

SUPREME COURT OF OHIO

COLUMBUS

ANNOUNCEMENT

9:00 A.M.

WEDNESDAY

February 25, 1998

MERIT DOCKET

97-963. State ex rel. Cox v. Porter.

In Mandamus. Sua sponte, cause dismissed.

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

97-1078. State ex rel. Hodge v. Levingston.

In Quo Warranto. 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.

97-2061. State ex rel. Waryck v. Sargus.

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.

97-2709. State ex rel. Harris v. Eighth Appellate Dist.

In Mandamus. Sua sponte, cause dismissed.

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

98-35. State ex rel. Mallon v. Trumbull 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.

98-152. State ex rel. Cotton v. Ghee.

In Habeas Corpus. Sua sponte, cause dismissed.

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

98-200. Bosse v. Hoague.

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

97-2283. State v. Evans.
Hamilton App. No. C-950923.

97-2441. Carter v. Weinstein.
Cuyahoga App. No. 71695.

97-2461. State v. Tomblin.
Lorain App. No. 97CA006892.

97-2465. State v. McDaniel.
Miami App. No. 97CA7.

97-2468. State v. Peeples.
Pickaway App. No. 97CA16.

97-2472. State v. Gordon.
Stark App. No. 1997CA0142.

97-2474. State v. Payton.
Greene App. No. 97CA101.

97-2478. Yancey v. Glazer.
Montgomery App. No. 13825.

97-2480. Snider v. Lillie.
Hamilton App. No. C-961014.
Moyer, C.J., dissents.

97-2495. State v. Lewis.
Knox App. No. 97CA000005.

97-2497. State v. Blackwell.
Franklin App. No. 97APA02-238.

97-2511. Ontario v. Mathews.
Richland App. No. 97CA362.

Moyer, C.J., and Pfeifer, J., dissent and would allow this
cause and hold it for the decision in 97-1054, State v. Wilhelm,
Butler App. No. CA96-12-272.

97-2513. State v. Zych.
Clermont App. No. CA97-02-012.

97-2523. Lakewood v. Brezic.
Cuyahoga App. No. 71728.

97-2525. State v. Comeaux.
Hamilton App. No. C-961147.
F.E. Sweeney, J., dissents.

97-2538. State v. Lemaster.

Knox App. No. 96CA28.

97-2539. State v. Monk.
Knox App. No. 96CA33.

97-2544. State v. Thompson.
Franklin App. No. 97APA04-489.

97-2548. State v. Kemp.
Hamilton App. No. C-960478.

97-2549. Scott v. Bazetta Twp. Bd. of Trustees.
Trumbull App. No. 96-T-5571.
Douglas and Resnick, JJ., dissent.

97-2557. State v. Robinson.
Summit App. No. 18230.
Cook, J., not participating.

97-2558. Middletown v. Myers.
Butler App. No. CA97-04-085.
Moyer, C.J., dissents and would allow this cause and hold it for the decision in 97-1054, State v. Wilhelm, Butler App. No. CA96-12-272.

97-2564. State v. Martin.
Shelby App. No. 17-97-14.
Pfeifer, J., dissents.

97-2572. State v. Creasey.
Cuyahoga App. No. 73184.

97-2575. State v. Plassman.
Fulton App. No. F-97-017.
Resnick, J., not participating.

97-2577. Ruble v. Cleveland Clinic Found.
Cuyahoga App. No. 71844.

97-2581. State v. Holt.
Franklin App. No. 97APA04-550.
Resnick and F.E. Sweeney, JJ., dissent.

97-2589. State v. Boyd.
Champaign App. No. 97CA1.

97-2594. State v. Ware.
Muskingum App. No. CT970013.

97-2598. State v. Hilton.
Summit App. No. 18447.

97-2599. State v. Fannin.
Franklin App. No. 97APA04-540.

97-2600. D. Michael Smith Ent., Inc. v. Ohio Liquor Control Comm.

Summit App. No. 18332.
Moyer, C.J., dissents.

97-2603. State v. Marsh.
Cuyahoga App. No. 71594.

97-2604. State v. Kelley.
Holmes App. No. 97CA571.
Douglas, J., dissents.

97-2605. State v. Gregory.
Lucas App. No. L-96-190.
Resnick, J., not participating.

97-2611. State v. Wilks.
Hamilton App. No. C-960993.

97-2617. State v. Frye.
Franklin App. No. 97APA01-106.

97-2620. State v. McCown.
Cuyahoga App. No. 72604.

97-2627. State v. Rivers.
Cuyahoga App. No. 73314.

97-2630. State v. Spires.
Franklin App. No. 97APA03-407.

97-2649. State v. Smith.
Ashtabula App. No. 96-A-0035.

97-2650. State v. Smith.
Ashtabula App. No. 95-A-0058.

97-2652. State v. Johnson.
Cuyahoga App. Nos. 71249 and 71250.

97-2656. State v. Griffith.
Miami App. No. 97CA31.

97-2665. State v. White.
Cuyahoga App. No. 71188.

97-2668. State v. Green.
Lake App. Nos. 96-L-187 and 96-L-188.

97-2669. State v. Allard.
Knox App. No. 973.

97-2672. State v. Blednick.
Summit App. No. 18395.

97-2678. Norman v. BP Am., Inc.
Franklin App. No. 97APE06-790.

97-2695. State v. Ware.

Hamilton App. No. C-970946.

MOTION DOCKET

97-1117. Simmons-Harris v. Goff.
Franklin App. Nos. 96APE08-982 and 96APE08-991. On motion to strike attachment to brief of appellant/cross-appellee. Motion denied.

Douglas and Cook, JJ., dissent.
Lundberg Stratton, J., not participating.

97-1831. Leber v. Buckeye Union Ins. Co.
Erie App. No. E-96-014. On motion to dismiss. Motion denied.

Cook, J., dissents.
Resnick, J., not participating.
On motion to strike. Motion denied as moot.
Cook, J., would deny the motion to strike
Douglas, J., dissents.
Resnick, J., not participating.

97-2267. Haning v. Pub. Util. Comm.
Public Utilities Commission, Nos. 97-268-GA-CSS, 97-32-GA-CSS, 97-33-GA-CSS, and 97-97-GA-CSS. On motion for admission pro hac vice of Nancy Brockway. Motion granted.

97-2730. State v. Smith.
Butler App. No. CA97-01-011. On motion to dismiss. Motion denied.

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

98-21. Delli Bovi v. Pacific Indemn. Co.
Certified State Law Question, No. 4:97CV0094. On preliminary memoranda pursuant to S.Ct.Prac.R. XVIII(6). The court will answer both questions certified by the United States District Court for the Northern District of Ohio, Eastern Division, found at page 2 of the court's Certification Order filed December 30, 1997:

"(1) Is a helicopter a 'motor vehicle' under Ohio Revised Code 4501.01 for purposes of the mandatory underinsured motorist coverage set forth in Ohio Revised Code 3937.18?;

"(2) Does the word 'land,' used in the Pacific policy, impermissibly modify the words 'motorized vehicle' so as to eliminate UIM coverage mandated by Ohio Revised Code 3937.18?"

Lundberg Stratton, J., dissents.
Sua sponte, cause consolidated with 98-23, infra.

98-23. Delli Bovi v. Auto-Owners Mut. Ins. Co.
Certified State Law Question, No. 4:97CV0147. On preliminary memoranda pursuant to S.Ct.Prac.R. XVIII(6). The court will answer both questions certified by the United States District Court for the Northern District of Ohio, Eastern Division, found at page 2 of the court's Certification Order filed December 30, 1997:

"(1) Is a helicopter a 'motor vehicle' under Ohio Revised Code 4501.01 for purposes of the mandatory underinsured motorist coverage set forth in Ohio Revised Code 3937.18?;

"(2) Does the word 'land,' incorporated by reference in

the form Auto-Owners policy, impermissibly modify the words 'motorized vehicle' so as to eliminate UIM coverage mandated by Ohio Revised Code 3937.18?"

Lundberg Stratton, J., dissents.

Sua sponte, cause consolidated with 98-21, supra.

96-46. Campanelli v. AT&T Wireless Serv.

Stark App. Nos. 1997CA00109 and 1997CA00110. On motion for stay. Motion denied.

Pfeifer, J., dissents.

Resnick, J., not participating.

98-52. State v. Eads.

Cuyahoga App. No. 73524. On motion for stay. Motion denied.

98-53. State v. Phillips.

Allen App. No. 1-97-37. On motion for leave to file delayed appeal. Motion denied.

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

98-61. State v. Issac.

Ross App. No. 97CA2286. On motion for leave to file delayed appeal. Motion denied.

98-65. State v. Shilling.

Franklin App. No. 97APA01-43. On motion for leave to file delayed appeal. Motion denied.

98-84. Rice v. CertainTeed Corp.

Certified State Law Question, No. 3:97CV7484. On preliminary memoranda pursuant to S.Ct.Prac.R. XVIII(6). The court will answer the following question certified by the United States District Court for the Northern District of Ohio, Western Division:

"Whether punitive or exemplary damages are available in an employment discrimination action arising under Ohio Rev. Code 4112.99."

98-90. State v. Tensing.

Hamilton App. No. C-961047. On motion for leave to file delayed appeal. Motion denied.

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

98-93. State v. Garrett.

Montgomery App. No. 16180. On motion for leave to file delayed appeal. Motion denied.

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

98-101. State v. Cooper.

Montgomery App. No. 16095. On motion for leave to file delayed appeal. Motion denied.

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

98-117. State v. Frazier.

Cuyahoga App. Nos. 71675, 71676, 71677 and 71678. On motion for leave to file delayed appeal. Motion granted.

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

98-120. Beecher v. Ohio State Home Serv., Inc.
Summit App. No. 18439. On review of order certifying a
conflict. The court determines that a conflict exists on the
following question:

"When the validity of a contract containing an arbitration
clause is challenged based on a general claim of fraudulent
inducement, must the trial court first determine whether the
contract is valid before submitting the case to arbitration, or
is this only required when the claim of fraudulent inducement is
specifically directed at the arbitration clause?"

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

Sua sponte, cause held for the decision in 96-1803, ABM
Farms, Inc. v. Woods, Fairfield App. No. 95CA50; briefing
schedule stayed.

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

98-151. Bloom v. Stevens.
Ashland App. No. 97COA01207. On review of order certifying a
conflict. The court determines that a conflict exists on the
following question:

"Whether under Juv.R. 4(A) and R.C. 2151.352, a parent is
entitled to appointed counsel in all matters properly brought
before the juvenile court, including companionship, custody and
visitation issues?"

Sua sponte, cause consolidated with 97-2486, *infra*, and
causes held for the decision in 97-1915, State ex rel. Asberry
v. Payne; briefing schedule stayed.

DISCRETIONARY APPEALS ALLOWED

97-2100. FOE Aerie 0582 Twin City v. Ohio Liquor Control Comm.
Franklin App. No. 97APE03-339. Discretionary appeal allowed;
sua sponte, cause held for the decision in 96-1269, AL Post 763
v. Ohio Liquor Control Comm.; 96-1572, VFW Post 4235 v. Ohio
Liquor Control Comm.; 96-1575, VFW Post 4615 v. Ohio Liquor
Control Comm.; and 96-2797, AL Post 0184 v. Ohio Liquor Control
Comm.; briefing schedule stayed.

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

97-2486. Bloom v. Stevens.
Ashland App. No. 97COA01207.
F.E. Sweeney, J., dissents.
Sua sponte, cause consolidated with 98-151, *supra*.

97-2585. State v. Lawrence.
Summit App. No. 18298. Discretionary appeal allowed; sua
sponte, cause held for the decision in 97-1778, State v. Rush,
Stark App. No. 96CA419; briefing schedule stayed.
Lundberg Stratton, J., dissents.

97-2587. In re Willhite.
Hamilton App. No. C-970122.
Douglas, J., dissents.

97-2609. Breidenbach v. Conrad.
Seneca App. No. 13-97-6. Discretionary appeal allowed on
Propositions of Law Nos. I and II; sua sponte, cause held for

the decision in 97-517, George v. Ohio Bur. of Workers' Comp., Montgomery App. No. 16081; briefing schedule stayed.

Douglas, Resnick and F.E. Sweeney, JJ., would allow all propositions of law.

97-2615. State v. Woodman.

Franklin App. No. 97APA04-499. Discretionary appeal allowed; sua sponte, cause held for the decision in 97-1193, State ex rel. Maynard v. Corrigan, Cuyahoga App. No. 72253; briefing schedule stayed.

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

97-2677. State v. Hurston.

Montgomery App. No. 16217. Discretionary appeal allowed on Proposition of Law No. I only; sua sponte, cause held for the decision in 97-1778, State v. Rush, Stark App. No. 96CA419; briefing schedule stayed.

Douglas, J., dissents.

DISCRETIONARY APPEALS NOT ALLOWED

97-2526. Brillhart v. Mansfield.

Richland App. No. 96CA105.

97-2528. Bedford Hts. v. Singer.

Cuyahoga App. No. 71740.

97-2542. State v. Griffin.

Morrow App. No. CA847.

97-2569. State ex rel. Jones v. Hamilton Cty. Bd. of Commrs.

Hamilton App. No. C-950772.

Douglas and Resnick, JJ., dissent.

97-2576. Whitler v. McFaul.

Cuyahoga App. No. 71614.

97-2578. State v. Landrum.

Summit App. No. 18660.

97-2583. Schirger v. Brook Park.

Cuyahoga App. No. 71739.

Douglas, J., dissents.

97-2584. Gillmor v. Delta Shores Dev. Co.

Ottawa App. No. OT-97-009.

Douglas, J., dissents.

Resnick, J., not participating.

97-2591. Brown v. Canfield Bd. of Zoning Appeals.

Mahoning App. No. 95 C.A. 219.

Moyer, C.J., dissents.

97-2595. State v. Verdun.

Clark App. No. 97CA30.

97-2597. Bates v. Cincinnati.

Hamilton App. No. C-960659.
Moyer, C.J., Douglas and Pfeifer, JJ., dissent.

97-2601. Waddell v. LTV Steel Co., Inc.
Cuyahoga App. No. 71811.
Moyer, C.J., Douglas and Pfeifer, JJ., dissent.

97-2602. Denkins v. Zinkan Ent.
Summit App. No. 18251.
Douglas, J., dissents.

97-2606. Klinger v. Premier Properties.
Logan App. No. 8-97-10.

97-2624. Halim v. Hanes.
Montgomery App. No. 16811.

97-2660. Eastgate Ford, Inc. v. Ford Motor Co.
Franklin App. No. 97APE05-670.
F.E. Sweeney, J., dissents.
Lundberg Stratton, J., not participating.

97-2662. Carter v. Warner Interior, Inc.
Cuyahoga App. No. 71797.
Douglas, Resnick and F.E. Sweeney, JJ., dissent.

97-2671. Monk v. Monk.
Clermont App. No. CA97-04-039.
Douglas and Pfeifer, JJ., dissent.

97-2694. Lewers v. Am. Express Trust Co.
Stark App. No. 96CA0354.
Moyer, C.J., and Pfeifer, J., dissent.

RECONSIDERATION DOCKET

95-902. State ex rel. Kinnebreu v. Clinic Ctr. Hotel.
Franklin App. No. 94APD03-284. Reported at 80 Ohio St.3d 688,
___ N.E.2d ___. On motion for reconsideration by Clinic Center
Hotel. Motion denied.

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

97-2124. State v. Poindexter.
Hamilton App. No. C-960780. Reported at 81 Ohio St.3d 1414, ___
N.E.2d ___. On motion for reconsideration. Motion denied.

97-2151. Reynolds v. Morris.
Franklin App. No. 97APE02-227. Reported at 81 Ohio St.3d 1414,
___ N.E.2d ___. On motion for reconsideration. Motion denied.
Douglas, J., dissents.

97-2181. Harmon v. Philip Morris, Inc.
Cuyahoga App. No. 71605. Reported at 81 Ohio St.3d 1420, ___
N.E.2d ___. On motion for reconsideration. Motion denied.
Moyer, C.J., Cook and Lundberg Stratton, JJ., dissent.

97-2215. Sain v. Allstate Ins. Co.
Franklin App. No. 97APG04-502. Reported at 81 Ohio St.3d 1415,

___ N.E.2d ___. On motion for reconsideration. Motion denied.

97-2269. Pritchett, Dlusky & Saxe v. Pingue.

Franklin App. No. 96APE11-1598. Reported at 81 Ohio St.3d 1421,

___ N.E.2d ___. On motion for reconsideration. Motion denied.

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