

The Supreme Court of Ohio

CASE ANNOUNCEMENTS

October 5, 2011

[Cite as *10/05/2011 Case Announcements*, 2011-Ohio-5129.]

MERIT DECISIONS WITH OPINIONS

2009-1763. Vandalia-Butler City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision, Slip Opinion No. 2011-Ohio-5078.

Board of Tax Appeals, No. 2007-M-1022. Decision vacated and cause remanded.

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

2010-0857. Huff v. FirstEnergy Corp., Slip Opinion No. 2011-Ohio-5083.
Trumbull App. No. 2009-TR-00080, 2010-Ohio-1456. Judgment reversed.

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

Pfeifer and O'Donnell, JJ., concur in judgment only.

2011-0700. Disciplinary Counsel v. Gerchak, Slip Opinion No. 2011-Ohio-5075.

On Certified Report by the Board of Commissioners on Grievances and Discipline, No. 10-069. David John Gerchak of Youngstown, Ohio, Attorney Registration No. 0069060, is suspended from the practice law in Ohio for a period of one year with the entire suspension stayed on condition.

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

MERIT DECISIONS WITHOUT OPINIONS

2011-1218. State ex rel. Portage Cty. Law Library Assn. Bd, of Trustees v. Ohio Pub. Emp. Retirement Sys.

In Mandamus. On answer of respondent. 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.

2011-1235. Fireman's Fund Ins. Co. v. Hartford Acc. and Indemn. Co.

Certified Question of State Law, United States District Court, Northern District of Ohio, Western Division, No. 3:03-cv-7168. On review of preliminary memoranda. The court determines that it will not answer the certified question. This cause is therefore dismissed.

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

Pfeifer, J., dissents.

2011-1244. Galloway v. Cook.

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.

2011-1264. Marcum v. Perry Cty. Court.

In Mandamus. 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.

2011-1265. State ex rel. Vansuch v. Krichbaum.

In Prohibition. 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.

2011-1280. Ohio ex rel. Byerly v. Richland Court of Common Pleas, Clerk.

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.

2011-1288. State ex rel. Woodland v. Sutula.

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.

2011-1333. Henderson v. Eyster.

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.

2011-1357. Thomas v. Donnelly.

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.

2011-1413. Goldshtein v. Bradshaw.

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

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

2011-1425. Archie v. Knab.

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

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

MOTION AND PROCEDURAL RULINGS

1994-1777. State v. Dunlap.

Hamilton App. No. C-930121. On motion to set execution date. Motion denied.

2011-1097. Luri v. Republic Servs, Inc.,

Cuyahoga App. No. 94908, 2011-Ohio-2389. On review of order certifying a conflict. The court determines that a conflict exists. Sua sponte, cause held for the decision in 2010-2148, *Havel v. Villa St. Joseph*, Cuyahoga App. No. 94677, 2010-Ohio-5251; and briefing schedule stayed.

2011-1327. Vacha v. N. Ridgeville.

Lorain App. No. 10CA009750, 2011-Ohio-2446.

On review of order certifying a conflict. The court determines that a conflict exists. Sua sponte, cause held for the decision in 2010-1561, *Sampson v. Cuyahoga Metro. Hous. Auth.*, Cuyahoga App. No. 93411, 188 Ohio App.3d 250, 2010-Ohio-3415; cause consolidated with 2011-1050, *Vacha v. N. Ridgeville*, Lorain App. No. 10CA009750, 2011-Ohio-2446; and briefing schedule stayed.

2011-1412. State v. Mobley.

Paulding App. No. 11-09-01, 2009-Ohio-5434. On motion for delayed appeal. Motion denied.

2011-1419. State v. Brooks.

Cuyahoga App. No. 83668. On motion for delayed appeal. Motion denied.

2011-1437. State v. Johnson.

Hamilton App. No. C-090620, 2011-Ohio-3143. On motion for delayed appeal. Motion granted.

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

2011-1451. State v. Rodgers.

Hancock App. No. 5-10-35. 2011-Ohio-3003. On motion for delayed appeal. Motion granted. On motion to disregard response. Motion denied as moot.

O'Connor, C.J., dissents and would deny the motion for delayed appeal.

2011-1362. Fed. Home Loan Mtge. Corp. v. Schwartzwald.

Greene App. No. 2010 CA 41, 2011-Ohio-2681.

On review of order certifying a conflict. The court determines that a conflict exists. The parties are to brief the issue stated at page 4 of the court of appeals' entry filed July 27, 2011:

“In a mortgage foreclosure action, the lack of standing or a real party in interest defect can be cured by the assignment of the mortgage prior to judgment.”

The conflict cases are *Wells Fargo Bank, N.A. v. Byrd*, 178 Ohio App.3d 285, 2008-Ohio-4603, *Bank of New York v. Gindele*, Hamilton App. No. C-090251, 2010-Ohio-542, *Wells Fargo Bank v. Jordan*, Cuyahoga App. 91675, 2009-Ohio-1092.

Sua sponte, cause consolidated with 2011-1201, *Fed. Home Loan Mtge. Corp. v. Schwartzwald*, Greene App. No. 2010 CA 41, 2011-Ohio-2681.

APPEALS ACCEPTED FOR REVIEW

2011-0902. Bennett v. Goodremont's, Inc.

Lucas App. No. L-10-1185, 2011-Ohio-1264.
Cupp and McGee Brown, JJ., dissent.
Lanzinger, J., not participating.

2011-0926. Sugarcreek Twp. v. Centerville.

Greene App. No. 2010-CA-52, 193 Ohio App.3d 408, 2011-Ohio-1830.
Cupp and McGee Brown, JJ., dissent.

2011-1050. Vacha v. N. Ridgeville.

Lorain App. No. 10CA009750, 2011-Ohio-2446. Discretionary appeal accepted.
O'Connor, C.J. dissents.

Sua sponte, cause held for the decision in 2010-1561, *Sampson v. Cuyahoga Metro. Hous. Auth.*, Cuyahoga App. No. 93411, 188 Ohio App.3d 250, 2010-Ohio-3415; cause consolidated with 2011-1327, *Vacha v. N. Ridgeville*, Lorain App. No. 10CA009750, 2011-Ohio-2446; and briefing schedule stayed. Discretionary cross-appeal not accepted.

Pfeifer, Lundberg Stratton, and O'Donnell, JJ., dissent and would accept the cross-appeal and hold the cause for the decision in *Sampson v. Cuyahoga Metro. Hous. Auth.*, Cuyahoga App. No. 93411, 188 Ohio App.3d 250, 2010-Ohio-3415.

2011-1066. State v. Brunning.

Cuyahoga App. No. 95376, 2011-Ohio-1936.
O'Connor, C.J., Pfeifer, Lundberg Stratton, JJ., dissent.

2011-1120. Luri v. Republic Servs., Inc.

Cuyahoga App. No. 94908, 2011-Ohio-2389. Discretionary appeal accepted. The parties shall brief the appeal in accordance with the Rules of Practice of the Supreme Court.

O'Donnell and Cupp, JJ., dissent and would not accept the discretionary appeal.

Discretionary cross-appeal accepted on Proposition of Law No. I only. Sua sponte, cross-appeal held for the decision in 2010-2148, *Havel v. Villa St. Joseph*, Cuyahoga App. No. 94677, 2010-Ohio-5251; and briefing schedule stayed.

Pfeifer and Lundberg Stratton, JJ., would also accept the cross-appeal on Propositions of Law II – V, and would hold the cause for the decision in 2010-2148, *Havel v. Villa St. Joseph*, Cuyahoga App. No. 94677, 2010-Ohio-5251.

2011-1201. Fed. Home Loan Mtge. Corp. v. Schwartzwald.

Greene App. No. 2010 CA 41, 2011-Ohio-2681. Discretionary appeal accepted and cause consolidated with 2011-1362, *Fed. Home Loan Mtge. Corp. v. Schwartzwald*, Greene App. No. 2010 CA 41, 2011-Ohio-2681.

O'Connor, C.J., dissents.

APPEALS NOT ACCEPTED FOR REVIEW

2011-0292. State v. Milby.

Montgomery App. No. 23798, 2010-Ohio-6344.

2011-0900. State v. Wynn.

Montgomery App. No. 24253, 2011-Ohio-1832.

2011-0905. First Place Bank v. Hersh Constr., Inc.

Stark App. No. 2010CA00074, 2011-Ohio-1790.

2011-0910. Huntington Natl. Bank v. Winter.

Hamilton App. No. C-090482, 2011-Ohio-1751. Discretionary appeal and cross-appeal not accepted.

Lundberg Stratton and McGee Brown, JJ., would accept the appeal.

O'Donnell, J., would accept the appeal and cross-appeal.

2011-0915. Egger v. Soltesz.

Erie App. No. E-10-029, 2011-Ohio-1843.

2011-0918. State v. Lockhart.

Delaware App. No. 11 CAA 03 0023.

O'Donnell, J., dissents.

2011-0919. State v. Bruggeman.

Auglaize App. Nos. 2941 and 21017.

O'Donnell, J., dissents.

2011-0920. Woodrow v. Heintschel.

Lucas App. No. L-10-1206, 2011-Ohio-1840.

O'Donnell, J., dissents.

2011-0921. Southeastern Natural Gas Co. v. Vititoe Constr., Inc.

Delaware App. No. 10CAE070053, 2011-Ohio-1844.

Pfeifer, J., dissents.

2011-0925. State v. Blackshear.

Cuyahoga App. No. 95424, 2011-Ohio-1806.

2011-0927. State v. Castillo.

Montgomery App. No. 24022, 2011-Ohio-1821.

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

2011-0928. Ingle-Barr, Inc. v. Scioto Valley Local School Dist. Bd.

Pike App. No. 10CA811, 2011-Ohio-2353.

Pfeifer, J., dissents.

2011-0930. Smith v. Kroger Co.

Butler App. No. CA201009233, 2011-Ohio-1871.

Pfeifer and O'Donnell, JJ., dissent.

2011-0932. Kostrzewski v. Toledo Clinic.

Lucas App. No. L-11-1018.

Motion to strike denied as moot.

2011-0936. Rathert v. Kempker.

Clermont App. No. CA2010-06-043, 2011-Ohio-1873.

O'Donnell, J., dissents.

2011-0937. Johnson v. Cleveland.

Cuyahoga App. No. 95688, 2011-Ohio-2152.

2011-0938. State v. Mendoza.

Wood App. No. WD-10-008, 2011-Ohio-1971.

2011-0939. Dudley v. Powers & Sons, L.L.C.

Williams App. No. WM-10-015, 2011-Ohio-1975.

2011-0943. State v. Newton.

Montgomery App. No. 24154, 2011-Ohio-2188.

2011-0944. KeyBank, N.A. v. MRN Ltd. Partnership.

Cuyahoga App. No. 95328, 193 Ohio App.3d 424, 2011-Ohio-1934.

2011-0945. Harris v. Mayfield Hts.

Cuyahoga App. No. 95601, 2011-Ohio-1943.
O'Connor, C.J., and Lundberg Stratton, JJ., dissent.

2011-0948. State v. Padgett.
Cuyahoga App. No. 95065, 2011-Ohio-1927.

2011-0950. Daniel v. Williams.
Franklin App. No. 10AP-797, 2011-Ohio-1941.
Motion to strike denied as moot.

2011-0951. Deutsche Bank Natl. Trust Co. v. Greene.
Erie App. No. E-10-006, 2011-Ohio-1976.
McGee Brown, J., dissents

2011-0962. Columbus v. Memon.
Franklin App. No. 10AP-880, 2011-Ohio-2008.

2011-0965. State v. Nickelson.
Lawrence App. No. 09CA8, 2009-Ohio-7006.

2011-0966. Huntsman v. Aultman Hosp.
Stark App. No. 2010CA00211, 2011-Ohio-1208.
Pfeifer and McGee Brown, JJ., dissent.

2011-0970. Coleman v. Davis.
Franklin App. No. 11AP-213.

2011-0977. State v. Keeling.
Hamilton App. Nos. C-080971 and C-081041.

2011-0982. Hillman v. Edwards.
Franklin App. No. 10AP-950, 2011-Ohio-2677.

2011-0984. State v. Love.
Hamilton App. No. C-100563, 2011-Ohio-2224.

2011-0985. State v. Brown.
Allen App. No. 1-10-31, 2011-Ohio-1461.
O'Connor, J., would accept Proposition of Law V and VI.

2011-0986. Tomko v. Cuyahoga Cty. Bd. of Commrs.

Cuyahoga App. No. 95725, 2011-Ohio-1575.

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

2011-0991. Berlin Twp. Bd. of Trustees v. Delaware Cty. Bd. of Cty. Commrs.

Delaware App. No. 10CAH030027, 2011-Ohio-2020.

2011-0994. Fifth Third Mtge. Co. v. Rankin.

Pickaway App. No. 10CA45, 2011-Ohio-2757.

2011-1003. State v. Burrell.

Portage App. No. 2009-P-0060, 2011-Ohio-2091.

Pfeifer, J., dissents.

2011-1005. Heaton v. Rohl.

Lake App. No. 2009-L-171, 2011-Ohio-2090.

2011-1006. Dispatch Printing Co. v. Recovery Ltd. Partnership.

Franklin App. Nos. 10AP-353, 10AP-354, and 10AP-355, 2011-Ohio-80.

2011-1007. State v. Ingram.

Hamilton App. No. C-100440.

2011-1008. State v. Zimbeck.

Fulton App. No. F10001, 2011-Ohio-2171.

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

2011-1010. State v. Taylor.

Cuyahoga App. No. 94853, 2011-Ohio-1554.

2011-1011. Abrigg v. Mercy Med. Ctr.

Stark App. No. 2010-CA-00182, 2011-Ohio-2112.

2011-1013. Cook Rd. Invests., L.L.C. v. Cuyahoga Cty. Bd. of Commrs.

Cuyahoga App. No. 95416, 2011-Ohio-2151.

2011-1014. State v. Jones.

Lucas App. No. L-09-1262, 2011-Ohio-2173.

2011-1019. Robertson v. Mt. Carmel E. Hosp.

Franklin App. No. 09AP-931, 2011-Ohio-2043.

2011-1021. State v. Shinholster.

Summit App. No. 25328, 2011-Ohio-2244.

2011-1022. State v. Shabazz.

Cuyahoga App. No. 95021, 2011-Ohio-2260.

2011-1026. Moore v. Honican.

Hamilton App. No. C-100432, 2011-Ohio-2109.

O'Donnell, J., dissents.

Lanzinger, J., dissents and would hold the cause for the decision in 2011-0743, *Anderson v. Massillon*, Stark App. No. 2010 CA 00196, 2011-Ohio-1328.

2011-1028. State v. Booker.

Cuyahoga App. No. 95740, 2011-Ohio-2154.

2011-1029. State v. Bennett.

Stark App. No. 2010CA00200, 2011-Ohio-2236.

2011-1033. State v. Martin.

Summit App. No. 25452, 2011-Ohio-2379.

2011-1034. Rivera v. Crosby.

Cuyahoga App. No. 95229, 2011-Ohio-2265.

2011-1035. Muddiman v. Cappel.

Hamilton App. No. C-100316.

2011-1038. State v. Blackman.

Cuyahoga App. No. 95168, 2011-Ohio-2262.

2011-1039. State v. LaPrairie.

Greene App. No. 2010CA-0009, 2011-Ohio-2184.

O'Connor, C.J., dissents.

McGee Brown dissents and would accept the appeal on Proposition of Law I only.

2011-1041. State v. Johnson.

Cuyahoga App. No. 91701, 2011-Ohio-2142.

2011-1043. State v. Barnhart.

Pickaway App. No. 11CA2.

2011-1044. Brown v. Philadelphia Indemn. Ins. Co.

Warren App. No. CA2010-10-094, 2011-Ohio-2217.

2011-1045. State v. Tell.

Cuyahoga App. No. 95425, 2011-Ohio-2661.

O'Connor, C.J., dissents.

2011-1054. Kingsley v. Ohio State Personnel Bd. of Review.

Franklin App. No. 10AP-875, 2011-Ohio-2227.

2011-1055. State v. Ragland.

Stark App. No. 2010CA00023, 2011-Ohio-2245.

2011-1057. State v. Chandler.

Hamilton App. No. C-100449.

2011-1058. King v. Rubber City Arches, L.L.C.

Summit App. No. 25498, 2011-Ohio-2240.

2011-1059. State v. Handcock.

Clark App. No. 2010 CA 76, 2011-Ohio-2559.

2011-1060. Makowski v. Kohler.

Summit App. No. 25219, 2011-Ohio-2382.

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

2011-1061. State v. Campbell.

Cuyahoga App. No. 95348, 2011-Ohio-2281.

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

2011-1062. State v. Gilbert.

Cuyahoga App. Nos. 95083 and 95084, 2011-Ohio-1928.

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

2011-1063. State v. Roberts.

Hamilton App. No. C-100456.

2011-1064. Bachrach v. Cornwell Quality Tool Co.

Summit App. No. 25444, 2011-Ohio-2498.

Pfeifer, J., dissents.

2011-1065. Siegler v. Ohio State Univ.

Franklin App. No. 10AP-421, 2011-Ohio-2485.

2011-1067. State v. Shoopman.

Union App. No. 14-10-17, 2011-Ohio-2340.

2011-1068. State v. Oneil.

Portage App. No. 2010-P-0041, 2011-Ohio-2202.

Pfeifer, J., dissents.

2011-1069. T.S. v. Plain Dealer.

Cuyahoga App. No. 96201, 2011-Ohio-2935.

2011-1071. Thompson v. Smith.

Trumbull App. No. 2010-T-0047, 2011-Ohio-1587.

Pfeifer, J., dissents.

2011-1072. State v. Davis.

Cuyahoga App. No. 91324, 2011-Ohio-2387.

2011-1243. State v. Wightman.

Fayette App. No. CA2006-12-045

2011-1292. State v. Bates.

Cuyahoga App. No. 96262.

2011-1397. In re B.B.

Cuyahoga App. No. 96262, 2011-Ohio-3265.

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

2011-1447. In re D.N.

Ross App. No. 11CA3213, 2011-Ohio-3395.

Pfeifer, J., dissents.