

# The Supreme Court of Ohio

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## CASE ANNOUNCEMENTS AND ADMINISTRATIVE ACTIONS

November 26, 2003

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### MERIT DECISIONS WITH OPINIONS

**2002-1993. State v. Quandt, 2003-Ohio-6014.**

Cuyahoga App. No. 80222, 2002-Ohio-4903. Sua sponte, cause dismissed as having been improvidently allowed.

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

**2003-0097. State ex rel. Hassan v. Indus. Comm., 2003-Ohio-6022.**

Franklin App. No. 02AP-153, 2002-Ohio-6564. Judgment affirmed.

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

### MERIT DECISIONS WITHOUT OPINIONS

**2003-1722. State ex rel. Jones v. Court of Appeals, Tenth Appellate Dist.**

In Procedendo. On complaint in procedendo of Henry G. Jones. On S.Ct.Prac.R. X(5) determination, cause dismissed.

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

**2003-1729. State ex rel. Ahmed v. Harris.**

In Prohibition. On answer of respondent Grace L. Hoffman. On S.Ct.Prac.R. X(5) determination, cause dismissed.

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

**2003-1763. State ex rel. Johnson v. Croft.**

In Mandamus. On answer of respondent. On S.Ct.Prac.R. X(5) determination, cause dismissed.

Moyer, C.J., Resnick, F.E. Sweeney, Pfeifer, O'Connor and O'Donnell, JJ., concur.

Lundberg Stratton, J., dissents and would grant an alternative writ.

**2003-1764. State ex rel. Harris v. Travis.**

In Prohibition. On motion to dismiss of Judge Alan Travis and motion to dismiss of Judge J. Warren Bettis. Motions to dismiss sustained. Cause dismissed.

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

**2003-1799. Fish v. Ohio Cas. Ins. Co.**

Stark App. No. 2003CA00041, 2003-Ohio-4276. On review of order certifying a conflict. The court determines that no conflict exists within the meaning of S.Ct.Prac.R. IV(2)(B). This cause is therefore dismissed.

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

F.E. Sweeney, J., dissents.

**2003-1800. Fish v. Ohio Cas. Ins. Co.**

Stark App. No. 2003CA00030, 2003-Ohio-4380. On review of order certifying a conflict. The court determines that no conflict exists within the meaning of S.Ct.Prac.R. IV(2)(B). This cause is therefore dismissed.

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

**2003-1836. Holsinger v. Hartford Ins. Co. of the Midwest.**

Pike App. No. 02CA702, 2003-Ohio-4446. On review of order certifying a conflict. The court determines that a conflict does not exist within the meaning of S.Ct.Prac.R. IV(2)(B). This cause is therefore dismissed.

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

F.E. Sweeney, J., dissents.

**2003-1862. Hendry v. CNA Ins. Cos.**

Stark App. No. 2002CA00405, 2003-Ohio-4042. On review of order certifying a conflict. The court determines that no conflict exists within the meaning of S.Ct.Prac.R. IV(2)(B). This cause is therefore dismissed.

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

**2003-1881. Fisher v. Brigano.**

In Habeas Corpus. On petition for writ of habeas corpus of James C. Fisher. Sua sponte, cause dismissed.

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

**MOTION AND PROCEDURAL RULINGS**

**1985-0007. State v. Williams.**

Cuyahoga App. No. 47853. On motion to set execution date. Motion granted.

**1999-0395. State v. Myers.**

Greene App. No. 96CA38. On motion to reopen based on ineffective assistance of appellate counsel and motion to set execution date. Motion to reopen denied. Motion to set execution date granted.

**2003-0321 and 2003-0324. Millonzi v. Perram Elec., Inc.**

Lake App. Nos. 2001-L-109, 2001-L-110, and 2001-L-111, 2002-Ohio-7340. On amicus curiae motions for leave to file under S.Ct.Prac.R. XI of Evans Koukios. Motions denied.

**2003-0476. Gable v. Gates Mills.**

Cuyahoga App. No. 80469, 151 Ohio App.3d 480, 2003-Ohio-399. On motion to strike appellant's merit brief. Motion denied.

F.E. Sweeney, J., dissents.

Sua sponte, a leave to file of 30 days is granted.

F.E. Sweeney, J., dissents.

**2003-0896. Wilson v. Haimerl.**

Madison App. No. CA2002-08-017, 2003-Ohio-1774. On motion for stay of briefing. Motion denied as moot.

Resnick, F.E. Sweeney and Pfeifer, JJ., dissent.

**2003-1010. State ex rel. Ohio Civ. Serv. Emp. Assn., AFSCME, Local 11, AFL-CIO v. State Emp. Relations Bd.**

Franklin App. No. 02AP-1007, 2003-Ohio-2021. On request for oral argument. Request granted.

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

**2003-1060. Ohio Bd. of Regents v. Miller.**

Franklin App. No. 03AP-172. On response to show-cause order. Selina Miller is sanctioned in the amount of \$50.

Resnick, Pfeifer and O'Connor, JJ., dissent and would dismiss the show-cause order.

**2003-1090. Sagar v. Nationwide Mut. Fire Ins. Co.**

Franklin App. No. 02AP-1104, 2003-Ohio-2268. On motion to dissolve stay of briefing schedule. Motion denied as moot.

Resnick, F.E. Sweeney and Pfeifer, JJ., dissent.

**2003-1127. State ex rel. Davis v. Wilson.**

Trumbull App. No. 2003-T-0049, 2003-Ohio-2840. On motion to execute a form of remedy by a procedural order. Motion denied.

**2003-1783. McGrath v. Westfield Ins. Co.**

Cuyahoga App. No. 83036. On motion for stay of proceedings related to this matter by any lower court or arbitration panel. Motion denied.

Resnick, F.E. Sweeney and Pfeifer, JJ., dissent.

**2003-1829. State v. Gambrel.**

Miami App. No. 2000CA29. On motion for leave to file delayed appeal. Motion denied.

Lundberg Stratton, J., dissents.

**2003-1863. State v. Fisher.**

Summit App. No. 20701, 2002-Ohio-3026. On motion for leave to file delayed appeal. Motion granted.

Resnick, F.E. Sweeney and O'Connor, JJ., dissent.

**2003-1866. State v. Webb.**

Clark App. No. 2001CA59, 2002-Ohio-2377. On motion for leave to file delayed appeal. Motion denied.

**2003-1868. Schuller v. US Steel Corp.**

Trumbull App. No. 2002-T-0165, 2003-Ohio-4870. On review of order certifying a conflict. The court determines that a conflict exists. The parties are to brief the

issue stated at page 3 of the court of appeals' Judgment Entry filed October 21, 2003:

"Based upon the foregoing conflicts, we certify the following issue for review by the Supreme Court of Ohio: Whether an expert's witness fee for live in-court testimony is a reimbursable cost of legal proceedings pursuant to R.C. 4123.512(F)."

The conflict cases are *Dean v. Conrad* (1999), 134 Ohio App.3d 367, 731 N.E.2d 212; and *Dixon v. Ford Motor Co.*, Cuyahoga App. No. 82148, 2003-Ohio-3959, 2003 WL 21710796.

**2003-1890. State v. Berryman.**

Montgomery App. No. 18770, 2002-Ohio-264. On motion for leave to file delayed appeal. Motion denied.

O'Donnell, J., dissents.

**2003-1896. State v. Bass.**

Franklin App. No. 02AP-547, 2003-Ohio-1642. On motion for leave to file delayed appeal. Motion denied.

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

**2003-1900. State v. Berry.**

Coshocton App. No. 01CA26, 2003-Ohio-167. On motion for leave to file delayed appeal. Motion denied.

**APPEALS ACCEPTED FOR REVIEW**

**2003-1261. Ratkosky v. Scottsdale Surplus Lines Ins. Co.**

Cuyahoga App. No. 81519, 2003-Ohio-2868. Discretionary appeal accepted; cause held for the decision in 2003-0474, *Kyle v. Buckeye Union Ins. Co.*, Lucas App. No. L-02-1166, 2003-Ohio-488; and briefing schedule stayed.

Resnick, F.E. Sweeney and Pfeifer, JJ., dissent.

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

Butler App. Nos. CA2002-09-220, CA2002-09-223, and CA2002-09-227, 2003-Ohio-3699. On discretionary appeal, motion for admission pro hac vice of M. King Hill III by Joseph P. Thomas, motion for admission pro hac vice of Paul F. Strain by Joseph P. Thomas, motion for admission pro hac vice of D. Strauber, M. Yelenick, P. Wilkinson, and G. Werwaiss by D. Cupps for Purdue etc. et al., motion for admission pro hac vice of Daniel Popeo and Richard Samp by Elisa P. Pizzino, motion for admission pro hac vice of David H. Remes by Quintin

Lindsmith, and motion for admission pro hac vice of John H. Beisner, Stephen J. Harburg, and Morgen A. Sullivan by Brian G. Selden. Discretionary appeal accepted and motions granted.

F.E. Sweeney and Pfeifer, JJ., dissent.

Resnick, J., not participating.

## **APPEALS NOT ACCEPTED FOR REVIEW**

### **2003-0178. State v. Thompson.**

Cuyahoga App. No. 81573, 2002-Ohio-6845.

### **2003-0864. Cincinnati Ins. Co. v. Torok.**

Jefferson App. No. 01JE24, 2003-Ohio-1764.

O'Donnell, J., dissents, would allow, and would hold this cause for the decision in *Tucker v. Wilson*, Clermont App. No. CA2002-01-002, 2002-Ohio-5142.

### **2003-1329. Amore v. Grange Ins. Co.**

Richland App. No. 02CA75, 2003-Ohio-3208. Discretionary appeal and cross-appeal not accepted.

Resnick, F.E. Sweeney and Pfeifer, JJ., dissent.

### **2003-1427. In re Ewanicky.**

Cuyahoga App. No. 81742, 2003-Ohio-3351.

Resnick, J., dissents.

### **2003-1482. Remnant Room v. Smith.**

Trumbull App. No. 2002-T-0041, 2003-Ohio-3545.

### **2003-1494. Akron v. Cripple.**

Summit App. No. 21385, 2003-Ohio-3920.

### **2003-1503. Carson v. Deloach.**

Cuyahoga App. No. 83044.

O'Connor, J., would allow on Proposition of Law No. I.

### **2003-1522. State v. Steinke.**

Cuyahoga App. No. 81785, 2003-Ohio-3527.

**2003-1523. State v. Thorpe.**

Franklin App. Nos. 02AP-1356 and 02AP-1359.

**2003-1525. Granzier v. Cabbage, Inc.**

Cuyahoga App. No. 81977, 2003-Ohio-3532.

**2003-1526. State v. James.**

Franklin App. Nos. 03AP-607 and 03AP-608.

**2003-1527. Talley v. Springfield.**

Montgomery App. No. 19818, 2003-Ohio-3979.

**2003-1528. Gasper v. Washington Twp.**

Franklin App. No. 02AP-1192, 2003-Ohio-3750.

**2003-1540. State v. Barr.**

Guernsey App. No. 03CA10.

**2003-1549. Morrison v. Unizan Bank.**

Franklin App. No. 03AP-721.

**2003-1550. Akron v. Burns.**

Summit App. No. 21338, 2003-Ohio-3785.

**2003-1551. State v. Walters.**

Hamilton App. No. C-990866.

**2003-1552. McClain v. Brown.**

Wyandot App. No. 16-03-12.

**2003-1553. State v. Huggins.**

Lucas App. No. L-02-1289, 2003-Ohio-3843.

**2003-1556. State v. Vincent.**

Ross App. No. 03CA2713, 2003-Ohio-3998.

**2003-1560. State v. Cobb.**

Hamilton App. Nos. C-020757 and C-020773, 2003-Ohio-3821.

Pfeifer and O'Connor, JJ., dissent.

**2003-1566. State v. DeArmitt.**

Wayne App. No. 03CA0036.

**2003-1571. Woodward v. Continental Ins. Co.**

Huron App. No. H-02-043, 2003-Ohio-3838 and 2003-Ohio-3992.

**2003-1574. Grubic v. Grubic.**

Cuyahoga App. No. 82462, 2003-Ohio-3680.

**2003-1575. Nationwide Prop. & Cas. Ins. Co. v. Cincinnati Ins. Co.**

Stark App. No. 2003CA0088.

Resnick, F.E. Sweeney and Pfeifer, JJ., dissent.

**2003-1579. State v. Jefferson.**

Hamilton App. No. C-020802, 2003-Ohio-4308.

**2003-1590. State v. Doan.**

Cuyahoga App. No. 82007, 2003-Ohio-3951.

**2003-1594. Hendry v. CNA Ins. Cos.**

Stark App. No. 2002CA00405, 2003-Ohio-4042.

Pfeifer, J., dissents.

**2003-1595. Marckel v. Raceway Park, Inc.**

Lucas App. No. L-02-1361, 2003-Ohio-3989.

**2003-1596. State v. Moore.**

Erie App. No. E-02-049, 2003-Ohio-3983.

O'Connor, J., dissents.

**2003-1601. State v. Balvin.**

Stark App. No. 2003CA00223.

**2003-1607. State v. Bush.**

Cuyahoga App. No. 81959, 2003-Ohio-4054.

O'Connor, J., dissents.

**2003-1609. Reese v. Hartford Fire Ins. Co.**

Summit App. No. 21455, 2003-Ohio-4269.

Resnick, F.E. Sweeney and Pfeifer, JJ., dissent.

**2003-1611. Schlesselman v. Nationwide Ins. Co.**

Licking App. No. 02CA117, 2003-Ohio-4142.

**2003-1615. Zartman v. Swad.**

Fairfield App. No. 02CA86, 2003-Ohio-4140.

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

**2003-1616. Calhoun v. Heidari.**

Gallia App. No. 02CA20, 2003-Ohio-4156.

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

**2003-1618. Marks v. Allstate Ins. Co.**

Stark App. No. 2002CA00417, 2003-Ohio-4043. On discretionary appeal and motion for admission pro hac vice of Alan S. Gilbert by Randolph L. Snow. Discretionary appeal not accepted and motion denied.

F.E. Sweeney and Pfeifer, JJ., dissent.

**2003-1619. State v. Steward.**

Washington App. No. 02CA43, 2003-Ohio-4082.

**2003-1620. Hissong v. McNerney.**

Auglaize App. No. 2-02-17, 2003-Ohio-4020.

**2003-1621. Seminatore v. Climaco, Climaco, Lefkowitz & Garofoli Co., L.P.A.**

Cuyahoga App. No. 81568, 2003-Ohio-3945.

**2003-1623. Cuyahoga Cty. Bd. of Commrs. v. Richard L. Bowen & Assoc., Inc.**

Cuyahoga App. No. 81867, 2003-Ohio-3663.

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

**2003-1624. Pickering v. Nationwide Mut. Ins. Co.**

Cuyahoga App. No. 82512, 2003-Ohio-4076.

F.E. Sweeney, J., dissents.

**2003-1627. State v. Montgomery.**

Huron App. No. H-02-039, 2003-Ohio-4095.

**2003-1629. In re Adoption of Primmer.**

Crawford App. No. 3-03-11.

Pfeifer, J., dissents.

**2003-1630. Remer v. Conrad.**

Lucas App. No. L-02-1380, 2003-Ohio-4096.

O'Connor, J., dissents.

**2003-1632. State v. Hudak.**

Cuyahoga App. No. 82108, 2003-Ohio-3805.

**2003-1639. State v. Patton.**

Medina App. No. 02CA0113M, 2003-Ohio-4030.

**2003-1645. State v. Williams.**

Cuyahoga App. No. 81949, 2003-Ohio-3950.

**2003-1652. State v. Clark.**

Franklin App. No. 02AP-1312, 2003-Ohio-4136.

**2003-1656. State v. Williams.**

Summit App. No. 21395, 2003-Ohio-4154.

**2003-1660. State v. Mumm.**

Knox App. No. 02CA000034.

**2003-1662. State v. Dumas.**

Fairfield App. No. 02CA60, 2003-Ohio-4117.

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

**2003-1666. Kohntopp v. Hamilton Mut. Ins. Co.**

Wood App. No. WD-02-063, 2003-Ohio-4219.

**2003-1672. State v. Saade.**

Cuyahoga App. Nos. 80705 and 80706, 2002-Ohio-5564.

**2003-1681. State v. Ray.**

Summit App. No. 21233, 2003-Ohio-2159.

**2003-1687. Fish v. Ohio Cas. Ins. Co.**  
Stark App. No. 2003CA00041, 2003-Ohio-4276.  
F.E. Sweeney, J., dissents.

**2003-1698. State v. McKinniss.**  
Crawford App. No. 3-03-05, 2003-Ohio-4239.

**2003-1702. Fish v. Ohio Cas. Ins. Co.**  
Stark App. No. 2003CA00030, 2003-Ohio-4380.

**2003-1708. Sobieraj v. Gomersall.**  
Cuyahoga App. No. 81708, 2003-Ohio-4339.  
O'Donnell, J., dissents.

**2003-1716. Standish v. Ohio Cas. Ins. Co.**  
Hamilton App. No. C-030041, 2003-Ohio-4309.

**2003-1718. State v. Thompson.**  
Cuyahoga App. No. 79334, 2003-Ohio-4336.

**2003-1723. State v. Watson.**  
Summit App. No. 21664.

**2003-1748. State v. Williams.**  
Hamilton App. Nos. C-020072 and C-020124.  
O'Connor, J., dissents.

**2003-1753. State v. Myles.**  
Marion App. No. 9-2000-93, 2001-Ohio-2216.

**2003-1758. In re Beresh Children.**  
Stark App. No. 2003CA00089, 2003-Ohio-4898.  
Pfeifer, J., dissents.

**2003-1759. State v. Swartsell.**  
Butler App. No. CA2002-06-151, 2003-Ohio-4450.

## **RECONSIDERATION OF PRIOR DECISIONS**

**2002-0612. Assn. of Fire Fighters, Local 93 v. Cleveland.**

Cuyahoga App. No. 78970, 2002-Ohio-498. Reported at 99 Ohio St.3d 476, 2003-Ohio-4278, 793 N.E.2d 484. On motion for reconsideration. Motion denied.

Lundberg Stratton, J., dissents.

O'Donnell, J., not participating.

**2002-1785. State ex rel. Preschool Dev., Ltd. v. Springboro.**

In Mandamus. Reported at 99 Ohio St.3d 347, 2003-Ohio-3999, 792 N.E.2d 721. On motion for reconsideration and motion for reconsideration of amicus curiae Berns, Ockner, Greenberger, LLC. Motions denied.

Resnick, F.E. Sweeney and Pfeifer, JJ., dissent.

**2002-2237. Disciplinary Counsel v. Baumgartner.**

Reported at 100 Ohio St.3d 41, 2003-Ohio-4756, 796 N.E.2d 495. On motion for reconsideration. Motion denied.

Resnick and O'Donnell, JJ., not participating.

**2003-0087. State ex rel. Wiley v. Whirlpool Corp.**

Franklin App. No. 02AP-340, 2002-Ohio-6558. Reported at 100 Ohio St.3d 110, 2003-Ohio-5100, 796 N.E.2d 925. On motion for reconsideration. Motion denied.

**2003-0636. State ex rel. Howard v. Seaway Foodtown, Inc.**

Franklin App. No. 00AP-1097. Reported at 100 Ohio St.3d 169, 2003-Ohio-5285, 797 N.E.2d 85. On motion for reconsideration. Motion denied.

**2003-0686. Griffith v. Wausau Business Ins. Co.**

Franklin App. Nos. 02AP-551 and 02AP-664, 2003-Ohio-955. Reported at 100 Ohio St.3d 1428, 2003-Ohio-5396, 797 N.E.2d 509. On motion for reconsideration. Motion denied.

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

**2003-0902. Potts v. Rose.**

Richland App. No. 03CA29. Reported at 100 Ohio St.3d 119, 2003-Ohio-5102, 796 N.E.2d 935. On motion for reconsideration. Motion denied.

**2003-0945. State ex rel. McGrath v. Ohio Adult Parole Auth.**

Cuyahoga App. No. 82287, 2003-Ohio-1969. Reported at 100 Ohio St.3d 72, 2003-Ohio-5062, 796 N.E.2d 526. On motion for reconsideration. Motion denied.

**2003-1085. State ex rel. Galloway v. Money.**

Marion App. No. 9-03-16. Reported at 100 Ohio St.3d 74, 2003-Ohio-5060, 796 N.E.2d 528. On motion for reconsideration. Motion denied.

**2003-1267. Koukios v. Ganson.**

Hamilton App. Nos. C-010659, C-010735, and C-020091. Reported at 99 Ohio St.3d 1539, 2003-Ohio-4671, 795 N.E.2d 680. On motion for reconsideration. Motion denied.

**2003-1279. Snow v. Brown.**

Franklin App. No. 02AP-1236, 2003-Ohio-3300. Reported at 100 Ohio St.3d 1425, 2003-Ohio-5232, 797 N.E.2d 92. On motion for reconsideration. Motion denied.

**2003-1341. In re Conservatorship of Ahmed.**

Belmont App. Nos. 01BA13 and 01BA48, 2003-Ohio-3272. Reported at 100 Ohio St.3d 1433, 2003-Ohio-5396, 797 N.E.2d 512. On motion for reconsideration. Motion denied.

**2003-1507. State v. Williams.**

Franklin App. No. 02AP-507, 2003-Ohio-2694. Reported at 100 Ohio St.3d 1421, 2003-Ohio-5232, 797 N.E.2d 90. On motion for reconsideration and motion to strike appellant's motion for reconsideration. Motions denied.