

The Supreme Court of Ohio

CASE ANNOUNCEMENTS

February 2, 2011

[Cite as *02/02/2011 Case Announcements, 2011-Ohio-376.*]

MERIT DECISIONS WITHOUT OPINIONS

2010-1696. State ex rel. Hillman v. Holbrook.

Franklin App. No. 10AP-552. This cause is pending as an appeal from an order denying a motion for a show-cause contempt order in a pending procedendo case.

Upon consideration, this cause is dismissed because the order appealed from is not a final, appealable order. See R.C. 2505.02; *State ex rel. Downs v. Panioto*, 107 Ohio St.3d 387, 2006-Ohio-8, 839 N.E.2d 911, ¶ 17 (“R.C. 2505.03 restricts the appellate jurisdiction of this court to review of final orders, judgments, or decrees”). The order was made against a non-party in a case in which a final judgment had not yet been entered. See *Denovchek v. Trumbull Cty. Bd. of Commrs.* (1988), 36 Ohio St.3d 14, 520 N.E.2d 1362, syllabus (“There is no right of appeal from the dismissal of a contempt motion when the party making the motion is not prejudiced by the dismissal”). Appellant can raise his claims in an appeal from the final judgment entered in his procedendo action.

O’Connor, C.J., and Pfeifer, Lundberg Stratton, O’Donnell, Lanzinger, Cupp, and McGee Brown, JJ., concur.

2010-1996. State ex rel. McIntosh v. Kubicki.

In Mandamus. On complaint in mandamus of Thomas McIntosh. On S.Ct.Prac.R. 10.5 determination, cause dismissed.

O’Connor, C.J., and Pfeifer, Lundberg Stratton, O’Donnell, Cupp, and McGee Brown, JJ., concur.

Lanzinger, J., dissents and would grant a writ of mandamus.

2010-2009. State ex rel. Russell v. Lynch.

In Mandamus. On complaint in mandamus of Mark Russell and respondent's answer. On S.Ct.Prac.R. 10.5 determination, cause dismissed.

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

2010-2034. State ex rel. Carney v. Brown.

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

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

2010-2038. [State ex rel.] Berry v. Bessey.

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

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

2010-2060. State ex rel. Muhammad v. O'Shaughnessy.

In Mandamus. On complaint in mandamus of Mustafa Muhammad and respondent's answer. On S.Ct.Prac.R. 10.5 determination, cause dismissed.

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

2010-2099. State ex rel. Dickens v. Nadel.

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

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

2010-2116. State ex rel. Ross v. DeWine.

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

O'Connor, C.J., and Pfeifer, Lundberg Stratton, Cupp, and McGee Brown, JJ., concur.

O'Donnell and Lanzinger, JJ., dissent and would grant a writ of mandamus.

2010-2219. Helton v. Sheldon.

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

O'Connor, C.J., and Pfeifer, Lundberg Stratton, O'Donnell, Lanzinger, and McGee Brown, JJ., concur.
Cupp, J., not participating.

MOTION AND PROCEDURAL RULINGS

2000-0729. State v. Smith.

Cuyahoga App. No. 75512. On motion to dismiss pursuant to R.C. 2505.02. Motion denied as moot.

2010-2059. State ex rel. Am. Subcontractors Assn., Inc. v. Ohio State Univ.

In Mandamus. On complaint in mandamus of American Subcontractors Association, Inc., and respondent's answer. 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. 10.6:

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

McGee Brown, J., not participating.

2010-2093. In re T.M.

Lucas App. Nos. L-10-1245 and L-10-1246, 2010-Ohio-5506. On review of order certifying a conflict. The court determines that a conflict exists. The parties are to brief the issue stated at pages 4-5 of the court of appeals' Decision and Judgment filed November 8, 2010:

"Do the delayed appeal provisions of App.R. 5 extend to cases involving the termination of parental rights and privileges?"

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

The conflict case is *In re Westfall Children*, Stark App. No. 2006 CA 00196, 2006-Ohio-6717.

2010-2135. State v. Curtis.

Brown App. No. CA2010-02-002. On motion for leave to file delayed appeal. Motion granted.

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

2010-2148. Havel v. Villa St. Joseph.

Cuyahoga App. No. 94677, 2010-Ohio-5251. 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 22, 2010:

“Whether R.C. 2315.21(B), as amended by S.B. 80, effective April 7, 2005, is unconstitutional, in violation of Section 5(B), Article IV of the Ohio Constitution, because it is a procedural law that conflicts with Civ.R. 42(B).”

Pfeifer and O'Donnell, JJ., dissent.

The conflict case is *Hanners v. Ho Wah Gentling Wire & Cable*, Franklin App. No. 09AP-361, 2009-Ohio-6481.

2010-2151. State v. Holman.

Cuyahoga App. Nos. 93869 and 93870, 2010-Ohio-4886. On motion for leave to file delayed appeal. Motion granted.

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

2010-2164. State v. Prater.

Butler App. No. CA2010-08-213. On motion for leave to file delayed appeal. Motion denied.

O'Donnell and McGee Brown, JJ., dissent.

2010-2165. State v. Humr.

Portage App. No. 2010-P-0004, 2010-Ohio-5057. On motion for leave to file delayed appeal. Motion granted.

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

2010-2181. State v. Bruggeman.

Auglaize App. No. 2-10-17. On motion for leave to file delayed appeal. Motion denied.

2010-2182. State v. Grant.

Cuyahoga App. No. 94101, 2010-Ohio-5241. On motion for leave to file delayed appeal. Motion granted.

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

2010-2190. State v. Cottrell.

Cuyahoga App. No. 95053, 2010-Ohio-5254. On motion for leave to file delayed appeal. Motion granted.

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

2010-2193. State v. Graggs.

Franklin App. No. 09AP-339, 2009-Ohio-5975. On motion for leave to file delayed appeal. Motion denied.

2010-2200. State v. Marcum.

Perry App. Nos. 10-CA-1 and 10-CA-2. On motion for immediate stay of execution and continuance of appeal bond. Motion denied.

2010-2212. State v. Hayes.

Hamilton App. Nos. C-100547 and C-100482. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

APPEALS ACCEPTED FOR REVIEW

2010-1636. State v. Gunnell.

Clark App. No. 09-CA-0013, 2010-Ohio-4415.

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

Pfeifer and McGee Brown, JJ., dissent.

2010-1826. Jones v. Centex Homes.

Franklin App. Nos. 09AP-1032 and 09AP-1033, 2010-Ohio-4268.

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

2010-1844. Longly v. Thailing.

Cuyahoga App. No. 94354, 2010-Ohio-5012. Discretionary appeal accepted; cause held for the decision in 2010-1091, *Barbee v. Allstate Ins. Co.*, Lorain App. Nos. 09CA009594 and 09CA009596, 2010-Ohio-2016; and briefing schedule stayed. Motion to consolidate denied as moot.

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

2010-1881. Flynn v. Fairview Village Retirement Community, Ltd.

Cuyahoga App. No. 95695.

Pfeifer, Cupp, and McGee Brown, JJ., dissent.

2010-1882. Green v. State.

Hamilton App. No. C-090650, 2010-Ohio-4371. Discretionary appeal accepted on Proposition of Law Nos. I, II, III, and IV; cause held for the decision in 2009-0088, *State v. Williams*, Warren App. No. CA2008-02-029, 2008-Ohio-6195; and briefing schedule stayed.

2010-1949. State v. Monford.

Franklin App. No. 09AP-274, 2010-Ohio-4732. Discretionary appeal accepted on Proposition of Law Nos. I and II.

Pfeifer, J., would also accept the appeal on Proposition of Law Nos. III-VI.

Lundberg Stratton, J., would also accept the appeal on Proposition of Law No. V.

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

APPEALS NOT ACCEPTED FOR REVIEW

2010-1319. State v. Ponce.

Cuyahoga App. No. 91329, 2010-Ohio-1741.

2010-1387. State v. Scandrick.

Montgomery App. No. 23406, 2010-Ohio-2270.

2010-1721. Third Fed. Sav. Bank v. Cox.

Cuyahoga App. No. 93950, 2010-Ohio-4133.

2010-1760. Hickerson v. Hickerson.

Hancock App. No. 5-10-08, 2010-Ohio-4070.

2010-1767. State v. Brown.

Marion App. No. 9-10-12, 2010-Ohio-4546.

O'Donnell, J., dissents.

2010-1768. State v. Johnson.

Cuyahoga App. No. 93635, 2010-Ohio-4117.

2010-1772. State v. Davis.

Cuyahoga App. No. 93856, 2010-Ohio-4488.

2010-1773. Blume v. Blume.

Noble App. No. 10 NO 377.

2010-1775. State v. Smith.

Highland App. No. 09CA29, 2010-Ohio-4507.

Lundberg Stratton and McGee Brown, JJ., dissent and would accept the appeal, reverse the judgment of the court of appeals, and remand the cause for application of *State v. Pepka*, 125 Ohio St.3d 124, 2010-Ohio-1045.

2010-1779. R2H, L.L.C. v. E-POCH Properties, L.L.C.

Cuyahoga App. No. 95496. Discretionary appeal not accepted. Motion to strike memorandum in support of jurisdiction denied as moot.

2010-1783. In re V.D.

Montgomery App. No. 23869, 2010-Ohio-4148.
O'Donnell, J., dissents.

2010-1785. HSBC Bank USA, N.A. v. Thompson.

Montgomery App. No. 23761, 2010-Ohio-4158.
O'Donnell, J., dissents.

2010-1786. State v. Glover.

Cuyahoga App. No. 93623, 2010-Ohio-4112.
Pfeifer and Lanzinger, JJ., dissent.

2010-1787. State v. Wheat.

Cuyahoga App. No. 93671, 2010-Ohio-4120.
Pfeifer and Lanzinger, JJ., dissent.

2010-1788. Gallagher v. Lucas Cty. Bd. of Elections.

Lucas App. No. L-10-1051, 2010-Ohio-4164.

2010-1789. State v. Oliver.

Mahoning App. No. 09 MA 44, 2010-Ohio-4182.

2010-1790. Proctor v. Davison.

Licking App. No. 09 CA 122, 2010-Ohio-3273.

2010-1801. State v. Slager.

Franklin App. Nos. 08AP-581, 08AP-582, 08AP-709, and 08AP-710, 2010-Ohio-4264.
O'Donnell, J., dissents.

2010-1806. Washington v. Ohio Dept. of Rehab. & Corr.

Franklin App. No. 10AP-136, 2010-Ohio-4323.

2010-1809. State v. Redding.

Medina App. No. 10CA0018-M, 2010-Ohio-4286.

2010-1814. State v. McCall.

Lorain App. No. 09CA009729, 2010-Ohio-4283.
Pfeifer and O'Donnell, JJ., dissent.

2010-1819. State v. Ellison.

Hamilton App. No. C-100120.

2010-1821. State v. Riggans.

Allen App. No. 1-10-38, 2010-Ohio-4552.

2010-1827. State v. Porterfield.

Trumbull App. No. 2010-T-0005, 2010-Ohio-4287.

2010-1829. State v. Boynton.

Cuyahoga App. No. 93598, 2010-Ohio-4248.

2010-1831. State v. Moncrief.

Franklin App. No. 10AP-88.

2010-1834. State v. Busby.

Franklin App. No. 09AP-1119, 2010-Ohio-4516.
McGee Brown, J., dissents.

2010-1838. State v. Bangs.

Franklin App. Nos. 10AP-256, 10AP-257, 10AP-258, 10AP-259, 2010-Ohio-4613.

2010-1842. State v. Morris.

Medina App. No. 09CA0022-M, 2010-Ohio-4282.
Lundberg Stratton, O'Donnell, and McGee Brown, JJ., dissent.

2010-1843. State v. Williams.

Knox App. No. 09 CA 12, 2010-Ohio-4647.

2010-1845. Castanias v. Castanias.

Warren App. No. CA2009-11-152, 2010-Ohio-4300.

2010-1849. State v. Allen.

Butler App. No. CA2010-04-101.

2010-1851. State v. Battle.

Morgan App. No. 09 AP 0001, 2010-Ohio-4327.

2010-1852. Price v. Carter Lumber Co.

Summit App. No. 24991, 2010-Ohio-4328. Discretionary appeal not accepted.
Motion to withdraw motion to dismiss granted.

2010-1853. Cleveland Civ. Serv. Emps. Assn. v. Cleveland.

Cuyahoga App. No. 93922, 2010-Ohio-4352.

O'Connor, C.J., dissents.

2010-1856. State v. Roberts.

Franklin App. No. 10AP-223.

2010-1857. State v. Kyle.

Summit App. No. 24655, 2010-Ohio-4456.

2010-1858. State v. Vaughn Hardware.

Cuyahoga App. No. 93639, 2010-Ohio-4346.

2010-1859. State v. Golden.

Franklin App. No. 09AP-1004, 2010-Ohio-4438.

2010-1861. Henry v. Mandell-Brown.

Hamilton App. No. C-090752, 2010-Ohio-3832.

Pfeifer, J., dissents.

2010-1864. Fierro v. Greater Cincinnati Water Works.

Hamilton App. No. C-100041, 2010-Ohio-4314.

2010-1865. State v. Copley.

Cuyahoga App. No. 92784, 2010-Ohio-2340.

O'Donnell, J., dissents.

2010-1867. State v. Hawks.

Cuyahoga App. No. 93582, 2010-Ohio-4345.

Lundberg Stratton and McGee Brown, JJ., dissent.

2010-1869. State v. Antenori.

Cuyahoga App. No. 90580, 2008-Ohio-5987.

Lundberg Stratton and Lanzinger, JJ., dissent.

2010-1871. Saxe v. Ohio Dept. of Mental Retardation & Dev. Disabilities.

Franklin App. No. 09AP-1022, 2010-Ohio-4377.

Pfeifer, J., dissents.

2010-1872. Odita v. Phillips.

Franklin App. No. 09AP-1172, 2010-Ohio-4321.

2010-1873. Franklin v. Berea.

Cuyahoga App. No. 93894, 2010-Ohio-4350.

O'Donnell, J., dissents.

2010-1875. Martin v. Kandpal.

Cuyahoga App. No. 94491, 2010-Ohio-4360.

2010-1876. State v. Kent.

Cuyahoga App. No. 90795, 2010-Ohio-4343.

2010-1879. Hayward v. Bellmann.

Williams App. No. WM-09-007, 2010-Ohio-3438.

2010-1880. State v. Lathan.

Guernsey App. No. 09-CA-42, 2010-Ohio-4540.

2010-1883. Connell v. Goodyear Tire & Rubber Co.

Cuyahoga App. Nos. 92833 and 92923, 2010-Ohio-4344.

Pfeifer, J., dissents.

2010-1884. Gelesh v. State Med. Bd. of Ohio.

Franklin App. No. 10AP-169, 2010-Ohio-4378.

Pfeifer and Lanzinger, JJ., dissent.

2010-1887. State v. Werber.

Cuyahoga App. No. 93716, 2010-Ohio-4883.

O'Donnell, J., dissents and would accept the appeal on Proposition of Law No. IV and remand the cause for application of *State v. Johnson*, ___ Ohio St.3d ___, 2010-Ohio-6314.

2010-1891. Lebanon v. Evans.

Warren App. No. CA2009-08-116, 2010-Ohio-4402.

2010-1893. Coventry Group, Inc. v. J.L. Gottlieb Agency, Inc.

Cuyahoga App. No. 94185, 2010-Ohio-4135.

O'Connor, C.J., dissents.

2010-1899. State v. Brown.

Hamilton App. No. C-100050, 2010-Ohio-4599.

Lundberg Stratton, O'Donnell, and McGee Brown, JJ., dissent and would accept the appeal and remand the cause for application of *State v. Fischer*, ___ Ohio St.3d ___, 2010-Ohio-6238.

2010-1900. State v. Mays.

Franklin App. No. 10AP-113, 2010-Ohio-4609.

2010-1901. Munroe Falls v. Div. of Mineral Resources Mgt.

Franklin App. No. 10AP-66, 2010-Ohio-4439.

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

2010-1902. Dixon v. Residential Fin. Corp.

Madison App. No. CA2009-11-024, 2010-Ohio-4409.

2010-1904. NaphCare, Inc. v. Cty. Council of Summit Cty.

Summit App. No. 24906, 2010-Ohio-4458.

Pfeifer, J., dissents.

2010-1912. Swallie v. Rousenberg.

Monroe App. No. 09-MO-2, 2010-Ohio-4573.

2010-1913. Black v. Dutiel.

Perry App. No. 10-CA-3, 2010-Ohio-4626.

2010-1919. State v. Allen.

Delaware App. No. 2009-CA-13, 2010-Ohio-4644.

2010-1920. State v. Braylock.

Lucas App. No. L-08-1433, 2010-Ohio-4722.

2010-1924. State v. Melton.

Cuyahoga App. No. 93299, 2010-Ohio-4476.

2010-1926. Gravely v. Shell Food Mart & Car Wash.

Cuyahoga App. No. 95247. Discretionary appeal not accepted. Motions to dismiss, to decline motion to dismiss, and to strike denied as moot.

2010-1927. White v. Bannerman.

Stark App. No. 2009CA00221, 2010-Ohio-4846.

Lundberg Stratton, J., dissents and would accept the appeal on Proposition of Law No. III.

McGee Brown, J., dissents.

2010-1928. State ex rel. Eberts v. Inland Prods.

Franklin App. No. 09AP-796, 2010-Ohio-4510.

O'Donnell, J., dissents.

Pfeifer, J., not participating.

2010-1932. Wascovich v. Personacare of Ohio, Inc.

Lake App. No. 2010-L-006, 2010-Ohio-4563.

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

2010-1933. Hiddens v. Leibold.

Montgomery App. No. 23376, 2010-Ohio-4532. Discretionary appeal not accepted. Motions for sanctions and for vexatious litigator determination denied.

2010-1934. State v. Nuh.

Franklin App. No. 10AP-31, 2010-Ohio-4740.

2010-1939. In re Estate of Pizzoferrato.

Jefferson App. No. 08JE38, 2010-Ohio-4848.

Pfeifer, J., dissents.

2010-1944. State v. Davis.

Franklin App. No. 09AP-869, 2010-Ohio-4734.

2010-1945. State v. Smith.

Franklin App. Nos. 10AP-143 and 10AP-144, 2010-Ohio-4744.

2010-1954. Tochtenhagen v. Tochtenhagen.

Trumbull App. No. 2009-T-0011, 2010-Ohio-4557.

2010-1960. Barnett v. Ohio Dept. of Rehab. & Corr.
Franklin App. No. 09AP-1186, 2010-Ohio-4737.

2010-1961. Isom v. Dayton Power & Light Co.
Montgomery App. No. 23911, 2010-Ohio-4756.

2010-1991. State v. Stevens.
Montgomery App. No. 23817, 2010-Ohio-4766.

2010-1999. State v. Butcher.
Athens App. No. 09CA31, 2010-Ohio-4877.

2010-2004. State v. Smith.
Clark App. No. 08CA0060.

2010-2019. State v. Woodson.
Cuyahoga App. No. 93476, 2010-Ohio-5230.

2010-2050. State v. Hill.
Franklin App. No. 09AP-398.

2010-2076. State v. Foster.
Franklin App. No. 10AP-317, 2010-Ohio-5155.

2010-2094. State v. Washington.
Franklin App. No. 09AP-424.

2010-2234. In re K.L.S.
Mahoning App. No. 10 MA 53, 2010-Ohio-5520.