

**GOODIN, APPELLANT, v. COLUMBIA GAS OF OHIO, INC., APPELLEE, ET AL.
LIECHTY, EXR., APPELLANT, v. YODER MANUFACTURING, INC. ET AL.; ITT
AUTOMOTIVE, INC., APPELLEE.**

[Cite as *Goodin v. Columbia Gas of Ohio, Inc.*, 2001-Ohio-143.]

Appeals dismissed as improvidently allowed.

(Nos. 00-769 and 00-1160 — Submitted April 4, 2001 at the Lawrence County
Session — Decided July 5, 2001.)

APPEAL from the Court of Appeals for Athens County, No. 99CA30.

APPEAL from the Court of Appeals for Cuyahoga County, No. 75654.

{¶ 1} The causes are dismissed, *sua sponte*, as having been improvidently allowed.

MOYER, C.J., RESNICK, F.E. SWEENEY, COOK and LUNDBERG STRATTON,
JJ., concur.

DOUGLAS and PFEIFER, JJ., dissent.

PFEIFER, J., dissenting.

{¶ 2} I disagree that this appeal was improvidently allowed. The decision of the trial court, upheld by the court of appeals, negatively impacts our tradition of trial by jury. In my view, issues of fact appropriate for a jury's determination were dealt with summarily by the trial judge. Specifically, genuine issues of fact existed as to two of the three prongs of the test establishing intent in intentional workplace torts, as enunciated in *Fyffe v. Jenos, Inc.* (1991), 59 Ohio St.3d 115, 570 N.E.2d 1108. Here, reasonable minds could have concluded that the employer, through its agents, knew that appellant's decedent was substantially certain to be harmed due to a dangerous work-related procedure and that the employer, despite that

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knowledge, required appellant's decedent to perform that dangerous task. We should have dealt with the case on the merits and reversed the judgment of the court of appeals.

DOUGLAS, J., concurs in the foregoing dissenting opinion.

Colley, Shroyer & Abraham Co., L.P.A., Michael F. Colley, Daniel N. Abraham and David K. Frank, for appellant, in case No. 00-769.

Stephen L. Hebenstreit and Andrew J. Sonderman, for appellee, in case No. 00-769.

Ray & Alton, L.L.P., and Frank A. Ray, urging reversal for *amicus curiae*, Ohio Academy of Trial Lawyers, in case No. 00-769.

Stewart Jaffy & Associates Co., L.P.A., Stewart R. Jaffy and Marc J. Jaffy, urging reversal for *amicus curiae*, Ohio AFL-CIO, in case No. 00-769.

Buckingham, Doolittle & Burroughs, L.L.P., and Scott A. Richardson, urging affirmance for *amicus curiae*, Ohio Association of Civil Trial Attorneys, in case No. 00-769.

Vorys, Sater, Seymour & Pease, L.L.P., Robert A. Minor and Robin R. Obetz, urging affirmance for *amicus curiae*, Ohio Self-Insurers' Association, in case No. 00-769.

Paul W. Flowers Co., L.P.A., and Paul W. Flowers; The Landskroner Law Firm, Ltd., and Jack Landskroner, for appellant, in case No. 00-1160.

Squire, Sanders & Dempsey, L.L.P., Damond R. Mace and Adam R. Fox, for appellee, in case No. 00-1160.

Hochman & Roach Co., L.P.A., James B. Hochman and Cinamon S. Houston, urging reversal for *amicus curiae*, Dayton Springfield Miami Valley AFL-CIO, Regional Labor Council, in case No. 00-1160.

January Term, 2001

Bashein & Bashein Co., L.P.A., and W. Craig Bashein; Weisman, Goldberg & Weisman Co., L.P.A., R. Eric Kennedy and Henry W. Chamberlain; The Okey Law Firm, L.P.A., and Mark D. Okey, for amicus curiae, in case No. 00-1160.
