

# The Supreme Court of Ohio

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## CASE ANNOUNCEMENTS AND ADMINISTRATIVE ACTIONS

September 4, 2002

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### MERIT DECISIONS WITH OPINIONS

**2000-2178. Wallace v. Ohio Dept. of Commerce, Div. of State Fire Marshal, 2002-Ohio-4210.**

Franklin App. No. 99AP-1303. Judgment reversed and cause remanded.

Douglas, F.E. Sweeney, Pfeifer and Cook, JJ., concur.

Douglas, J., concurs separately.

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

Lundberg Stratton, J., dissents.

**2001-0265. OHA: The Assn. for Hosps. & Health Sys. v. Ohio Dept. of Human Serv., 2002-Ohio-4209.**

Franklin App. No. 99AP-614. Judgment reversed and cause remanded to the court of appeals.

Douglas, F.E. Sweeney, Pfeifer and Cook, JJ., concur.

Moyer, C.J., dissents.

Resnick and Lundberg Stratton, JJ., dissent.

### MERIT DECISIONS WITHOUT OPINIONS

**2002-0908. State ex rel. Rock v. Nicely.**

In Prohibition. 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.

**2002-0920. State ex rel. E. Liverpool v. Gausse-Milliken.**

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.

**2002-1024. State ex rel. Floyd v. Cain.**

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.

**2002-1041. State ex rel. Buoscio v. Seventh Judicial Dist.**

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.

**2002-1117. State ex rel. Carter v. Ohio Adult Parole Auth.**

In Mandamus. On motion to dismiss. Motion to dismiss sustained. Cause dismissed and motion for leave to amend complaint denied.

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

**2002-1151. Rexrode v. Space.**

In Quo Warranto. On motion to dismiss with prejudice of judges Mary Wade Space, Edward Emmett O'Farrell, Brad Hillyer, and W. Hudson Hillyer, motion to dismiss of Joseph I. Tripodi, motion to dismiss of David C. Hipp, motion for attorney fees of David C. Hipp, motion to dismiss of Amanda Spies Bornhorst, motion to dismiss of John W. McCloud, motion for attorney fees of John W. McCloud, motion to dismiss of Susan Pucci-Sutton, motion to dismiss of Paul Gordon, Magistrate, answer of respondent Michael A. Boske, motion to dismiss of Michael A. Boske and request for attorney fees, answer of respondent Michael R. Puterbaugh, motion to dismiss of Michael R. Puterbaugh, and motion for award of attorney fees of Michael R. Puterbaugh. Motions to dismiss sustained and cause dismissed.

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

Motions for attorney fees granted except as to Michael A. Boske, who is representing himself.

Pfeifer and Cook, JJ., dissent in part because they would deny all motions for attorney fees.

**2002-1157. State ex rel. Martin v. Ohio Adult Parole Auth.**

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.

**2002-1160. Lutz v. Mason.**

In Prohibition. 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.

**2002-1164. State ex rel. Clifton Yacht Club v. Schweikert.**

In Prohibition. On answer of respondent, motion for judgment on pleadings and/or summary judgment, and motion to strike portion of respondent's answer.

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.

**2002-1172. Wood v. Rose.**

In Habeas Corpus. On petition for writ of habeas corpus of Leonard Wood, Sr. Sua sponte, cause dismissed.

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

**2002-1176. Carrick v. Plusquellic.**

In Quo Warranto. On motion to dismiss of Judge William R. Baird, Judge William G. Batchelder, and Judge James E. Murphy, motion to dismiss of Mayor Donald Plusquellic, Judge Carla Moore, Max Rothal, John York et al., and demand to quash respondents' motion to dismiss. Motions to dismiss sustained. Cause dismissed.

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

**2002-1177. State ex rel. Koukios v. Ruehlman.**

In Mandamus and Prohibition. On answer of respondents Hon. Robert P. Ruehlman and Judges of the Court of Appeals, First Appellate District of Ohio, and motion to dismiss, motion for emergency stay of cases C-010735, C-010659, and C-020091 in the First District Court of Appeals, and motion to dismiss of Chief Justice Moyer and Justices of the Ohio Supreme Court. Motions to dismiss sustained. Cause dismissed.

Douglas, Resnick, Pfeifer, Cook and Lundberg Stratton, JJ., concur.

Moyer, C.J., and F.E. Sweeney, J., not participating.

**2002-1181. State ex rel. McGee v. Celebrezze.**

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.

**2002-1235. Perry v. McFaul.**

In Habeas Corpus. On petition for writ of habeas corpus of Ray A. Perry. Sua sponte, cause dismissed.

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

**2002-1236. In re Petition for Writ of Habeas Corpus Ad Subjiciendum for Pianowski.**

In Habeas Corpus. On petition for writ of habeas corpus of Ted A. Pianowski. Sua sponte, cause dismissed.

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

**2002-1287. State ex rel. Schrock v. Erwin.**

In Habeas Corpus. On petition for writ of habeas corpus of Roy Schrock. Sua sponte, cause dismissed.

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

Lundberg Stratton, J., dissents.

**2002-1316. State ex rel. Price v. Rose.**

In Habeas Corpus. On petition for writ of habeas corpus of Oliver C. Price. Sua sponte, cause dismissed.

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

## MOTION AND PROCEDURAL RULINGS

### **2001-0096. Sain v. Roo.**

Franklin App. No. 99AP-1459. On itemized statement of attorney fees and costs filed pursuant to order of July 9, 2002. Attorney fees granted in the amount of \$2,400.

### **2001-1386. State ex rel. Maynard v. Indus. Comm.**

In Mandamus. On request for oral argument and motion to strike relator's request for oral argument. Motions denied.

### **2001-1958. State ex rel. Cincinnati-Dayton Stenographic, Inc. v. Crehan.**

In Mandamus. On notice of unavailability of attorney from June 2, 2002, to June 18, 2002, due to assignment to active military duty and motion to strike notice to court of unavailability of relator's attorney. Sua sponte, the submission is stricken.

Resnick, Pfeifer and Lundberg Stratton, JJ., would deny the motion to strike.

### **2002-0587. Roeder v. Grange Mut. Cas. Co.**

Franklin App. No. 01AP-811. 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 filed March 28, 2002, at pages 1-2:

"When a homeowner's insurance policy provides express liability for damages arising from a motor vehicle accident when the injured party is the homeowner's residence employee and the injury occurred in the course of that employment, is the policy deemed an automobile liability or motor vehicle policy subject to the requirement of former R.C. 3937.18 to offer uninsured and underinsured motorist coverage?"

Cook, J., would also hold this cause for the decision in 2001-1786, *Lemm v. The Hartford*, Franklin App. No. 01AP-251.

Sua sponte, cause consolidated with 2002-0818, *Roeder v. Grange Mut. Cas. Co.*, Franklin App. No. 01AP-811.

The conflict case is *Davis v. Shelby Ins. Co.* (2001), 144 Ohio App.3d 468, 760 N.E.2d 855.

### **2002-0837. German v. Therm-O-Disc, Inc.**

Richland App. No. 01CA512, 2002-Ohio-1848. On review of order certifying a conflict. The court determines that a conflict exists; sua sponte, cause held for the decision in 2001-1807, *Luckenbill v. Hamilton Mut. Ins. Co.*, Darke App. No.

1524, 2001-Ohio-1465, briefing schedule stayed, and cause consolidated with 2002-0803, *German v. Therm-O-Disc, Inc.*, Richland App. No. 01CA512, 2002-Ohio-1848.

Resnick, J., dissents.

**2002-0892. In re April B.**

Lucas App. Nos. L-01-1334 and L-01-1348, 2002-Ohio-2299. On review of order certifying a conflict. The court determines that a conflict exists; the parties are to brief the issue of “whether or not juveniles are entitled to credit for time served in a treatment facility.”

Resnick, J., not participating.

Sua sponte, cause consolidated with 2002-0894, *In re April B.*, Lucas App. Nos. L-01-1334 and L-01-1348, 2002-Ohio-2299.

Resnick, J., not participating.

The conflict cases are *In re Dillard*, Stark App. Nos. 2001CA00093 and 2001CA00121, 2001-Ohio-1897, and *In re Keernan*, Licking App. No. 01CA69, 2002-Ohio-1580.

**2002-0977. Purvis v. Cincinnati Ins. Co.**

Greene App. No. 2001CA104, 2002-Ohio-1803. On review of order certifying a conflict. The court determines that a conflict exists; the parties are to brief the following issues stated in the court of appeals’ Decision and Entry dated June 7, 2002, at page 3:

“1. Are the requirements of *Linko v. Indemnity Ins. Co.*, 90 Ohio St.3d 445 (2000), relative to an offer of UM/UIM coverage, applicable to a policy of insurance written after enactment of H.B. 261 and before S.B. 97?

“2. If the *Linko* requirements are applicable, does, under H.B. 261, a signed rejection act as an effective declination of UM/UIM coverage, where there is no other evidence, oral or documentary, of an offer of coverage?”

Moyer, C.J., would also hold this cause for the decision in 2001-1709, *Kemper v. Michigan Millers Mut. Ins. Co.*, Certified State Law Question No. 3:00CV07799.

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

Cook, J., not participating.

Sua sponte, cause consolidated with 2002-0740, *Purvis v. Cincinnati Ins. Co.*, Greene App. No. 2001CA104, 2002-Ohio-1803.

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

Cook, J., not participating.

The conflict cases are *Pillo v. Stricklin*, Stark App. No. 2001CA00204, 2001-Ohio-7049, appeal accepted in 95 Ohio St.3d 1461, 2002-Ohio-2230, 767 N.E.2d 1178; *Still v. Indiana Ins. Co.*, Stark App. No. 2001CA00300, 2002-Ohio-1004; and *Raymond v. Sentry Ins. Co.*, Lucas App. No. L-01-1357, 2002-Ohio-1228.

**2002-1032. State v. Stanley.**

Mahoning App. No. 99CA55, 2002-Ohio-3007. On motion to vacate stay of the Seventh District Court of Appeals' judgment. Motion denied.

**2002-1112. State v. Holland.**

Allen App. No. 1-2000-88, 2001-Ohio-2192. On motion for leave to file delayed appeal. Motion denied.

**2002-1114. State v. Henry.**

Montgomery App. No. 18248. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

**2002-1124. State v. Mitchell.**

Clark App. No. 2001CA29, 2002-Ohio-2061. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, Cook and Lundberg Stratton, JJ., dissent.

**2002-1140. Stevens v. Allstate Ins. Co.**

Lucas App. No. L-02-1003, 2002-Ohio-3044. On review of order certifying a conflict. The court determines that a conflict exists; sua sponte, cause held for the decision in 2001-1786, *Lemm v. The Hartford*, Franklin App. No. 01AP-251; briefing schedule stayed.

**2002-1152. State v. Johnson.**

Mahoning App. No. 99CA49, 2001-Ohio-3441. On motion for leave to file delayed appeal. Motion denied.

**2002-1162. State v. Black.**

Hamilton App. Nos. C-980197 and C-980207. On motion for leave to file delayed appeal. Motion denied.

Cook, J., dissents.

**2002-1169. State v. Seely.**

Delaware App. No. 01CAA03010, 2001-Ohio-247. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

**2002-1178. State v. Bowman.**

Hamilton App. No. C-020165. On amended motion for leave to file delayed appeal. Amended motion denied.

Pfeifer, J., dissents.

**2002-1215. State v. Chapman.**

Cuyahoga App. No. 79812, 2002-Ohio-1081. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

**2002-1216. Steiner v. Ganley Toyota-Mercedes Benz.**

Summit App. No. 20767, 2002-Ohio-2326. On review of order certifying a conflict. The court determines that a conflict exists; sua sponte, cause held for the decision in 2002-0367, *Armstrong v. Best Buy Co.*, Lorain App. No. 01CA007848, 2001-Ohio-1934; briefing schedule stayed.

**2002-1222. State v. Rivera.**

Montgomery App. No. 18845, 2002-Ohio-283. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

**2002-1230. State v. Shilling.**

Tuscarawas App. No. 2001AP010001, 2002-Ohio-775. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

**2002-1233. State v. Perkins.**

Fulton App. No. F-02-003. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

Resnick, J., not participating.



**2002-1248. State v. Miller.**

Cuyahoga App. No. 79949, 2002-Ohio-2257. On motion for leave to file delayed appeal. Motion granted.

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

**2002-1251. State v. Kasser.**

Franklin App. No. 01AP-260, 2001-Ohio-3993. On motion for leave to file delayed appeal and motion for stay of court of appeals' judgment. Motions denied.

Pfeifer, J., dissents.

**2002-1268. State v. Ballinger.**

Cuyahoga App. No. 79974, 2002-Ohio-2146. On motion for leave to file delayed appeal. Motion denied.

Pfeifer and Lundberg Stratton, JJ., dissent.

**2002-1270. State v. Freeman.**

Montgomery App. No. 18798, 2002-Ohio-918. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

**2002-1288. State v. Taylor.**

Huron App. No. H-01-053, 2002-Ohio-2168. On motion for leave to file delayed appeal, motion for stay or abeyance of notice of appeal and delayed appeal, and motion to dismiss charge with prejudice for multiple violations of appellant's due process rights. Motions denied.

Pfeifer and Lundberg Stratton, JJ., dissent.

**2002-1307. State v. Purdy.**

Lake App. No. 2000-L-176, 2002-Ohio-2111. On motion for leave to file delayed appeal. Motion granted.

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

**2002-1315. State v. Layne.**

Scioto App. No. 01CA2788. On motion for leave to file delayed appeal. Motion denied.

Pfeifer and Lundberg Stratton, JJ., dissent.

## APPEALS ACCEPTED FOR REVIEW

### **2002-0585. Klein v. Leis.**

Hamilton App. Nos. C-020012, C-020013, C-020015 and C-020021, 2002-Ohio-1634. On discretionary appeal and motion for admission pro hac vice of Johnathan E. Lowy and Daniel R. Vice by R. Ganulin for Thomas Streicher et al. Appeal accepted and motion granted.

### **2002-0740. Purvis v. Cincinnati Ins. Co.**

Greene App. No. 2001CA104, 2002-Ohio-1803. Discretionary appeal allowed and cause consolidated with 2002-0977, *Purvis v. Cincinnati Ins. Co.*, Greene App. No. 2001CA104, 2002-Ohio-1803.

Moyer, C.J., concurs but would also hold the cause for the decision in 2001-1709, *Kemper v. Michigan Millers Mut. Ins. Co.*, Certified State Law Question No. 3:00CV07799.

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

Cook, J., not participating.

### **2002-0753. Thorley v. Am. States Preferred.**

Summit App. No. 20827, 2002-Ohio-1253.

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

### **2002-0787. Winegar v. Greenfield Police Dept.**

Highland App. No. 00CA18, 2002-Ohio-2173.

Resnick, Pfeifer and Cook, JJ., dissent.

### **2002-0788. Peebles v. Owners Ins. Co.**

Fulton App. No. F-01-022, 2002-Ohio-1518. Appeal accepted and cause held for the decision in 2001-1786, *Lemm v. The Hartford*, Franklin App. No. 01AP-251; briefing schedule stayed.

Lundberg Stratton, J., dissents.

Resnick, J., not participating.

### **2002-0803. German v. Therm-O-Disc, Inc.**

Richland App. No. 01CA512, 2002-Ohio-1848. Appeal accepted on Propositions of Law Nos. I and II, cause held for the decision in 2001-1807, *Luckenbill v. Hamilton Mut. Ins. Co.*, Darke App. No. 1524, 2001-Ohio-1465, briefing schedule stayed, and cause consolidated with 2002-0837, *German v. Therm-O-Disc, Inc.*, Richland App. No. 01CA512, 2002-Ohio-1848.

F.E. Sweeney, Cook and Lundberg Stratton, JJ., would also allow all other propositions of law.

Douglas, Resnick and Pfeifer, JJ., dissent.

**2002-0818. Roeder v. Grange Mut. Cas. Co.**

Franklin App. No. 01AP-811. Appeal accepted and cause consolidated with 2002-0587, *Roeder v. Grange Mut. Cas. Co.*, Franklin App. No. 01AP-811.

Douglas, Resnick and Pfeifer, JJ., dissent.

**2002-0894. In re April B.**

Lucas App. No. L-01-1334 and L-01-1348, 2002-Ohio-2299. Appeal accepted and cause consolidated with 2002-0892, *In re April B.*, Lucas App. Nos. L-01-1334 and L-01-1348.

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

Resnick, J., not participating.

**APPEALS NOT ACCEPTED FOR REVIEW**

**2002-0969. State v. McIntosh.**

Hamilton App. No. C-000695.

**2002-0974. State v. McGrath.**

Cuyahoga App. No. 77896, 2002-Ohio-2386.

**2002-1002. In re Devine.**

Hamilton App. No. C-000780.

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

**2002-1008. State v. McClain.**

Cuyahoga App. No. 77740, 2002-Ohio-2349.

**2002-1034. State v. Shiffler.**

Lucas App. No. L-01-1272, 2002-Ohio-122.

Resnick, J., not participating.

**2002-1071. State v. Abd’Rahman.**

Richland App. No. CA2567.

**2002-1074. State v. Wright.**

Hamilton App. No. 10202.

**2002-1085. State v. Ferrell.**

Stark App. No. 1997CA0005.

**2002-1096. State v. Belcastro.**

Cuyahoga App. No. 77443, 2002-Ohio-2556.

**2002-1111. State v. Smith.**

Lorain App. No. 99CA007451.

**2002-1143. State v. Williams.**

Summit App. No. 19559.

**2002-1219. State v. Brown.**

Summit App. No. 18766.

**RECONSIDERATION OF PRIOR DECISIONS**

**2000-1984 and 2001-0493. Aetna Cas. & Sur. Co. v. Goodyear Tire & Rubber Co.**

Summit App. No. 19121. Reported at 95 Ohio St.3d 512, 2002-Ohio-2842, 769 N.E.2d 835. On motion for reconsideration. Motion denied.

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

Cook, J., not participating.

**2000-2236. Kostelnik v. Helper.**

Cuyahoga App. No. 76809. Reported at 96 Ohio St.3d 1, 2002-Ohio-2985, 770 N.E.2d 58. On motion for reconsideration. Motion denied.

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

**2001-0001. State ex rel. Schultz v. Indus. Comm.**

Franklin App. No. 00AP-166. Reported at 96 Ohio St.3d 27, 2002-Ohio-3316, 770 N.E.2d 576. On motion for reconsideration. Motion denied.

**2001-0733. State v. Parker.**

Cuyahoga App. No. 76395, 2001-Ohio-4120. Reported at 95 Ohio St.3d 524, 2002-Ohio-2833, 769 N.E.2d 846. On motion for reconsideration. Motion denied.

Resnick, Cook and Lundberg Stratton, JJ., dissent.

**2002-0208. Wyczalek v. Rowe Constr. Serv. Co.**

Erie App. No. E-00-059, 148 Ohio App. 3d 328, 2001-Ohio-3104, 773 N.E.2d 560. Reported at 96 Ohio St.3d 1447, 2002-Ohio-3512, 771 N.E.2d 261. On motion for reconsideration and amicus curiae motion for leave to file under S.Ct.Prac.R. XI. The motions fail for want of four votes on the following vote:

Cook and Lundberg Stratton, JJ., vote no.

Moyer, C.J., votes no but would grant the amicus motion.

Douglas, F.E. Sweeney and Pfeifer, JJ., vote yes on the motion for reconsideration.

Resnick, J., not participating.

**2002-0619. State ex rel. Schwartzman v. Evendale.**

In Mandamus. Reported at 96 Ohio St.3d 1436, 2002-Ohio-3344, 770 N.E.2d 1046. On motion for reconsideration. Motion denied.

Douglas, J., not participating.

**2002-0708. State v. Ahart.**

Mahoning App. No. 93CA211, 2001-Ohio-3390. Reported at 96 Ohio St.3d 1441, 2002-Ohio-3344, 770 N.E.2d 1049. On motion for reconsideration. Motion denied.

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

**2002-0713. Konchar v. Aurora Manor L.P.**

Portage App. No. 2001-P-0100. Reported at 96 Ohio St.3d 1441, 2002-Ohio-3344, 770 N.E.2d 1049. On motion for reconsideration. Motion denied.