

The Supreme Court of Ohio

CASE ANNOUNCEMENTS AND ADMINISTRATIVE ACTIONS

October 8, 2003

MERIT DECISIONS WITH OPINIONS

2001-0524. State v. Brown, 2003-Ohio-5059.

Mahoning App. No. 96 C.A. 56, 2001-Ohio-3175. Judgment affirmed.

Moyer, C.J., Resnick, F.E. Sweeney, Pfeifer, Lundberg Stratton, O'Connor and O'Donnell, JJ., concur.

2002-0293. Judy v. Ohio Bur. of Motor Vehicles, 2003-Ohio-5277.

Lucas App. No. L-01-1200, 2001-Ohio-2909. Judgment affirmed in part and reversed in part.

Moyer, C.J., F.E. Sweeney, Pfeifer, Walters and Wise, JJ., concur.

Carr and Lundberg Stratton, JJ., dissent.

Donna J. Carr, J., of the Ninth Appellate District, sitting for Resnick, J.

Sumner E. Walters, J., of the Third Appellate District, sitting for Cook, J.

John W. Wise, J., of the Fifth Appellate District, sitting for O'Connor, J.

2002-1575. Barnhill v. Hamilton, 2003-Ohio-5029.

Butler App. No. CA2002-03-052. Judgment affirmed on Proposition of Law No. I, and appeal dismissed as having been improvidently allowed on Proposition of Law No. II.

Moyer, C.J., Resnick, F.E. Sweeney, Lundberg Stratton, O'Connor and O'Donnell, JJ., concur.

Pfeifer, J., dissents.

2003-0321 and 2003-0324. Millonzi v. Perram Elec., Inc., 2003-Ohio-5030.

Lake App. Nos. 2001-L-109, 2001-L-110, and 2001-L-111, 2002-Ohio-7340. Sua sponte, judgment reversed and cause remanded.

Moyer, C.J., Resnick, F.E. Sweeney, Pfeifer, Lundberg Stratton and O'Connor, JJ., concur.
O'Donnell, J., not participating.

2003-0400. Medina Cty. Bar Assn. v. Carlson, 2003-Ohio-5073.

On Certified Report by the Board of Commissioners on Grievances and Discipline of the Supreme Court, No. 02-38.

Christopher Thomas Carlson, Attorney Registration No. 0062450, is suspended from the practice of law for two years.

Moyer, C.J., Resnick, Pfeifer, Lundberg Stratton, O'Connor and O'Donnell, JJ., concur.

F.E. Sweeney, J., dissents.

2003-0583. State ex rel. Buckley v. Indus. Comm., 2003-Ohio-5072.

Franklin App. No. 02AP-498, 2003-Ohio-667. Judgment affirmed.

Moyer, C.J., Resnick, F.E. Sweeney, Pfeifer, Lundberg Stratton, O'Connor and O'Donnell, JJ., concur.

2003-0786. State ex rel. Holloman v. Phillips, 2003-Ohio-5063.

Hamilton App. No. C-030028. Judgment affirmed and motion to strike denied.

Moyer, C.J., Resnick, F.E. Sweeney, Pfeifer, Lundberg Stratton, O'Connor and O'Donnell, JJ., concur.

2003-0945. State ex rel. McGrath v. Ohio Adult Parole Auth., 2003-Ohio-5062.

Cuyahoga App. No. 82287, 2003-Ohio-1969. Judgment affirmed.

Moyer, C.J., Resnick, F.E. Sweeney, Pfeifer, Lundberg Stratton, O'Connor and O'Donnell, JJ., concur.

2003-1085. Galloway v. Money, 2003-Ohio-5060.

Marion App. No. 9-03-16. Judgment affirmed.

Moyer, C.J., Resnick, F.E. Sweeney, Pfeifer, Lundberg Stratton, O'Connor and O'Donnell, JJ., concur.

2003-1118. Dittmer v. Lorain, 2003-Ohio-5061.

Lorain App. Nos. 02CA008126, 02CA008151, 02CA008138, 02CA008152, and 02CA008150, 2003-Ohio-2340. Judgment reversed and cause remanded.

Moyer, C.J., Pfeifer, Lundberg Stratton, O'Connor and O'Donnell, JJ., concur.

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

MERIT DECISIONS WITHOUT OPINIONS

2002-2045. Dawson v. Zaino.

Board of Tax Appeals, No. 02-N-784. On motion to dismiss. Motion to dismiss sustained. Cause dismissed.

Moyer, C.J., Resnick, F.E. Sweeney, Pfeifer, Lundberg Stratton, O'Connor and O'Donnell, JJ., concur.

2003-1369. State ex rel. Freeman v. Martin.

In Mandamus. On motion to dismiss of Thomas Streicher, Chief of Police, Cincinnati Police Division. Motion to dismiss sustained. Cause dismissed.

Moyer, C.J., Resnick, F.E. Sweeney, Pfeifer, Lundberg Stratton, O'Connor and O'Donnell, JJ., concur.

MOTION AND PROCEDURAL RULINGS

2002-1785. State ex rel. Preschool Dev., Ltd. v. Springboro.

In Mandamus. On amicus curiae motion for leave to file under S.Ct.Prac.R. XI of Berns, Ockner & Greenberger, LLC. Motion granted.

Lundberg Stratton, J., dissents.

Resnick, J., not participating.

2002-1929. Tongren v. Pub. Util. Comm.

Public Utilities Commission, No. 02-2117-TP-ALT. On motion for leave to intervene of United Telephone Company of Ohio, d.b.a. Sprint. Motion granted.

On motion to consolidate case with 2002-1428, *Tongren v. Pub. Util. Comm.*, Public Utilities Commission, No. 00-1532-TP-COI, for oral argument and decision. Motion denied as moot.

2003-0806. ORIX Credit Alliance, Inc. v. Zaino.

Board of Tax Appeals, No. 1996-P-500. On motion to vacate and remand. Motion granted.

2003-1490. State v. Charlton.

Lorain App. Nos. 02CA008048 and 02CA008049, 2003-Ohio-2631. On motion for leave to file delayed appeal. Motion granted.

Resnick, F.E. Sweeney and O'Connor, JJ., dissent.

2003-1506. State v. Holmes.

Lorain App. No. 01CA007805, 2002-Ohio-309. On motion for leave to file delayed appeal. Motion denied.

2003-1507. State v. Williams.

Franklin App. No. 02AP-507, 2003-Ohio-2694. On motion for leave to file delayed appeal. Motion denied.

Pfeifer and Lundberg Stratton, JJ., dissent.

2003-1508. State v. Gayles.

Stark App. No. 2002CA00412, 2003-Ohio-3418. On motion for leave to file delayed appeal. Motion denied.

Pfeifer and Lundberg Stratton, JJ., dissent.

2003-1510. State v. Burke.

Franklin App. No. 02AP-1238, 2003-Ohio-2889. On motion to strike notice of appeal, affidavit of indigency, and motion for delayed appeal. Motion denied.

On motion for leave to file delayed appeal. Motion denied.

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

2003-1519. State v. Colvin.

Richland App. No. 2002CA0063, 2003-Ohio-3389. On motion for leave to file delayed appeal. Motion denied.

Pfeifer and Lundberg Stratton, JJ., dissent.

2003-1544. State v. Carr.

Franklin App. No. 02AP-1240, 2003-Ohio-2947. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

2003-1554. State v. Lenoir.

Montgomery App. No. 19241, 2003-Ohio-2820. On motion for leave to file delayed appeal. Motion denied.

Pfeifer and Lundberg Stratton, JJ., dissent.

2003-1568. State v. Harris.

Cuyahoga App. No. 81844, 2003-Ohio-2744. On motion for leave to file delayed appeal. Motion denied.

Pfeifer and Lundberg Stratton, JJ., dissent.

2003-1578. Ritt v. Billy Blanks Enterprises.

Cuyahoga App. No. 80983, 2003-Ohio-3645. On motion for stay of court of appeals' judgment. Motion denied.

Moyer, C.J., Resnick and O'Connor, JJ., dissent.

2003-1584. State v. Cruse.

Franklin App. Nos. 03AP-648 and 03AP-649. On motion for stay of court of appeals' judgment. Motion denied.

Pfeifer, J., dissents.

APPEALS ACCEPTED FOR REVIEW

2003-1090. Sagar v. Nationwide Mut. Fire Ins. Co.

Franklin App. No. 02AP-1104, 2003-Ohio-2268. The discretionary appeal of Nationwide Mutual Fire Insurance Company is accepted; the cause is held for the decision in 2002-1126 and 2002-1433, *Allen v. Johnson*, Wayne App. Nos. 01CA0046 and 01CA0047, 2002-Ohio-3404; and the briefing schedule is stayed.

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

The discretionary appeal of Continental Casualty Company is allowed on Proposition of Law No. I only; the cause is held for the decision in 2002-0579, *Burkhart v. CNA Ins. Co.*, Stark App. No. 2001CA00265, 2002-Ohio-903; and the briefing schedule is stayed.

Resnick, F.E. Sweeney and Pfeifer, JJ., concur with the denial of Proposition of Law No. II but dissent to the allowance of Proposition of Law No. I.

2003-1106. Hanshaw v. River Valley Health Sys.

Lawrence App. No. 02CA31, 2003-Ohio-2358.

Lundberg Stratton, O'Connor and O'Donnell, JJ., dissent.

2003-1114. Repl v. Jones.

Summit App. No. 21299, 2003-Ohio-2350. Discretionary appeal allowed on Proposition of Law No. I; cause held for the decision in 2002-0610, *Geran v. Westfield Ins. Co.*, Lucas App. No. L-01-1398, 2002-Ohio-1230; and briefing schedule stayed. Discretionary appeal allowed on Proposition of Law No. II; cause held for the decision in 2002-0579, *Burkhart v. CNA Ins. Co.*, Stark App. No. 2001CA00265, 2002-Ohio-903; and briefing schedule stayed.

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

2003-1138. State v. Stewart.

Cuyahoga App. No. 81468, 2003-Ohio-2867. Discretionary appeal allowed; cause held for the decision in 2002-1888, *State v. Jordan*, Cuyahoga App. No. 80675, 2002-Ohio-4587; and briefing schedule stayed.

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

2003-1151. State v. Woods.

Cuyahoga App. No. 82120, 2003-Ohio-2475. Discretionary appeal allowed; cause held for the decision in 2003-0392 and 2003-0560, *Pratts v. Hurley*, Ross App. No. 02CA2674, 2003-Ohio-864; and briefing schedule stayed.

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

2003-1161. State v. Crotts.

Cuyahoga App. No. 81477, 2003-Ohio-2473. Discretionary appeal allowed.

Moyer, C.J., Pfeifer and O'Connor, JJ., dissent.

Discretionary cross-appeal denied.

Lundberg Stratton, J., would allow on Proposition of Law No. I only.

F.E. Sweeney and O'Donnell, JJ., would allow the cross-appeal.

2003-1175. State v. Mayfield.

Cuyahoga App. No. 81924, 2003-Ohio-2312.

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

2003-1180. Blake v. Midwestern Indemn. Co.

Tuscarawas App. No. 2002AP060049, 2003-Ohio-2698. Discretionary appeal allowed; cause held for the decision in 2002-0932, *Westfield Ins. Co. v. Galatis*, Summit App. No. 20784, 2002-Ohio-1502; and briefing schedule stayed.

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

2003-1183. Rosenberry v. Morris.

Stark App. No. 2002CA00399, 2003-Ohio-2743. Discretionary appeal allowed; cause held for the decision in 2002-0610, *Geren v. Westfield Ins. Co.*, Lucas App. No. L-01-1398, 2002-Ohio-1230; and briefing schedule stayed.

Moyer, C.J., Resnick and O'Donnell, JJ., dissent.

APPEALS NOT ACCEPTED FOR REVIEW

2003-1199. Ashley v. Baird.

Summit App. No. 21364, 2003-Ohio-2711.

Moyer, C.J., and O'Connor, J., dissent, would allow, and would hold the cause for the decision in 2002-0579, *Burkhart v. CNA Ins. Co.*, Stark App. No. 2001CA00265, 2002-Ohio-903.

2003-1203. Wayne Mut. Ins. Co. v. Beagle.

Coshocton App. No. 02CA025, 2003-Ohio-2799.

2003-1204. Tammac Corp. v. Norch.

Stark App. No. 2002CA00402, 2003-Ohio-2724.

F.E. Sweeney, J., dissents.

2003-1206. State v. Selbak.

Butler App. No. CA2002-06-139, 2003-Ohio-2688.

2003-1209. State v. Orwick.

Hancock App. No. 5-02-48, 2003-Ohio-2681.

Pfeifer, J., dissents.

2003-1210. State v. Orwick.

Hancock App. No. 5-02-46, 2003-Ohio-2682.

Pfeifer, J., dissents.

2003-1213. State v. Richardson.

Hamilton App. No. C-020330.

Lundberg Stratton, J., dissents.

2003-1215. State v. Miller.

Cuyahoga App. No. 82100, 2003-Ohio-2320.

2003-1218. Dalicandro v. Veenocom, Inc.

Franklin App. No. 02AP-841.

Pfeifer, J., dissents.

2003-1221. State v. Brown.

Cuyahoga App. No. 82882.

2003-1225. Kvinta v. Kvinta.

Franklin App. No. 02AP-836, 2003-Ohio-2884. Discretionary appeal and cross-appeal not allowed.

Lundberg Stratton, J., dissents.

2003-1231. McDaniel v. Nationwide Mut. Ins. Co.

Franklin App. No. 02AP-936, 2003-Ohio-2833.

F.E. Sweeney, J., dissents.

2003-1232. State v. Franklin.

Cuyahoga App. No. 81426, 2003-Ohio-2649.

2003-1233. Akron v. Fowler.

Summit App. No. 21327, 2003-Ohio-2844.

2003-1235. State v. Hajdin.

Cuyahoga App. No. 81058, 2003-Ohio-2863.

2003-1236. State v. Samuels.

Cuyahoga App. Nos. 81333 and 81334, 2003-Ohio-2865.

2003-1237. State v. Allen.

Wayne App. No. 02CA0059, 2003-Ohio-1129 and 2003-Ohio-2847.

2003-1238. Carroll v. Dairy Farmers of Am., Inc.

Auglaize App. No. 2-03-20.

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

2003-1244. State v. Ferrell.

Stark App. No. 2002CA00423, 2003-Ohio-3137.

2003-1246. Marbley v. Metaldyne Co.

Summit App. No. 21377, 2003-Ohio-2851.

Resnick, J., dissents.

2003-1248. State v. Young.

Adams App. No. 02CA755, 2003-Ohio-3395.

2003-1249. Todd v. Crowe.

Warren App. No. CA2003-05-061.

2003-1251. Poulos v. State Auto. Mut. Ins. Co.

Hamilton App. No. C-020226, 2003-Ohio-2899.

Moyer, C.J., Lundberg Stratton and O'Connor, JJ., dissent.

2003-1252. State v. Short.

Cuyahoga App. No. 82246, 2003-Ohio-3538.

2003-1256. State v. Hutton.

Cuyahoga App. No. 82849.

2003-1257. In re Pryor.

Ashland App. No. 02COA037, 2003-Ohio-2988.

2003-1259. Cardinal Distrib. v. Reade.

Franklin App. No. 02AP-1204, 2003-Ohio-2880. On motion of Rex Elliott, Esq., for admission pro hac vice of Daniel P. Goldberg, Esp., for Duane Reade et al. Motion denied.

Pfeifer, J., dissents.

On discretionary appeal. Appeal denied.

2003-1260. State v. Wyley.

Cuyahoga App. No. 81051, 2003-Ohio-1951.

2003-1262. State v. Santiago.

Franklin App. No. 02AP-1094, 2003-Ohio-2877.

2003-1263. Suttle v. DeCesare.

Cuyahoga App. No. 81441, 2003-Ohio-2866.

F.E. Sweeney, J., dissents.

2003-1265. Branch v. Lackey.

Hamilton App. No. C-030277.

2003-1266. Stewart v. W. Ohio Conference of the United Methodist Church.

Franklin App. Nos. 02AP-974, 02AP-975, 02AP-982, and 02AP-983, 2003-Ohio-3885.

2003-1267. Koukios v. Ganson.

Hamilton App. Nos. C-010659, C-010735, and C-020091.

2003-1272. State v. Krzywkowski.

Cuyahoga App. No. 80392, 2003-Ohio-3003.

2003-1274. State v. Axson.

Cuyahoga App. No. 81231, 2003-Ohio-2182. On discretionary appeal, motion to dismiss, and motion to withdraw first proposition of law. Appeal and motions denied.

Lundberg Stratton, J., would allow on Proposition of Law No. II.

2003-1278. State v. Matos.

Cuyahoga App. No. 81302, 2003-Ohio-3214.

Pfeifer, J., dissents.

2003-1279. Snow v. Brown.

Franklin App. No. 02AP-1236, 2003-Ohio-3300.

2003-1281. State v. Ferrell.

Stark App. No. 2002CA00272, 2003-Ohio-3134.

2003-1283. In re Registered Land Certificate No. 135170.

Hamilton App. No. C-020631.

2003-1287. State v. Ferguson.

Lake App. No. 2001-L-170.

2003-1296. Rucker v. Davis.

Ross App. No. 02CA2670, 2003-Ohio-3192.

F.E. Sweeney, J., dissents.

O'Connor, J., dissents, would allow, and would hold the cause for the decision in 2002-1986, *Shaw v. State Farm Ins. Co.*, Cuyahoga App. No. 80471, 2002-Ohio-5330.

2003-1306. Klein v. Brothers Masonry, Inc.

Lucas App. No. L-02-1080, 2003-Ohio-3098.

2003-1309. State v. Woodley.

Cuyahoga App. No. 80732, 2003-Ohio-1950.

Moyer, C.J., O'Connor and O'Donnell, JJ., dissent, would allow on Proposition of Law No. VI, and would hold the cause for the decision in 2002-1888, *State v. Jordan*, Cuyahoga App. No. 80675, 2002-Ohio-4587.

Moyer, C.J., would also allow on Proposition of Law No. I.

2003-1313. State v. Smith.

Summit App. No. 21274, 2003-Ohio-3159.

2003-1381. Kentucky Med. Ins. Co. v. Jones.

Franklin App. No. 02AP-817, 2003-Ohio-3301.

2003-1392. In re N.B.

Cuyahoga App. No. 81392, 2003-Ohio-3656.

F.E. Sweeney, J., dissents.

O'Donnell, J., not participating.

2003-1407. State v. Calwise.

Mahoning App. No. 00CA77, 2003-Ohio-3463.

2003-1452. State v. Holcomb.

Summit App. No. 21611.

RECONSIDERATION OF PRIOR DECISIONS

2002-1461. Disciplinary Counsel v. Gardner.

Reported at 99 Ohio St.3d 416, 2003-Ohio-4048, 793 N.E.2d 425. On motion for reconsideration. Motion denied.

Pfeifer, J., dissents.

O'Donnell, J., not participating.