

SUPREME COURT OF OHIO

COLUMBUS

ANNOUNCEMENT

1:00 P.M.

WEDNESDAY

August 2, 2000

MERIT DOCKET

00-856. State ex rel. Walls v. Blackwell.

In Mandamus. On answer of respondent and on suggestion of mootness. On S.Ct.Prac.R. X(5) determination, cause dismissed.

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

Douglas, J., concurs because the vote of the Secretary of State is final.

00-972. State ex rel. Taylor v. Ghee.

In Mandamus. On answer of respondents Margarett Ghee and Reginald Wilkinson and on answer of respondent of Betty Montgomery. On S.Ct.Prac.R. X(5) determination, cause dismissed.

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

00-1065. Lawson v. 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.

00-1069. State ex rel. Chambers v. Ohio Adult Parole Auth.

In Mandamus. On motion for stay of Supreme Court proceedings pending presentation of evidence, motion to dismiss, motion for appointment of expert examiner, motion for determination of case based in part on tapes and/or transcription of final parole revocation hearing, and motion for discovery. Motion to dismiss sustained. Cause dismissed.

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

00-1190. Parker v. Brigano.

In Habeas Corpus. On petition for writ of habeas corpus by Bobby Neal Parker. *Sua sponte*, cause dismissed.

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

00-1191. King v. Wilson.

In Habeas Corpus. On petition for writ of habeas corpus by David C. King. *Sua sponte*, cause dismissed.

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

00-1194. State ex rel. Taylor v. Anderson.

In Habeas Corpus. On petition for writ of habeas corpus by David Taylor. *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**

00-746. Walker v. Walker.

Cuyahoga App. No. 77357.

00-765. State v. Harter.

Auglaize App. No. 2-99-46.

00-767. State v. Cromer.

Lucas App. Nos. L-98-1289 and L-98-1290.

00-787. State v. Daniels.

Hamilton App. No. C-990549.

00-788. State v. Borger.

Hamilton App. No. C-990736.

00-792. State v. Wilson.

Wayne App. No. 99CA0034.

00-802. State v. Holdcroft.

Wyandot App. No. 16-99-04.

00-813. State v. Blackwell.

Franklin App. No. 98AP-124.

00-814. State v. Plassman.

Fulton App. No. F00004.

Resnick, J., not participating.

00-817. BP Communications Alaska, Inc. v. Cent. Collection Agency.

Cuyahoga App. No. 75788.

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

00-819. State v. Gibbons.

Stark App. No. 1998CA00158.

Lundberg Stratton, J., would allow on Propositions of Law Nos. I and V.

00-820. Whitler v. McFaul.

Cuyahoga App. No. 75163.

Pfeifer and Lundberg Stratton, JJ., dissent.

00-825. State v. Harrison.

Cuyahoga App. No. 75828.

00-826. Aust v. Ohio State Dental Bd.

Franklin App. No. 99AP-946.

00-831. State v. Higgins.

Hamilton App. No. C-990615.

00-834. Stout v. Liverpool Twp. Bd. of Trustees.

Medina App. No. 2907-M.

Moyer, C.J., dissents.

00-843. State v. Wells.

Jefferson App. No. 98JE3.

00-845. Doss v. Ohio Dept. of Rehab. & Corr.

Franklin App. No. 99AP-661.

00-846. Calex Corp. v. United Steelworkers of Am.

Mahoning App. No. 98CA44.

Lundberg Stratton, J., dissents.

00-848. State v. Dawson.

Tuscarawas App. No. 1999AP080051.

Moyer, C.J., would allow on Proposition of Law No. II.

Cook, J., would allow.

00-849. Skonieczny v. Eastlake.

Lake App. No. 99-L-165.

00-853. State v. Eastep.

Summit App. No. 19703.

00-854. Rocky River v. Papandreas.

Cuyahoga App. No. 76132.

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

00-862. MDJ Properties, Inc. v. Union Twp. Bd. of Trustees.

Clermont App. Nos. CA99-02-013 and CA99-02-019.

Pfeifer, J., dissents.

00-863. State v. Muhammad.

Cuyahoga App. No. 77833.

Resnick, J., not participating.

00-866. State v. Benvenuto.

Auglaize App. Nos. 2-99-35 and 2-99-36.

Pfeifer, J., dissents.

00-872. Tradesmen Internatl., Inc. v. Kahoe.

Cuyahoga App. No. 74420.

Resnick, J., dissents.

00-878. State v. Brust.

Franklin App. No. 99AP-509.

00-881. State v. Woodman.

Franklin App. No. 99AP-694.

00-883. State v. Alberty.

Allen App. No. 1-99-84.

00-884. Greiner v. Timm.

Franklin App. No. 99AP-618.

F.E. Sweeney, J., dissents.

00-885. Basinger v. Pilarczyk.

Hamilton App. No. C-990454.

00-887. State v. Miskel.

Franklin App. No. 99AP-482.

00-889. State v. Maddox.

Mahoning App. No. 98CA147.

00-890. State v. Barr.

Cuyahoga App. No. 77718.

00-892. Kim v. Vasko.

Lucas App. No. L-99-1199.

Resnick, J., not participating.

00-895. State v. Olvera.

Williams App. Nos. WM-98-022 and WM-98-023.

00-896. State v. Montgomery.

Clark App. No. 98CA82.

00-898. Gray-Jones v. Jones.

Franklin App. Nos. 98AP-1372 and 98AP-1373.

Pfeifer, J., dissents.

00-899. State v. Everett.

Hamilton App. No. C-990423.

00-900. O'Connell Null v. Ohio Dept. of Mental Retardation & Developmental Disabilities.

Franklin App. No. 99AP-523.

Douglas and Resnick, JJ., dissent.

00-904. Brecksville v. Waschpusch.

Cuyahoga App. No. 75952.

Resnick, J., not participating.

00-916. Poindexter v. Poindexter.

Franklin App. No. 98AP-1150.

Resnick, J., dissents.

00-922. State v. Winkfield.

Franklin App. No. 99AP-555.

00-923. State v. Rogers.

Summit App. No. 19176.

00-931. State v. Moore.

Cuyahoga App. No. 76142.

00-937. Metzenbaum v. Marc Glassman, Inc.

Cuyahoga App. No. 76684.

00-976. State v. Woods.

Hamilton App. Nos. C-860576 and C-870179.

00-978. State v. Lopez.

Cuyahoga App. No. 74096.

00-979. State v. Robinson.

Clark App. No. 97CA0073.

Lundberg Stratton, J., dissents.

00-1005. State v. Lambert.

Montgomery App. No. 15474.

00-1007. State v. Rollins.

Lucas App. No. L-99-1042.

00-1019. State v. Stanley.

Greene App. No. 99CA37.

00-1026. State v. Bell.

Perry App. No. 96CA27.

MOTION DOCKET

96-2029. State v. White.

Ashland C.P. No. 96CRI07366. On application for reopening under S.Ct.Prac.R. XI(5). Application denied.

96-2509. State v. White.

Ashland App. No. 96COA01182. On application for reopening under S.Ct.Prac.R. XI(5). Application denied.

99-2117. Miele v. Ribovich.

Cuyahoga App. No. 75489. On motion to strike portions of the appendix of the appellee's merit brief. Motion denied.

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

On motion to strike reply brief and appellant's motion to strike filed July 3, 2000. Motion denied.

Cook and Lundberg Stratton, JJ., would also grant leave of ten days to reply.

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

99-2216. Mayer v. Bristow.

Crawford App. No. 3-98-29. On motion to strike appellee's merit brief by James J. Mayer and intervenor Attorney General Betty D. Montgomery. Motion denied and leave of ten days granted to reply.

Pfeifer, J., dissents.

00-244. Romig v. Tuscarawas Cty. Dept. of Human Serv.

Tuscarawas App. No. 99AP120073. On notice of return of minor child to custody of appellant. *Sua sponte*, cause dismissed.

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

00-636. Kishmarton v. William Bailey Constr., Inc.

Cuyahoga App. No. 74893. On review of order certifying a conflict. The court determines that a conflict exists. The parties are to brief the following issues:

“(1) Where the vendee and builder-vendor enter into an agreement for the future construction of a residence, does the vendee's claim for breach of an implied duty to construct the house in a workmanlike manner arise *ex contractu* or *ex delicto*?”

“(2) Regardless of whether the claim is in contract or tort, in such a case, can the plaintiff recover emotional distress damages for loss of enjoyment, annoyance or discomfort?”

Sua sponte, cause consolidated with 00-684, *Kishmarton v. William Bailey Constr., Inc.*, Cuyahoga App. No. 74893.

The conflict cases are *Lloyd v. William Fannin Bldrs., Inc.* (1973), 40 Ohio App.2d 507, 69 O.O.2d 444, 320 N.E.2d 738; *Barton v. Ellis* (1986), 34 Ohio App.3d 251, 518 N.E.2d 18; *Tibbs v. Natl. Homes Constr. Corp.* (1977), 52 Ohio App.2d 281, 6 O.O.3d 300, 369 N.E.2d 1218; and *Vistein v. Keeney* (1990), 71 Ohio App.3d 92, 593 N.E.2d 52.

Resnick, J., not participating.

00-719. Carr v. Eli Lilly & Co.

Cuyahoga App. Nos. 75678, 75679 and 75680. On motion for admission *pro hac vice* by Hugh E. McKay for John C. Maloney, Jr., for Smithkline Beecham Corporation. Motion denied as moot.

00-801. Littrell v. Wigglesworth.

Butler App. No. CA99-05-092. On review of order certifying a conflict. The court determines that a conflict exists. The parties are to brief the following issue:

“The issue for certification is whether R.C. 3937.18 precludes recovery merely because the insured’s under-insured motorist coverage limits are identical to or less than the tortfeasor’s liability limits when, due to the presence of multiple claimants, the insured is unable to recover the tortfeasor’s limits.”

Lundberg Stratton, J., dissents.

Sua sponte, cause consolidated with 00-745, *Littrell v. Wigglesworth*, Butler App. Nos. CA99-05-092 and CA99-08-1410.

The conflict cases are *Estate of Fox v. Auto-Owners Ins. Co.* (June 12, 1998), Darke App. No. 1456, unreported, 1998 WL 309212; and *Berry v. Przyborowski* (Nov. 19, 1999), Miami App. No. 99-CA-21, unreported, 1999 WL 1043880.

00-833. State v. Tipler.

Summit App. No. 19344. On motion for leave to file delayed appeal. Motion granted.

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

00-1085. Funk v. Rent All Mart, Inc.

Certified State Law Question, No. 3:00 CV 7086. On review of order certifying a question of state law. The court will answer the following questions certified by the United States District Court for the Northern District of Ohio, Western Division:

“Is the statute of limitations under Ohio Rev.Code § 2305.112 viable in light of the ruling in *Johnson v. BP Chemicals, Inc.*, 85 Ohio St.3d 298, 707 N.E.2d 1107 (1999) which rendered the enabling statute, Ohio Rev.Code § 2745.01 unconstitutional? Does Ohio Rev.Code § 2305.112 apply to a common law cause of action brought by an employee against his

employer pursuant to *Blankenship v. Cincinnati Milacron Chemicals, Inc.*, 69 Ohio St.2d 608, 433 N.E.2d 572, *cert. Denied*, 459 U.S. 857 (1992)? If the statute of limitations is not one year pursuant to Ohio Rev.Code § 2305.112, what is the applicable statute of limitations for such causes of action?”

00-1126. State v. Rollins.

Lucas App. No. L-99-1042. On motion for leave to file delayed appeal. Motion denied.

00-1131. State v. Montgomery.

Montgomery App. No. 17203. On motion for leave to file delayed appeal. Motion denied.

00-1132. State v. Martin.

Cuyahoga App. No. 73455. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

00-1147. State v. Taylor.

Montgomery App. No. 17142. On motion for leave to file delayed appeal. Motion granted.

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

00-1155. State v. Norman.

Cuyahoga App. No. 76140. On motion for leave to file delayed appeal. Motion denied.

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

00-1171. State v. Wyrick.

Fairfield App. Nos. 99CA56 and 99CA63. On motion for leave to file delayed appeal. Motion denied.

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

00-1183. Banning v. Lake Cty.

Lake App. No. 99-L-113. On review of order certifying a conflict. The court determines that a conflict exists; *sua sponte*, cause held for the

decision in 00-472 and 00-481, *Johnson v. Greene Cty. Drug Task Force*, Greene App. No. 99CA61; briefing schedule stayed.

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

00-1233. In re Estate of Stewart.

Lorain App. No. 99CA007422. On motion for stay of court of appeals' judgment. Motion granted; no supersedeas bond required.

DISCRETIONARY APPEALS ALLOWED

00-495. State v. Iacona.

Medina App. No. 2891-M.

F.E. Sweeney, Cook and Lundberg Stratton, JJ., dissent.

00-660. USX Corp. v. Penn Cent. Corp.

Cuyahoga App. No. 74755.

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

00-684. Kishmarton v. William Bailey Constr., Inc.

Cuyahoga App. No. 74893. Discretionary appeal allowed and cause consolidated with 00-636, *Kishmarton v. William Bailey Constr., Inc.*, Cuyahoga App. No. 74893.

Douglas, J., dissents.

Resnick, J., not participating.

00-745. Littrell v. Wigglesworth.

Butler App. Nos. CA99-05-092 and CA99-08-141. Discretionary appeal allowed and cause consolidated with 00-801, *Littrell v. Wigglesworth*, Butler App. No. CA99-05-092.

Lundberg Stratton, J., dissents.

00-769. Goodin v. Columbia Gas of Ohio, Inc.

Athens App. No. 99CA30.

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

00-771. Community Ins. Co. v. Ohio Dept. of Transp.

Franklin App. No. 99AP-746.

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

DISCRETIONARY APPEALS NOT ALLOWED

00-662. Meritech Blue, Inc. v. Meritech, Inc.

Cuyahoga App. No. 77826. On discretionary appeal and motion for sanctions against appellant. Appeal and motion denied.

Lundberg Stratton, J., dissents.

Resnick, J., not participating.

00-818. Francis v. Hildebrand, Williams & Farrell.

Cuyahoga App. No. 76823.

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

Resnick, J., not participating.

00-821. Mihalcin v. Hocking College.

Athens App. No. 99CA32.

00-823. MGM Landscaping Contrs., Inc. v. Berry.

Summit App. No. 19426.

00-847. State v. Kotronis.

Montgomery App. No. 17762.

Lundberg Stratton, J., dissents.

00-850. Sucic v. Ohio Dept. of Human Serv.

Medina App. No. 2841-M.

Pfeifer and Lundberg Stratton, JJ., dissent.

00-859. State Farm Fire & Cas. Co. v. Dostie.

Greene App. No. 99CA119.

00-867. Simon v. Thorman.

Cuyahoga App. No. 77627.

Pfeifer, J., dissents.

00-869. Styers v. Falcon Foundry Co.

Trumbull App. No. 99-T-0017.

Lundberg Stratton, J., dissents.

00-876. Bishop v. Munson Transp., Inc.

Belmont App. No. 97BA62.

Resnick, J., dissents.

00-880. Dillard v. Campbell.

Montgomery App. No. 17969.

00-888. Dozier v. Ohio Adult Parole Auth.

Franklin App. No. 99AP-893.

00-905. Jackson v. Bellomy.

Franklin App. No. 99AP-691.

00-918. Quinan v. Ohio Dept. of Human Serv.

Franklin App. No. 99AP-562.

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

00-919. Sherrod v. Zahedi.

Hamilton App. No. C-990667.

00-939. Lukehart v. W. Ninth Street Partners, Inc.

Cuyahoga App. No. 75981.

Resnick, J., not participating.

00-1041. Masters v. Wilson.

Summit App. No. 19777.

RECONSIDERATION DOCKET

98-2445. Stickney v. State Farm Mut. Auto. Ins. Co.

Richland App. No. 98CA7. Reported at 88 Ohio St.3d 504, ___ N.E.2d ___.

On motion for reconsideration as to Proposition of Law No. 2 only. Motion granted and cause held for the decision in 00-745 and 00-801, *Littrell v. Wigglesworth*, Butler App. Nos. CA99-05-092 and CA99-08-141; briefing schedule stayed.

Pfeifer and Lundberg Stratton, JJ., dissent.

98-2572. Home Builders Assn. of Dayton and the Miami Valley v. Beavercreek.

Greene App. Nos. 97CA113 and 97CA115. Reported at 89 Ohio St.3d 121, ___ N.E.2d ___. On motion for reconsideration by Home Builders Association of Dayton et al. and on *amicus curiae* motion for leave to file under S.Ct.Prac.R. I. Motions denied.

Resnick, Pfeifer and Cook, JJ., dissent.

99-55. Hampel v. Food Ingredients Specialties.

Cuyahoga App. No. 73143. Reported at 89 Ohio St.3d 169, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

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

99-219, 99-223 and 99-224. Karr v. Borchardt.

Seneca App. Nos. 13-98-33, 13-98-34 and 13-98-35. Reported at 88 Ohio St.3d 535, ___ N.E.2d ___. On motions for reconsideration. Motions granted on Proposition of Law No. III only and cause held for the decision in 00-745 and 00-801, *Littrell v. Wigglesworth*, Butler App. Nos. CA99-05-092 and CA99-08-141; briefing schedule stayed.

Pfeifer and Lundberg Stratton, JJ., dissent.

99-1883. State v. Dawson.

Summit App. No. 19179. Reported at 89 Ohio St.3d 1208, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

00-549. Salick v. Caltrider.

Cuyahoga App. No. 76639. Reported at 89 Ohio St.3d 1425, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

00-567. State v. Allen.

Hamilton App. No. C-990310. Reported at 89 Ohio St.3d 1426, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

Lundberg Stratton, J., dissents.

00-934. State ex rel. Lehman v. Rosenbaum.

In Habeas Corpus. Reported at 89 Ohio St.3d 1425, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

00-936. State ex rel. Lehman v. Belden.

In Prohibition. Reported at 89 Ohio St.3d 1433, ____ N.E.2d _____. On motion for reconsideration. Motion denied.