

# The Supreme Court of Ohio

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## CASE ANNOUNCEMENTS AND ADMINISTRATIVE ACTIONS

November 20, 2002

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### MERIT DECISIONS WITHOUT OPINIONS

**2002-1194. Cincinnati Community Kollé v. Zaino.**

Board of Tax Appeals, No. 99-P-1578. Sua sponte, cause dismissed.

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

**2002-1198. Cincinnati Community Kollé v. Zaino.**

Board of Tax Appeals, No. 99-P-1579. Sua sponte, cause dismissed.

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

**2002-1328. State ex rel. Proctor v. Kilbane-Koch.**

In Procedendo. On motion to dismiss. Motion to dismiss sustained. Cause dismissed.

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

Douglas, J., dissents and would grant an alternative writ.

**2002-1469. State ex rel. Mosley v. Crawford.**

In Mandamus and Prohibition. On motion for certification of respondent class and maintenance as respondent class action, motion for stay of proceedings pending before the Franklin County Court of Common Pleas, and motion to dismiss. Motion to dismiss sustained. Cause dismissed.

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

**2002-1533. Swagelok Co. v. Young.**

Cuyahoga App. No. 78976, 2002-Ohio-3416. On review of order certifying a conflict. The court determines that there is no conflict. This cause is therefore dismissed.

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

Douglas and Pfeifer, JJ., dissent.

**2002-1622. State ex rel. Brown v. Suster.**

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.

**2002-1628. Topp v. Martin.**

In Quo Warranto. On motion to dismiss of John M. Gatrell, answer of respondents Donald Burns, Janet Unkefer, Robert Wirkner, and William Wohlwend, motion to dismiss with prejudice all claims against Judge William J. Martin, motion for award of attorney fees and expenses pursuant to Civ.R. 11, motion to dismiss of John S. Campbell, motion for sanctions for frivolous action of John S. Campbell, motion to dismiss of Gary L. Willen, motion for sanctions for frivolous action of Gary L. Willen, motion to dismiss of Daniel P. Bibler, and motion for sanctions for frivolous action of Daniel P. Bibler. Motions to dismiss sustained. Cause dismissed and attorney fees and expenses awarded.

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

**2002-1651. State ex rel. Green 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.

**2002-1652. State ex rel. Brown v. Corrigan.**

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.

**2002-1668. State ex rel. Taylor v. Erie Cty. Common Pleas Court.**

In Mandamus. On motion for contempt of court and motion to dismiss. Motion to dismiss sustained. Cause dismissed.

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

Resnick, J., not participating.

**2002-1706. King v. Mason.**

In Prohibition. On motion to dismiss, motion to strike motion to dismiss filed by L. Christopher Frey, and motion for leave to amend complaint. Motion to dismiss sustained. Cause dismissed.

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

**2002-1715. Lutz v. McFaul.**

In Habeas Corpus. On petition for writ of habeas corpus of Ronald Edward Lutz. Sua sponte, cause dismissed.

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

**2002-1738. State ex rel. Brown v. Cuyahoga Cty. Common Pleas Court.**

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.

## **MOTION AND PROCEDURAL RULINGS**

**2002-0001. State ex rel. Clark v. Great Lakes Constr. Co.**

Franklin App. No. 01AP-326. On request for oral argument. Request granted.

**2002-0777 and 2002-0825. In re Price.**

Butler App. Nos. CA2001-02-035 and CA2001-04-085, 2002-Ohio-1345. On motion for appointment of counsel. Motion referred to court of appeals for appointment of the Public Defender.

Pfeifer, J., dissents.

**2002-0914. Campus Bus Serv. v. Zaino.**

Board of Tax Appeals, No. 00-V-1031. Sua sponte, this cause is consolidated with 2002-0915, *Campus Bus Serv. v. Zaino*, Board of Tax Appeals, No. 00-V-1030.

**2002-0915. Campus Bus Serv. v. Zaino.**

Board of Tax Appeals, No. 00-V-1030. Sua sponte, this cause is consolidated with 2002-0914, *Campus Bus Serv. v. Zaino*, Board of Tax Appeals, No. 00-V-1031.

**2002-1030. GuideOne Mut. Ins. Co. v. Reno.**

Greene App. No. 01CA68, 2002-Ohio-2057. On motion for relief from stay of briefing. Motion granted.

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

On motion to consolidate with case 2002-0248, *Cincinnati Ins. Co. v. Anders*, Greene App. No. 2001CA42, 2001-Ohio-1920, for oral argument. Motion granted.

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

**2002-1515. Haley v. Wilson.**

Summit App. No. 20967, 2002-Ohio-3987. On motion to disqualify Matthew Gilmartin as counsel of record for appellee Haley with supporting affidavits attached. Motion denied.

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

**2002-1524. State v. Burnside.**

Fairfield App. No. 01CA60, 2002-Ohio-4344. 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 August 22, 2002, at page 3:

“When there is no evidence that a solid anticoagulant is used in a blood test to determine alcohol content as required by O.A.C. 3701-53-05(C) do[es] the State still meet its burden of substantial compliance with Department of Health regulations?”

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

Resnick, J., not participating.

Sua sponte, cause consolidated with 2002-1440, *State v. Burnside*, Fairfield App. No. 01CA60, 2002-Ohio-4344.

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

Resnick, J., not participating.

The conflict case is *State v. Zuzga* (2001), 141 Ohio App.3d 696, 753 N.E.2d 229.

**2002-1552. State ex rel. Commt. for the Charter Amendment, City Trash Collection v. Westlake.**

In Mandamus. On relator's bill and documentation in support of attorney fees. Attorney fees granted in the amount of \$18,550.

**2002-1674. Maestle v. Best Buy Co.**

Cuyahoga App. No. 79827, 2002-Ohio-3769. 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' Journal Entry filed September 24, 2002:

"Should R.C. 2711.02 and R.C. 2711.03 be read in pari materia and require the court to conduct a hearing to determine whether the parties here entered into a valid and enforceable arbitration agreement or are these distinct statutes as determined in *Brumm v. McDonald & Co. Securities, Inc.* (1992), 78 Ohio App.3d 96 [603 N.E.2d 1141], holding that R.C. 2711.02 does not require the court to conduct such a hearing?"

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

**2002-1709. State v. McNeal.**

Allen App. No. 1-01-158, 2002-Ohio-2981. On motion for leave to file delayed appeal. Motion denied.

Pfeifer and Lundberg Stratton, JJ., dissent.

**2002-1717. State v. Harris.**

Miami App. No. 02CA21. On motion for leave to file delayed appeal. Motion denied.

**2002-1733. State v. Jackson.**

Cuyahoga App. No. 80398, 2002-Ohio-4576. On motion for stay of court of appeals' judgment. Motion denied.

Pfeifer, J., dissents.

**2002-1752. State v. Carter.**

Lucas App. No. L-00-1082, 2002-Ohio-3433. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

Resnick, J., not participating.

**2002-1804. State v. Krcal.**

Cuyahoga App. No. 80061, 2002-Ohio-3634. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

**2002-1809. State v. Houser.**

Washington App. No. 02CA35. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

**2002-1829. State v. Holloman.**

Hamilton App. No. C-010685. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

**2002-1840. State v. Marshall.**

Lorain App. No. 02CA008024, 2002-Ohio-5037. On motion for stay of court of appeals' judgment. Motion denied.

**APPEALS ACCEPTED FOR REVIEW**

**2002-1314. Santos v. Ohio Bur. of Workers' Comp.**

Cuyahoga App. No. 80353, 2002-Ohio-2731.

Cook, J., dissents.

**2002-1324. Jones v. Norfolk S. Ry. Co.**

Lucas App. No. L-01-1490, 2002-Ohio-3412. On discretionary appeal, motion for admission pro hac vice of Robert W. Schmieder by E.J. Leizerman, and motion for admission pro hac vice of Christie R. Schmieder by E.J. Leizerman. Appeal allowed and motions granted.

Cook and Lundberg Stratton, JJ., dissent.

Resnick, J., not participating.

**2002-1336. Withem v. Cincinnati Ins. Co.**

Franklin App. No. 01AP-1286, 2002-Ohio-3067. Discretionary appeal allowed; sua sponte, cause held for the decision in 2001-1843, *Ferrando v. Auto-Owners Mut. Ins. Co.*, Ashtabula App. No. 2002-A-0038; briefing schedule stayed.

Lundberg Stratton, J., dissents.

Cook, J., not participating.

**2002-1407. Coolidge v. Riverdale Local School Dist.**

Hancock App. No. 5-01-42, 2002-Ohio-3401.

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

**2002-1433. Allen v. Johnson.**

Wayne App. Nos. 01CA0046 and 01CA0047, 2002-Ohio-3404. Discretionary appeal allowed.

Cook and Lundberg Stratton, JJ., dissent.

Discretionary cross-appeal allowed.

Cook, J., dissents.

**2002-1440. State v. Burnside.**

Fairfield App. No. 01CA60, 2002-Ohio-4344. Discretionary appeal allowed and cause consolidated with 2002-1524, *State v. Burnside*, Fairfield App. No. 01CA60, 2002-Ohio-4344.

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

Resnick, J., not participating.

**APPEALS NOT ACCEPTED FOR REVIEW**

**2002-1375. Brady Lake v. Kent.**

Portage App. No. 2001-P-0093, 148 Ohio App.3d 429, 2002-Ohio-3141, 773 N.E.2d 1073.

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

**2002-1399. Cleveland v. N. Pacific Group, Inc.**

Cuyahoga App. Nos. 78706, 78871 and 79595, 2002-Ohio-3117.

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

**2002-1498. State v. Bocook.**

Muskingum App. No. CT9347.

**2002-1501. Swagelok Co. v. Young.**

Cuyahoga App. No. 78976, 2002-Ohio-3416.

Douglas, Pfeifer and Cook, JJ., dissent.

**2002-1512. State v. Jenkins.**

Miami App. No. 2000CA59, 2002-Ohio-3651.

**2002-1526. State v. Vinzant.**

Montgomery App. No. 18546, 2001-Ohio-7005.

**2002-1554. State v. Latham.**

Coshocton App. No. 01CA1, 2001-Ohio-1556.

**2002-1615. State v. Gates.**

Cuyahoga App. No. 78120, 2002-Ohio-4018.

**2002-1623. State v. Merritt.**

Hamilton App. No. C-970479.

**RECONSIDERATION OF PRIOR DECISIONS**

**2000-2299 and 2001-0203. Manigault v. Ford Motor Co.**

Cuyahoga App. No. 73147. Reported at 96 Ohio St.3d 431, 2002-Ohio-5057, 775 N.E.2d 824. On motion for reconsideration. Motion denied.

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

**2001-0099. State v. Walls.**

Butler App. No. CA99-10-174. Reported at 96 Ohio St.3d 437, 2002-Ohio-5059, 775 N.E.2d 829. On motion for reconsideration. Motion denied.

Pfeifer, J., dissents.

**2001-1303. Wiles v. Medina Auto Parts.**

Medina App. No. 3131-M. Reported at 96 Ohio St.3d 240, 2002-Ohio-3994, 773 N.E.2d 526. On motion for reconsideration of amici curiae Ohio Employment Lawyers Association, Ohio Academy of Trial Lawyers, et al. Motion denied.

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

**2001-1807. Luckenbill v. Hamilton Mut. Ins. Co.**

Darke App. No. 1524, 2001-Ohio-1465. Reported at 96 Ohio St.3d 1507, 2002-Ohio-4986, 775 N.E.2d 851. On amended motion for reconsideration. Motion denied.

Douglas, J., dissents.

**2002-1012. In re Testamentary Trust of Hamm.**

Geauga App. Nos. 2001-G-2363 and 2001-G-2366, 2002-Ohio-2106. Reported at 96 Ohio St.3d 1512, 2002-Ohio-4950, 775 N.E.2d 855. On motion for reconsideration and motion for sanctions for frivolous action and award of attorney fees. Motions denied.

**2002-1065. Siuda v. Howard.**

Hamilton App. Nos. C-000656 and C-000687, 2002-Ohio-2292. Reported at 96 Ohio St.3d 1514, 2002-Ohio-4950, 775 N.E.2d 856. On motion for reconsideration of David G. Howard, M.D., and Tri-State Eye Care, Inc., and on



motion to strike David G. Howard, M.D., and Tri-State Care, Inc.'s motion for reconsideration. Motions denied.

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

**2002-1068. Byrd v. Mickens-Byrd.**

Franklin App. No. 01AP-946, 2002-Ohio-2579. Reported at 96 Ohio St.3d 1514, 2002-Ohio-4950, 775 N.E.2d 856. On motion for reconsideration. Motion denied.

**2002-1153. Augustiniak v. Toledo Hosp.**

Lucas App. No. L-01-1437. Reported at 96 Ohio St.3d 1523, 2002-Ohio-5099, 775 N.E.2d 863. On motion for reconsideration. Motion denied.

**2002-1163. State v. Karasek.**

Montgomery App. Nos. 17408 and 17563, 2002-Ohio-2616. Reported at 96 Ohio St.3d 1516, 2002-Ohio-4950, 775 N.E.2d 857. On motion for reconsideration. Motion denied.

**2002-1214. State v. Davis.**

Mahoning App. No. 01CA171, 2002-Ohio-2789. Reported at 96 Ohio St.3d 1516, 2002-Ohio-4950, 775 N.E.2d 857. On motion for reconsideration. Motion denied.

**2002-1217. State v. Reynolds.**

Putnam App. No. 12-01-11, 2002-Ohio-2823. Reported at 96 Ohio St.3d 1524, 2002-Ohio-5099, 775 N.E.2d 864. On motion for reconsideration. Motion denied.

**2002-1256. Cho v. Bowns.**

Hamilton App. No. C-010513. Reported at 96 Ohio St.3d 1525, 2002-Ohio-5099, 775 N.E.2d 864. On motion for reconsideration. Motion denied.

F.E. Sweeney, J., dissents.

**2002-1470. Ameritech Ohio v. Pub. Util. Comm.**

Public Utilities Commission, No. 02-579-TP-CSS. Reported at 96 Ohio St.3d 1508, 2002-Ohio-4950, 775 N.E.2d 852. On motion for reconsideration. Motion denied.

Pfeifer, J., dissents.

Resnick, J., not participating.