

The Supreme Court of Ohio

CASE ANNOUNCEMENTS

April 3, 2002

MERIT DECISIONS WITH OPINIONS

00-1625 and 00-1694. Green v. Toledo Hosp.

Lucas App. No. L-97-1457. Judgment affirmed in part, reversed in part, and cause remanded.

Moyer, C.J., Edwards, Pfeifer and Lundberg Stratton, JJ., concur.

Cook, J., concurs separately.

Douglas and F.E. Sweeney, JJ., concur in part and dissent in part.

Julie A. Edwards, J., of the Fifth Appellate District, sitting for Resnick, J.

00-1757. State v. Murrell.

Hamilton App. No. C-000103. Judgment affirmed.

Douglas, Resnick, F.E. Sweeney, Cook and Lundberg Stratton, JJ., concur.

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

00-1869 and 00-2126. State v. Weideman.

Portage App. No. 98-P-0109. Judgment reversed.

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

Resnick, J., concurs in judgment.

Cook, J., concurs in judgment only.

Pfeifer, J., dissents.

00-2099. Cincinnati Bar Assn. v. Clapp & Affiliates Fin. Serv., Inc.

On Order Requiring Intervening Respondent to Appear Pursuant to Order Holding Him in Contempt. See opinion.

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

00-2127. Corporate Staffing Resources, Inc. v. Zaino.

Board of Tax Appeals, No. 97-M-538. Decision affirmed.

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

00-2260. Columbus S. Power Co. v. Pub. Util. Comm.

Public Utilities Commission, Nos. 99-1729-EL-ETP and 99-1730-EL-ETP.
Order affirmed.

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

Douglas and Cook, JJ., concur in judgment.

01-456. Key Serv. Corp. v. Zaino.

Board of Tax Appeals, No. 98-K-553. Decision reversed and cause
remanded.

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

Cook, J., concurs in judgment.

James R. Sherck, J., of the Sixth Appellate District, sitting for
Resnick, J.

01-512. Tallal v. Bank One, N.A.

Summit App. No. 19592. *Sua sponte*, cause dismissed as having been
improvidently allowed.

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

Peter M. Handwork, J., of the Sixth Appellate District, sitting for
Cook, J.

01-519. Hook v. Springfield.

Clark App. No. 2000CA71. *Sua sponte*, cause dismissed as having been
improvidently allowed.

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

Douglas, J., dissents.

Resnick and Pfeifer, JJ., dissent.

01-643. State ex rel. Jerdo v. Pride Cast Metals, Inc.

Franklin App. No. 00AP-646. Judgment affirmed.

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

01-652. State ex rel. Gillette v. Indus. Comm.

Franklin App. No. 00AP-630. Judgment affirmed.

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

01-810 and 01-811. Friemoth v. Fruehauf Trailer Corp.

Allen App. No. 1-2000-78. *Sua sponte*, cause dismissed as having been improvidently allowed and improvidently certified.

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

Pfeifer, J., dissents.

01-1668. State ex rel. Butler Cty. Children Serv. Bd. v. Sage.

Butler App. No. CA2001-07-164. Judgment affirmed.

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

01-1902. State v. Taufeeq.

Clermont App. No. CA2000-12-094. Judgment reversed and cause remanded.

Douglas, Resnick, F.E. Sweeney, Cook and Lundberg Stratton, JJ., concur.

Moyer, C.J., dissents.

Pfeifer, J., dissents.

01-2057. State v. Dzubak.

Geauga App. No. 2000-G-2285. Judgment reversed and cause remanded.

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

Pfeifer, J., dissents.

MERIT DECISIONS WITHOUT OPINIONS

01-2250. In re Beck.

Original Action Involving Parental Rights or Adoption. On motion to dismiss of Judge Joseph J. Vukovich. Motion to dismiss sustained. Cause dismissed.

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

02-224. State ex rel. Thomas v. Ohio Bur. of Motor Vehicles.

In Mandamus. On answer of respondents. On S.Ct.Prac.R. X(5) determination, cause dismissed.

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

Moyer, C.J., and Douglas, J., dissent and would grant an alternative writ.

02-280. State ex rel. Knowles v. Brooks Wells.

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.

02-327. Brooks v. Ganshiemer.

In Habeas Corpus. On petition for writ of habeas corpus of Dwayne Brooks. *Sua sponte*, cause dismissed.

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

02-376. Calhoun v. Hurley.

In Habeas Corpus. On petition for writ of habeas corpus of Mark Calhoun. *Sua sponte*, cause dismissed.

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

02-387. Rarden v. Mack.

In Habeas Corpus. On petition for writ of habeas corpus of Lonnie Rarden. *Sua sponte*, cause dismissed.

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

MOTION AND PROCEDURAL RULINGS

01-1. State ex rel. Schultz v. Indus. Comm.

Franklin App. No. 00AP-166. On request for oral argument. Request denied.

01-1635. State ex rel. Rasul-Bey v. Onunwor.

In Mandamus. On bill and documentation pursuant to court's January 16, 2002 order awarding attorney fees. It is hereby ordered that relator be and hereby is awarded \$1,557.50 in attorney fees.

Lundberg Stratton, J., dissents.

02-149. Jones v. Action Coupling & Equip., Inc.

Holmes App. No. 01CA013. On review of order certifying a conflict. The court determines that a conflict exists; the parties are to brief the issue stated at page 2 of the court of appeals' Judgment Entry dated January 25, 2002:

"Whether R.C. 4123.65 is applicable to state fund claims in which settlement is reached during litigation brought pursuant to R.C. 4123.512."

Sua sponte, cause consolidated with 02-70, *Jones v. Action Coupling & Equip., Inc.*, Holmes App. No. 01CA013.

The conflict cases are *Bedinghaus v. Ohio Bur. of Workers' Comp.* (Mar. 16, 2001), Hamilton App. No. C-000468, unreported, 2001 WL 300734; and *Macek v. Damon Baird Excavating & Land Improvement Co.* (Dec. 21, 1999), Columbiana App. No. 99CO6, unreported, 1999 WL 1243297.

02-223. Vohsing v. Auto-Owners Ins. Co.

Licking App. No. 01CA56. On review of order certifying a conflict. The court determines that a conflict exists; *sua sponte*, cause held for the decision in 01-1474 and 01-1867, *Hillyer v. State Farm Fire & Cas. Co.*, Cuyahoga App. No. 79176; briefing schedule stayed.

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

Lundberg Stratton, J., dissents.

02-262. Penn Traffic Co. v. AIU Ins. Co.

Pike App. No. 00CA653. On review of order certifying a conflict. The court determines that a conflict exists; the parties are to brief the issue stated at page 7 of the court of appeals' Decision and Judgment Entry on Motion to Certify dated January 25, 2002:

"The rule of law upon which the conflict exists is whether a commercial general liability insurance policy which contains an exclusion for 'bodily injury to an employee' which arises out of or in the course of employment covers an employer's liability for substantially certain intentional torts."

Cook, J., not participating.

Sua sponte, cause consolidated with 01-1891, *Penn Traffic Co. v. AIU Ins. Co.*, Pike App. No. 00CA653.

Cook, J., not participating.

The conflict case is *Maffett v. Moyer's Auto Wrecking, Inc.*, Crawford App. Nos. 3-99-11 and 3-99-12, unreported, 2000 WL 743707.

Cook, J., not participating.

02-329. State v. Robinson.

Cuyahoga App. No. 75423. On motion for leave to file delayed appeal. Motion denied.

02-330. State v. Bake.

Belmont App. No. 00BA31. On motion for leave to file delayed appeal. Motion denied.

Pfeifer and Lundberg Stratton, JJ., dissent.

02-350. State v. Nichols.

Scioto App. No. 01CA2775. On motion for order extending stay previously granted by the Fourth District Court of Appeals during pendency of appeal. Motion denied.

Moyer, C.J., F.E. Sweeney and Pfeifer, JJ., dissent.

02-354. In re Skinner.

Stark App. No. 2001CA00160. On motion for leave to file delayed appeal. Motion granted.

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

02-370. State v. Henton.

Ashtabula App. No. 95-A-0056. On motion for leave to file delayed appeal. Motion denied.

02-371. State v. Liles.

Huron App. Nos. H-00-014 and H-00-019. On motion for leave to file delayed appeal. Motion granted.

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

02-375. Cohen v. [UBS] PaineWebber, Inc.

Hamilton App. No. C-010312. On motion for stay of court of appeals' judgment pending appeal. Motion denied.

Moyer, C.J., and Cook, J., dissent.

02-395. State v. Upkins.

Shelby App. No. 17-01-15. On motion for stay of court of appeals' judgment. Motion denied.

APPEALS ALLOWED FOR REVIEW

01-1891. Penn Traffic Co. v. AIU Ins. Co.

Pike App. No. 00CA653. Appeal and cross-appeals allowed and cause consolidated with 02-262, *Penn Traffic Co. v. AIU Ins. Co.*, Pike App. No. 00CA653.

Cook, J., not participating.

02-50. Schottenstein v. Schottenstein.

Franklin App. Nos. 00AP-1088, 00AP-1284, 01AP-227, 01AP-36, 01AP-94 and 01AP-95.

Douglas, Resnick and Cook, JJ., dissent.

02-70. Jones v. Action Coupling & Equip., Inc.

Holmes App. No. 01CA013. Appeal allowed and cause consolidated with 02-149, *Jones v. Action Coupling & Equip., Inc.*, Holmes App. No. 01CA013.

APPEALS NOT ALLOWED FOR REVIEW

01-2049. State v. DiCenzi.

Cuyahoga App. No. 80119.

02-51. State v. Morris.

Ottawa App. No. OT-00-033.

Resnick, J., not participating.

02-57. Sorrell v. Estate of Datko.

Columbiana App. No. 00CO15.

Pfeifer, J., dissents.

02-59. Columbus v. Joyce.

Franklin App. No. 00AP-1486.

02-61. State v. Westbrook.

Franklin App. No. 00AP-1383.

Resnick, J., dissents.

02-62. State v. Colon.

Cuyahoga App. No. 77779.

02-67. Ahmad v. Ahmad.

Lucas App. No. L-00-1391.

Lundberg Stratton, J., dissents.

02-68. Duryee v. Rogers.

Cuyahoga App. No. 78242.

02-79. Miller-Wagenknecht v. Munroe Falls.

Summit App. No. 20324.

02-82. Bishop v. Ohio Bur. of Workers' Comp.

Franklin App. No. 01AP-169.

Douglas and Resnick, JJ., dissent.

02-83. State v. Pinion.

Licking App. No. 01CA00066.

02-90. Browning v. Sucher.

Montgomery App. No. 18892.

Cook, J., dissents.

02-91. Gunter v. Clint.

Miami App. No. 2001CA32.

Douglas, J., dissents.

02-92. State v. Ruvalcaba.

Summit App. No. 20585.

02-93. Grogan v. Roszman.

Hardin App. No. 6-01-03.

02-94. Irving v. Austin.

Lucas App. No. L-01-1399.

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

02-95. Mason v. Mason.
Union App. No. 14-01-17.

02-98. State v. Douse.
Cuyahoga App. No. 79318.

02-99. Stern v. Stern.
Jefferson App. No. 00JE17.

02-100. Lavery v. Lavery.
Summit App. No. 20616.

02-104. Mondl v. Mondl.
Summit App. No. 20570.

02-105. McCarthy v. Caplan.
Cuyahoga App. No. 79721.

02-107. Baer v. Scotts Co.
Franklin App. No. 01AP-323.

02-108. Darnell v. Ohio Pub. Emp. Retirement Sys.
Franklin App. No. 01AP-462.

02-109. Cleveland v. Cleveland Championships 2000.
Cuyahoga App. No. 80403.

02-110. State v. Fitzgerald.
Cuyahoga App. No. 80495.

02-111. State v. Bentley.
Athens App. No. 01CA13.

02-112. State v. Vinzant.
Montgomery App. No. 18546.

02-117. State v. Dawson.
Franklin App. No. 00AP-1052.

02-120. State v. Jennings.
Richland App. No. 01CA62.

02-124. Myers v. Jamar Ent.
Clermont App. No. CA2001-06-056.

02-129. State v. Smith.
Fairfield App. No. 00CA63.

Moyer, C.J., dissents, would allow the appeal, and would hold this cause for the decision in 02-20, *State v. Noser*, Lucas App. No. L-00-1154.

Pfeifer, J., dissents.

02-130. In re Smith.
Geauga App. No. 2000-G-2321.
Pfeifer, J., dissents.

02-132. State v. McGee.
Cuyahoga App. No. 77463.

02-144. State v. Conte.
Lake App. No. 2000-L-105.

02-151. State v. Conte.
Lake App. No. 2000-L-104.

02-152. Haller v. Hickory Creek Homeowners Assn.
Hamilton App. No. C-010332.

02-156. Mitchell v. State Auto. Mut. Ins. Co.
Franklin App. No. 00AP-1431.

02-165. State v. DeFabio.
Portage App. No. 2000-P-0037.

02-169. State v. Moore.
Hamilton App. Nos. C-010364, C-010365, C-010366 and C-010367.

02-181. State v. O'Donnell.
Scioto App. No. 00CA2724.

02-188. State v. Johnson.
Mahoning App. No. 00CA131.

02-193. State v. Draper.
Franklin App. No. 01AP-237.

02-207. State v. Dozier.
Cuyahoga App. Nos. 56120 and 56121.

02-210. Eden v. Fortunado.
Lorain App. No. 01CA007910.

02-213. Agostinelli v. DeBartolo Realty Corp.
Mahoning App. No. 01CA9.
Douglas, J., dissents.

02-214. Agostinelli v. DeBartolo Realty Corp.
Mahoning App. No. 01CA10.
Douglas, J., dissents.

02-218. State v. Abdalla.
Franklin App. No. 01AP-439.

02-302. In re Bernard.
Mahoning App. No. 01CA220.
Pfeifer and Lundberg Stratton, JJ., dissent.

02-368. In re Ross.
Franklin App. No. 01AP-570.

RECONSIDERATION OF PRIOR DECISIONS

01-2114. State v. Brown.
Lucas App. No. L-00-1123. Reported at 94 Ohio St.3d 1470, 762 N.E.2d 1017. On motion for reconsideration. Motion denied.
Pfeifer, J., dissents.
Lundberg Stratton, J., dissents, would grant the motion and allow the appeal, and would hold the cause for the decision in 01-99, *State v. Walls*, Butler App. No. CA99-10-174.