

# The Supreme Court of Ohio

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## CASE ANNOUNCEMENTS AND ADMINISTRATIVE ACTIONS

November 10, 2004

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### MERIT DECISIONS WITH OPINIONS

**2003-0476. Gable v. Gates Mills, 2004-Ohio-5719.**

Cuyahoga App. No. 80469, 2003-Ohio-399. Judgment reversed.

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

F.E. Sweeney, J., dissents.

Pfeifer, J., dissents.

**2003-0878 and 2003-1018. Morris v. United Ohio Ins. Co., 2004-Ohio-5706.**

Ross App. No. 02CA2653, 2003-Ohio-1708. Judgment reversed and cause remanded.

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

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

**2003-1261. Ratkosky v. Scottsdale Surplus Lines Ins. Co., 2004-Ohio-5705.**

Cuyahoga App. No. 81519, 2003-Ohio-2868. Judgment reversed.

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

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

**2003-1284. Maitland v. Ford Motor Co., 2004-Ohio-5717.**

Franklin App. No. 02AP-935, 153 Ohio App.3d 161, 2003-Ohio-3009. Judgment reversed.

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

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

**2003-1646. State v. Cossin, 2004-Ohio-5698.**

Athens App. No. 02CA32, 2003-Ohio-4246. Sua sponte, cause dismissed as having been improvidently allowed.

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

**2003-1903. State v. Cline, 2004-Ohio-5701.**

Champaign App. No. 2002-CA-05, 2003-Ohio-4712. Judgment reversed and cause remanded.

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

**2003-1989. State v. Kovacic, 2004-Ohio-5708.**

Ashtabula App. No. 2002-A-0032, 2003-Ohio-5219. Sua sponte, cause dismissed as having been improvidently allowed.

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

Pfeifer, J., dissents and would reverse.

**2003-2081. State ex rel. Peters v. Indus. Comm., 2004-Ohio-5704.**

Franklin App. No. 03AP-67, 2003-Ohio-5945. Judgment affirmed consistent with the opinion of the court of appeals.

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

Resnick, F.E. Sweeney and Pfeifer, JJ., dissent and would reverse the judgment of the court of appeals.

**2003-2161. State ex rel. Johns Manville Internatl., Inc., 2004-Ohio-5700.**

Franklin App. No. 02AP-957, 2003-Ohio-5808. Judgment affirmed consistent with the opinion of the court of appeals.

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

Resnick, F.E. Sweeney and Pfeifer, JJ., dissent and would reverse the judgment of the court of appeals.

**2004-0164. Kuhnle v. Zander, 2004-Ohio-5699.**

Lucas App. No. L-03-1157, 2003-Ohio-7265. Judgment affirmed.

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

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

**2004-0440. State ex rel. Blackburn v. Ohio Packing Co., 2004-Ohio-5703.**

Franklin App. No. 03AP-191, 2004-Ohio-931. Judgment affirmed consistent with the opinion of the court of appeals.

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

**2004-0544. Cincinnati Cos. v. Albers, 2004-Ohio-5702.**

Mercer App. No. 10-03-10, 2004-Ohio-806. Judgment affirmed.

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

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

**2004-1006 and 2004-1196. State v. Yeager, 2004-Ohio-5707.**

Summit App. No. 21510, 2004-Ohio-2368. Judgment reversed and cause remanded.

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

F.E. Sweeney, J., dissents.

### **MERIT DECISIONS WITHOUT OPINIONS**

**2004-1496. State ex rel. McGee v. Court of Appeals, Ninth Appellate District.**

In Mandamus. On S.Ct.Prac.R. X(5) determination and consideration of respondent's answer. Cause dismissed.

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

**2004-1514. State ex rel. Adkins v. State.**

In Mandamus and Procedendo. On consideration of motions to dismiss, for stay of proceedings, and for leave to amend complaint. Motion to dismiss sustained. Motions for stay and for leave to amend dismissed as moot. Cause dismissed.

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

### **MOTION AND PROCEDURAL RULINGS**

**2003-0902. Potts v. Rose.**

Richland App. No. 03CA29. On motion for relief from judgment pursuant to Civ.R. 60(B)(5). Motion denied.

**2004-0524. Rosette v. Countrywide Home Loans, Inc.**

Cuyahoga App. No. 82938, 2004-Ohio-359. On motion for admission pro hac vice of Jan T. Chilton by Jennifer Mingus Mountcastle. Motion granted.

**2004-1623. State v. Bowers.**

Greene App. No. 97CA46. On motion for leave to file delayed appeal. Motion denied.

**2004-1625. State v. Hoffert.**

Hamilton App. No. C-020168, 2002-Ohio-6343. On motion for leave to file delayed appeal. Motion denied.

**2004-1645. Charter One Mortgage Corp. v. Keselica.**

Lorain App. No. 04CA008426, 2004-Ohio-4333. On motion for stay of court of appeals' judgment. Motion denied.

Moyer, C.J., and Resnick, J., dissent.

**2004-1679. Summit Cty. v. Meyer.**

Summit App. No. 21882, 2004-Ohio-4457. On motion for stay of court of appeals' judgment. Motion denied.

**2004-1696. State v. Threatt.**

Stark App. No. 2003CA00368, 2004-Ohio-3261. On review of order certifying a conflict. The court determines that a conflict exists. Sua sponte, cause consolidated with 2004-1279, *State v. Threatt*, Stark App. No. 2003CA00368, 2004-Ohio-3261; causes held for the decision in 2003-1048 and 2003-1049, *State v. White*, Guernsey App. No. 02CA23, 2003-Ohio-2289; and briefing schedule stayed.

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

## **APPEALS ACCEPTED FOR REVIEW**

**2004-1265. State v. Embry.**

Cuyahoga App. No. 82998, 2004-Ohio-2986. Discretionary appeal accepted; cause held for 2004-1171, *State v. Mathis*, Cuyahoga App. No. 83311, 2004-Ohio-2982, and 2004-1267, *State v. Fair*, Cuyahoga App. No. 82278, 2004-Ohio-2971; and briefing schedule stayed.

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

**2004-1279. State v. Threatt.**

Stark App. No. 2003CA00368, 2004-Ohio-3261. Discretionary appeal accepted; cause consolidated with 2004-1696, *State v. Threatt*, Stark App. No. 2003CA00368, 2004-Ohio-3261; causes held for the decision in 2003-1048 and 2003-1049, *State v. White*, Guernsey App. No. 02CA23, 2003-Ohio-2289; and briefing schedule stayed.

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

**2004-1301. Ward v. Kroger Co.**

Jefferson App. No. 03 JE 40, 2004-Ohio-3637.

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

**2004-1314. Pelc v. Hartford Fire Ins. Co.**

Stark App. No. 2004CA00017, 2004-Ohio-3438. Discretionary appeal accepted; cause held for the decision in 2003-2167, *Hopkins v. Dyer*, Tuscarawas App. No. 2003AP0100009, 2003-Ohio-6178; and briefing schedule stayed.

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

**2004-1325. State v. Chandler.**

Stark App. No. 2003-CA-00342, 2004-Ohio-3436.

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

**APPEALS NOT ACCEPTED FOR REVIEW**

**2004-0622. State v. Gegia.**

Portage App. No. 2003-P-0026, 2004-Ohio-1441.

Lundberg Stratton and O'Donnell, JJ., dissent and would allow on Proposition of Law No. II and hold for the decision in 2003-1767, *State v. Francis*, Cuyahoga App. No. 82324, 2003-Ohio-4406.

**2004-0810. State v. Gegia.**

Summit App. No. 21819, 2004-Ohio-2124.

Lundberg Stratton and O'Donnell, JJ., dissent and would allow on Proposition of Law III and hold for the decision in 2003-1767, *State v. Francis*, Cuyahoga App. No. 82324, 2003-Ohio-4406.

**2004-1118. Warren v. DeMarco.**

Trumbull App. No. 2003-T-0052, 2004-Ohio-3191.

Resnick, J., dissents.

**2004-1151. State v. George.**

Hamilton App. No. C-030216, 2004-Ohio-2868. Discretionary appeal and cross-appeal denied.

Pfeifer, J., dissents.

O'Connor, J., not participating.

**2004-1209. State v. Andrews.**

Cuyahoga App. No. 84657.

**2004-1210. Schmiehausen v. Zimmerman.**

Ottawa App. No. OT-03-027, 2004-Ohio-3148.

Moyer, C.J., and Resnick, J., dissent.

**2004-1212. State ex rel. Wilson v. Taft.**

Highland App. No. 04CA5.

**2004-1221. Johnson v. Metrohealth Med. Ctr.**

Cuyahoga App. No. 82506, 2004-Ohio-2864.

Pfeifer, J., dissents.

**2004-1234. Bowersock v. Bowersock.**

Allen App. Nos. 1-04-12 and 1-04-22, 2004-Ohio-3021.

**2004-1235. Borkowski v. Ebersole.**

Fulton App. No. F-04-014. Discretionary appeal denied and motion to strike dismissed as moot.

**2004-1237. State v. Reese.**

Clark App. No. 2003 CA 64, 2004-Ohio-3142.

**2004-1256. State v. Singh.**

Columbiana App. No. 03 CO 8, 2004-Ohio-3213.

**2004-1258. Presidential Square Estates Condominium Assn. v. Slabochova.**

Mahoning App. No. 03 MA 111, 2004-Ohio-2936.

**2004-1259. State v. Taylor.**

Madison App. No. CA2003-07-025, 2004-Ohio-3171.

**2004-1270. State v. Elie.**

Cuyahoga App. No. 83169, 2004-Ohio-3127.

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

**2004-1273. State v. Gott.**

Stark App. No. 2003CA00242, 2004-Ohio-3499.

O'Donnell, J., dissents.

**2004-1280. State v. Hawk.**

Athens App. No. 04CA22.

**2004-1283. Ianiro v. Pastis.**

Cuyahoga App. No. 83368, 2004-Ohio-2987.

**2004-1284. Van Leur v. Ohio Dept. of Commerce.**

Montgomery App. No. 20180, 2004-Ohio-3777.

**2004-1287. Crockett v. HCR Manor, Inc.**

Scioto App. No. 03CA2919, 2004-Ohio-3533.

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

**2004-1290. Non-Employees of Chateau Estates Resident Assn. v. Chateau Estates, Ltd.**

Clark App. Nos. 2004 CA 19 and 2004 CA 20, 2004-Ohio-3781. Discretionary appeal and cross-appeal denied.

**2004-1294. State v. Greene.**

Sandusky App. No. S-03-045, 2004-Ohio-3456.

**2004-1298. Allied Erecting & Dismantling Co., Inc. v. Youngstown.**

Mahoning App. No. 03 MA 179, 2004-Ohio-3665. Discretionary appeal denied and motion for admission pro hac vice dismissed as moot.

**2004-1303. State v. Cunningham.**

Miami App. No. 2002-CA-19, 2003-Ohio-1044.

**2004-1305. Mayor v. Ford Motor Co.**

Cuyahoga App. No. 83297, 2004-Ohio-3289.

Resnick, J., dissents.

**2004-1306. State v. Smith.**

Geauga App. No. 2002-G-2488, 2004-Ohio-3853.

**2004-1307. Lintner v. Nuckols.**

Preble App. No. CA2003-10-020, 2004-Ohio-3348.

**2004-1311. Hudson v. DaimlerChrysler Motors Co., L.L.C.**

Summit App. No. 21804, 2004-Ohio-3416.  
Resnick, F.E. Sweeney and Pfeifer, JJ., dissent.

**2004-1316. I Sports v. IMG Worldwide, Inc.**  
Cuyahoga App. No. 83349, 2004-Ohio-3113 and 2004-Ohio-3631.  
Moyer, C.J., and O'Donnell, J., dissent.

**2004-1317. Nova v. State Farm Mut. Auto. Ins. Co.**  
Summit App. No. 21885, 2004-Ohio-3419.  
Pfeifer, J., dissents.

**2004-1318. Vipperman v. Bartley.**  
Richland App. No. 03 CA 58, 2004-Ohio-3369.  
Lundberg Stratton, J., dissents.

**2004-1319. State v. Smith.**  
Montgomery App. No. 20172, 2004-Ohio-3573.  
Moyer, C.J., and Lundberg Stratton, J., dissent.

**2004-1321. State v. Mendez.**  
Cuyahoga App. No. 83064, 2004-Ohio-3107.  
Pfeifer, J., dissents.

**2004-1323. State v. Reed.**  
Cuyahoga App. No. 83434, 2004-Ohio-3124.  
Moyer, C.J., dissents and would accept on Proposition of Law No. II and hold for the decision in 2002-1888, *State v. Jordan*, Cuyahoga App. No. 80675, 2003-Ohio-4587, and 2003-0567, *State v. Finger*, Cuyahoga App. No. 80691, 2003-Ohio-402.

Lundberg Stratton, J., dissents and would accept and hold for the decision in 2002-1888, *State v. Jordan*, Cuyahoga App. No. 80675, 2003-Ohio-4587, and 2003-0567, *State v. Finger*, Cuyahoga App. No. 80691, 2003-Ohio-402.

O'Connor, J., dissents and would accept and remand the cause for application of *State v. Brooks*, 103 Ohio St.3d 134, 2004-Ohio-4746.

**2004-1327. State v. Burgess.**  
Lake App. No. 2002-L-019, 2004-Ohio-3338.

**2004-1329. BP Products N. Am. Inc. v. Oakwood.**  
Cuyahoga App. No. 83598, 2004-Ohio-3119.

Pfeifer, J., dissents.

Resnick and O'Donnell, JJ., not participating.

**2004-1333. State v. Barr.**

Hamilton App. No. C-020299.

**2004-1338. Pingue v. Parrot.**

Delaware App. No. 03 CA-H-10-054, 2004-Ohio-3498.

Pfeifer and O'Connor, JJ., dissent.

**2004-1339. Levey & Co. v. Oravec.**

Summit App. No. 21768, 2004-Ohio-3418.

Resnick, Pfeifer and Lundberg Stratton, JJ., dissent.

**2004-1341. State v. Todd.**

Clermont App. No. CA2003-02-012, 2003-Ohio-6786.

**2004-1345. State v. Dalton.**

Greene App. No. 2003 CA 96, 2004-Ohio-3575.

**2004-1347. State v. Keeton.**

Richland App. No. 03 CA 43, 2004-Ohio-3676.

**2004-1348. Wolfe v. Perry.**

Ottawa App. No. OT-03-026, 2004-Ohio-3443.

Pfeifer, J., dissents.

**2004-1352. State v. Adams.**

Trumbull App. No. 2000-T-0149, 2004-Ohio-3510.

**2004-1354. Current Source, Inc. v. Elyria City School Dist.**

Lorain App. No. 03CA008406, 2004-Ohio-3422.

**2004-1355. State v. Hall.**

Montgomery App. No. 20025, 2004-Ohio-3561.

O'Donnell, J., dissents.

**2004-1356. State v. Swank.**

Franklin App. No. 03AP-440, 2004-Ohio-3832.

**2004-1357. State v. Johnson.**

Medina App. No. 03CA0127-M, 2004-Ohio-3409.

**2004-1358. State v. Hughes.**

Summit App. No. 22165.

**2004-1361. Kotlarczyk v. State Farm Mut. Auto. Ins. Co.**

Lucas App. No. L-03-1103, 2004-Ohio-3447.

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

**2004-1368. State v. Kolvek.**

Summit App. No. 21752, 2004-Ohio-3706.

**2004-1391. Helms v. Akron Health Dept.**

Summit App. No. 21735, 2004-Ohio-953, 2004-Ohio-2002 and 2004-Ohio-3408.

Moyer, C.J., dissents.

**2004-1392. State v. Saxton.**

Marion App. No. 90343, 2004-Ohio-811 and 2004-Ohio-3546.

**2004-1399. Mitchell v. Bainbridge Twp.**

Geauga App. Nos. 2003-G-2505 and 2003-G-2513, 2004-Ohio-3687.

**2004-1431. State v. Shorter.**

Montgomery App. No. 20111, 2004-Ohio-4057.

**2004-1438. Baird v. SDG, Inc.**

Wayne App. No. 03CA0071, 2004-Ohio-3705.

Moyer, C.J., dissents.

**2004-1504. State v. Nalls.**

Montgomery App. No. 20541.

**2004-1648. In re K.L.J.**

Franklin App. No. 04AP-152, 2004-Ohio-4358.

**RECONSIDERATION OF PRIOR DECISIONS**

**2004-0651. State ex rel. Ahmed v. Costine.**

Belmont App. No. 01-BA-30, 2004-Ohio-1369. Reported at 103 Ohio St.3d 166, 2004-Ohio-4756. On motion for reconsideration. Motion denied.