

The Supreme Court of Ohio

CASE ANNOUNCEMENTS AND ADMINISTRATIVE ACTIONS

June 23, 2004

MERIT DECISIONS WITH OPINIONS

2002-2221. Parisi Transp. Co. v. Wilkins, 2004-Ohio-2952.

Board of Tax Appeals, No. 99-J-690. Decision reversed.

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

2003-0207 and 2003-0254. Ft. Frye Teachers Assn., OEA/NEA v. State Emp. Relations Bd., 2004-Ohio-2947.

Washington App. Nos. 02CA31 and 02CA32, 2002-Ohio-7219. Judgment affirmed in part, reversed in part and cause remanded.

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

Lundberg Stratton, J., dissents.

2003-0252 and 2003-0283. State v. Thompson, 2004-Ohio-2946.

Cuyahoga App. No. 78919, 2002-Ohio-6478. Judgment reversed and trial court judgment reinstated.

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

Moyer, J., dissents.

Pfeifer, J., dissents.

2003-1958. State ex rel. Frisch's Restaurants, Inc. v. Indus. Comm., 2004-Ohio-2892.

Franklin App. No. 02AP-1092, 2003-Ohio-5078. Judgment affirmed.

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

2004-0271. Helms v. Green, 2004-Ohio-2951.

Summit C.P. No. CV-03-12-7220. Judgment affirmed.

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

O'Connor, J., concurs separately.

Pfeifer and Lundberg Stratton, JJ., dissent.

2004-0340. Hawkins v. S. Ohio Correctional Facility, 2004-Ohio-2893.

Scioto App. No. 03CA2904. Judgment affirmed.

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

Pfeifer, J., concurs in judgment only.

2004-0387. State ex rel. Consumers' Counsel v. Pub. Util. Comm., 2004-Ohio-2894.

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

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

Pfeifer, J., dissents.

MERIT DECISIONS WITHOUT OPINIONS

2003-1762. Fish v. Republic-Franklin Ins. Co.

Stark App. No. 2003CA00044, 2003-Ohio-4277. 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, Pfeifer, Lundberg Stratton, O'Connor and O'Donnell, JJ., concur.

2003-1894. Gill v. Ley.

Seneca App. No. 13-03-19, 2003-Ohio-4472. 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, Pfeifer, Lundberg Stratton, O'Connor and O'Donnell, JJ., concur.

2004-0618. State ex rel. Butler v. Ohio Adult Parole Auth.

In Mandamus. 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.

2004-0628. State ex rel. Ajax Commercial Cleaning, Inc. v. Czetli.

In Mandamus. On answer of respondent, motion to dismiss, and motion for summary judgment. Motion to dismiss sustained. Cause dismissed.

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

Lundberg Stratton, J., dissents, would grant an alternative writ, and would advise the Attorney General to participate in this cause.

2004-0636. State ex rel. Fish v. Clerk of Ohio Supreme Court.

In Mandamus. On complaint in mandamus of Terry L. Fish. On S.Ct.Prac.R. X(5) determination, cause dismissed.

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

2004-0682. State ex rel. Vickers v. Berta.

In Mandamus. On complaint in mandamus of James L. Vickers. On S.Ct.Prac.R. X(5) determination, cause dismissed.

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

2004-0776. State ex rel. Oates v. Portage Cty. Bd. of Elections.

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

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

2004-0789. Elersic v. Bobby.

In Habeas Corpus. On petition for writ of habeas corpus by Shane R. Elersic. Sua sponte, cause dismissed.

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

2004-0814. Stewart v. Tambi.

In Habeas Corpus. On petition for writ of habeas corpus of Peter A. Stewart. 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

2002-1666. State v. Doe.

Montgomery App. No. 19408, 2002-Ohio-4966. On motion for stay of proceedings pending disposition of petition for writ of certiorari. Motion denied.

Resnick and Lundberg Stratton, JJ., dissent.

2002-1732. State ex rel. Prusinski v. Romanoff.

In Mandamus and Prohibition. On joint motion for court to adopt settlement agreement. Joint motion granted.

2002-1775. Toledo Bar Assn. v. Neller, 2004-Ohio-2895.

On sua sponte order to show cause. Document stricken. See opinion.

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

Pfeifer, J., dissents.

2003-1913. Community First Bank & Trust v. Dafoe.

Van Wert App. No. 15-03-04. On review of order certifying a conflict. The court determines that a conflict exists.

F.E. Sweeney, J., dissents.

The parties are to brief the issue stated in the court of appeals' Journal Entry filed October 3, 2003:

“Upon consideration the court finds that the judgment in the instant case is in conflict with the judgment rendered by the Sixth District Court of Appeals in *Sorg v. Montgomery Ward & Co., Inc.* (Dec. 17, 1998), Erie App. No. E-98-057 [1998 WL 904945]. Accordingly, the motion to certify a conflict is well taken and the following issue should be certified pursuant to App.R. 25:

“Is a court's order staying an action, including the claims against non-bankrupt parties, pending determination of the bankruptcy of another party a final order subject to appeal under R.C. 2505.02[?]”

2004-0602. State ex rel. Lee v. Karnes.

In Mandamus. On answer of respondent Jim Karnes, Sheriff. Sua sponte, alternative writ granted.

Pfeifer, J., dissents and would dismiss.

2004-0661. Erb v. Griffin.

Cuyahoga App. No. 84367, 2004-Ohio-1790. On motion to set aside decree of confirmation and to stay execution of sheriff's deed to appellee, Provident Bank. Motion denied.

2004-0769. State v. McCoy.

Greene App. No. 2003CA27, 2004-Ohio-266. On motion for leave to file delayed appeal. Motion denied.

2004-0770. State v. Cammon.

Hamilton App. No. C-000800. On motion for leave to file delayed appeal. Motion denied.

2004-0773. State v. Goldwire.

Montgomery App. No. 19659, 2003-Ohio-6066. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

2004-0779. State v. Zimmer.

Cuyahoga App. No. 84043. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

2004-0821. Rickels v. Goyings.

Paulding App. No. 11-04-02. On motion for stay of court of appeals' judgment. Motion denied.

2004-0822. Rickels v. Goyings.

Paulding App. No. 11-04-03. On motion for stay of court of appeals' judgment. Motion denied.

2004-0847. In re C.W.

Summit App. Nos. 21809 and 21811, 2004-Ohio-1987. On review of order certifying a conflict. The court determines that a conflict exists. The parties are to

brief the issue stated at pages 1-2 of the court of appeals' Journal Entry filed May 17, 2004:

“Where a children services agency files a permanent custody motion pursuant to R.C. 2151.414 and asserts grounds under R.C. 2151.414(B)(1)(d), must the child have been in the temporary custody of the children services agency for at least twelve months of a consecutive twenty-two month period ending on or after March 18, 1999, as counted pursuant to R.C. 2151.414(B)(1)(d), at the time of the filing of the motion for permanent custody or is it sufficient that the child be in the temporary custody of the children services agency for at least twelve months by the date the permanent custody trial commences?”

The conflict case is *In re Dyal* (Aug. 9, 2001), 4th Dist. No. 01CA12, 2001 WL 925379.

APPEALS ACCEPTED FOR REVIEW

2004-0284. Clark v. Risko.

Knox App. No. 03CA14, 2003-Ohio-7272. Discretionary appeal accepted on Proposition of Law No. I.

Moyer, C.J., Lundberg Stratton and O'Connor, JJ., concur but would also accept all other propositions of law.

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

Discretionary cross-appeal not accepted and motion to strike Patricia L. Clark's memorandum in support of jurisdiction on cross-appeal denied as moot.

2004-0296. Schirmer v. Mt. Auburn Obstetrics & Gynecologic Associates, Inc.

Hamilton App. No. C-030034, 155 Ohio App.3d 640, 2003-Ohio-7150. Discretionary appeal and cross-appeal accepted.

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

2004-0524. Rosette v. Countywide Home Loans, Inc.

Cuyahoga App. No. 82938, 2004-Ohio-359.

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

2004-0525. Piro v. Natl. City Bank.

Cuyahoga App. Nos. 82885 and 82999, 2004-Ohio-356 and 2004-Ohio-501.

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

2004-0544. Cincinnati Cos. v. Albers.

Mercer App. No. 1-00-310, 2004-Ohio-806. Discretionary appeal accepted and cause held for the decision in 2003-0474, *Kyle v. Buckeye Union Ins. Co.*, Lucas App. No. L-02-1166, 2003-Ohio-488.

Resnick, F.E. Sweeney and Pfeifer, JJ., concur in part because they would not hold for 2003-0474.

Moyer, C.J., O'Connor O'Donnell, JJ., would accept on Propositions of Law Nos. I and II and hold for the decision in 2003-0474.

2004-0556. State v. Larson.

Clermont App. No. CA2003-07-059, 2004-Ohio-700. Discretionary appeal accepted; cause 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.

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

APPEALS NOT ACCEPTED FOR REVIEW

2003-1692. Fish v. Republic-Franklin Ins. Co.

Stark App. No. 2003CA00044, 2003-Ohio-4277.

O'Donnell, J., dissents, would accept, and would reverse the court of appeals.

2003-1940. Welsh v. Indiana Ins. Co.

Stark App. No. 2002CA00370, 2003-Ohio-5026.

O'Donnell, J., dissents, would accept, and would reverse per *Westfield Ins. Co. v. Galatis*, 100 Ohio St.3d 216, 2003-Ohio-5849, 797 N.E.2d 1256.

2003-2111. Wenger v. Wenger.

Wayne App. No. 02CA0065, 2003-Ohio-5790.

Moyer, C.J., and Lundberg Stratton, J., dissent and would accept on Propositions of Law Nos. I and II.

2003-2209. Shaffer v. Ohio Civ. Rights Comm.

Fairfield App. No. 03CA58. On discretionary appeal and motion for stay pending related Ohio Ethics Commission investigation and United States Court of Appeals ruling. Appeal not accepted and motion denied.

2004-0291. State v. Miller.

Lorain App. No. 03CA008259, 2003-Ohio-6580.

2004-0318. State v. Carter.

Coshocton App. No. 02CA028, 2004-Ohio-39.

2004-0412. State v. Greer.

Hamilton App. No. C-030021.

2004-0418. Pravitsky v. Halczyzak.

Cuyahoga App. No. 82295, 2003-Ohio-7057.

2004-0422. Safe Auto Ins. Co. v. Corson.

Hamilton App. No. C-030276, 155 Ohio App.3d 736, 2004-Ohio-249.

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

2004-0425. State v. Sterling.

Ashtabula App. No. 2002-A-0026, 2004-Ohio-526.

2004-0435. State v. Griffin.

Allen App. No. 1-03-31, 2004-Ohio-287.

Lundberg Stratton, J., dissents, would accept on Proposition of Law No. I, and would hold the cause for the decision in 2003-0567, *State v. Finger*, Cuyahoga App. No. 80691, 2003-Ohio-402; and 2003-0033, *State v. Colbert*, Cuyahoga App. No. 80361, 2002-Ohio-6315.

2004-0438. State v. Johnson.

Wayne App. No. 04CA0007.

2004-0439. State v. McNeal.

Cuyahoga App. No. 82793, 2004-Ohio-50.

2004-0441. State v. Wilson.

Cuyahoga App. No. 82155, 156 Ohio App.3d 1, 2004-Ohio-144.

2004-0443. Ballinger v. Luers.

Warren App. No. CA2003-04-053, 2004-Ohio-284.

2004-0450. Neal v. Johnson.

Cuyahoga App. No. 83124, 2004-Ohio-743.

O'Donnell, J., dissents.

2004-0486. State v. Early.

Lucas App. No. L-01-1454, 2004-Ohio-471.

2004-0497. Renter v. Anthony.

Cuyahoga App. No. 82050, 2004-Ohio-465.

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

2004-0499. S.R. Products v. Gerrity.

Cuyahoga App. No. 82735, 156 Ohio App.3d 150, 2004-Ohio-472.

Pfeifer, J., dissents.

2004-0500. Westfield Ins. Cos. v. D.C. Builders, Inc.

Cuyahoga App. No. 82970, 2004-Ohio-742.

Pfeifer, J., dissents.

2004-0502. Lofino Properties, L.L.C. v. Wal-Mart Stores, Inc.

Greene App. No. 2003CA57, 2004-Ohio-458.

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

2004-0505. State v. Cooper.

Lake App. No. 2002-L-091, 2004-Ohio-529.

2004-0507. Findlay Ford Lincoln-Mercury v. Huffman.

Hancock App. No. 5-02-67, 2004-Ohio-541.

O'Donnell, J., dissents.

2004-0509. Gooding v. Natl. Union Fire Ins. Co. of Pittsburgh, PA.

Stark App. No. 2003CA00209, 2004-Ohio-694.

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

2004-0514. State v. Wooden.

Franklin App. No. 03AP-368, 2004-Ohio-588.

2004-0523. State v. Horton.

Stark App. No. 2003CA00097, 2004-Ohio-613.

Moyer, C.J., Lundberg Stratton and O'Donnell, JJ., dissent; would accept on Proposition of Law No. I and hold for the decision in 2003-1048 and 2003-1049, *State v. White*, Guernsey App. No. 02CA23, 2003-Ohio-2289; and would accept on Proposition of Law No. II and hold for the decision in 2003-0033, *State v. Colbert*, Cuyahoga App. No. 80361, 2002-Ohio-6315.

2004-0526. State v. Norwood.

Franklin App. No. 03AP-317, 2004-Ohio-590.

2004-0531. State v. Ridgeway.

Cuyahoga App. No. 82713, 2004-Ohio-497.

2004-0533. State v. Totarella.

Lake App. No. 2002-L-147.

2004-0536. State v. Amin.

Lucas App. No. L-03-1084, 156 Ohio App.3d 304, 2004-Ohio-886.

2004-0538. State v. Cameron.

Tuscarawas App. No. 2003AP040030, 2004-Ohio-974.

2004-0542. Soler v. Evans, St. Clair & Kelsey.

Franklin App. No. 03AP-377, 2004-Ohio-679.

2004-0543. State v. Hawk.

Allen App. No. 1-03-54, 2004-Ohio-922 and 2004-Ohio-1052.

2004-0545. State v. Lough.

Summit App. No. 21547, 2004-Ohio-596.

2004-0546. State v. Ludwick.

Ashtabula App. No. 2002-A-0024, 2004-Ohio-1152.

2004-0547. State v. Jennings.

Richland App. No. 04CA2.

2004-0548. State v. Shelton.

Cuyahoga App. No. 83242, 2004-Ohio-1131.

2004-0551. State v. Carter.

Portage App. No. 2003-P-0007, 2004-Ohio-1181.

2004-0554. State v. Wilson.

Cuyahoga App. No. 82770, 2004-Ohio-499.

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

2004-0558. Baker v. Columbiana Cty. Aud.

Franklin App. No. 03AP-552, 2004-Ohio-839.

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

2004-0560. State v. Hinojosa.

Butler App. No. CA2003-05-104, 2004-Ohio-1192.

2004-0562. State v. Kiriazis.

Cuyahoga App. No. 82887, 2004-Ohio-502.

2004-0564. Wiley v. Good Samaritan Hosp.

Hamilton App. Nos. C-030131 and C-030181, 2004-Ohio-763. Discretionary appeal and cross-appeal not accepted.

2004-0565. Dyke v. Shaker Hts.

Cuyahoga App. No. 83010, 2004-Ohio-514.

F.E. Sweeney, J., dissents.

2004-0567. State v. Murrell.

Hamilton App. No. C-030493.

2004-0568. Jefferson Twp. Local Schools Bd. of Edn. v. Moraine.

Montgomery App. No. 20176, 2004-Ohio-777.

Pfeifer, J., dissents.

2004-0569. Bordonaro v. Merrill Lynch, Pierce, Fenner & Smith.

Cuyahoga App. No. 82806, 156 Ohio App.3d 358, 2004-Ohio-741.

O'Donnell, J., dissents.

2004-0575. State v. Fetter.

Wayne App. No. 03CA0012, 2003-Ohio-5778.

2004-0576. State v. Lyons.

Medina App. No. 03CA0023-M, 2003-Ohio-5783.

2004-0579. State v. Kaseda.

Lake App. No. 2002-L-002, 2004-Ohio-1074.

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

2004-0580. Donofrio v. Chernick.

Summit App. No. 21821.

2004-0583. State v. Juenger.

Butler App. No. CA2003-02-049, 2004-Ohio-796.

2004-0593. State v. Fornash.

Butler App. No. CA2003-04-082, 2004-Ohio-797.

Moyer, C.J., Lundberg Stratton and O'Connor, JJ., dissent and would accept on Proposition of Law No. I.

2004-0607. Waldecker v. Erie Cty. Humane Soc.

Erie App. No. E-03-022, 2004-Ohio-892.

2004-0610. State v. Cannon.

Cuyahoga App. No. 81799, 2003-Ohio-2195.

2004-0619. State v. Buchanan.

Summit App. No. 21709, 2004-Ohio-1232.

2004-0637. State v. Graber.

Stark App. No. 2002CA00014, 2003-Ohio-137.

2004-0643. State v. Lowe.

Summit App. No. 21426, 2003-Ohio-6807.

2004-0656. Brook Park v. Rispo.

Cuyahoga App. No. 83932.

Resnick, J., dissents.

2004-0662. State v. Davie.

Summit App. No. 21708, 2004-Ohio-1068.

2004-0693. In re Adoption of Baby F.

Franklin App. No. 03AP-1092, 2004-Ohio-1871.

F.E. Sweeney and O'Donnell, JJ., dissent.

2004-0698. State v. Sinclair.

Cuyahoga App. No. 81437, 2004-Ohio-1242.

RECONSIDERATION OF PRIOR DECISIONS

2002-1994. Dobran v. Franciscan Med. Ctr.

Montgomery App. No. 19218, 149 Ohio App.3d 455, 2002-Ohio-5378. Reported at 102 Ohio St.3d 54, 2004-Ohio-1883, 806 N.E.2d 537. On motion for reconsideration. Motion denied.

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

2004-0064. Chang v. Cleveland Clinic Found.

Cuyahoga App. No. 82033, 2003-Ohio-6167. Reported at 102 Ohio St.3d 1421, 2004-Ohio-2003, 807 N.E.2d 366. On motion for reconsideration. Motion denied.

2004-0084. Stypula v. Chandler.

Geauga App. No. 2002-G-2468, 2003-Ohio-6413. Reported at 102 Ohio St.3d 1422, 2004-Ohio-2003, 807 N.E.2d 367. On motion for reconsideration. Motion denied.

O'Donnell, J., dissents.

2004-0167. Gruenstein v. Tallarigo.

Hamilton App. No. C-030011. Reported at 102 Ohio St.3d 1424, 2004-Ohio-2003, 807 N.E.2d 368. On motion for reconsideration. Motion denied.
