

The Supreme Court of Ohio

CASE ANNOUNCEMENTS AND ADMINISTRATIVE ACTIONS

February 19, 2003

MERIT DECISIONS WITHOUT OPINIONS

2002-2109. State ex rel. Bradley v. Selvaggio.

In Mandamus. On answer of respondents Nick A. Selvaggio and James R. Smith, motion for judgment on pleadings of Nick A. Selvaggio and James R. Smith, motion to dismiss of Richard E. Nau, Esq., and motion for judgment on pleadings of Kevin Bradley. Motion to dismiss sustained. Cause dismissed.

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

2002-2116. Schumacher v. Covenio.

Stark App. No. 2002CA00128, 2002-Ohio-5928. On review of order certifying a conflict. The court determines that no conflict exists within the meaning of S.Ct.Prac.R. IV(2)(B). This cause is therefore dismissed.

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

Pfeifer, Cook and O'Connor, JJ., dissent.

2002-2133. Rumpke Container Serv., Inc. v. Zaino.

Board of Tax Appeals, No. 1998-B-1201. On motion to dismiss appeal. Motion granted and cause dismissed.

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

Pfeifer, J., dissents.

2002-2134. Rumpke Container Serv., Inc. v. Zaino.

Board of Tax Appeals, No. 1998-B-1199. On motion to dismiss appeal. Motion granted and cause dismissed.

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

Pfeifer, J., dissents.

2002-2135. Rumpke Waste, Inc. v. Zaino.

Board of Tax Appeals, No. 1999-B-1696. On motion to dismiss appeal. Motion granted and cause dismissed.

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

Pfeifer, J., dissents.

2002-2136. Rumpke Waste, Inc. v. Zaino.

Board of Tax Appeals, No. 1998-B-1200. On motion to dismiss appeal. Motion granted and cause dismissed.

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

Pfeifer, J., dissents.

2002-2144. State ex rel. Beach v. Sadler.

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

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

2002-2168. State ex rel. Thompson v. Luse.

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

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

2003-0044. Griffin v. McFaul.

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

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

MOTION AND PROCEDURAL RULINGS

1985-0007. State v. Williams.

Cuyahoga App. No. 47853. On motion to set execution date. Motion granted. On motion for stay of execution of sentence pending disposition of habeas corpus actions pursuant to *Atkins v. Virginia* (2002), 536 U.S. 304, 122 S.Ct. 2242, 153 L.Ed.2d 335. Motion denied.

2001-0748 and 2001-0976. State ex rel. R.T.G., Inc. v. State.

Franklin App. No. 98AP-1015, 2001-Ohio-4267. On motion for award of attorney fees and expenses by the Supreme Court and motion for stay with respect to motion for award of attorney fees and expenses. Motions denied; cause remanded to the court of appeals to rule on the motion for attorney fees and costs.

Moyer, C.J., and Cook, J., would grant the motion for stay.

O'Connor, J., would grant the motion for stay and remand to the court of appeals to rule on the motion for attorney fees and costs.

2001-1302. In re Complaint of the Ohio State Legislative Bd.

Public Utilities Commission, No. 00-1430-RR-CSS. On motion for leave to intervene of Wheeling & Lake Erie Railway Company. Motion granted.

On motion to dismiss of the Public Utilities Commission of Ohio. Motion granted and cause dismissed.

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

2001-1709. Kemper v. Michigan Millers Mut. Ins. Co.

Certified State Law Question, No. 3-00-CV-07799. On amicus curiae motion of Ohio Association of Civil Trial Attorneys for leave to file under S.Ct.Prac.R. XI. The motion fails for want of four votes on the following vote:

Resnick, F.E. Sweeney and Pfeifer, JJ., vote to deny.

Moyer, C.J., Lundberg Stratton and O'Connor, JJ., vote to grant.

Cook, J., not participating.

2002-1415. Hager v. Waste Technologies Industries.

Columbiana App. No. 2000CO45, 2002-Ohio-3466. On motion to clarify court order/decision. Motion denied.

2002-1549. State ex rel. Howard v. McDonald.

In Mandamus. On response to show cause order. Show cause order vacated.

Moyer, C.J., and Lundberg Stratton, J., dissent and would order sanctions.

2002-1599. N. Coast Community Homes, Inc. v. Zaino.

Board of Tax Appeals, No. 2001-J-1065. On motion to vacate decision and order of the Board of Tax Appeals and motion to remand case to the Board of Tax Appeals. Motions granted.

2002-1672. State ex rel. Smith v. Dickinson.

In Mandamus and Prohibition. On documentation in support of award of attorney fees and sanctions of Max Rothal, Patrick and Brian Armstead et al., and documentation in support of an award of attorney fees and costs of Perry Dickinson. Attorney fees and costs granted.

Pfeifer, J., dissents.

Sanctions denied.

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

2002-2069. Lake Lane Emp. Group of Akron, LLC v. Columber.

Summit App. No. 21084, 2002-Ohio-5551. On motion to withdraw as counsel of Frederick M. Lombardi, Christopher C. Esker, and Walter A. Lucas. Motion granted.

Pfeifer and O'Connor, JJ., dissent.

2002-2128. State ex rel. Webb v. Bliss.

In Mandamus. On answer of respondent and motion for judgment on pleadings. Sua sponte, alternative writ granted.

2002-2138. Saunders v. Mortensen.

Erie App. No. E-02-008, 2002-Ohio-6244. On review of order certifying a conflict. The court determines that a conflict exists. The parties are to brief the issue stated at page 11 of the court of appeals' Decision and Judgment Entry dated November 15, 2002:

"The question presented is whether the language of Nationwide Insurance Endorsement 2352 may be reasonably construed in the manner articulated by this court and the Franklin County Court of Appeals in *Nicolini-Brownfield v. Eigensee* (Sept. 16, 1999), Franklin App. No. 98AP-1244 [1999 WL 717308], so as to give rise to an ambiguity in underinsured motorists coverage."

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

The conflict case is *Carroll v. Allstate Ins. Co.*, 148 Ohio App.3d 413, 2002-Ohio-3074, 773 N.E.2d 1061.

2002-2158. Thorne v. Amerisure Ins. Co.

Summit App. No. 21137, 2002-Ohio-6123. On review of order certifying a conflict. The court determines that a conflict exists. Sua sponte, cause held for the

decision in 2002-0932, *Westfield Ins. Co. v. Galatis*, Summit App. No. 20784, 2002-Ohio-1502; briefing schedule stayed.

Lundberg Stratton, J., would accept the conflict but would hold the cause for the decision in 2002-0579, *Burkhart v. CNA Ins. Co.*, Stark App. No. 2001CA00265, 2002-Ohio-903.

F.E. Sweeney, J., dissents.

2002-2189. State ex rel. Barletta v. Fersch.

In Mandamus. On S.Ct.Prac.R. X(5) determination and on consideration of motions to intervene of Dominion Homes, Inc., Princeton Capital Group, LLC, and Weston Investments, LLC.

It is hereby ordered that the motions of Dominion Homes, Inc., Princeton Capital Group, LLC, and Weston Investments, LLC, be, and hereby are, granted, and that they be, and hereby are, permitted to intervene as respondents.

Cook, J., not participating.

It is further ordered that an alternative writ be, and hereby is, granted.

Cook, J., not participating.

2003-0026. Orr v. Hays.

Mahoning App. No. 02CA27, 2002-Ohio-7441. On motion for stay of court of appeals' judgment. Motion denied.

2003-0027. In re Guardianship of Freeman.

Adams App. No. 02CA737, 2002-Ohio-6386. On motion for stay of court of appeals' judgment. Motion denied.

2003-0040. State v. Henderson.

Trumbull App. No. 2001-T-0047, 2002-Ohio-6715. On motion for stay of court of appeals' judgment. Motion denied.

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

2003-0043. In re Borntreger.

Geauga App. No. 2001-G-2379, 2002-Ohio-6468. On motion for stay of court of appeals' judgment. Motion granted.

Pfeifer and Cook, JJ., dissent.

2003-0045. State v. Campbell.

Hamilton App. No. C-010727, 2002-Ohio-6064. 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' Entry Granting Motion to Certify Conflict dated December 9, 2002:

“Whether the amendment of the charging instrument from one subsection of R.C. 4511.19 to another subsection of R.C. 4511.19 changes the name and identify of the crime charged in violation of Ohio Criminal Rule 7(D)?”

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

The conflict case in *State v. Marinik* (1989), 57 Ohio App.3d 110, 567 N.E.2d 310.

2003-0049. Paine Funeral Home v. Ohio Bd. of Embalmers & Funeral Directors.

Ashtabula App. No. 2001-A-0078, 2002-Ohio-6474. On motion for stay of court of appeals' judgment. Motion granted.

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

2003-0057. State v. Kelly.

Franklin App. No. 02AP-195, 2002-Ohio-5797. On motion for leave to file delayed appeal. Motion denied.

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

2003-0073. Jackson v. Bellomy.

Franklin App. No. 01AP-1397, 2002-Ohio-6495. On motion for stay of court of appeals' judgment. Motion granted.

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

2003-0077. State v. Franks.

Cuyahoga App. No. 80912, 2002-Ohio-6233. On motion for leave to file delayed appeal. Motion granted.

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

2003-0095. State v. Richards.

Cuyahoga App. No. 79350, 2002-Ohio-6623. On motion for stay of court of appeals' judgment. Motion denied.

APPEALS ACCEPTED FOR REVIEW

2002-1808. State v. Wagner.

Paulding App. No. 11-02-03. Discretionary appeal allowed and cause held for the decision in 2002-1807, *State v. Schmitt*, Mercer App. No. 10-01-16, 2002-Ohio-4615; briefing schedule stayed.

F.E. Sweeney, J., dissents.
O'Connor, J., not participating.

2002-1837. Jennings v. Univ. Ear, Nose & Throat Specialists, Inc.

Hamilton App. No. C-010516, 2002-Ohio-4805. Discretionary appeal allowed and cause held for the decision in 2002-1560, *Johns v. Horton*, Hamilton App. No. C-010672, 149 Ohio App.3d 252, 2002-Ohio-3802, 776 N.E.2d 1146; briefing schedule stayed.

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

2002-1854. Roberts v. Wausau Business Ins. Co.

Franklin App. Nos. 02AP-04 and 02AP-05, 2002-Ohio-4734. Discretionary appeal allowed and cause held for the decision in 2002-1126, *Allen v. Johnson*, Wayne App. Nos. 01CA0046 and 01CA0047, 2002-Ohio-2432 and 2002-Ohio-3404; briefing schedule stayed.

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

2002-1857. Glick v. Sokol.

Franklin App. No. 01AP-1224, 2002-Ohio-4731.

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

2002-1861. Masiongale Electrical-Mechanical, Inc. v. Constr. One, Inc.

Franklin App. No. 02AP-138, 2002-Ohio-4736.

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

2002-1879. State v. Johnson.

Cuyahoga App. No. 80459, 2002-Ohio-4581. Discretionary appeal allowed and cause to be argued on the same date as 2002-1888, *State v. Jordan*, Cuyahoga App. No. 80675, 2002-Ohio-4587.

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

2002-1880. Danziger v. Luse.

Sandusky App. No. S-01-042, 2002-Ohio-4945.

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

2002-1888. State v. Jordan.

Cuyahoga App. No. 80675, 2002-Ohio-4587. Discretionary appeal allowed and cause to be argued on the same date as 2002-1879, *State v. Johnson*, Cuyahoga App. No. 80459, 2002-Ohio-4581.

Resnick and Pfeifer, JJ., dissent.

APPEALS NOT ACCEPTED FOR REVIEW

2002-1735. Citicasters Co. v. Stop 26 Riverbend, Inc.

Mahoning App. No. 01CA99, 2002-Ohio-5197.

2002-1805. State v. Lott.

Stark App. No. 2001CA00367, 2002-Ohio-4540.

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

2002-1878. Fraley v. Fraley.

Montgomery App. No. 19178, 2002-Ohio-4967.

2002-1890. N. Olmsted v. Reagan.

Cuyahoga App. No. 79627, 2002-Ohio-4426.

2002-1893. Smith v. Coldwell Banker Hunter Realty.

Summit App. No. 20908, 2002-Ohio-4866.

2002-1898. Jones v. Cynet, Inc.

Cuyahoga App. No. 79769, 2002-Ohio-2617.

2002-1901. Bowling v. Nationwide Mut. Ins. Co.

Hamilton App. No. C-020089, 2002-Ohio-4933.

F.E. Sweeney, J., dissents.

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

2002-1904. In re Jaric.

Mahoning App. No. 00CA243, 2002-Ohio-5016.

2002-1906. State v. Nichols.

Cuyahoga App. No. 81079, 2002-Ohio-5358.

2002-1908. State v. Vaughn.

Carroll App. No. 683, 2002-Ohio-5046.

Lundberg Stratton, J., dissents.

2002-1909. State v. Hinkle.

Allen App. No. 1-02-41, 2002-Ohio-5585.

2002-1911. Bay W. Paper Corp. v. Jones.

Franklin App. No. 01AP-1201, 2002-Ohio-4317.
Pfeifer, J., dissents.

2002-1914. Turner v. Cleveland Clinic Found.

Cuyahoga App. No. 80949, 2002-Ohio-4790.

2002-1917. State v. Allen.

Fayette App. No. CA2002-02-006.

2002-1921. Carmona v. Blankenship.

Franklin App. No. 02AP-14, 2002-Ohio-5003.
Lundberg Stratton, J., would allow on Proposition of Law No. II.

2002-1922. Russell v. Univ. of Cincinnati Hosp.

Franklin App. Nos. 01AP-1378, 01AP-1386 and 01AP-1396, 2002-Ohio-5007.
F.E. Sweeney, J., dissents.

2002-1924. Daroczy v. Lantz.

Franklin App. No. 02AP-31, 2002-Ohio-5417.

2002-1926. Hall v. Forsyth.

Montgomery App. No. 19252, 2002-Ohio-5129.

2002-1927. State v. Moning.

Hamilton App. No. C-010315, 2002-Ohio-5097.

2002-1930. State v. Duvall.

Cuyahoga App. No. 80316, 2002-Ohio-4574.

2002-1933. State v. Blalock.

Cuyahoga App. Nos. 80419 and 80420, 2002-Ohio-4580.

2002-1935. State v. Turner.

Stark App. No. 2002CA00123, 2002-Ohio-5478.

2002-1937. Blanchard v. State Farm Ins. Co.

Stark App. No. 2002CA00115, 2002-Ohio-5297.

2002-1941. In re John Doe.

Mahoning App. No. 01CA153, 2002-Ohio-5210.

2002-1942. State v. Satta.

Marion App. No. 9-01-38, 2002-Ohio-5049.

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

2002-1943. State v. McCain.

Pickaway App. No. 01CA22, 2002-Ohio-5342.

2002-1946. Helman v. EPL Prolong, Inc.

Columbiana App. No. 2001CO43, 2002-Ohio-5249.

2002-1947. State v. Zakrzewski.

Lucas App. No. L-02-1236.

Resnick, J., not participating.

2002-1952. State v. Jackson.

Cuyahoga App. No. 80299, 2002-Ohio-2711.

2002-1959. Reichardt v. Natl. Sur. Corp.

Clermont App. No. CA2002-02-017, 2002-Ohio-5143.

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

2002-1961. Collins v. Carpenter.

Richland App. No. 02CA31, 2002-Ohio-5173.

2002-1962. State v. Pelphrey.

Hamilton App. Nos. C-010452 and C-010702, 2002-Ohio-5491.

2002-1963. Skonieczny v. Eastlake.

Lake App. No. 2001-L-077, 2002-Ohio-5152.

Lundberg Stratton, J., dissents.

2002-1964. State v. Harris.

Clermont App. No. CA2001-12-098, 2002-Ohio-5141.

2002-1965. Euler v. Euler.

Wood App. No. WD-01-063, 2002-Ohio-5199.

2002-1971. Randolph v. Ins. Co. of Pennsylvania.

Jefferson App. No. 99JE37, 2002-Ohio-5242.

2002-1972. State v. Lee.

Cuyahoga App. No. 80938, 2002-Ohio-4924.

2002-1979. State v. Bethel.

Tuscarawas App. No. 2002AP0010, 2002-Ohio-5437.

2002-1980. Koback v. Tri-Arch, Inc.

Cuyahoga App. Nos. 80152 and 81471, 2002-Ohio-5462.

F.E. Sweeney, J., dissents.

2002-1983. Reef v. Center for Individual & Family Serv., Inc.

Richland App. No. 02CA30, 2002-Ohio-5476.

2002-1985. Millstein v. Millstein.

Cuyahoga App. Nos. 79617, 79754, 80184, 80185, 80186, 80187, 80188 and 80963, 2002-Ohio-4783.

Resnick, J., dissents.

2002-1990. State v. Bradley.

Cuyahoga App. No. 79354, 2002-Ohio-3895.

2002-1995. State v. Ferrell.

Stark App. No. 2002CA00339.

2002-1997. Prather v. Am. Med. Response, Inc.

Summit App. No. 20965, 2002-Ohio-5261 and 2002-Ohio-5439.

Lundberg Stratton, J., dissents.

2002-2002. Day, Ketterer, Raley, Wright & Rybolt, Ltd. v. Hamrick.

Stark App. No. 2002CA0043, 2002-Ohio-5433.

2002-2004. State v. Braxton.

Cuyahoga App. No. 80663, 2002-Ohio-5072.

2002-2006. Bench Signs Unlimited, Inc. v. Lake Twp. Bd. of Zoning Appeals.
Stark App. No. 2002CA00096, 2002-Ohio-5436.

2002-2010. Rutledge v. Wallace.
Carroll App. No. 02AP0770, 2002-Ohio-5372.

2002-2030. State v. Golson.
Montgomery App. No. 17707.

2002-2040. State v. Holcomb.
Summit App. No. 21235.

2002-2050. Starks v. Globe Am. Cas. Co.
Hamilton App. No. C-010631.

2002-2083. Fleming v. Wallace.
Belmont App. No. 01BA54, 2002-Ohio-6003.
Discretionary appeal denied.
Discretionary cross-appeal denied.
Lundberg Stratton, J., dissents.

2002-2090. State v. Emch.
Summit App. No. 20372, 2002-Ohio-3861.

2002-2099. State v. Haynes.
Franklin App. No. 01AP-430, 2002-Ohio-4389.

2002-2115. Schumacher v. Coven.
Stark App. No. 2002CA00128, 2002-Ohio-5928.
Cook and O'Connor, JJ., dissent.

2002-2231. In re Willis.
Coshocton App. No. 02CA15, 2002-Ohio-6795.

RECONSIDERATION OF PRIOR DECISIONS

2001-0960. Westside Cellular, Inc. v. Pub. Util. Comm.
Public Utilities Commission, No. 93-1758-RC-CSS. Reported at 98 Ohio St.3d 165, 2002-Ohio-7119, 781 N.E.2d 199. On motion for reconsideration of

Cincinnati SMSA Limited Partnership and motion for reconsideration. Motions denied.

Cook and Lundberg Stratton, JJ., dissent.

Resnick, J., not participating.

2001-1132. New Par v. Pub. Util. Comm.

Public Utilities Commission, No. 93-1758-RC-CSS. Reported at 98 Ohio St.3d 277, 2002-Ohio-7245, 781 N.E.2d 1008. On motion for reconsideration. Motion denied.

Resnick, J., not participating.

2001-1158. Cincinnati SMSA L.P. v. Pub. Util. Comm.

Public Utilities Commission, No. 93-1758-RC-CSS. Reported at 98 Ohio St.3d 282, 2002-Ohio-7235, 781 N.E.2d 1012. On motion for reconsideration. Motion denied.

Resnick, J., not participating.

2001-1843. Ferrando v. Auto-Owners Mut. Ins. Co.

Ashtabula App. No. 2000-A-0038. Reported at 98 Ohio St.3d 186, 2002-Ohio-7217, 781 N.E.2d 927. On motion for reconsideration. Motion denied.

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

2002-0291. Pillo v. Stricklin.

Stark App. No. 2001CA00204, 2001-Ohio-7049. Reported at 98 Ohio St.3d 163, 2002-Ohio-7090, 781 N.E.2d 198. On motion for reconsideration and/or motion to clarify court order/decision. Motions denied.

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