

**THE STATE EX REL. MAYS, APPELLANT, v. MIAMI VALLEY MASONRY, INC. ET  
AL., APPELLEES.**

[Cite as *State ex rel. Mays v. Miami Valley Masonry, Inc.*, 2001-Ohio-1602.]

*Workers' compensation—Court of appeals' judgment affirmed.*

(No. 01-690—Submitted September 18, 2001—Decided October 31, 2001.)

APPEAL from the Court of Appeals for Franklin County, No. 00AP-672.

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{¶ 1} The judgment of the court of appeals is affirmed consistent with the opinion of the court of appeals.

MOYER, C.J., PFEIFER, COOK and LUNDBERG STRATTON, JJ., concur.

DOUGLAS, RESNICK and F.E. SWEENEY, JJ., dissent.

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**ALICE ROBIE RESNICK, J., dissenting.**

{¶ 2} I would reverse the judgment of the court of appeals and return the cause to the Industrial Commission for relief consistent with *State ex rel. Gay v. Mihm* (1994), 68 Ohio St.3d 315, 626 N.E.2d 666.

Douglas and F.E. Sweeney, JJ., concur in the foregoing dissenting opinion.

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*Butkovich, Schimpf, Schimpf & Ginocchio Co., L.P.A., James A. Whittaker and Stephen P. Gast*, for appellant.

*Betty D. Montgomery*, Attorney General, and *Jacob Dobres*, Assistant Attorney General, for appellee Industrial Commission.

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