.A. Third Street, LLC.

Montgomery App. No. 16639.

98-339. State v. Roberts.

Franklin App. No. 97APA06-778.

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

98-379. Paxton v. Glenn J. Ruff, Inc.

Butler App. No. CA97-04-089.

F.E. Sweeney, J., dissents.

98-394. State v. Shown.

Lake App. No. 96-L-218.

Cook and Lundberg Stratton, JJ., dissent.

98-412. Sparks v. Erie Cty. Bd. of Commrs.

Erie App. No. E-97-007.

Pfeifer, J., dissents.

98-413. Schulman v. Wolske & Blue Co., L.P.A.

Franklin App. Nos. 97APE07-924 and 97APE07-931.

Douglas, J., not participating.

98-414. State v. Reynolds.

Ottawa App. No. OT-97-022.

Lundberg Stratton, J., dissents.

98-417. Noftz v. Ernsberger.

Ottawa App. No. OT-97-026.

Resnick, J., not participating.

98-427. In re Guardianship of McElhany.

Summit App. No. 18423.

98-439. Jefferson Place Condominium Assn. v. Naples.

Mahoning App. Nos. 95 C.A. 238 and 95 C.A. 240.

Douglas and Cook, JJ., dissent.

98-446. State v. Thompson.

Hamilton App. No. C-980008.

98-452. Schrader v. Schrader.

Medina App. No. 2664-M.

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

98-458. Quillen v. Deaton.

Butler App. No. CA97-07-147.

Moyer, C.J., dissents.

98-474. Burns v. Krishnan.

Lorain App. No. 96CA006650.

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

98-501. Wurth v. Emro Marketing Co.

Lucas App. No. L-97-1158.

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

98-557. State v. Schachner.

Lucas App. No. L-97-1088.

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

Resnick, J., not participating.

RECONSIDERATION DOCKET

97-100. State v. Lacy.

Butler App. No. CA95-12-221. Reported at 81 Ohio St.3d 266, ____ N.E.2d _____. On motion for reconsideration. Motion denied.
Resnick and Pfeifer, JJ., dissent.

97-2189. State ex rel. Henderson v. Ohio Dept. of Rehab. & Corr.

Madison App. No. CA96-12-058. Reported at 81 Ohio St.3d 267, ____ N.E.2d _____. On motion for reconsideration. Motion denied.

98-443. State ex rel. Brown v. Franks.

In Procedendo and Prohibition. Reported at 81 Ohio St.3d 1486, ____ N.E.2d _____. On motion for reconsideration. Motion denied.
Pfeifer, J., dissents.