

The Supreme Court of Ohio

CASE ANNOUNCEMENTS AND ADMINISTRATIVE ACTIONS

February 16, 2005

[Cite as *02/16/2005 Case Announcements*, 2005-Ohio-531.]

MERIT DECISIONS WITHOUT OPINIONS

2004-2037. State ex rel. Sherman v. Sargeant.

In Mandamus and Procedendo. On complaint of Robert Franklin Sherman. On S.Ct.Prac.R. X(5) determination, cause dismissed.

Resnick, Pfeifer, Lundberg Stratton, O'Connor and Lanzinger, JJ., concur.

Moyer, C.J., and O'Donnell, J., dissent and would grant an alternative writ.

2004-2087. Coffman v. Toyota Motor Credit Corp.

In Quo Warranto. On motions to dismiss, motion for sanctions for frivolous action, and motions for stay. Motions to dismiss sustained. Motion for sanctions denied. Motions for stay dismissed as moot. Cause dismissed.

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

2004-2178. Johnson v. Cincinnati.

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

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

MOTION AND PROCEDURAL RULINGS

2002-0506. State v. Fitzpatrick.

Hamilton C.P. No. B0104117. On application for reopening under S.Ct.Prac.R. XI(6). Motion denied.

2003-1538. Howland v. Purdue Pharma, L.P.

Butler App. Nos. CA2002-09-220, CA2002-09-223 and CA2002-09-227, 2003-Ohio-3699. Reported at 104 Ohio St.3d 584, 2004-Ohio-6552, 821 N.E.2d 141. On motion to vacate judgment and for entry of a new judgment. Motion denied.

Pfeifer and O'Donnell, JJ., dissent.

Resnick and Lanzinger, JJ., not participating.

2003-1964. State v. Conway.

Franklin C.P. No. 02CR063117. This cause is pending before the court as a death penalty appeal from the Court of Common Pleas of Franklin County. On motion for substitution of counsel. Motion denied.

Lundberg Stratton, J., dissents.

2004-0819. Brickman & Sons, Inc. v. Natl. City Bank.

Cuyahoga App. No. 81428, 2004-Ohio-1447. On motion to dismiss for lack of jurisdiction and mootness. Motion denied.

2004-1078. Bd. of Edn. of Cleveland Mun. School Dist. v. Cuyahoga Cty. Bd. of Revision.

Board of Tax Appeals, Nos. 2002-R-2641 and 2002-R-2642. On motion to strike pages 140-155 of appellant's supplement. Motion granted.

Pfeifer, J., dissents.

Moyer, C.J., not participating.

2004-1454. State ex rel. Meris v. Indus. Comm.

Franklin App. No. 03AP-810, 2004-Ohio-3883. On motion to strike appellant's Propositions of Law II and III. Motion granted.

Resnick, Pfeifer and Lanzinger, JJ., dissent.

2004-1808. Columbus Bar Assn. v. Halliburton-Cohen.

Board of Commissioners on Grievances and Discipline, No. 03-113. On motion for admission pro hac vice of Lance Tibbles by Bruce A. Campbell. Motion granted.

2004-2031. In re C.R.

Cuyahoga App. No. 82891, 2004-Ohio-4465. 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 November 15, 2004:

"Whether, before awarding legal custody to a nonparent, a trial court must first find the noncustodial parent unsuitable when a child has been determined to be abused, neglected or dependent?"

The conflict cases are *In re D.R.*, 153 Ohio App.3d 156, 2003-Ohio-2852; *In re T.W.*, Summit App. No. 21594, 2003-Ohio-7185; *In re Gales*, Franklin App. Nos. 03AP-445 & 03AP-446, 2003-Ohio-6309; *In re Farrow*, Franklin App. No. 01AP-837, 2002-Ohio-3237; and *In re Osberry*, Allen App. No. 1-03-26, 2003-Ohio-5462.

2004-2125. State v. Seal.

Lake App. No. 2003-L-163, 2004-Ohio-5938. On motion for stay of court of appeals' judgment. Motion denied.

2004-2139. State v. Burton.

Licking App. No. 2004CA00027. On motion for leave to file delayed appeal. Motion granted.

Resnick and O'Connor, JJ., dissent.

2004-2147. State v. Malone.

Marion App. No. 9-04-46. On motion for leave to file delayed appeal. Motion denied.

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

2005-0010. State v. Bibbs.

Cuyahoga App. No. 83955, 2004-Ohio-5604. On motion for leave to file delayed appeal. Motion denied.

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

2005-0021. State v. Levy.

Cuyahoga App. No. 83114, 2004-Ohio-4489. On motion for leave to file delayed appeal. Motion granted.

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

2005-0035. State v. West.

Cuyahoga App. No. 83779, 2004-Ohio-5212. On motion for leave to file delayed appeal. Motion denied.

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

2005-0182. State v. Schmiesing.

Darke App. No. 1640, 2005-Ohio-56. On motion for stay of court of appeals' judgment. Motion denied.

APPEALS ACCEPTED FOR REVIEW

2004-1668. State ex rel. Ohio Congress of Parents and Teachers v. State Bd. of Edn.

Franklin App. No. 03AP-508, 2004-Ohio-4421. Discretionary appeal accepted; cross-appeal of State Bd. of Edn. accepted on Propositions of Law II, III, and IV; cross-appeal of Community Schools accepted on Propositions of Law II, III, and IV; and cross-appeal of White Hat Mgt. L.L.C. accepted.

Moyer, C.J., Resnick and Pfeifer, JJ., would also accept the cross-appeals of State Bd. of Edn. and Community Schools on Propositions of Law I.

O'Donnell, J., dissents.

2004-1829. Cincinnati v. Baskin.

Hamilton App. No. C-030864, 158 Ohio App.3d 539, 2004-Ohio-5055.

Resnick, O'Donnell and Lanzinger, JJ., dissent.

2004-1862. Reinhart v. Bur. of Workers' Comp.

Franklin App. No. 04AP-157. Discretionary appeal accepted; cause held for the decision in 2004-1738, *Parsons v. Bur. of Workers' Comp.*, Franklin App. No. 03AP-772, 2004-Ohio-4552; and briefing schedule stayed.

Pfeifer and O'Donnell, JJ., dissent.

2004-1877. State v. Saxon.

Cuyahoga App. No. 83889, 2004-Ohio-5017.

Pfeifer and O'Connor, JJ., dissent.

2004-1888. State v. Glass.

Cuyahoga App. No. 84035, 2004-Ohio-4912. Discretionary appeal accepted; cause held for the decisions in 2004-1771, *State v. Quinones*, Cuyahoga App. No. 83720, 2004-Ohio-4485, and 2004-Ohio-1568, *State v. Foster*, Licking App. No. 03CA95, 2004-Ohio-4209; and briefing schedule stayed.

2004-1911. Clark v. Bd. of Commrs., Greene Cty. Combined Health Dist.

Greene App. No. 04CA0027, 158 Ohio App.3d 492, 2004-Ohio-5276.

2004-1923. Bakies v. Perrysburg.

Wood App. Nos. WD-03-055 and WD-03-062, 2004-Ohio-5231.

Resnick and O'Connor, JJ., dissent.

Lanzinger, J., not participating.

APPEALS NOT ACCEPTED FOR REVIEW

2004-1579. State v. Dixon.

Richland App. No. 03 CA 75, 2004-Ohio-3940.

2004-1634. State v. South.

Fairfield App. No. 04 CA 38, 2004-Ohio-5073.

Lundberg Stratton, J., dissents.

2004-1814. Trammell v. McDonald.

Defiance App. No. 4-04-15, 2004-Ohio-4805.

Resnick, J., dissents.

O'Connor, J., dissents and would accept the appeal on Proposition of Law II.

2004-1815. Nefores v. Branddirect Marketing, Inc.

Richland App. No. 03-CA-104, 2004-Ohio-5006.

2004-1817. State v. Jaworski.

Ottawa App. No. OT-03-047, 2004-Ohio-5242.

Lundberg Stratton and O'Connor, JJ., dissent and would accept the appeal and reverse and remand on the authority of *State v. Fraley*, ___ Ohio St.3d ___, 2004-Ohio-7110, ___ N.E.2d ___.

Lanzinger, J., not participating.

2004-1827. State v. Mustard.

Pike App. No. 04CA724, 2004-Ohio-4917.

O'Donnell and Lanzinger, JJ., dissent.

2004-1831. In re A.C.T.

Miami App. No. 2004-CA-9, 158 Ohio App.3d 473, 2004-Ohio-4935.

Moyer, C.J., dissents.

2004-1835. State v. Griffin.

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

2004-1839. Davis v. Daimler Chrysler Corp.

Summit App. No. 21985, 2004-Ohio-4875.

Resnick and Pfeifer, JJ., dissent.

2004-1841. State v. De La Paz.

Franklin App. Nos. 03AP-1147 and 04AP-453, 2004-Ohio-5433.

2004-1842. State v. Harris.

Cuyahoga App. No. 85027.

2004-1844. Thompson v. Keland Steel Erectors, Inc.

Clermont App. No. CA2004-03-019.

Pfeifer, J., dissents.

2004-1846. State v. Ballinger.

Warren App. No. CA2003-07-069, 2004-Ohio-4984.

2004-1848. State v. Raymer.

Hamilton App. No. C-800565.

2004-1850. Bernabei v. Cincinnati Ins. Cos.

Stark App. No. 2002CA00073, 2004-Ohio-4939.

2004-1851. Mullins v. Ohio Dept. of Transp.

Franklin App. No. 04AP-122.

Resnick, J., dissents.

2004-1852. State v. Miller.

Stark App. No. 2004CA00263.

2004-1859. Morning View Care Center-Fulton v. Ohio Dept. of Job & Family Servs.

Franklin App. No. 04AP-57, 2004-Ohio-5436.

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

2004-1861. Maloney v. Ohio Dept. of Ins.

Butler App. No. CA2004-01-021, 2004-Ohio-5334.

2004-1863. State v. Pfeiffer.

Butler App. No. CA2003-12-329, 2004-Ohio-4981.

2004-1868. State v. Andrejic.

Cuyahoga App. No. 84093, 2004-Ohio-6571.

2004-1869. Asente v. Gargano.

Franklin App. No. 04AP-278, 2004-Ohio-5069.
Resnick and Pfeifer, JJ., dissent.

2004-1871. State v. Call.
Marion App. No. 9-04-47.

2004-1876. State v. Black.
Hamilton App. No. C-040207.

2004-1878. State v. Overholt.
Medina App. No. 03CA0119-M, 2004-Ohio-4969.

2004-1879. Varner v. Goodyear Tire & Rubber Co.
Summit App. No. 21901, 2004-Ohio-4946.
Resnick, J., dissents.

2004-1880. Hawes v. Golden.
Lorain App. No. 03CA008398, 2004-Ohio-4957.
Moyer, C.J., Lundberg Stratton and Lanzinger, JJ., dissent.

2004-1882. Carrick v. Bennett.
Summit App. No. 21962, 2004-Ohio-4949.

2004-1883. Harris v. Allstate Ins. Co.
Wayne App. Nos. 03CA0070 and 03CA0072, 2004-Ohio-4955.
O'Connor, J., dissents.

2004-1884. Cuyahoga Falls v. Eslinger.
Summit App. No. 21951, 2004-Ohio-4953.

2004-1885. In re Slater.
Wayne App. Nos. 04CA0004 and 04CA0005, 2004-Ohio-4961.

2004-1886. State v. Jackson.
Ashtabula App. No. 2003-A-0015, 2004-Ohio-5304.

2004-1887. O'Planick v. Rubbermaid Inc.
Wayne App. No. 03CA0060, 2004-Ohio-4968.
Moyer, C.J., and Pfeifer, J., dissent.

On motion for admission pro hac vice of Thomas B. Quinn, Sondra A. Hemeryck and Paula M. Ketcham by J. Douglas Drushal. Motion granted.

2004-1889. Koberstein v. Richland Lumber, Inc.

Richland App. No. 03-CA-110, 2004-Ohio-5291.

2004-1892. State v. Kajfasz.

Lucas App. No. L-04-1004, 2004-Ohio-5243.

2004-1893. State v. Davis.

Lucas App. No. L-03-1258, 2004-Ohio-5670.

Lanzinger, J., not participating.

2004-1895. Mitchell v. Mid-Ohio Emergency Serv., L.L.C.

Franklin App. No. 03AP-981, 2004-Ohio-5264. Discretionary appeal not accepted. Motion to remand and motion to strike dismissed as moot.

2004-1897. State v. Stamper.

Mahoning App. No. 03-MA-144, 2004-Ohio-5366.

2004-1899. State v. Sevayega.

Cuyahoga App. No. 83392, 2004-Ohio-4909.

O'Donnell, J., not participating.

2004-1900. In re Name Change of Perez.

Franklin App. Nos. 04AP-126 and 04AP-131, 2004-Ohio-5068.

2004-1901. State v. Raglin.

Hamilton App. No. C-030944.

2004-1902. State v. Gates.

Cuyahoga App. No. 85221.

2004-1903. Bitter v. Bitter.

Wood App. No. WD-04-007, 2004-Ohio-5233.

O'Donnell, J., dissents.

Lanzinger, J., not participating.

2004-1905. Visconsi-Royalton, Ltd. v. Strongsville.

Cuyahoga App. No. 83128, 2004-Ohio-4908.

O'Connor, J., not participating.

2004-1912. State ex rel. G&M Tanglewood, Inc. v. Desiderio.

Geauga App. No. 2003-G-2497, 2004-Ohio-5309.

Pfeifer and O'Donnell, JJ., dissent.

2004-1913. F&F, Inc. of Cincinnati v. Ohio Liquor Control Comm.

Franklin App. Nos. 03AP-914, 03AP-915 and 03AP-916, 2004-Ohio-5259.

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

2004-1915. State v. Hickie.

Ottawa App. No. OT-03-034, 2004-Ohio-5250.

Pfeifer and O'Donnell, JJ., dissent.

2004-1918. Catipay v. Trumbull Mem. Hosp.

Trumbull App. No. 2003-T-0136, 2004-Ohio-5108. Discretionary appeal not accepted.

Pfeifer, J., dissents.

Motion to review minutes dismissed as moot.

2004-1920. Adamson v. Ohio State Med. Bd.

Franklin App. No. 03AP-926, 2004-Ohio-5261.

Pfeifer, J., dissents.

Lundberg Stratton, J., not participating.

2004-1926. State v. Skjold.

Geauga App. No. 2003-G-2544, 2004-Ohio-5311.

2004-1927. State v. Kitts.

Cuyahoga App. No. 83634, 2004-Ohio-5208.

2004-1951. State v. Elko.

Cuyahoga App. No. 83641, 2004-Ohio-5209.

2004-1954. State v. Perkins.

Cuyahoga App. No. 83659, 2004-Ohio-4915.

2004-1955. State v. Morrison.

Highland App. No. 03CA13, 2004-Ohio-5724.

2004-1958. State v. Dowdell.

Cuyahoga App. No. 83829, 2004-Ohio-5487.

2004-1961. BI Properties, Inc. v. Vulcan Blanchester Realty Corp.

Hamilton App. No. C-040008, 2004-Ohio-5397. Discretionary appeal not accepted.

On motion for admission pro hac vice of Thomas D. Gettler by Neil J. Roth. Motion granted.

2004-1970. State v. Jennings.

Summit App. No. 22016, 2004-Ohio-5447.

2004-1981. State v. Sanders.

Portage App. No. 2003-P-0072, 2004-Ohio-5629.

2004-2043. State v. Russell.

Franklin App. No. 03AP-666, 2004-Ohio-2501.

RECONSIDERATION OF PRIOR DECISIONS

2001-1518. State v. Gapen.

Montgomery C.P. 2000 CR 02945. Reported at 104 Ohio St.3d 358, 2004-Ohio-6548, 819 N.E.2d 1047. On motion for reconsideration. Motion denied.

Lanzinger, J., not participating.

2003-0001. Arth Brass & Aluminum Castings, Inc. v. Conrad.

Franklin App. No. 02APE01-0066, 2002-Ohio-6282. Reported at 104 Ohio St.3d 547, 2004-Ohio-6888, 820 N.E.2d 900. On motion for reconsideration. Motion denied.

Resnick, J., dissents.

Lanzinger, J., not participating.

On motion to tax attorney fees as costs. Motion denied.

Lundberg Stratton, J., dissents.

Lanzinger, J., not participating.

2003-0622. Funtime, Inc. v. Wilkins.

Board of Tax Appeals, No. 2001-A-342. Reported at ____ Ohio St.3d ____, 2004-Ohio-6890, ____ N.E.2d _____. On motion for reconsideration. Motion denied.

Pfeifer and O'Donnell, JJ., dissent.

Lanzinger, J., not participating.

2003-1081 and 2003-1092. Gilchrist v. Gonsor.

Cuyahoga App. No. 80944, 2003-Ohio-2297. Reported at 104 Ohio St.3d 599, 2004-Ohio-7103, 821 N.E.2d 154. On motion for reconsideration. Motion denied.

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

Lanzinger, J., not participating.

2003-1161. State v. Crotts.

Cuyahoga App. No. 81477, 2003-Ohio-2473. Reported at 104 Ohio St.3d 432, 2004-Ohio-6550, 820 N.E.2d 302. On motion for reconsideration. Motion denied.

Lanzinger, J., not participating.

2003-1947. Belmont Cty. Sheriff v. Fraternal Order of Police, Ohio Labor Council, Inc.

Belmont App. No. 03 BE 8, 2003-Ohio-5154. Reported at 104 Ohio St.3d 568, 2004-Ohio-7106, 820 N.E.2d 918. On motion for reconsideration. Motion denied.

Lanzinger, J., not participating.

2004-1102. State ex rel. Johnson v. Ohio Adult Parole Auth.

Franklin App. No. 03AP-466, 2004-Ohio-2648. Reported at 104 Ohio St.3d 421, 2004-Ohio-6590, 819 N.E.2d 1106. On motion for reconsideration. Motion denied.

Lanzinger, J., not participating.

2004-1515. State v. Smith.

Stark App. No. 2004CA00089. Reported at 104 Ohio St.3d 1426, 2004-Ohio-6585, 819 N.E.2d 709. On motion for reconsideration. Motion denied.

2004-1602. SuperValu Holdings, Inc. v. Jackson Center Assoc., L.P.

Clermont App. Nos. CA2003-12-108 and CA2003-12-110, 2004-Ohio-4314. Reported at 104 Ohio St.3d 1440, 2004-Ohio-7033, 819 N.E.2d 1123. On motion for reconsideration. Motion denied.

Pfeifer, J., dissents.

2004-1617. Humbert v. Borkowski.

Fulton App. No. F-04-022, 2004-Ohio-4275. Reported at 104 Ohio St.3d 1427, 2004-Ohio-6585, 819 N.E.2d 710. On motion for reconsideration. Motion denied. All other motions dismissed as moot.