

The Supreme Court of Ohio

CASE ANNOUNCEMENTS

September 10, 2008

[Cite as *09/10/2008 Case Announcements*, 2008-Ohio-4487.]

MERIT DECISIONS WITH OPINIONS

2007-1434. State ex rel. Bartley v. Fahey Banking Co., Slip Opinion No. 2008-Ohio-4481.

Franklin App. No. 06AP-980, 2007-Ohio-3623. Judgment affirmed.

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

2008-0651. Monroe v. Jackson, Slip Opinion No. 2008-Ohio-4480.

Warren App. No. CA2008-01-001. Judgment affirmed.

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

2008-0664. Smith v. Voorhies, Slip Opinion No. 2008-Ohio-4479.

Scioto App. No. 07CA3200. Judgment affirmed.

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

2008-0710. State ex rel. Manns v. Henson, Slip Opinion No. 2008-Ohio-4478.

Richland App. No. 08-CA-4. Judgment affirmed.

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

2008-0933. Eubank v. Anderson, Slip Opinion No. 2008-Ohio-4477.

Lorain App. No. 07CA009136. Judgment affirmed.

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

2008-0957. State ex rel. Rudolph v. Horton, Slip Opinion No. 2008-Ohio-4476.
Franklin App. No. 07AP-1000. Judgment affirmed.

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

MERIT DECISIONS WITHOUT OPINIONS

2008-0575. Zak v. Mentor.

In Quo Warranto. On joint motion to dismiss. Motion to dismiss granted. Cause dismissed.

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

2008-1079. State ex rel. Parker v. Court of Appeals, Eighth Appellate Dist.

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

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

2008-1083. State ex rel. Sisson v. Hagan.

In Mandamus. On motions to dismiss. Motions to dismiss granted. Cause dismissed.

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

2008-1135. State ex rel. Hoang v. Court of Appeals, Ninth Appellate Dist.

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

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

2008-1141. State ex rel. Hill v. Myers.

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

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

2008-1175. State ex rel. Ealy v. Liston.

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

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

Lanzinger, J., not participating.

2008-1177. State ex rel. McDonald v. Routson.

In Mandamus. On motions to dismiss. Motions to dismiss granted. Cause dismissed.

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

2008-1192. State ex rel. Bollar v. Court of Appeals, Seventh Appellate Dist.

In Procedendo. On motion to dismiss. Motion to dismiss granted. Cause dismissed.

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

2008-1208. Schnitzler v. Mallory.

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

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

2008-1226. State ex rel. Washington v. Cain.

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

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

2008-1275. Steck v. Smith.

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

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

2008-1294. Facundo v. Mukasey.

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

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

2008-1300. Gates v. Anderson.

In Habeas Corpus. On petition for writ of habeas corpus of John B. Gates and petitioner's motion for summary judgment. Sua sponte, cause dismissed. Motion for summary judgment denied as moot.

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

2008-1336. State ex rel. Rice v. Dartt.

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

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

2008-1357. Lucky v. Smith.

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

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

2008-1375. Donaldson v. Gansheimer.

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

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

MOTION AND PROCEDURAL RULINGS

1996-0423. State v. Biros.

Trumbull App. No. 91-T-4632. On motion to set execution date. Motion denied.

2005-1656. State v. Davis.

Licking C.P. No. 04 CR 464. On application for reopening under S.Ct.Prac.R. XI(6). Application denied.

2007-0558. Wilborn v. Bank One Corp.

Mahoning App. No. 04-MA-182, 2007-Ohio-596. On motion to consolidate this cause with 2008-1284, *HomEq Servicing Corp. v. Schwamberger*, Scioto App. No. 07CA3146, 2008-Ohio-2478. Motion denied.

2007-2227. State ex rel. Mun. Constr. Equip. Operators' Labor Council v. Cleveland.

In Mandamus. This cause originated on the filing of a complaint for a writ of mandamus. Upon consideration of relators' and respondent city of Cleveland's motions for clarification of the July 9, 2008 entry and relators' motion to strike respondent city of Cleveland's motion for clarification,

The court denies respondent city of Cleveland's motion for clarification. This renders moot relators' motion to strike respondent city of Cleveland's motion for clarification.

The court grants relators' motion for clarification and orders as follows:

It is ordered that respondents immediately comply with the writ by paying the city's construction-equipment operators and master mechanics the difference between the prevailing-wage rates set forth in the Construction Employers Association Building Agreement between the International Union of Operating Engineers, Local 18 and its branches, and the Construction Employers Association and the lower rates that they have been paid for the period beginning April 11, 2007 and thereafter as long as there is no collective bargaining agreement and the Cleveland Charter requires paying those employees the prevailing-wage rates.

2007-2295. State v. Hoover.

Union App. No. 14-07-11, 173 Ohio App.3d 487, 2007-Ohio-5773. Motion for admission pro hac vice of Michael Dominic Meuti by William P. Marshall granted.

2008-0200. Olympic Holding Co., L.L.C. v. ACE Ltd.

Franklin App. No. 07AP-168, 2007-Ohio-6643. On motion to dismiss appeal as improvidently granted or, in the alternative, motion to strike portions of appellants' merit brief. Motion denied.

2008-0212. Williams v. Lazaroff.

Pickaway App. No. 07CA36. On appellant's motion to vacate void sentence and appellee's motion to strike motion to vacate void sentence. Motion to vacate denied. Motion to strike denied as moot.

2008-0782. State ex rel. Miles v. Piketon.

In Mandamus. On respondents' answer and motion for judgment on the pleadings. Sua sponte, an alternative writ is granted, and the following briefing schedule is set for presentation of evidence and filing of briefs pursuant to S.Ct.Prac.R. X:

The parties shall file any evidence they intend to present within 20 days of the date of this entry; relators shall file a brief within 30 days of the date of this entry; respondents shall file a brief within 20 days after the filing of relators' brief; and relators may file a reply brief within seven days after filing of respondents' brief.

2008-1233. State v. Ustaszewski.

Lucas App. No. L-05-1226, 2006-Ohio-329. On motion for leave to file delayed appeal. Motion denied.

2008-1234. Rogers v. Planned Parenthood Cincinnati Region.

Certified Questions of State Law, United States Court of Appeals for the Sixth Circuit, Nos. 06-4422 and 06-4423. On review of preliminary memoranda pursuant to S.Ct.Prac.R. XVIII(6). The court will answer the following questions:

1) Does R.C. 2919.123 mandate that physicians in Ohio who perform abortions using mifepristone do so in compliance with the forty-nine-day gestational limit described in the FDA approval letter?

2) Does R.C. 2919.123 mandate that physicians in Ohio who perform abortions using mifepristone do so in compliance with the treatment protocols and dosage indications described in the drug's final printed labeling?

Lundberg Stratton, J., dissents.

Motions for admission pro hac vice of Roger K. Evans and Helene K. Krasnoff by Jennifer L. Branch granted.

2008-1235. State v. Koller.

Cuyahoga App. No. 89606, 2008-Ohio-806. On motion for leave to file delayed appeal. Motion denied.

Pfeifer and Cupp, JJ., dissent.

2008-1241. State v. Armstrong.

Cuyahoga App. No. 89995, 2008-Ohio-2184. On review of order certifying a conflict. The court determines that a conflict exists.

Sua sponte, the cause is held for the decisions in 2007-0693, *State v. Bloomer*, Fulton App. No. F-06-012, 2007-Ohio-1039, 2007-1415, *State v. Mosmeyer*, Hamilton App. No. C-060747, and 2007-1439, *State v. Barnes*, Portage App. No. 2006-P-0089, 2007-Ohio-3362, and the briefing schedule is stayed.

2008-1259. State v. Bandy.

Cuyahoga App. No. 91322. On motion for leave to file delayed appeal. Motion denied.

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

2008-1266. State v. Smith.

Trumbull App. No. 2007-T-0076, 2008-Ohio-1501. On motion for leave to file delayed appeal. Motion denied.

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

2008-1276. State v. Cherry.

Clark App. No. 05-CA-93, 171 Ohio App.3d 375, 2007-Ohio-2133. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

2008-1280. State v. Murphy.

Ottawa App. No. OT-07-041, 2008-Ohio-2382. On motion for leave to file delayed appeal. Motion granted.

O'Connor and Cupp, JJ., dissent.

2008-1298. State v. Smith.

Belmont App. No. 06 BE 22, 2008-Ohio-1670. On motion for leave to file delayed appeal. Motion granted.

O'Connor, O'Donnell, and Cupp, JJ., dissent.

2008-1304. State v. Baker.

Summit App. No. 23840, 2008-Ohio-1909. On review of order certifying a conflict. The court determines that a conflict exists. The parties are to brief the issues stated at page 1 of the court of appeals' Journal Entry file June 11, 2008:

"(1) Does *Old Chief v. United States* (1997), 519 U.S. 172, apply to Ohio, state law, criminal prosecutions?

"(2) Are parties required to object to avoid waiver of criminal sentencing issues on appeal?

"(3) Is the issue of merger waived if a trial court imposes concurrent sentences?"

O'Connor, J., would certify only the first issue.

O'Donnell and Lanzinger, JJ., dissent.

The conflict cases are *State v. Simms*, Hamilton App. Nos. C-030138 and C-030211, 2004-Ohio-652, *State v. Winn*, 173 Ohio App.3d 202, 2007-Ohio-4327, *State v. Taylor*, Washington App. No. 07CA29, 2008-Ohio-484, *State v. Fischer*

(1977), 52 Ohio App.2d 53, *State v. Reid*, Cuyahoga App. No. 83206, 2004-Ohio-2018, and *State v. Hatfield*, Ashtabula App. No. 2006-A-0033, 2007-Ohio-7130.

Sua sponte, cause consolidated with 2008-1094, *State v. Baker*, Summit App. No. 23840, 2008-Ohio-1909. It is further ordered that briefing in this cause and 2008-1094 shall be consolidated. The parties shall file two originals of each of the briefs permitted under S.Ct.Prac.R. VI and include both case numbers on the cover page of the briefs. The parties shall otherwise comply with the requirements of S.Ct.Prac.R. VI.

It is further ordered by the court that the Clerk shall issue an order for the transmittal of the record from the Court of Appeals for Summit County.

It is further ordered by the court, sua sponte, that Donald Gallick of Akron, Ohio is appointed counsel for appellant.

2008-1320. State v. Ertel.

Clermont App. No. CA2007-07-087, 2008-Ohio-1360. On motion for leave to file delayed appeal. Motion denied.

Pfeifer and Lundberg Stratton, JJ., dissent.

2008-1332. State v. Armstrong.

Montgomery App. No. 19655, 2005-Ohio-432. On motion for leave to file delayed appeal. Motion denied.

2008-1334. Natl. Union Fire Ins. Co. of Pittsburgh, PA v. Wuerth.

Certified Question of State Law, United States Court of Appeals for the Sixth Circuit, No. 07-4035. On review of preliminary memoranda pursuant to S.Ct.Prac.R. XVIII(6). The court will answer the following question:

“Under Ohio law, can a legal malpractice claim be maintained directly against a law firm when all of the relevant principals and employees have either been dismissed from the lawsuit or were never sued in the first instance?”

Lundberg Stratton, J., not participating.

2008-1345. State v. Hubaker.

Lake App. No. 2007-L-162, 2008-Ohio-1776. On motion for leave to file delayed appeal. Motion granted.

O'Connor, Lanzinger, and Cupp, JJ., dissent.

2008-1346. State v. Roberts.

Cuyahoga App. No. 89236, 2008-Ohio-1942. On motion for leave to file delayed appeal. Motion denied.

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

2008-1362. State v. Hoffmeyer.

Summit App. No. 23712, 2008-Ohio-2311. On motion for leave to file delayed appeal. Motion granted.

Moyer, C.J., and O'Connor and Lanzinger, JJ., dissent.

2008-1377. State v. Ferguson.

Ashtabula App. No. 2007-A-0059, 2008-Ohio-2392. On motion for leave to file delayed appeal. Motion denied.

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

2008-1381. In re Young Children.

Stark App. No. 2008CA00092. 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' Judgment Entry filed July 3, 2008:

"Whether the denial of a grandparents' motion to intervene in a permanent custody case is a final, appealable order."

The conflict cases are *In re Goff*, Portage App. No. 2001-P-0144, 2003-Ohio-6768, and *In re C.G.*, Preble App. Nos. CA2007-03-005 and CA2007-03-006, 2007-Ohio-4361.

2008-1382. State v. Harris.

Richland App. No. 2007CA0059, 2008-Ohio-2681. On motion for stay. Motion denied.

2008-1393. State v. Armstrong.

Montgomery App. No. 19655, 2005-Ohio-432. On motion for leave to file delayed appeal. Motion denied.

2008-1405. State v. Foster.

Richland App. No. 07CA31, 2007-Ohio-6626. On motion for leave to file delayed appeal. Motion denied.

Cupp, J., dissents.

2008-1406. State v. Hunter.

Montgomery App. No. 22201, 2008-Ohio-2887. On motion for stay of court of appeals' judgment. Motion denied.

2008-1407. State v. Gonzalez.

Defiance App. No. 4-07-13. On motion for leave to file delayed appeal. Motion denied.

2008-1428. State v. Judd.

Cuyahoga App. No. 89278, 2007-Ohio-6811. On motion for leave to file delayed appeal. Motion denied.

2008-1429. State v. Hughes.

Warren App. Nos. CA2007-08-107 and CA2007-09-109. On motion for leave to file delayed appeal. Motion granted.

O'Connor and Lanzinger, JJ., dissent.

2008-1450. State v. Dalton.

Williams App. No. WM-08-003. On motion for leave to file delayed appeal. Motion denied.

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

2008-1469. State v. Mooney.

Stark App. No. 2007CA00124. On motion for leave to file delayed appeal. Motion denied.

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

2008-1491. State v. Thomas.

Greene App. No. 2006 CA 57, 2007-Ohio-443. On motion for leave to file delayed appeal. Motion denied.

Moyer, C.J., and Cupp, J., dissent.

2008-1520. AEGIS v. Sedlacko.

Mahoning App. No. 07 MA 128, 2008-Ohio-3190. On motion for stay of court of appeals' judgment. Motion denied.

2008-1522. State v. Collins.

Cuyahoga App. No. 89808, 2008-Ohio-3016. On motion for stay. Motion granted.

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

2008-1544. State v. Chavers.

Wayne App. No. 07CA0065, 2008-Ohio-3199. On motion for stay of court of appeals' judgment. Motion denied.

APPEALS ACCEPTED FOR REVIEW

2008-0845. Allen v. Totes/Isotoner Corp.

Butler App. No. CA2007-08-196.

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

2008-0894. Klaus v. United Equity, Inc.

Allen App. No. 1-07-63, 2008-Ohio-1344.

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

2008-0905. Alexander v. Wells Fargo Financial Ohio 1, Inc.

Cuyahoga App. No. 89277, 2008-Ohio-1402. Discretionary appeal accepted, and briefing shall proceed in accordance with the Rules of Practice of the Supreme Court of Ohio.

This cause shall be consolidated for oral argument with 2008-1009, *Coleman v. Am. Gen. Financial Servs.*, Cuyahoga App. No. 89311, 2008-Ohio-1403. Appellants in these causes collectively will share 20 minutes for oral argument, as will appellees.

Pfeifer, J., dissents.

2008-0919. Cincinnati City School Dist. Bd. of Edn. v. State Bd. of Edn.

Hamilton App. No. C-070084, 176 Ohio App.3d 157, 2008-Ohio-1434.

Pfeifer, O'Donnell, and Cupp, JJ., dissent.

2008-1009. Coleman v. Am. Gen. Financial Servs.

Cuyahoga App. No. 89311, 2008-Ohio-1403. Discretionary appeal accepted, and briefing shall proceed in accordance with the Rules of Practice of the Supreme Court of Ohio.

This cause shall be consolidated for oral argument with 2008-0905, *Alexander v. Wells Fargo Financial Ohio 1, Inc.*, Cuyahoga App. No. 89277, 2008-Ohio-1402. Appellants in these causes collectively will share 20 minutes for oral argument, as will appellees.

Moyer, C.J., would accept the appeal on Proposition of Law Nos. I and II only.

O'Donnell, J., would accept the appeal on Proposition of Law No. I only.

Pfeifer, J., dissents.

2008-1012. State v. Clinkscale.

Franklin App. No. 06AP-1109, 2008-Ohio-1677. Discretionary appeal accepted on Proposition of Law Nos. I and II.

Pfeifer, Lundberg Stratton, and Cupp, JJ., would also accept the appeal on Proposition of Law No. III.

O'Connor and O'Donnell, JJ., dissent.

2008-1052. State v. Madaris.

Hamilton App. No. C-070287, 2008-Ohio-1440 and 2008-Ohio-2470.

Moyer, C.J., would also hold the cause for the decision in 2007-0184, *State v. Brown*, Cuyahoga App. No. 87651, 2006-Ohio-6267.

Lundberg Stratton, J., would also hold the cause for the decision in 2008-0363, *State v. Evans*, Cuyahoga App. No. 89057, 2008-Ohio-139.

Pfeifer, Lanzinger, and Cupp, JJ., dissent.

2008-1094. State v. Baker.

Summit App. No. 23840, 2008-Ohio-1909. Discretionary appeal accepted on Proposition of Law Nos. I, II, and III and cause consolidated with 2008-1304, *State v. Baker*, Summit App. No. 23840, 2008-Ohio-1909.

It is further ordered that briefing in this cause and 2008-1304 shall be consolidated. The parties shall file two originals of each of the briefs permitted under S.Ct.Prac.R. VI and include both case numbers on the cover page of the briefs. The parties shall otherwise comply with the requirements of S.Ct.Prac.R. VI.

The Clerk shall issue an order for the transmittal of the record from the Court of Appeals for Summit County.

Upon consideration of appellant's motion for appointment of counsel,

It is ordered by the court that the motion is granted. Donald Gallick of Akron, Ohio is appointed counsel for appellant.

Pfeifer, J., would also accept the appeal on Proposition of Law No. IV.

O'Connor, J., would accept the appeal on Proposition of Law No. I only.

O'Donnell and Lanzinger, JJ., dissent.

2008-1284. HomeEq Servicing Corp. v. Schwamberger.

Scioto App. No. 07CA3146, 2008-Ohio-2478. Discretionary appeal accepted; cause held for the decision in 2007-0558, *Wilborn v. Bank One Corp.*, Mahoning App. No. 04-MA-182, 2007-Ohio-596; and briefing schedule stayed. Motion to consolidate denied.

Pfeifer, J., dissents.

APPEALS NOT ACCEPTED FOR REVIEW

2008-0539. State v. Barksdale.

Montgomery App. No. 21848, 2008-Ohio-182.

2008-0663. State v. McBride.

Ashland App. No. 06COA036.

2008-0696. Riley v. Riley.

Washington App. No. 07CA16, 2008-Ohio-859.

2008-0740. C & R, Inc. v. Liberty Mut. Fire Ins. Co.

Franklin App. No. 07AP-633, 2008-Ohio-947. Discretionary appeal and cross-appeal not accepted.

Cupp, J., dissents and would accept the appeal on Proposition of Law No. II.

2008-0742. Klever v. Sullivan.

Crawford App. No. 3-07-33, 2008-Ohio-1784.

2008-0811. State v. Mitchell.

Columbiana App. No. 05 CO 63, 2008-Ohio-1525.

2008-0826. State v. Melton.

Cuyahoga App. No. 89568, 2008-Ohio-925.

2008-0828. Snowden v. Hastings Mut. Ins. Co.

Mahoning App. No. 06 MA 138, 2008-Ohio-1540.

2008-0830. Calhoun v. Harner.

Allen App. No. 1-06-97, 2008-Ohio-1141.

Pfeifer, J., dissents.

2008-0833. Machnics v. Sloe.

Geauga App. No. 2007-G-2784, 2008-Ohio-1133.

2008-0839. Farrell v. Deuble.

Wayne App. No. 07CA0028, 175 Ohio App.3d 646, 2008-Ohio-1124.

Moyer, C.J., dissents and would accept the appeal on Proposition of Law No. III.

Pfeifer and O'Connor, JJ., dissent.

2008-0847. Peters v. Tipton.

Harrison App. No. 07 HA 3, 2008-Ohio-1524.

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

2008-0854. State v. Royles.

Hamilton App. No. C-070018.

2008-0859. Doty v. Fellhauer Elec., Inc.

Ottawa App. No. OT-07-023, 175 Ohio App.3d 681, 2008-Ohio-1294.

O'Connor, J., dissents.

O'Donnell, J., not participating.

2008-0861. Vahdati'bana v. Scott R. Roberts & Assoc. Co., L.P.A.

Franklin App. No. 07AP-581, 2008-Ohio-1219.

Cupp, J., dissents.

2008-0866. State v. Rose.

Cuyahoga App. No. 89457, 2008-Ohio-1263.

2008-0875. State v. O'Neal.

Medina App. No. 07CA0050-M, 2008-Ohio-1325.

2008-0883. State v. Marshall.

Cuyahoga App. No. 90959.

2008-0886. State v. Osborne.

Richland App. No. 07-CA-38, 2008-Ohio-1367.

O'Connor, J., dissents and would accept the appeal and hold the cause for the decision in 2007-1842, *State v. Winn*, Montgomery App. No. 21710, 173 Ohio App.3d 202, 2007-Ohio-4327.

2008-0893. Wilson v. Superior Foundations, Inc.

Clermont App. No. CA2007-03-043, 2008-Ohio-1359.

2008-0903. Natl. City Mtge. Co. v. Wellman.

Pickaway App. No. 08CA2.

2008-0906. Davis v. CNG Financial Corp.

Hamilton App. No. C-070753.

Lundberg Stratton, J., dissents.

2008-0907. State v. Madaris.

Hamilton App. No. C-070287, 2008-Ohio-1440 and 2008-Ohio-2470.

Lundberg Stratton, J., dissents and would accept the appeal and hold the cause for the decision in 2008-0363, *State v. Evans*, Cuyahoga App. No. 89057, 2008-Ohio-139.

2008-0916. Summit Cty. Day School v. Republic-Franklin Ins. Co.

Hamilton App. No. C-070044. Discretionary appeal not accepted.

Pfeifer, J., dissents.

Motions for admission pro hac vice of Lon A. Berk and Michael S. Levin by Timothy S. Mangan granted.

2008-0920. State v. Wiest.

Hamilton App. No. C-070609, 2008-Ohio-1433.

Pfeifer, J., dissents.

2008-0921. State v. Mettle.

Franklin App. No. 07AP-892, 2008-Ohio-1425.

2008-0922. Crenshaw v. Columbus City School Dist. Bd. of Edn.

Franklin App. No. 07AP-883, 2008-Ohio-1424.

2008-0926. Bell v. Mid-Western Auto Sales, Inc.

Butler App. No. CA2008-02-057.

2008-0930. State v. Varholic.

Cuyahoga App. No. 89627, 2008-Ohio-962.

2008-0936. Bailey v. Ohio Dept. of Transp.

Franklin App. No. 07AP-849, 2008-Ohio-1513.

2008-0938. Sowers v. Luginbill.

Van Wert App. No. 15-07-14, 175 Ohio App.3d 745, 2008-Oho-1486.

2008-0943. State v. Taylor.

Cuyahoga App. No. 89629, 2008-Ohio-1626.

2008-0947. State v. McClory.

Henry App. No. 7-07-18.

2008-0948. State v. Garrett.

Clark App. No. 2007 CA 23, 2008-Ohio-1752.

2008-0950. State v. Chapman.

Lorain App. No. 07CA009161, 2008-Ohio-1452.

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

2008-0952. State v. Junk.

Huron App. No. H-07-27, 2008-Ohio-1564.

O'Donnell, J., dissents.

2008-0953. State ex rel. Cleveland Cold Storage v. Beasley.

Franklin App. No. 07AP-736, 2008-Ohio-1516.

Pfeifer, J., dissents.

2008-0954. Otto v. Country Mut. Ins. Co.

Franklin App. No. 07AP-227, 2008-Ohio-1514.

Pfeifer, J., dissents.

2008-0955. State v. Cline.

Trumbull App. No. 2007-T-0052, 2008-Ohio-1500.

O'Connor, J., not participating.

2008-0956. JPMorgan Chase Bank, N.A. v. Historic Cent. Plaza Developer, LLC.

Stark App. No. 2007CA00074.

2008-0959. State v. McShepard.

Lorain App. No. 06CA009024, 2008-Ohio-1460.

2008-0960. State v. Wolf.

Union App. No. 14-06-54, 176 Ohio App.3d 165, 2008-Ohio-1483.

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

2008-0961. State v. Kosier.

Lucas App. No. L-07-1274, 2008-Ohio-1565.

2008-0962. State v. Turner.

Clark App. No. 2007 CA 82, 175 Ohio App.3d 250, 2008-Ohio-1578.

Lundberg Stratton, J., dissents.

2008-0963. State v. Hudson.

Cuyahoga App. No. 89588, 2008-Ohio-1265.

2008-0964. State v. Caudill.

Wood App. No. WD-07-009, 2008-Ohio-1557.

2008-0965. Lisboa v. Kleinman.

Cuyahoga App. No. 89703, 2008-Ohio-1270.

O'Donnell, J., dissents.

2008-0966. State v. Murphy.

Ross App. No. 07CA2953, 2008-Ohio-1744.

2008-0968. Taylor v. Smith.

Hamilton App. No. C-070330.

2008-0969. Tabatha N.S. v. Zimmerman.

Lucas App. No. L-06-1252, 2008-Ohio-1639.

Moyer, C.J., dissents and would accept the appeal on Proposition of Law No. II.

2008-0970. State v. Waver.

Hamilton App. Nos. C-070245 and C-070246.

2008-0971. State v. Schaefer-Kraft.

Hamilton App. No. C-060979.

2008-0974. State v. Dunbar.

Cuyahoga App. No. 89711, 2008-Ohio-1628 and 2008-Ohio-3977.

2008-0976. State v. Webster.

Hamilton App. Nos. C-070027 and C-070028, 2008-Ohio-1636.

2008-0977. State v. Massie.

Richland App. No. 06CA109, 2008-Ohio-1848.

2008-0978. State v. Bortner.

Allen App. No. 1-07-75, 2008-Ohio-1787.

2008-0979. Cleveland Constr., Inc. v. Ohio Pub. Emps. Retirement Sys.

Franklin App. No. 07AP-574, 2008-Ohio-1630.

2008-0980. State v. Fuller.

Williams App. No. WM-07-015, 2008-Ohio-1640.

2008-0982. Keck v. Metrohealth Med. Ctr.

Cuyahoga App. No. 89526, 2008-Ohio-801.

O'Donnell, J., dissents.

2008-0987. MBNA Am. Bank, N.A. v. Anthony.

Tuscarawas App. No. 2007AP030019.

Moyer, C.J., dissents.

2008-0989. State v. Kuhl.

Ottawa App. No. OT-07-032, 2008-Ohio-1641.

O'Donnell, J., dissents.

2008-0993. State v. Carney.

Hamilton App. No. C-070640.

2008-0999. State v. Aderhold.

Medina App. No. 07CA0047-M, 2008-Ohio-1772.

O'Donnell, J., dissents.

2008-1002. State v. Butler.

Cuyahoga App. No. 89755, 2008-Ohio-1924.

2008-1003. In re Prentice.

Cuyahoga App. No. 90047, 2008-Ohio-1418.

2008-1004. State v. Henderson.

Cuyahoga App. No. 89809, 2008-Ohio-2030.

2008-1006. State v. Edwards.

Cuyahoga App. No. 89823, 2008-Ohio-1831.

2008-1007. State v. Howard.

Clermont App. No. CA2007-06-074.

O'Donnell, J., dissents and would accept the appeal on Proposition of Law No. II.

2008-1010. Doecker v. Willo Security, Inc.

Stark App. No. 2007 CA 00184, 2008-Ohio-2008.

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

O'Connor, J., dissents and would accept the appeal on Proposition of Law No. III.

2008-1019. State v. Delaney.

Lorain App. No. 07CA009190, 2008-Ohio-1879.

2008-1020. State v. Simmons.

Montgomery App. No. 22653.

2008-1021. State v. Clay.

Cuyahoga App. No. 89763, 2008-Ohio-1415.

Moyer, C.J., dissents.

2008-1022. State v. Volpe.

Franklin App. No. 06AP-1153, 2008-Ohio-1678.

Moyer, C.J., dissents and would accept the appeal on Proposition of Law No. I.

Pfeifer, J., dissents.

2008-1026. Martini v. Perrone.

Hamilton App. No. C-070463.

2008-1030. State v. Vaughn.

Montgomery App. No. 22350, 2008-Ohio-1746.

2008-1031. State v. Davis.

Franklin App. No. 08AP-168.

2008-1039. State v. Lander.

Montgomery App. No. 22112, 2008-Ohio-1872.

2008-1040. State v. Marshall.

Cuyahoga App. No. 89551, 2008-Ohio-1632.

2008-1045. State v. Ganaway.

Cuyahoga App. No. 89722, 2008-Ohio-1629.

2008-1048. State ex rel. Athens Cty. Dept. of Job & Family Servs. v. Martin.
Athens App. No. 07CA11, 2008-Ohio-1849.

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

2008-1053. Wolf v. Big Lots Stores, Inc.
Franklin App. No. 07AP-511, 2008-Ohio-1837.
Pfeifer, J., dissents.

2008-1054. State v. Piert.
Cuyahoga App. No. 89803, 2008-Ohio-1828.

2008-1058. State v. Sanders.
Hamilton App. No. C-070639.

2008-1059. State v. Pierce.
Franklin App. No. 08AP-159.

2008-1060. State v. Gunner.
Lucas App. No. L-06-1385, 2008-Ohio-1857.

2008-1064. State v. Lee.
Union App. No. 14-06-18, 2006-Ohio-6091.

2008-1066. Connors v. U.S. Bank.
Franklin App. No. 07AP-649, 2008-Ohio-1838.

2008-1070. State v. Stayer.
Defiance App. No. 4-06-38, 2007-Ohio-3598.
Cupp, J., not participating.

2008-1072. State v. Like.
Montgomery App. No. 21991, 2008-Ohio-1873.

2008-1091. State v. Logan.
Cuyahoga App. No. 88472, 2007-Ohio-2636 and 2008-Ohio-1934.

2008-1092. State v. Travis.
Medina App. No. 06CA0075-M, 2007-Ohio-6683.

2008-1096. State v. Russ.

Trumbull App. No. 2007-T-0045, 2008-Ohio-1897.
O'Connor, J., not participating.

2008-1098. State v. Rarden.

Butler App. No. CA2007-03-077.

2008-1103. Parsons v. Parsons.

Franklin App. No. 07AP-541, 2008-Ohio-1904.

2008-1119. Adkins v. Delta Pro, Inc.

Crawford App. No. 3-07-36, 2008-Ohio-1997.

Moyer, C.J., dissents and would accept the appeal on Proposition of Law Nos. II and III.

Pfeifer and O'Donnell, JJ., dissent.

2008-1123. State v. Bennett.

Brown App. No. CA2007-01-003.

2008-1125. State v. Burgess.

Summit App. No. 23940, 2008-Ohio-2025.

2008-1127. State v. Rivera.

Hamilton App. No. C-070467.

2008-1146. State v. Davis.

Washington App. No. 06CA39, 2007-Ohio-1281.

2008-1159. State v. Madden.

Franklin App. No. 05AP-149, 2006-Ohio-4224.

2008-1184. State v. Evans.

Pickaway App. No. 06CA34, 2007-Ohio-6575.

2008-1213. State v. Pianowski.

Montgomery App. No. 21069, 2006-Ohio-3372.

2008-1225. State v. Rife-Anello.

Stark App. No. 2006CA00340, 2007-Ohio-4822.

2008-1253. State v. Cromartie.

Medina App. No. 06CA0107-M, 2008-Oho-273. Discretionary appeal not accepted.

O'Donnell, J., dissents.

Motion to strike memorandum opposing jurisdiction denied as moot.

2008-1273. State v. Wellman.

Miami App. No. 2006 CA 42, 2007-Ohio-6896.

2008-1278. State v. Taylor.

Scioto App. No. 07CA3147, 2007-Ohio-7174.

2008-1340. State v. McCarley.

Summit App. No. 23607, 2008-Ohio-552.

2008-1347. State v. Starks.

Lucas App. No. L-08-1024.

2008-1392. State v. Thompson.

Ashland App. No. 06-COA-021, 2007-Ohio-5528.

RECONSIDERATION OF PRIOR DECISIONS

2005-1678. State v. Hale.

Cuyahoga C.P. No. CR-04-54857. Reported at ___ Ohio St.3d ___, 2008-Ohio-3426, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

2006-1811. Paterek v. Petersen & Ibold.

Geauga App. No. 2005-G-2624, 2006-Ohio-4179. Reported at 118 Ohio St.3d 503, 2008-Ohio-2790, 890 N.E.2d 316. On motion for reconsideration. Motion denied.

O'Connor and Cupp, JJ., dissent.

James A. Brogan, J., of the Second Appellate District, sitting for O'Donnell, J.

2007-0140. Barnes v. Univ. Hosps. of Cleveland.

Cuyahoga App. Nos. 87247, 87285, 87710, 87903, and 87946, 2006-Ohio-6266. Reported at ___ Ohio St.3d ___, 2008-Ohio-3344, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

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

2007-0442. Swaisgood v. Puder.

Erie App. No. E-06-033, 2007-Ohio-307. Reported at 118 Ohio St.3d 445, 2008-Ohio-3177, 889 N.E.2d 1018. On motion for reconsideration. Motion denied.

O'Donnell, J., dissents.

2007-0758. Angel v. Reed.

Geauga App. No. 2005-G-2669, 2007-Ohio-1069. Reported at ____ Ohio St.3d ____, 2008-Ohio-3193, ____ N.E.2d _____. On motion for reconsideration. Motion denied.

2008-0182. Peleg v. Spitz.

Cuyahoga App. No. 89048, 2007-Ohio-6304. Reported at 118 Ohio St.3d 446, 2008-Ohio-3176, 889 N.E.2d 1019. On motion for reconsideration. Motion denied.

2008-0547. Tillimon v. Stubbleski.

Williams App. No. WM-07-009, 2008-Ohio-369. Reported at 118 Ohio St.3d 1506, 2008-Ohio-3369, 889 N.E.2d 1025. On motion for reconsideration. Motion denied.

2008-0553. Karnofel v. Kmart Corp.

Trumbull App. Nos. 2007-T-0036 and 2007-T-0064, 2007-Ohio-6939. Reported at 118 Ohio St.3d 1464, 2008-Ohio-2823, 888 N.E.2d 1115. On motion for reconsideration. Motion denied.

2008-0563. Shawnee Assoc., L.P. v. Shawnee Hills.

Delaware App. No. 07CAE050022, 2008-Ohio-461. Reported at 118 Ohio St.3d 1507, 2008-Ohio-3369, 889 N.E.2d 1025. On motion for reconsideration. Motion denied.

O'Donnell, J., dissents.

2008-0568. State v. Dudley.

Franklin App. No. 06AP-1272, 2008-Ohio-390. Reported at 118 Ohio St.3d 1464, 2008-Ohio-2823, 888 N.E.2d 1115. On motion for reconsideration. Motion denied.

2008-0595. Nunn v. Spring Village Apts.

Warren App. No. CA2007-07-090. Reported at 118 Ohio St.3d 1507, 2008-Ohio-3369, 889 N.E.2d 1025. On motion for reconsideration. Motion denied.

2008-0640. In re Guardianship of Hards.

Lake App. Nos. 2006-L-158 and 2007-L-012, 175 Ohio App.3d 168, 2008-Ohio-630. On motion for reconsideration. Motion denied.

2008-0645. State v. Craddock.

Cuyahoga App. No. 89484, 2008-Ohio-448. Reported at 118 Ohio St.3d 1508, 2008-Ohio-3369, 889 N.E.2d 1026. On motion for reconsideration. Motion denied.

O'Donnell, J., dissents.

2008-0652. Sesto v. Perduk.

Summit App. No. 23797, 2008-Ohio-664. Reported at 118 Ohio St.3d 1509, 2008-Ohio-3369, 889 N.E.2d 1026. On motion for reconsideration. Motion denied.

Pfeifer, J., dissents.

2008-0678. State v. Macalla.

Cuyahoga App. No. 88825, 2008-Ohio-569. Reported at 118 Ohio St.3d 1509, 2008-Ohio-3369, 889 N.E.2d 1026. On motion for reconsideration. The motion is granted to the following extent:

The discretionary appeal is accepted; the cause is held for the decision in 2007-2389, *State v. Thompson*, Fairfield App. No. 2007-CA-00006, 2007-Ohio-6098; and the briefing schedule is stayed.

Pfeifer, J., dissents.

2008-0808. Lewis v. Mason.

In Habeas Corpus. Reported at 118 Ohio St.3d 1459, 2008-Ohio-2823, 888 N.E.2d 1112. On motion for reconsideration, motion to return all property, motion to certify conflict, and petition to redress government. Motion for reconsideration denied. Motions to return all property and to certify conflict and petition to redress government denied as moot.