

The Supreme Court of Ohio

CASE ANNOUNCEMENTS

April 8, 2009

[Cite as *04/08/2009 Case Announcements*, 2009-Ohio-1638.]

MERIT DECISIONS WITH OPINIONS

2007-1452. Sogg v. Zurz, Slip Opinion No. 2009-Ohio-1526.

Franklin App. No. 06AP-883, 2007-Ohio-3219. Judgment reversed and cause remanded to the trial court.

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

Lanzinger, J., concurs in judgment only.

2008-0392. Estate of Stevic v. Bio-Medical Application of Ohio, Inc., Slip Opinion No. 2009-Ohio-1525.

Richland App. No. 2006 CA 0095, 2008-Ohio-33. Judgment affirmed and cause remanded to the trial court.

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

2008-1160. State ex rel. Sawicki v. Court of Common Pleas of Lucas Cty., Slip Opinion No. 2009-Ohio-1523.

Lucas App. No. L-07-1386, 2008-Ohio-2479. Judgment reversed in part and cause remanded.

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

Lundberg Stratton, J., dissents.

MERIT DECISIONS WITHOUT OPINIONS

2009-0178. [State ex rel.] Grundstein v. Melling.

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.

2009-0346. [State ex rel.] Green v. Kubicki.

In Prohibition. On motion to dismiss. Motion to dismiss granted. Cause dismissed as moot.

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

2009-0385. Hughley v. Saunders.

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

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

2009-0388. State ex rel. Wenker v. Court of Appeals, Ninth Appellate Dist.

In Prohibition. On relator's complaint, motion to amend complaint, and emergency motion for stay and respondents' motion to dismiss. Motions to amend complaint and for stay denied. Motion to dismiss granted. Cause dismissed.

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

MOTION AND PROCEDURAL RULINGS

1994-0722. State v. Fautenberry.

Hamilton App. No. C-920734. On motion to set execution date. Motion granted. It is ordered that appellant's sentence be carried into execution by the Warden of the Southern Ohio Correctional Facility, or in his absence, by the Deputy Warden on Tuesday, July 14, 2009, in accordance with the statutes so provided.

It is further ordered that a certified copy of this entry and a warrant under the seal of this court be duly certified to the Warden of the Southern Ohio Correctional Facility and that said Warden shall make due return thereof to the Clerk of the Court of Common Pleas of Hamilton County.

Pfeifer, J., dissents.

1996-2346. State v. Getsy.

Trumbull C.P. No. 95CR399. On motion to set execution date. Motion granted. It is further ordered that appellant's sentence be carried into execution by the Warden

of the Southern Ohio Correctional Facility, or in his absence, by the Deputy Warden on Tuesday, August 18, 2009, in accordance with the statutes so provided.

It is further ordered that a certified copy of this entry and a warrant under the seal of this court be duly certified to the Warden of the Southern Ohio Correctional Facility and that said Warden shall make due return thereof to the Clerk of the Court of Common Pleas of Trumbull County.

Pfeifer, J., dissents.

2008-1898. In re Guardianship of Shear.

Cuyahoga App. No. 91293. On motion to further redact. Motion denied.

2009-0026. State ex rel. Nickoli v. Erie Metroparks.

In Mandamus. On respondents' answer, request for oral argument on its motion for judgment on the pleadings, and motion to strike. Request for oral argument and motion to strike denied.

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.

O'Donnell, J., not participating.

2009-0044. McGhan v. Vettel.

Ashtabula App. No. 2008-A-0036, 2008-Ohio-6063. On motion to stay further proceedings in the Ashtabula County Court of Common Pleas pending appeal and motion for reasonable visitation pending appeal. Motions denied.

2009-0333. State ex rel. Huston v. Vinton Cty. Emergency Med. Servs.

In Mandamus. On answer of respondent.

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; relator shall file a brief within 30 days of the date of this entry; 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.

Pfeifer, J., dissents.

2009-0341. State v. Hake.

Trumbull App. No. 2007-T-0091, 2008-Ohio-1332. On motion for leave to file delayed appeal. Motion denied.

2009-0351. State v. Priesand.

Cuyahoga App. No. 89370, 174 Ohio App.3d 689, 2008-Ohio-129. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

2009-0440. State v. Ozinga.

Ashtabula App. No. 2008-A-0038, 2009-Ohio-181. On motion for stay of court of appeals' judgment. Motion denied.

Moyer, C.J., dissents.

2009-0482. Fraher Transit, Inc. v. Aldi, Inc.

Summit App. No. 24133, 2009-Ohio-336. On motion for stay of court appeals' judgment. Motion denied.

Lundberg Stratton, J., dissents.

APPEALS ACCEPTED FOR REVIEW

2008-2424. State v. Williams.

Montgomery App. No. 22532, 2008-Ohio-6245.

Pfeifer, J., dissents.

2008-2487. State v. Lupardus.

Washington App. No. 08CA31, 2008-Ohio-5960. Discretionary appeal accepted on Proposition of Law No. I.

Lundberg Stratton and O'Connor, JJ., would also accept the appeal on Proposition of Law No. II.

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

2008-2490. State v. Troisi.

Lake App. No. 2008-L-060, 179 Ohio App.3d 326, 2008-Ohio-6062.

Lanzinger, J., would accept the appeal on Proposition of Law No. II only.

Pfeifer and O'Donnell, JJ., dissent.

2008-2501. Nagel v. Huntington Natl. Bank.

Cuyahoga App. No. 90662, 179 Ohio App.3d 126, 2008-Ohio-5741. Discretionary appeal accepted on Proposition of Law No. I; cause held for the decision in 2008-0900, *Spiller v. Sky Bank-Ohio Bank Region*, Logan App. No. 8-07-03, 2008-Ohio-1338; and briefing schedule stayed.

Lundberg Stratton and O'Donnell, JJ., would also accept the appeal on Proposition of Law No. II.

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

2008-2502. State v. Bodyke.

Huron App. Nos. H-07-040, H-07-041, and H-07-042, 2008-Ohio-6387. Discretionary appeal accepted. Oral argument will be held on the same day as 2008-1624, *In re Smith*, Allen App. No. 1-07-58, 2008-Ohio-3234.

Pfeifer, J., dissents.

2009-0014. Estate of Graves v. Circleville.

Ross App. No. 06CA2900, 2008-Ohio-6052.

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

2009-0045. State v. Swank.

Lake App. No. 2008-L-019, 2008-Ohio-6059. Discretionary appeal accepted on Proposition of Law Nos. III, IV, and V; cause held for the decision in 2008-2502, *State v. Bodyke*, Huron App. Nos. H-07-040, H-07-041, and H-07-042, 2008-Ohio-6387; and briefing schedule stayed.

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

APPEALS NOT ACCEPTED FOR REVIEW

2008-1970. State v. Ingram.

Butler App. No. CA2007-10-247.

2008-2085. State v. Billiter.

Tuscarawas App. No. 08AP070049.

2008-2248. State v. Sandoval.

Lorain App. No. 07CA009276, 2008-Ohio-4402.

2008-2266. State v. Skatzes.

Montgomery App. Nos. 22322 and 22484, 2008-Ohio-5387. Discretionary appeal not accepted. Motion for admission pro hac vice of Heather Lamberg Kafele and Michael Y. Keival by Sean G. Arthurs granted.

2008-2295. State v. Hamilton.

Cuyahoga App. No. 90179, 2008-Ohio-5476.

2008-2321. State v. Howald.

Union App. No. 14-08-23, 2008-Ohio-5404.

2008-2322. State v. Weisman.

Crawford App. No. 3-08-23.

2008-2323. State v. Judy.

Ross App. No. 08CA3013, 2008-Ohio-5551.

2008-2338. State v. Cooper.

Hamilton App. No. C-080105.

2008-2341. State v. Griffin.

Hamilton App. Nos. C-070711 and C-070712.

2008-2342. Ayad v. Radio One, Inc.

Cuyahoga App. No. 90638, 2008-Ohio-5487.

2008-2345. State ex rel. Harris v. Moore.

Warren App. No. CA2008-01-003.

2008-2349. State v. Bassett.

Cuyahoga App. No. 90887, 2008-Ohio-5597.

2008-2371. State v. Hudson.

Licking App. No. 2008CA0033, 2008-Ohio-5573.
Moyer, C.J., dissents.

2008-2375. State v. Darby.

Hamilton App. No. C-080095.

2008-2377. State v. Hughley.

Cuyahoga App. No. 90323, 2008-Ohio-6146. Discretionary appeal not accepted. Motion to exceed page limitation of memorandum in support of jurisdiction denied as moot.

2008-2386. State v. Mixon.

Hamilton App. No. C-081061.

2008-2396. Joann S. v. Khalid R.

Lucas App. No. L-07-1363, 2008-Ohio-5801.

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

Lundberg Stratton, J., dissents.

2008-2399. State v. Smith.

Cuyahoga App. No. 90749, 2008-Ohio-5581.

2008-2411. State v. Clayton.

Cuyahoga App. No. 90584, 179 Ohio App.3d 55, 2008-Ohio-5481.

Lanzinger, J., dissents.

2008-2414. State v. Burton.

Clermont App. No. CA2008-01-004.

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

2008-2416. State v. Ayers.

Cuyahoga App. No. 90907, 2008-Ohio-5475.

2008-2420. State v. Mendez.

Hamilton App. No. C-080149.

2008-2421. Griffith v. Veale.

Summit App. No. 24036, 2008-Ohio-5704.

Pfeifer, J., dissents.

2008-2423. Kilgore v. Kilgore.

Ashtabula App. Nos. 2008-A-0006 and 2008-A-0008, 2008-Ohio-5858.

Lundberg Stratton, J., dissents.

2008-2429. State v. Hampton.

Hamilton App. No. C-080187, 2008-Ohio-6088.

2008-2430. State v. Isa.

Champaign App. No. 07-CA-37, 2008-Ohio-5906. Discretionary appeal not accepted. Motion for leave to file judgment entry when and if available or waive its requirement denied as moot.

2008-2432. Vogel v. Felts.

Clermont App. No. CA2008-05-051, 2008-Ohio-6569.

2008-2435. State v. Dave.

Stark App. No. 2008-CA-00111, 2008-Ohio-5890.

2008-2436. State v. Porterfield.

Trumbull App. No. 2008-T-0002, 2008-Ohio-5948. Discretionary appeal not accepted. Motion to strike notice of appeal and memorandum in support of jurisdiction denied as moot.

2008-2437. State v. Finney.

Fulton App. No. F-07-030, 2008-Ohio-5795.

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

2008-2439. State v. Rouse.

Tuscarawas App. No. 2007 AP 12 0078, 2008-Ohio-5891.

2008-2443. State v. Cooper.

Franklin App. No. 06AP-150, 2008-Ohio-6119.

2008-2445. State v. Acedo-Gonzalez.

Greene App. No. 2007 CA 96, 2008-Ohio-5776.

2008-2448. Boehm, Kurtz & Lowry v. Interstate Ins. Servs. Agency, Inc.

Hamilton App. No. C-080186, 179 Ohio App.3d 147, 2008-Ohio-5761.

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

2008-2451. State v. Munichello.

Marion App. No. 9-08-34.

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

Cupp, J., not participating.

2008-2452. State v. Harris.

Hamilton App. No. C-080153.

2008-2459. State v. Issa.

Cuyahoga App. No. 90622, 2008-Ohio-5592.

O'Connor and Lanzinger, JJ., dissent and would accept the appeal and consolidate the cause with 2008-2460, *State v. Mohamed*, Cuyahoga App. No. 90621, 178 Ohio App.3d 695, 2008-Ohio-5591.

2008-2460. State v. Mohamed.

Cuyahoga App. No. 90621, 178 Ohio App.3d 695, 2008-Ohio-5591.

O'Connor and Lanzinger, JJ., dissent and would accept the appeal and consolidate the cause with 2008-2459, *State v. Issa*, Cuyahoga App. No. 90622, 2008-Ohio-5592.

2008-2475. State v. Franklin.

Cuyahoga App. No. 90713, 2008-Ohio-5603.

2008-2476. State v. Bingham.

Cuyahoga App. No. 90555, 2008-Ohio-5589.

2008-2478. First Merit v. Williams.

Summit App. No. 24011, 2008-Ohio-5038.

2008-2491. Harig v. Hall.

Summit App. No. 24170, 2008-Ohio-5705.

2008-2492. State v. Perry.

Cuyahoga App. No. 90497, 2008-Ohio-5588.

2008-2496. State v. Hobbs.

Meigs App. No. 08CA4. Discretionary appeal not accepted. Motion to submit evidence denied as moot.

2009-0004. Richardson v. Boes.

Lucas App. No. L-08-1015, 179 Ohio App.3d 418, 2008-Ohio-6173.

Lundberg Stratton, J., dissents.

2009-0005. State v. Snowden.

Ashtabula App. No. 2008-A-0014, 2008-Ohio-6554.

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

2009-0012. Knowlton v. Schultz.

Hamilton App. No. C-080016, 2008-Ohio-5984.

Pfeifer, J., dissents.

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

2009-0023. Hoffman v. Stearns & Lehman, Inc.

Richland App. No. 2008-CA-29, 2008-Ohio-5978.

2009-0031. Johnson v. Church of the Open Door.

Lorain App. No. 08CA009387, 2008-Ohio-6054.

Lundberg Stratton, J., dissents.

Cupp, J., dissents and would accept the appeal on Proposition of Law Nos. I and II.

2009-0048. Brechbuhler v. Brechbuhler.

Stark App. No. 2007CA00281.

Pfeifer, J., dissents.

2009-0057. Burger v. Buck.

Portage App. No. 2008-P-0041, 2008-Ohio-6061.

2009-0059. Boylen v. Ohio Dept. of Rehab. & Corr.

Richland App. No. 08-CA-24, 2008-Ohio-6327.

2009-0061. State v. Green.

Guernsey App. No. 07-CA-000044, 2008-Ohio-6114.

2009-0071. State v. Madrigal.

Lucas App. Nos. L-07-1417 and L-07-1418, 2008-Ohio-6394.

Lanzinger, J., not participating.

2009-0080. State v. Bostic.

Hamilton App. No. C-070721.

2009-0083. Hayberg v. Physicians Emergency Serv., Inc.

Portage App. No. 2008-P-0010, 2008-Ohio-6180.

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

2009-0097. State v. Crawford.

Richland App. No. 07 CA 116, 2008-Ohio-6260.

2009-0128. Cyperski v. Smith.

Stark App. No. 2008CA00271.

2009-0162. State v. Williams.

Licking App. No. 08-CA-23, 2008-Ohio-6842.

2009-0180. State v. Wren.

Franklin App. No. 08AP-320, 2008-Ohio-6512.

2009-0193. State v. Jones.

Franklin App. No. 08AP-551, 2008-Ohio-6515.

RECONSIDERATION OF PRIOR DECISIONS

2007-0558. Wilborn v. Bank One Corp.

Mahoning App. No. 04-MA-182, 2007-Ohio-596. Reported at ___ Ohio St.3d ___, 2009-Ohio-306, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

2007-1588. Thorton v. Montville Plastics & Rubber, Inc.

Geauga App. No. 2006-G-2744, 2007-Ohio-3475. Reported at 121 Ohio St.3d 124, 2009-Ohio-360, 902 N.E.2d 482. On motion for reconsideration. Motion denied.

O'Donnell, J., dissents.

2007-1751. In re S.B.

Stark App. No. 2006-CA-00328, 2007-Ohio-4034. Reported at ___ Ohio St.3d ___, 2009-Ohio-507, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

Lundberg Stratton, J., dissents.

2007-2239. In re J.F.

Greene App. No. 06-CA-123, 2007-Ohio-5652. Reported at 121 Ohio St.3d 76, 2009-Ohio-318, 902 N.E.2d 19. On motion for reconsideration. Motion denied. Motion to strike additional authority denied as moot.

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

2008-1988. State v. Westerfield.

Franklin App. No. 07AP-1072, 2008-Ohio-4458. Reported at 120 Ohio St.3d 1506, 2009-Ohio-361, 900 N.E.2d 623. On motion for reconsideration. Motion denied.

2008-2079. State v. Foti.

Lake App. No. 2007-L-152, 2008-Ohio-4767. Reported at 120 Ohio St.3d 1508, 2009-Ohio-361, 900 N.E.2d 624. On motion for reconsideration. Motion denied.

2008-2116. Riggs v. Richard.

Stark App. No. 2007CA00328, 2008-Ohio-4697. Reported at 120 Ohio St.3d 1509, 2009-Ohio-361, 900 N.E.2d 625. On motion for reconsideration. Motion denied.