

The Supreme Court of Ohio

CASE ANNOUNCEMENTS AND ADMINISTRATIVE ACTIONS

October 15, 2003

MERIT DECISIONS WITH OPINIONS

2002-0824. In re Thomas, 2003-Ohio-5162.

Warren App. No. CA2001-02-013, 2002-Ohio-1426. Judgment affirmed as modified and cause remanded.

Moyer, C.J., F.E. Sweeney, Pfeifer, Lazarus and O'Connor, JJ., concur.

Resnick, J., concurs in judgment.

Lundberg Stratton, J., concurs in part and dissents in part.

Cynthia C. Lazarus, J., of the Tenth Appellate District, sitting for Cook, J.

2002-0892 and 2002-0894. In re Burford, 2003-Ohio-5162.

Lucas App. Nos. L-01-1334 and L-01-1348, 2002-Ohio-2299. Judgment affirmed as modified and cause remanded.

Moyer, C.J., Lazarus, F.E. Sweeney, Pfeifer, J.J. Sweeney and O'Connor, JJ., concur.

Lundberg Stratton, J., concurs in part and dissents in part.

Cynthia C. Lazarus, J., of the Tenth Appellate District, sitting for Resnick, J.

James J. Sweeney, J., of the Eighth Appellate District, sitting for Cook, J.

2002-0953. In re Subpoena Duces Tecum Served Upon Atty. Potts, 2003-Ohio-5234.

Lucas App. No. L-01-1033, 2002-Ohio-2050. Judgment reversed in part and affirmed in part. See opinion.

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

Pfeifer, J., concurs separately.

Donald R. Ford, J., of the Eleventh Appellate District, sitting for Resnick, J.

Charles R. Petree, J., of the Tenth Appellate District, sitting for Cook, J.

2002-1106. Worthington v. Columbus, 2003-Ohio-5099.

Franklin App. Nos. 01AP-1119 and 01AP-1120, 2002-Ohio-2330. Judgment affirmed.

Moyer, C.J., Resnick, F.E. Sweeney, Harsha, W. Young and O'Connor, JJ., concur.

Pfeifer, J., dissents.

William H. Harsha III, J., of the Fourth Appellate District, sitting for Cook, J.

William W. Young, J., of the Twelfth Appellate District, sitting for Lundberg Stratton, J.

2003-0087. State ex rel. Wiley v. Whirlpool Corp., 2003-Ohio-5100.

Franklin App. No. 02AP-340, 2002-Ohio-6558. Judgment affirmed.

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

2003-0528. State ex rel. R.W. Sidley, Inc. v. Crawford, 2003-Ohio-5101.

Franklin App. No. 02AP-99, 2003-Ohio-625. Judgment reversed in part, affirmed in part, and cause remanded. See opinion.

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

2003-0902. Potts v. Rose, 2003-Ohio-5102.

Richland App. No. 03CA29. Judgment affirmed.

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

MERIT DECISIONS WITHOUT OPINIONS

2003-0686. Griffith v. Wausau Business Ins. Co.

Franklin App. Nos. 02AP-511 and 02AP-664, 2003-Ohio-955. On motion for stay of appeal pending decision in 2002-1126 and 2002-1433, *Allen v.*

Johnson, Wayne App. Nos. 01CA0046 and 01CA0047, 2002-Ohio-3404. Motion denied.

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

On motion not to dismiss appeal for want of prosecution. Motion denied and cause dismissed.

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

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

O'Connor, J., dissents, would grant the motion not to dismiss, and would hold this cause for the decision in *Allen v. Johnson*.

2003-1270. State ex rel. Mahoning Cty. Commrs. v. Maloney.

In Prohibition. Sua sponte, cause dismissed as moot.

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

2003-1577. Franklin v. Brigano.

In Habeas Corpus. On petition for writ of habeas corpus of Augustus T. Franklin. Sua sponte, cause dismissed.

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

2003-1647. Patterson v. Money.

In Habeas Corpus. On petition for writ of habeas corpus of Jo'El Patterson. Sua sponte, cause dismissed.

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

2003-1650. Martz v. Taft.

In Habeas Corpus. On petition for writ of habeas corpus of Larry Keith Martz. Sua sponte, cause dismissed.

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

MOTION AND PROCEDURAL RULINGS

2002-0612. Assn. of Fire Fighters, Local 93 v. Cleveland.

Cuyahoga App. No. 78970, 2002-Ohio-498. On amicus curiae motion for leave to file under S.Ct.Prac.R. XI of the Ohio Municipal League. Motion denied.

On motion to strike amicus curiae motion for leave to file under S.Ct.Prac.R. XIV of the Ohio Municipal League. Motion granted.

Resnick and Pfeifer, JJ., dissent.

Lundberg Stratton, J., would deny as moot.

2003-0393. State ex rel. Nestle USA – Prepared Foods Div., Inc. v. Indus. Comm.

Franklin App. No. 01AP-1214, 2003-Ohio-413. On request for oral argument. Request denied.

Resnick, J., not participating.

2003-0528. State ex rel. R.W. Sidley, Inc. v. Crawford.

Franklin App. No. 02AP-99, 2003-Ohio-625. On motion for stay of arbitration (AAA case No. 5311063802). Motion denied.

2003-1425. State v. Evans.

Jefferson App. No. 02JE11, 2003-Ohio-3475. On motion to strike application for dismissal based upon fraud and unauthorized interference by non-party. Motion granted.

Resnick, J., dissents.

2003-1426. Tulak v. Meridian Ins. Co.

Tuscarawas App. No. 2002AP110088, 2003-Ohio-3290 and 2003-Ohio-4139. On review of order certifying a conflict. The court determines that a conflict exists. Sua sponte, cause consolidated with 2003-1319, *Tulak v. Meridian Ins. Co.*, Tuscarawas App. No. 2002AP110088, 2003-Ohio-3290 and 2003-Ohio-4139; causes 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.

2003-1433. Westfield Ins. Co. v. Metzler.

Summit App. No. 21517, 2003-Ohio-3788. On review of order certifying a conflict. The court determines that a conflict exists. Sua sponte, cause consolidated with 2003-1375, *Westfield Ins. Co. v. Metzler*, Summit App. No. 21517, 2003-Ohio-3788; causes held for the decision in 2002-0932, *Westfield Ins. Co. v. Galatis*, Summit App. No. 20784, 2002-Ohio-1502; and briefing schedule stayed.

2003-1476. State ex rel. WBNS TV, Inc. v. Dues.

In Mandamus. On motion for peremptory writ, motion to strike motion for peremptory writ: emergency relief request, and answer of respondents. Sua sponte, alternative writ granted and motion to strike denied.

Pfeifer, J., dissents.

2003-1486. State v. Housley.

Clermont App. No. CA2002-07-060, 2003-Ohio-2223. On review of order certifying a conflict. The court determines that a conflict exists. Cause consolidated with 2003-1084, *State v. Housley*, Clermont App. No. CA2002-07-060, 2003-Ohio-2223; causes held for the decision in 2003-1380, *State v. Brooks*, Summit App. No. 21360, 2003-Ohio-3143 and 2003-Ohio-3364; and briefing schedule stayed.

2003-1599. State v. Ingram.

Warren App. No. CA2003-01-006. On motion for leave to file delayed appeal. Motion denied.

Pfeifer and Lundberg Stratton, JJ., dissent.

2003-1600. State v. Watson.

Stark App. No. 97CA0123. On motion for leave to file delayed appeal. Motion denied.

2003-1602. State v. Rodriguez.

Lorain App. No. 98CA007037. On motion for leave to file delayed appeal. Motion denied.

2003-1603. State v. Chapman.

Franklin App. No. 02AP-666, 2003-Ohio-2415. On motion for leave to file delayed appeal. Motion denied.

Pfeifer and Lundberg Stratton, JJ., dissent.

2003-1613. State v. Cochrane.

Franklin App. No. 01AP-1440, 2002-Ohio-4733. On motion for leave to file delayed appeal. Motion denied.

Moyer, C.J., dissents.

2003-1629. In re Adoption of Primmer.

Crawford App. No. 3-03-11. On motion for stay of court of appeals' judgment. Motion granted.

Resnick and O'Connor, JJ., dissent.

2003-1665. New Family Physicians Assoc., Inc. v. Telesis Med. Mgt.
Cuyahoga App. No. 82901. On motion for stay of court of appeals' judgment. Motion denied.
Moyer, C.J., dissents.

APPEALS ACCEPTED FOR REVIEW

2003-1084. State v. Housley.
Clermont App. No. CA2002-07-060, 2003-Ohio-2223. Discretionary appeal allowed; cause consolidated with 2003-1486, *State v. Housley*, Clermont App. No. CA2002-07-060, 2003-Ohio-2223; causes held for the decision in 2003-1380, *State v. Brooks*, Summit App. No. 21360, 2003-Ohio-3143 and 2003-Ohio-3364; and briefing schedule stayed.

2003-1181. Landers v. Lucent Technologies, Inc.
Cuyahoga App. Nos. 81506 and 81531, 2003-Ohio-3326 and 2003-Ohio-3657. Discretionary appeal allowed; cause held for the decision in 2002-1956, *Tucker v. Wilson*, Clermont App. No. CA2002-01-002, 2002-Ohio-5142; and briefing schedule stayed.
F.E. Sweeney, J., dissents.
Resnick and Pfeifer, JJ., not participating.

2003-1194. State v. Smith.
Morrow App. No. CA957, 2003-Ohio-3416.
F.E. Sweeney and Pfeifer, JJ., dissent.

2003-1202. Bellecourt v. Cleveland.
Cuyahoga App. No. 80193, 2003-Ohio-2468.
Pfeifer, J., dissents.

2003-1205. Delong v. Myers.
Knox App. No. 02CA000035, 2003-Ohio-2702. Discretionary appeal allowed; cause held for the decision in 2002-1956, *Tucker v. Wilson*, Clermont App. No. CA2002-01-002, 2002-Ohio-5142; and briefing schedule stayed.
Resnick and F.E. Sweeney, JJ., would allow the discretionary appeal without holding for *Tucker v. Wilson*.

2003-1212. Andreyko v. Cincinnati.

Hamilton App. No. C-020606, 2003-Ohio-2759.

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

2003-1240. Dalton v. Lumbermens Mut. Ins. Co.

Stark App. No. 2002CA00198, 2003-Ohio-2897. 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.

2003-1250. Hughes v. Nationwide Mut. Ins. Co.

Franklin App. Nos. 02AP-1254 and 02AP-1256. Discretionary appeal allowed; cause held for the decision in 2002-1126 and 2002-1433, *Allen v. Johnson*, Wayne App. Nos. 01CA0046 and 01CA0047, 2002-Ohio-3404; and briefing schedule stayed.

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

2003-1268. Jones v. Morehart.

Seneca App. No. 13-03-06, 2003-Ohio-2995. Discretionary appeal allowed; 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.

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

2003-1271. Hans v. Hartford Ins. Co.

Hamilton App. No. C-020500, 2003-Ohio-3045. Discretionary appeal allowed; cause held for the decision in 2002-1956, *Tucker v. Wilson*, Clermont App. No. CA2002-01-002, 2002-Ohio-5142; and briefing schedule stayed.

Resnick, J., dissents.

2003-1277. Radwandky v. Hartford Ins. Co.

Cuyahoga App. No. 82249, 2003-Ohio-3029. 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 and F.E. Sweeney, JJ., dissent.

2003-1319. Tulak v. Meridian Ins. Co.

Tuscarawas App. No. 2002AP110088, 2003-Ohio-3290 and 2003-Ohio-4139. Discretionary appeal allowed; cause consolidated with 2003-1426,

Tulak v. Meridian Ins. Co., Tuscarawas App. No. 2002AP110088, 2003-Ohio-3290 and 2003-Ohio-4139; causes 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.

2003-1375. Westfield Ins. Co. v. Metzler.

Summit App. No. 21517, 2003-Ohio-3788. Discretionary appeal allowed; cause consolidated with 2003-1433, *Westfield Ins. Co. v. Metzler*, Summit App. No. 21517, 2003-Ohio-3788; causes held for the decision in 2002-0932, *Westfield Ins. Co. v. Galatis*, Summit App. No. 20784, 2002-Ohio-1502; and briefing schedule stayed.

2003-1406. State v. Cowan.

Portage App. No. 2002-P-0029, 2003-Ohio-3547.

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

APPEALS NOT ACCEPTED FOR REVIEW

2002-0053. Pearce v. Fouad.

Franklin App. No. 00AP-837, 146 Ohio App.3d 496, 2001-Ohio-3986. Discretionary appeal and cross-appeal not accepted.

Pfeifer, J., dissents.

2003-1275. State v. Broe.

Hamilton App. No. C-020521, 2003-Ohio-3054.

2003-1276. State v. Tate.

Cuyahoga App. No. 81682, 2003-Ohio-3229.

2003-1286. State v. Jalowiec.

Lorain App. No. 02CA008130, 2003-Ohio-3152.

F.E. Sweeney, J., dissents.

2003-1291. State v. Braden.

Franklin App. No. 02AP-954, 2003-Ohio-2949.

Pfeifer, J., dissents.

2003-1295. State v. Tracy.

Franklin App. No. 03AP-427.

2003-1300. State v. Johnson.

Delaware App. No. 02CAA9045, 2003-Ohio-3414.

2003-1303. In re Miller.

Franklin App. No. 02AP-1286.

2003-1308. Rollins v. Mad River Green Local School Dist.

Clark App. No. 2002CA75, 2003-Ohio-3058.

O'Donnell, J., dissents.

2003-1310. Beever v. Cincinnati Life Ins. Co.

Franklin App. Nos. 02AP-543 and 02AP-544, 2003-Ohio-2942. On motion for admission pro hac vice of Matthew D. Walker by Nancy Manougian and motion for admission pro hac vice of Daniel G. Litchfield by Nancy Manougian. Discretionary appeal and motions denied.

2003-1315. State v. King.

Hamilton App. No. C-020398.

2003-1316. State v. Tucker.

Cuyahoga App. No. 81885, 2003-Ohio-3022.

2003-1318. Kent State Univ. v. Univ. Coffee House, Inc.

Franklin App. No. 02AP-1100, 2003-Ohio-2950.

2003-1322. State v. Saxton.

Lorain App. No. 02CA008030, 2003-Ohio-3158.

2003-1324. Gamiere v. Kayko.

Trumbull App. No. 2002-T-0086, 2003-Ohio-3066.

2003-1326. In re Stone.

Clinton App. No. CA2002-09-035, 2003-Ohio-3071.

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

2003-1332. Gartland v. Garcia.

Mahoning App. No. 02CA164, 2003-Ohio-3277.

Resnick and Pfeifer, JJ., dissent.

2003-1334. State v. Cline.
Champaign App. No. 03CA09.

2003-1335. State v. Gooden.
Cuyahoga App. No. 81320, 2003-Ohio-2864.

Moyer, C.J., O'Connor and O'Donnell, JJ., dissent in part; would allow Proposition of Law No. VI and hold for the decision in 2002-1792, *State v. Perry*, Franklin App. No. 01AP-996, 2002-Ohio-4545; and would allow Proposition of Law No. VIII and hold for the decision in 2002-1888, *State v. Jordan*, Cuyahoga App. No. 80675, 2002-Ohio-4587.

2003-1337. Wilson v. Precision Environmental Co.
Cuyahoga App. No. 81932, 2003-Ohio-2873.

Resnick, J., dissents.

2003-1338. Sanicky v. Ruggles Twp. Bd. of Zoning Appeals.
Ashland App. No. 02COA033, 2003-Ohio-3133.

2003-1339. Riddle v. Wiegand.
Madison App. No. CA2002-12-027, 2003-Ohio-3072.

Lundberg Stratton and O'Connor, JJ., dissent and would allow.

O'Donnell, J., dissents, would allow, and would hold this cause for the decision in 2002-0932, *Westfield Ins. Co. v. Galatis*, Summit App. No. 20784, 2002-Ohio-1502.

2003-1340. State v. Oglesby.
Morrow App. No. 03CA1, 2003-Ohio-3204.

2003-1341. In re Conservatorship of Ahmed.
Belmont App. Nos. 01BA13 and 01BA48, 2003-Ohio-3272.

2003-1345. State v. Nageotte.
Medina App. No. 02CA0095M, 2003-Ohio-3153.
O'Donnell, J., dissents.

2003-1347. State v. Parton.
Lorain App. No. 03CA008278.

2003-1348. State v. Bays.
Greene App. No. 2003CA4, 2003-Ohio-3234.

2003-1349. Amadasu v. United Dairy Farmers.

Hamilton App. No. C-020523.

2003-1353. Jones v. Hughey.

Franklin App. No. 02AP-1005, 2003-Ohio-3184.

2003-1355. Antush v. N. Ridgeville.

Lorain App. Nos. 02CA008161, 02CA008169, and 02CA008192, 2003-Ohio-3164.

2003-1356. Sheets v. Karl W. Schmidt & Assoc., Inc.

Hamilton App. No. C-020726, 2003-Ohio-3198.

Resnick and Pfeifer, JJ., dissent.

2003-1358. Falkner v. Para-Chem.

Summit App. No. 21288, 2003-Ohio-3155.

2003-1359. Jarvis v. Gerstenslager Co.

Wayne App. Nos. 02CA0047 and 02CA0048, 2003-Ohio-3165.

2003-1361. Petrilla v. Ohio State Bd. of Pharmacy.

Mahoning App. No. 02CA151, 153 Ohio App.3d 428, 2003-Ohio-3276.

2003-1362. Donofrio v. Winebrenner.

Summit App. No. 21356, 2003-Ohio-3317.

2003-1365. State v. Kelly.

Franklin App. No. 02AP-195, 2002-Ohio-5797.

2003-1368. State v. Griffin.

Hamilton App. No. C-020084, 2003-Ohio-3196.

Moyer, C.J., dissents.

2003-1371. State v. Loper.

Cuyahoga App. No. 81297, 2003-Ohio-3213.

2003-1374. State v. Johnson.

Cuyahoga App. Nos. 81692 and 81693, 2003-Ohio-3241.

2003-1378. State v. Wantz.

Geauga App. No. 2002-G-2419, 2003-Ohio-3264.

2003-1383. Wall v. Pizza Outlet, L.P.

Stark App. No. 2002CA00400, 2003-Ohio-3369.

2003-1385. Ross v. Fox.

Pickaway App. No. 02CA25, 2003-Ohio-3513.

Pfeifer, J., dissents.

2003-1405. State v. Lallathin.

Noble App. No. 299, 2003-Ohio-3478.

2003-1416. State v. Shepherd.

Cuyahoga App. No. 81926, 2003-Ohio-3356.

2003-1439. State v. Scarl.

Portage App. No. 2002-P-0091, 2003-Ohio-3493.

2003-1448. Rinder v. Med. Protective Co.

Stark App. No. 2002CA00354, 2003-Ohio-3855.

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

2003-1464. State v. Hairston.

Cuyahoga App. No. 80054, 2003-Ohio-3640.

2003-1502. State v. Scott.

Franklin App. No. 02AP-1338, 2003-Ohio-3646.

RECONSIDERATION OF PRIOR DECISIONS

2003-1061. State ex rel. Howard v. Zimmelman.

In Mandamus. Reported at 99 Ohio St.3d 1535, 2003-Ohio-4753, 795 N.E.2d 676. On motion for reconsideration and/or motion to vacate entry of September 9, 2003. Motions denied.