

The Supreme Court of Ohio

CASE ANNOUNCEMENTS AND ADMINISTRATIVE ACTIONS

December 1, 2004

MERIT DECISIONS WITH OPINIONS

2000-2119. State v. Yarbrough, 2004-Ohio-6087.

Jefferson C.P. No. 99-CR-116. Judgment affirmed in part and reversed in part.

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

2002-1888 and 2003-0567. State v. Jordan, 2004-Ohio-6085.

Cuyahoga App. No. 80675, 2002-Ohio-4587, and Cuyahoga App. No. 80691, 2003-Ohio-402. Judgment affirmed in No. 2002-1888. Judgment reversed and cause remanded in No. 2003-0567.

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

Resnick, J., concurs in judgment only.

Pfeifer, J., concurs in part and dissents in part.

2003-1992. State ex rel. Lawson v. Mondie Forge, 2004-Ohio-6086.

Franklin App. No. 03AP-157, 2003-Ohio-5347. Judgment reversed and writ granted.

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

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

MERIT DECISIONS WITHOUT OPINIONS

2004-1383. Carson v. Johnson

In Prohibition. On answers of respondents, motion to dismiss, and motion for judgment on pleadings. Motion to dismiss sustained. Cause dismissed.

2004-1506. State ex rel. Sherman v. Sargeant.

In Mandamus and Procedendo. On S.Ct.Prac.R. X(5) determination and consideration of respondent's motion for judgment on the pleadings. Cause dismissed.

O'Donnell, J., dissents and would deny the motion for judgment on the pleadings and grant an alternative writ.

2004-1558. State ex rel. Parsons v. Ohio Adult Parole Auth.

In Mandamus. On respondents' motion to dismiss and relators' motion for summary judgment, request for oral argument, and motion to disqualify the Attorney General as counsel of record. Motion to dismiss sustained. All other motions are denied as moot. Cause dismissed.

O'Connor, J., dissents and would grant an alternative writ.

2004-1572. State ex rel. Campbell v. Ohio Adult Parole Auth.

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

2004-1621. State ex rel. Chamblin v. Riffle.

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

2004-1638. State ex rel. Boylen v. White.

In Mandamus and Prohibition. On respondent's motion to dismiss and relator's motion to strike. Motion to dismiss sustained. Motion to strike is denied as moot. Cause dismissed.

2004-1773. Klein v. Moore.

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

MOTION AND PROCEDURAL RULINGS

2003-0487. State v. Skatzes.

Montgomery App. No. 15848, 2003-Ohio-516. On motion for supplemental briefing. Motion denied.

2004-0669. State ex rel. Rollins v. Indus. Comm.

Franklin App. No. 03AP-444, 2004-Ohio-1058. On motion to strike reply brief. Motion denied.

2004-0738. Kish v. Akron.

On Order from the United States Court of Appeals for the Sixth Circuit Certifying Questions of State Law, Nos. 02-3631 and 02-3632. On motion to strike portions of appendix attached to respondents' merit brief. Motion granted.

Resnick and Pfeifer, JJ., dissent.

2004-1227. Ohio Consumers' Counsel v. Pub. Util. Comm.

Public Utilities Commission, Nos. 03-1459-GA-ATA, 94-987-GA-AIR, 96-1113-GA-ATA and 98-222-GA-GCR. On motion for leave to intervene of Interstate Gas Supply, Inc. and WPS Energy Services, Inc. Motion granted.

2004-1413. State ex rel. McCallister v. Indus. Comm.

Franklin App. No. 03AP-719, 2004-Ohio-3728. On motion to stay briefing schedule and motion to consolidate with 2003-1648, *State ex rel. Adams v. Aluchem, Inc.*, Franklin App. No. 02AP-1210, 2003-Ohio-4510. Motion to stay briefing schedule granted. Sua sponte, cause held for the decision in 2003-1648, *State ex rel. Adams v. Aluchem, Inc.*, Franklin App. No. 02AP-1210, 2003-Ohio-4510.

2004-1605. Cox v. Zanesville City School Dist. Bd. of Edn.

Muskingum App. No. 04 CA 14, 2004-Ohio-4253. 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' Journal Entry filed September 21, 2004:

“Whether an abuse of discretion standard of review applies in the context of an appellate review of a trial court's decision to determine whether a public school district board of education has satisfied the statutory requirements of R.C. 3319.111 in non-renewing an employee's limited teaching contract.”

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

The conflict cases are *Perkins v. Pickaway/Ross Cty. Joint Vocational School Dist. Bd. of Edn.*, Ross App. No. 03CA2723, 2004-Ohio-768; and *Shephard v. Fairfield Local School Dist. Bd. of Edn.*, Lawrence App. No. 99CA33, 2000-Ohio-1992.

2004-1647. Estate of Harrold v. Collier.

Wayne App. No. 03CA0064, 2004-Ohio-4331. On motion for stay of court of appeals' judgment. Motion denied.

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

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' Journal Entry filed September 22, 2004:

“Whether Ohio Courts are obligated to afford ‘special weight’ to the wishes of the parents of minor children concerning non-parental visitation as outlined in *Troxel v. Granville* (2000), 530 U.S. 57[.]” (Emphasis added.)

The conflict case is *Oliver v. Feldner*, 149 Ohio App.3d 114, 2002-Ohio-3209.

Sua sponte, cause consolidated with 2004-1492, *Estate of Harrold v. Collier*, Wayne App. No. 03CA0064, 2004-Ohio-4331.

2004-1655. State v. Loyed.

Cuyahoga App. No. 83075, 2004-Ohio-3961. On motion for leave to file delayed appeal. Motion granted.

Resnick, F.E. Sweeney and O’Donnell, JJ., dissent.

2004-1660. State v. Brazzon.

Trumbull App. No. 2001-T-0050, 2003-Ohio-6088. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

2004-1671. State v. Woods.

Cuyahoga App. No. 82789, 2004-Ohio-2700. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

2004-1704. Morris v. Andros.

Summit App. Nos. 21861 and 21867, 2004-Ohio-4446. On motion for stay of court of appeals’ judgment. Motion denied.

2004-1714. State v. Castillo.

Cuyahoga App. No. 84854. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

2004-1729. Ohio Valley Orthopaedics & Sports Medicine, Inc. v. Bd. of Trustees of Sycamore Twp.

Hamilton App. No. C-030697, 2004-Ohio-4662. On motion for stay of court of appeals’ judgment. Motion denied.

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

2004-1734. State v. Marcum.

Hocking App. No. 04CA13. On motion for immediate stay of further execution of sentence and release on recognizance or, in the alternative, motion for bond. Motion denied.

Lundberg Stratton, J., dissents.

2004-1752. State v. Brown.

Fayette App. No. CA2003-07-008, 2004-Ohio-3996. On motion for leave to file delayed appeal. Motion denied.

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

2004-1754. State v. King.

Montgomery App. No. 19814, 2004-Ohio-262. On motion for leave to file delayed appeal. Motion denied.

2004-1782. State v. Dowell.

Cuyahoga App. No. 83575, 2004-Ohio-3870. On motion for leave to file delayed appeal. Motion granted.

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

APPEALS ACCEPTED FOR REVIEW

2004-1396. Borger v. Utica Natl. Ins. Group.

Montgomery App. No. 20213, 2004-Ohio-3782. Discretionary appeal accepted; cause held for the decision in 2003-2079, *Hollon v. Clary*, Montgomery App. No. 19826, 2003-Ohio-5734; and briefing schedule stayed.

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

2004-1492. Estate of Harrold v. Collier.

Wayne App. No. 03CA0064, 2004-Ohio-4331. Discretionary appeal accepted and cause consolidated with 2004-1647, *Estate of Harrold v. Collier*, Wayne App. No. 03CA0064, 2004-Ohio-4331.

F.E. Sweeney, J., dissents.

2004-1464. State v. Anthony.

Hamilton App. No. C-030510, 2004-Ohio-3894.

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

APPEALS NOT ACCEPTED FOR REVIEW

2004-1288. State v. Pelfrey.

Montgomery App. No. 19955, 2004-Ohio-3401.

2004-1302. State v. Brown.

Richland App. No. 2003-CA-01, 2004-Ohio-3368.

2004-1330. State v. Jester.

Cuyahoga App. No. 83520, 2004-Ohio-3611.

2004-1340. State v. Thacker.

Franklin App. No. 03AP-653, 2004-Ohio-3828.

Moyer, C.J., dissents.

2004-1364. State v. Fears.

Hamilton App. No. C-020697.

O'Donnell, J., dissents.

2004-1365. State v. Smith.

Cuyahoga App. No. 83007, 2004-Ohio-3619.

2004-1371. State v. McNeil.

Hamilton App. No. C-000808.

2004-1377. State v. Carson.

Greene App. No. 03CA11, 2004-Ohio-3775.

2004-1379. State v. Perez.

Licking App. No. 03-CA-107, 2004-Ohio-3646.

2004-1382. State v. Gholston.

Hamilton App. No. C-030788.

2004-1384. Elridge v. Cleveland.

Cuyahoga App. No. 83776, 2004-Ohio-3604.

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

2004-1385. State v. Bland.

Cuyahoga App. No. 83430, 2004-Ohio-3742.

Resnick and Lundberg Stratton, JJ., dissent.

2004-1386. State v. Tomlinson.

Cuyahoga App. No. 83411, 2004-Ohio-3295.

2004-1387. Duff v. Coshocton Cty. Bd. of Commrs.

Coshocton App. No. 03-CA-019, 2004-Ohio-3713.

Resnick and Lundberg Stratton, JJ., dissent.

2004-1390. Martin v. Wayne Cty. Natl. Bank.

Wayne App. No. 03CA0079, 2004-Ohio-4194.

2004-1398. State v. Whitt.

Cuyahoga App. No. 82293, 2004-Ohio-3620.

2004-1402. Carlton Oil Corp. v. E. Ohio Gas Co.

Washington App. No. 03CA59, 2004-Ohio-3849.

Pfeifer, J., dissents.

2004-1403. Elias v. Gammel.

Cuyahoga App. No. 83365, 2004-Ohio-3464.

2004-1404. In re \$22,161 United States Currency.

Hamilton App. No. C-030767.

2004-1405. Delahoussaye v. Ohio State Racing Comm.

Franklin App. Nos. 03AP-954 and 03AP-955, 2004-Ohio-3388.

2004-1408. State v. Ramsey.

Cuyahoga App. No. 83026, 2004-Ohio-3618.

Moyer, C.J., dissents.

2004-1422. State v. Myers.

Richland App. No. 2003 CA 0062, 2004-Ohio-3715.

2004-1424. House v. Kirtland Capital Partners.

Lake App. No. 2003-L-011, 2004-Ohio-3688.

Resnick, J., dissents.

2004-1433. State v. Davis.

Summit App. No. 21762, 2004-Ohio-3704.

2004-1437. State v. Friley.

Franklin App. No. 03AP-1032.

2004-1442. State v. Smith.

Wayne App. Nos. 01CA0039 and 01CA0055, 2002-Ohio-4402.

2004-1444. State v. Rodgers.

Lucas App. No. L-02-1089, 2004-Ohio-3795.

2004-1448. State v. Smith.

Cuyahoga App. No. 82710, 2004-Ohio-3479.

Moyer, C.J., dissents.

O'Donnell, J., not participating.

2004-1459. McBroom v. Techneglas, Inc.

Franklin App. No. 04AP-480.

2004-1460. State v. Payne.

Fairfield App. No. 04CA31.

2004-1461. Assn. of Cleveland Fire Fighters, #93 v. Cleveland.

Cuyahoga App. No. 83726, 2004-Ohio-3608.

2004-1469. State v. Swank.

Cuyahoga App. No. 83512, 2004-Ohio-3612.

Lundberg Stratton, J., dissents and would accept on Proposition of Law V.

2004-1470. State v. Douglas.

Cuyahoga App. Nos. 83743 and 83769, 2004-Ohio-3605.

2004-1474. State v. Young.

Montgomery App. No. 20408, 2004-Ohio-3916.

Pfeifer, J., dissents.

2004-1476. State v. Bluford.

Cuyahoga App. No. 83921, 2004-Ohio-4088.

2004-1478. Tinsley v. Doctors Hosp.

Franklin App. No. 03AP-1108.

F.E. Sweeney, J., dissents.

2004-1479. State v. Stafford.

Hamilton App. No. C-030297, 2004-Ohio-3893.

2004-1486. State v. Kling.

Butler App. No. CA2003-08-191, 2004-Ohio-3911.

Moyer, C.J., dissents and would accept on Proposition of Law I.

Pfeifer, J., dissents.

2004-1487. State v. Crawford.

Hamilton App. No. C-030540, 2004-Ohio-3895 and 2004-Ohio-4505.

2004-1501. Geiger v. King.

Franklin App. No. 04AP-108, 2004-Ohio-4227.

Pfeifer, J., dissents.

2004-1521. State v. Todd.

Clermont App. No. CA2004-07-056.

2004-1529. State v. Harmon.

Logan App. No. 8-04-01, 2004-Ohio-4012.

2004-1534. State v. Nihiser.

Hocking App. No. 03CA21, 2004-Ohio-4067.

Pfeifer and O'Connor, JJ., dissent.

2004-1551. State v. Yeager.

Summit App. Nos. 21092 and 21107, 2003-Ohio-1809.

2004-1553. Save the Lake Assn. v. Hillsboro.

Highland App. No. 04CA6, 2004-Ohio-4522.

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

2004-1564. State v. Greenwood.

Montgomery App. No. 19820, 2004-Ohio-2737.

2004-1566. State v. Hudson.

Hamilton App. No. C-030342.

2004-1571. State v. Murphy.

Summit App. No. 22254.

2004-1574. In re Wilkinson.

Hamilton App. Nos. C-040182, C-040203 and C-040282, 2004-Ohio-4107.
O'Donnell, J., dissents.

2004-1584. Cuyahoga Falls v. Bradley.

Summit App. No. 21979, 2004-Ohio-4583.

2004-1604. Cox v. Zanesville City School Dist. Bd. of Edn.

Muskingum App. No. 04 CA 14, 2004-Ohio-4253.

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

2004-1654. State v. Glavic.

Lake App. Nos. 2001-L-177 and 2001-L-179, 2003-Ohio-6961.

2004-1748. State v. Gilcreast.

Summit App. No. 21533, 2003-Ohio-7177.

RECONSIDERATION OF PRIOR DECISIONS

2003-0474. Kyle v. Buckeye Union Ins. Co.

Lucas App. No. L-02-1166, 2003-Ohio-488. Reported at 103 Ohio St.3d 170, 2004-Ohio-4885, 814 N.E.2d 1195. On motion for reconsideration. Motion denied.

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

2003-1880. N. Buckeye Edn. Council Group Health Benefits Plan v. Lawson.

Lucas App. No. L-02-1298, 154 Ohio App.3d 659, 2003-Ohio-5196, 798 N.E.2d 667. Reported at 103 Ohio St.3d 188, 2004-Ohio-4886, 814 N.E.2d 1210. On motion for reconsideration. Motion denied.

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

2004-0347. State v. Gumm.

Hamilton App. No. C-920907. Reported at 103 Ohio St.3d 162, 2004-Ohio-4755, 814 N.E.2d 861. On motion for reconsideration. Motion denied.

2004-0933. State v. Mayes.

Cuyahoga App. No. 82592, 2004-Ohio-2014. Reported at 2004-Ohio-5056. On motion for reconsideration. Motion denied.

2004-0938. In re D.N., II.

Cuyahoga App. No. 82708, 2004-Ohio-1106. Reported at 2004-Ohio-5056. On motion for reconsideration. Motion denied.

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

2004-0953. Pauer v. Langaa.

Cuyahoga App. No. 83232, 2004-Ohio-2019. Reported at 2004-Ohio-5056. On motion for reconsideration. Motion denied.

2004-0955. Soler v. Court of Appeals, Tenth Appellate Dist.

In Mandamus and Procedendo. Reported at 2004-Ohio-5056. On motion for reconsideration. Motion denied.

2004-0964. West Unity v. Merillat.

Williams App. No. WM-03-016, 2004-Ohio-2682. Reported at 2004-Ohio-5056. On motion for reconsideration. Motion denied.

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

2004-0967. Robinson v. Freedom Faith Missionary Baptist Church.

Montgomery App. No. 20232, 2004-Ohio-2607. Reported at 2004-Ohio-5056. On motion for reconsideration. Motion denied.

2004-1021. In re Estate of Eyajan.

Ashtabula App. No. 2002-A-0043, 2004-Ohio-2312. Reported at 2004-Ohio-5056. On motion for reconsideration. Motion denied.

2004-1051. First Bank of Marietta v. Roslovic & Partners, Inc.

Franklin App. Nos. 03AP-332, 03AP-333, 2004-Ohio-2717. Reported at 2004-Ohio-5405. On motion for reconsideration. Motion denied.

2004-1105. State v. Thompson.

Franklin App. No. 03AP-841, 2004-Ohio-3229. Reported at 2004-Ohio-5405. On motion for reconsideration. Motion denied.

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

2004-1260. Hawk v. Am. Elec. Power Co.

Allen App. No. 1-04-01, 2004-Ohio-3549. Reported at 2004-Ohio-5405. On motion for reconsideration. Motion denied.

2004-1315. In re Johnson.

Franklin App. Nos. 03AP-1264 and 03AP-1265, 2004-Ohio-3886. Reported at 2004-Ohio-5056. On motion for reconsideration. Motion denied.