

# The Supreme Court of Ohio

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## CASE ANNOUNCEMENTS

**December 24, 2014**

[Cite as *12/24/2014 Case Announcements*, 2014-Ohio-5567.]

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## MERIT DECISIONS WITHOUT OPINIONS

### **2013-1776. State v. Allen.**

Cuyahoga App. Nos. 99289 and 99191, 2013-Ohio-4188. This cause, here on appeal from the Court of Appeals for Cuyahoga County, was considered in the manner prescribed by law. On consideration thereof, the judgment of the court of appeals is reversed on the authority of *State v. Johnson*, \_\_\_ Ohio St.3d \_\_\_, 2014-Ohio-5021, \_\_\_ N.E.3d \_\_\_, and this cause is remanded to the trial court for further proceedings.

O'Connor, C.J., and Pfeifer, O'Donnell, Lanzinger, Kennedy, French, and O'Neill, JJ., concur.

### **2014-0011. State v. Sullivan.**

Fairfield App. No. 13-CA-10, 2013-Ohio-5276. This cause, here on appeal from the Court of Appeals for Fairfield County, was considered in the manner prescribed by law. On consideration thereof, the judgment of the court of appeals is reversed on the authority of *State v. Johnson*, \_\_\_ Ohio St.3d \_\_\_, 2014-Ohio-5021, \_\_\_ N.E.3d \_\_\_, and this cause is remanded to the trial court for further proceedings.

O'Connor, C.J., and Pfeifer, O'Donnell, Lanzinger, Kennedy, French, and O'Neill, JJ., concur.

### **2014-0012. State v. White.**

Fairfield App. No. 13-CA-11, 2013-Ohio-5221. This cause, here on appeal from the Court of Appeals for Fairfield County, was considered in the manner prescribed by law. On consideration thereof, the judgment of the court of appeals is reversed on the authority of *State v. Johnson*, \_\_\_ Ohio St.3d \_\_\_, 2014-Ohio-

5021, \_\_\_ N.E.3d \_\_\_, and this cause is remanded to the trial court for further proceedings.

O'Connor, C.J., and Pfeifer, O'Donnell, Lanzinger, Kennedy, French, and O'Neill, JJ., concur.

**2014-1127. State v. Sullivan.**

Franklin App. No. 13AP-173, 2014-Ohio-1443. This cause, here on appeal from the Court of Appeals for Franklin County, was considered in the manner prescribed by law. On consideration thereof, the judgment of the court of appeals is reversed on the authority of *State v. Johnson*, \_\_\_ Ohio St.3d \_\_\_, 2014-Ohio-5021, \_\_\_ N.E.3d \_\_\_, and this cause is remanded to the trial court for further proceedings.

O'Connor, C.J., and Pfeifer, O'Donnell, Lanzinger, Kennedy, French, and O'Neill, JJ., concur.

**2014-1128. State v. Sullivan.**

Franklin App. No. 13AP-173, 2014-Ohio-1443. This cause is pending before the court on the certification of a conflict by the Court of Appeals for Franklin County. Upon further consideration, it is ordered that the certified conflict is dismissed.

O'Connor, C.J., and Pfeifer, O'Donnell, Lanzinger, Kennedy, French, and O'Neill, JJ., concur.

**2014-1846. State v. McDowell.**

Summit App. No. 26697, 2014-Ohio-3900. On review of order certifying a conflict. The court determines that no conflict exists. Cause dismissed.

O'Connor, C.J., and Pfeifer, O'Donnell, and French, JJ., concur.

Lanzinger, Kennedy, and O'Neill, JJ., dissent.

## **MOTION AND PROCEDURAL RULINGS**

**2010-2198. State v. McKelton.**

Butler C.P. No. CR2010020189. On motion for leave to file response instanter. Motion denied. It is further ordered that the appellant's response to the sur-reply is stricken.

Pfeifer, J., dissents.

**2014-1436. State v. Greathouse.**

Montgomery App. No. 26053. On request for findings of fact and conclusions of law. Request denied.

**2014-1785. Austell v. Bowie.**

Hamilton App. No. C-130579. On motion for stay of court of appeals' decision. Motion denied.

O'Neill, J., dissents.

**2014-1819. In re Q.O.**

Hamilton App. No. C-130548, 2014-Ohio-3893. On revised motion for stay. Motion denied.

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

**2014-1826. State v. Richardson.**

Seneca App. No. 13-13-54, 2014-Ohio-3541. On motion for delayed appeal. Motion denied.

Lanzinger and O'Neill, JJ., dissent.

**2014-1827. State v. Burden.**

Summit App. No. 27298, 2014-Ohio-4456. On motion for stay of court of appeals' judgment. Motion denied.

**2014-1847. Am. Mun. Power, Inc. v. Bechtel Power Corp.**

Certified Question of State Law, United States District Court, Southern District of Ohio, Eastern Division, No. 2:11-CV-131. Upon review pursuant to S.Ct.Prac.R. 9.05, the court will answer the following question:

Does reckless conduct by the breaching party, as defined in *Anderson v. Massillon*, 134 Ohio St. 3d 380 (2012), render a contractual limitation of liability clause unenforceable?

It is ordered by the court that petitioner shall file its merit brief within 40 days of the date of this entry and the parties shall otherwise proceed in accordance with S.Ct.Prac.R. 16.02–16.04; and S.Ct.Prac.R. 9.07.

Pfeifer, O'Donnell, Lanzinger, and Kennedy, JJ., concur.

O'Connor, C.J., and French and O'Neill, JJ., dissent and would not answer the certified question.

**2014-1858. State v. Moorer.**

Cuyahoga App. No. 101214, 2014-Ohio-4581. On motion for stay of court of appeals' judgment. Motion denied.

**2014-1875. State v. Kerby.**

Clark App. No. 2013 CA 31, 2014-Ohio-3358. On motion for delayed appeal. Motion denied.

Pfeifer, Kennedy, and O'Neill, JJ., dissent.

**2014-1889. State v. Vasquez.**

Franklin App. No. 13AP-366, 2014-Ohio-224. On motion for delayed appeal. Motion granted.

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

**2014-1890. State v. Bohanan.**

Franklin App. Nos. 13AP-472 and 13AP-474. On motion for delayed appeal. Motion denied.

**2014-1906. Fahey Banking Co. v. Squire.**

Mahoning App. No. 14 MA 123. On emergency motion of Inner City Transit, L.L.C., to stay. Motion denied. On motion to strike memo of The Fahey Banking Company opposing emergency motion for stay. Motion denied.

**2014-1907. State v. Fortson.**

Cuyahoga App. No. 100707, 2014-Ohio-3720. On motion for delayed appeal. Motion denied.

O'Neill, J., dissents.

**2014-1911. State v. Ringer.**

Hamilton App. No. C-130656, 2013-Ohio-2442. On motion for delayed appeal. Motion denied.

Lanzinger and O'Neill, JJ., dissent.

**2014-1942. State v. Burnett.**

Clark App. No. 2013-CA-98, 2014-Ohio-4246. On review of order certifying a conflict. The court determines that a conflict exists. Cause held for the decision in 2014-0563, *State v. South*, 9th Dist. Summit No. 26967, 2014-Ohio-374, and briefing schedule stayed.

Pfeifer, J., dissents.

**2014-1967. State v. Ramey.**

Auglaize App. No. 2-11-11, 2012-Ohio-133. On motion for delayed appeal. Motion denied.

**2014-1982. State v. Dehner.**

Clermont App. No. CA2012-12-090, 2013-Ohio-3576. On motion for delayed appeal. Motion denied.

**MISCELLANEOUS DISMISSALS**

**2013-1088. Lincoln Elec. Co. v. Travelers Cas. & Sur. Co.**

Certified Question of State Law, United States District Court, Northern District of Ohio, Eastern Division, No. 1:11-CV-2253. This cause is pending before the court on the certification of a state law question from the United States District Court for the Northern District of Ohio, Eastern Division.

Upon consideration of the joint application for dismissal, it is ordered by the court that the application for dismissal is granted. Accordingly, this cause is dismissed.

**APPEALS ACCEPTED FOR REVIEW**

**2014-1236. Midland Funding, L.L.C. v. Hottenroth.**

Cuyahoga App. No. 100146, 2014-Ohio-2390. Discretionary appeal accepted. Cause held for decision in No. 2013-0118, *Taylor Jarvis v. First Resolution Invest. Corp.*, and briefing schedule stayed.

Pfeifer, J., dissents.

**2014-1295. State v. Baker.**

Ashtabula App. No. 2013-A-0020, 2014-Ohio-2873.

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

**APPEALS NOT ACCEPTED FOR REVIEW**

**2012-1739. State v. Awkal.**

Cuyahoga App. Nos. 98532 and 98553, 2012-Ohio-3970.

O'Donnell, J., dissents.

**2014-1203. Hill v. Williamson.**

Marion App. No. 9-13-74.

**2014-1259. Zeter v. Weinle Motorsports.**

Hamilton App. No. C-130660.

**2014-1297. State v. Ayala.**

Union App. No. 14-13-22, 2014-Ohio-2576.

**2014-1299. State v. Grant.**

Cuyahoga App. No. 100497, 2014-Ohio-2656.

O'Connor, C.J., and French, J., dissent, and would remand the case to the court of appeals for application of *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659.

**2014-1301. State v. Evans.**

Scioto App. No. 14CA3633.

**2014-1302. State v. McElfresh.**

Licking App. No. 13 CA 73, 2014-Ohio-2605.

O'Neill, J., dissents.

**2014-1304. Jones v. Roberts.**

Franklin App. No. 14AP-151, 2014-Ohio-2798.

O'Neill, J., dissents.

**2014-1306. In re K.E.**

Hamilton App. Nos. C-130352 and C-130370.

O'Donnell, Kennedy, and O'Neill, JJ., dissent.

**2014-1308. Sacksteder v. Senney.**

Montgomery App. No. 25892, 2014-Ohio-2678.

Kennedy, J., dissents, and would accept the discretionary appeal on Propositions of Law I and II.

**2014-1311. Ginley v. Hamilton.**

Cuyahoga App. No. 100361, 2014-Ohio-2642.

**2014-1313. State v. Zanni.**

Ross App. No. 13CA3392, 2014-Ohio-2806.

**2014-1320. Johnson v. Gross.**

Hamilton App. No. C-130423.

**2014-1322. State v. Boyd.**

Cuyahoga App. Nos. 100350, 100351, 100352, and 100353, 2014-Ohio-2640.

**2014-1326. State v. Berry.**

Clermont App. No. CA2013-11-084, 2014-Ohio-2715.

**2014-1332. State v. Sierra.**

Wood App. No. WD-13-062, 2014-Ohio-2107.

**2014-1333. Roghelia v. Hopedale Mining, L.L.C.**

Harrison App. No. 13 HA 8, 2014-Ohio-2735.

French, J., dissents.

**2014-1334. Yohannes Parkwood, Inc., v. Ohio Liquor Control Comm.**

Franklin App. No. 13AP-974, 2014-Ohio-2736.

**2014-1343. Louis v. Fulton.**

Hamilton App. No. C-130583.

**2014-1344. State v. Thomas.**

Cuyahoga App. No. 100749, 2014-Ohio-2410.

**2014-1348. State ex rel. Patrick Bros. v. Putnam Cty. Bd. of Commrs.**

Putnam App. No. 12-13-05, 2014-Ohio-2717.

French, J., dissents.

**2014-1387. Nix v. Ohio Dept. of Rehab. & Corr.**

Franklin App. No. 13AP-547, 2014-Ohio-2902.

**2014-1412. State v. Thomas.**

Franklin App. No. 13AP-985, 2014-Ohio-2912.

Pfeifer and O'Neill, JJ., dissent.

**2014-1416. CitiMortgage, Inc. v. Hijjawi.**

Lake App. No. 2013-L-105, 2014-Ohio-2886.

**2014-1430. State v. Henderson.**

Wayne App. No. 13CA0039, 2014-Ohio-2854.

**2014-1446. State v. Houston.**  
Hamilton App. No. C-130429, 2014-Ohio-3111.

**2014-1488. State v. Beechler.**  
Clark App. No. 2014 CA 11, 2014-Ohio-1488.

**2014-1504. Iqbal v. Wells Fargo Bank, N.A.**  
Franklin App. No. 14AP-31, 2014-Ohio-3156.

**2014-1507. State v. Walburg.**  
Franklin App. No. 14AP-493.

**2014-1679. State v. Chappell.**  
Mahoning App. No. 12 MA 206, 2014-Ohio-3877.  
Pfeifer, French, and O'Neill, JJ., dissent.

**2014-1880. In re R.L.**  
Greene App. Nos. 2013-CA-46 and 2013-CA-50, 2014-Ohio-3955.

**2014-1965. In re K.M.**  
Medina App. No. 14CA0025-M, 2014-Ohio-4268.  
O'Neill, J., dissents.

**2014-1699. State v. Coleman.**  
Hancock App. No. 5-13-15, 2014-Ohio-1483.

**2014-1734. State v. Hawkins.**  
Gallia App. No. 13CA3, 2014-Ohio-1224.

## **RECONSIDERATION OF PRIOR DECISIONS**

**2013-0984. Independence v. Office of the Cuyahoga Cty. Executive.**  
Cuyahoga App. No. 97167, 2013-Ohio-1336. Reported at \_\_\_ Ohio St.3d  
\_\_\_, 2014-Ohio-4650, \_\_\_ N.E.3d \_\_\_. On motion for reconsideration and joint  
memo in support of amicus curiae County Engineers' Association of Ohio. Motion  
denied.  
O'Donnell, J., dissents.

**2013-1552. Plassman v. Ohio Adult Parole Auth.**

In Habeas Corpus. 2013-Ohio-5678. Reported at 141 Ohio St.3d 14, 2014-Ohio-4033, 21 N.E.3d 271. On motion for reconsideration. Motion denied.

O’Neill, J., dissents.

**2013-1574. Fondessy v. Simon.**

Ottawa App. No. OT-11-041, 2013-Ohio-3465. Reported at \_\_\_ Ohio St.3d \_\_\_, 2014-Ohio-4638, \_\_\_ N.E.3d \_\_\_. On motion for reconsideration. Motion denied.

Kennedy, French, and O’Neill, JJ., dissent.

On motion for sanctions. Motion denied.

**2013-1994. State ex rel. Luoma v. Russo.**

Cuyahoga App. No. 99844, 2013-Ohio-5033. Reported at 141 Ohio St.3d 53, 2014-Ohio-4532, 21 N.E.3d 305. On motion for reconsideration. Motion denied.

**2014-1321. Harper v. Tuscarawas Cty. Court of Common Pleas, Juvenile Div.**

In Mandamus. Reported at 140 Ohio St.3d 1464, 2014-Ohio-4629, 18 N.E.3d 444. On motion for reconsideration. Motion denied.

**2014-1492. Macon v. Toledo Mun. Court.**

In Mandamus. Reported at 140 Ohio St.3d 1495, 2014-Ohio-4845, 18 N.E.3d 1250. On motion for reconsideration. Motion denied.

Lanzinger, J., not participating.