

The Supreme Court of Ohio

CASE ANNOUNCEMENTS

September 25, 2013

[Cite as *09/25/2013 Case Announcements*, 2013-Ohio-4140.]

MERIT DECISIONS WITHOUT OPINIONS

2013-0946. Vehr v. Ohio Health Corporate Offices.

In Mandamus. On motions to dismiss. Motions granted. Cause dismissed.

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

2013-0957. Reeves v. Schneider.

In Mandamus. On answer and motion for judgment on the pleadings of respondent. Motion granted. Cause dismissed.

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

2013-1038. State v. Clay.

In Mandamus. On answer of respondents. It is ordered by the court, sua sponte, that 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. 12.05:

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 10 days of the filing of the evidence; respondents shall file a brief within 20 days after the filing of relator's brief; and relator may file a reply brief within 7 days after the filing of respondents' brief.

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

O'Donnell and French, JJ., dissent.

2013-1081. Berry v. Phieffer.

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

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

2013-1220. Sudberry v. Morgan.

In Habeas Corpus. On amended petition for writ of habeas corpus of James D. Sudberry. Sua sponte, cause dismissed.

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

MOTION AND PROCEDURAL RULINGS

2013-0579. In re D.M.

Hamilton App. No. C-120794, 2013-Ohio-668. On motion for stay of decision of First District Court of Appeals pending appeal. Motion denied.

O'Donnell and Lanzinger, JJ., dissent.

2013-0633. State ex rel. Bell v. Madison Cty. Bd. of Commrs.

Madison App. No. CA2010-04-010. On motion to dismiss of Madison County Board of Commissioners. Motion denied.

2013-1046. State v. Schleiger.

Preble App. No. CA2011-11-012, 2013-Ohio-1110. On review of order certifying a conflict. The court determines that a conflict exists. The parties are to brief the issue stated at page 2 of the court of appeals' entry filed May 31, 2013:

“Whether a defendant is entitled to counsel when a trial court conducts a resentencing hearing for the purpose of imposing statutorily mandated post-release control.”

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

The conflict case is *State v. Peace*, 3d Dist. Hancock No. 5-12-04, 2012-Ohio-6118.

Sua sponte, cause consolidated with 2013-0743, *State v. Schleiger*, 12th Dist. Preble No. CA2011-11-012, 2013-Ohio-1110.

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, Case No. 1:11CV2253. On review of preliminary memoranda pursuant to S.Ct.Prac.R. 9.05. The court will answer the following question:

“May an insured who has accrued indemnity and defense costs arising from progressive injuries, and who settles resultant claims against primary insurer(s) on a pro rata allocation basis among various primary insurance policies, employ an ‘all sums’ method to aggregate unreimbursed losses and thereby reach the attachment point(s) of one or more excess insurance policies?”

Petitioners shall file their 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 through 16.04 and S.Ct.Prac.R. 9.07.

O’Donnell and Kennedy, JJ., dissent.

2013-1155. State v. Frett.

Cuyahoga App. No. 97538, 2012-Ohio-3363. On motion for delayed appeal. Motion denied.

2013-1177. Clermont Cty. Transp. Improvement Dist. v. Gator Milford, L.L.C.

Clermont App. No. CA2013-02-010. On review of order certifying a conflict. The court determines that a conflict exists. The parties are to brief the issue stated at page 2 of the court of appeals’ entry filed July 10, 2013:

“Whether actual knowledge and receipt of a judgment entry that is a final appealable order begins the 30-day time period during which to file an appeal, or does the 30-day period only begin following service and notation of service on the docket by the clerk of courts.”

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

The conflict case is *Whitehall ex rel. Fennessy v. Bambi Motel, Inc.*, 131 Ohio App.3d 734, 723 N.E.2d 633 (10th Dist.1988).

2013-1232. Martins Ferry City School Dist. Bd. of Edn. v. Ohio Assn. of Pub. School Emps.

Belmont App. No. 12 BE 15, 2013-Ohio-2954. On motion for immediate stay. Motion granted.

Pfeifer, Lanzinger, and Kennedy, JJ., dissent.

2013-1249. State v. Williams.

Cuyahoga App. No. 98528, 2013-Ohio-1181. On motion for delayed appeal. Motion denied.

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

2013-1290. State v. Nolan.

Portage App. No. 2012-P-0047, 2013-Ohio-2829. On motion for stay of court of appeals' judgment. Motion denied.

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

2013-1296. Meyers Lake Sportman's Club, Inc. v. Meyers Lake Preserve, Inc.

Stark App. No. 2012CA00198, 2013-Ohio-3227. On amended motion for stay of Fifth District's judgment in advance of filing jurisdictional memorandum. Motion denied.

French and O'Neill, JJ., dissent.

APPEALS ACCEPTED FOR REVIEW

2013-0743. State v. Schleiger.

Preble App. No. CA2011-11-012, 2013-Ohio-1110. Discretionary appeal accepted on proposition of law No. III and cause consolidated with 2013-1046, *State v. Schleiger*, 12th Dist. Preble No. CA2011-11-012, 2013-Ohio-1110.

O'Neill, J., would also accept proposition of law Nos. II and IV.

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

2013-0830. State v. Hamon.

Delaware App. No. 12 CAA 12 0089. Discretionary appeal accepted on proposition of law No. I and cause held for the decision in 2012-1834, *State v. Anderson*, 7th Dist. Mahoning No. 11-MA-43, 2012-Ohio-4390; and briefing stayed.

Pfeifer and O'Donnell, JJ., dissent.

2013-0890. Cedar Fair, L.P. v. Falfas.

Erie App. No. E-12-015, 2013-Ohio-1590. Discretionary appeal accepted on proposition of law No. I.

Pfeifer and O'Donnell, JJ., would also accept proposition of law Nos. II and III.

Lanzinger, Kennedy, and French, JJ., dissent.

2013-0892. Friebel v. Visiting Nurse Assn. of Mid Ohio.

Richland App. No. 2012-CA-56, 2013-Ohio-1646. Discretionary appeal accepted.
Motion to strike denied.

O'Connor, C.J., and Pfeifer, J., dissent and would not accept the appeal.
Kennedy, J., would accept the appeal on proposition of law No. I only.

2013-1010. State v. Vanzandt.

Hamilton App. No. C-130079, 2013-Ohio-2290.

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

APPEALS NOT ACCEPTED FOR REVIEW

2013-0533. State v. Eicholtz.

Clark App. No. 2012-CA-7, 2013-Ohio-302.

2013-0786. State v. Bronkar.

Muskingum App. No. CT2012-0045, 2013-Ohio-683.

2013-0787. State v. Leffingwell.

Lawrence App. No. 12CA1, 2013-Ohio-1421.

2013-0789. State v. Pulley.

Hamilton App. No. C-120444, 2013-Ohio-1624.

2013-0791. In re J.H.

Tuscarawas App. No. 2012 AP 10 0062, 2013-Ohio-1423.

2013-0792. Reinbold v. Kern.

Wood App. No. WD-12-041, 2013-Ohio-1359.

2013-0793. Sylvester Summers, Jr. Co., L.P.A. v. E. Cleveland.

Cuyahoga App. No. 98227, 2013-Ohio-1339.

O'Neill, J., dissents.

2013-0807. State v. Yambrisak.

Richland App. No. 2012-CA-50, 2013-Ohio-1406.

O'Connor, C.J., dissents and would accept the appeal on proposition of law
Nos. I and III.

2013-0808. State v. Colyer.

Hamilton App. Nos. C-120347, C-120348, and C-120349, 2013-Ohio-1316.

2013-0809. Lively v. Donald Dunning, D.D.S., Inc.

Cuyahoga App. No. 98910, 2013-Ohio-1350.

O'Donnell, J., dissents.

2013-0811. McDill v. Sunbridge Care Ents., Inc.

Pickaway App. No. 12CA8, 2013-Ohio-1618.

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

2013-0815. State v. Elkins.

Champaign App. No. 2012 CA 28, 2013-Ohio-1468.

2013-0818. State v. Manuel.

Ross App. No. 13CA3365.

French and O'Neill, JJ., dissent.

2013-0822. State v. Knight.

Franklin App. No. 12AP-317, 2013-Ohio-1462.

2013-0826. State v. Hudson.

Cuyahoga App. No. 98499, 2013-Ohio-1444.

Kennedy, J., dissents and would accept the appeal on proposition of law No. I.

2013-0827. State v. Beverly.

Clark App. No. 2011 CA 64, 2013-Ohio-1365.

O'Donnell, French, and O'Neill, JJ., dissent and would accept the appeal on proposition of law No. I.

O'Connor, C.J., dissents and would accept the appeal on proposition of law No. II.

2013-0829. State v. Blandin.

Allen App. No. 1-12-46.

2013-0834. Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision.

Summit App. No. 26503, 2013-Ohio-1419.

Pfeifer and Kennedy, JJ., dissent.

O'Donnell, J., dissents and would accept the appeal and hold the cause for the decision in 2012-1432, *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, Board of Tax Appeals, Nos. 2009-Q-1282, 2009-Q-1283, 2009-Q-1284, 2009-Q-1285, 2009-Q-1286, 2009-Q-1287, 2009-Q-1288, 2009-Q-1289, 2009-Q-1291, 2009-Q-1290, 2009-Q-1292, 2009-Q-1293, 2009-Q-1294, 2009-Q-1295, 2009-Q-1296, 2009-Q-1297, 2009-Q-1298, 2009-Q-1299, 2009-Q-1300, 2009-Q-1301, and 2009-Q-1408.

2013-0835. State v. Hullum.

Cuyahoga App. No. 98796, 2013-Ohio-1448.

French, J., dissents.

2013-0836. BAC Home Loans Servicing, L.P. v. Meister.

Lake App. No. 2012-L-042, 2013-Ohio-873.

2013-0841. State v. Haddix.

Stark App. No. 2012-CA-00218, 2013-Ohio-1974.

2013-0845. Toledo v. Tillimon.

Lucas App. No. L-11-1315, 2013-Ohio-1484.

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

2013-0847. State v. Phillips.

Cuyahoga App. No. 98487, 2013-Ohio-1443.

2013-0848. State v. Hughes.

Cuyahoga App. No. 98669, 2013-Ohio-1551.

2013-0849. Ottawa Hills v. Afjeh.

Lucas App. No. L-12-1093, 2013-Ohio-1474.

2013-0850. Palladino v. Steen.

Cuyahoga App. No. 98968, 2013-Ohio-1455.

O'Connor, C.J., dissents.

2013-0851. AK Real Estate, L.L.C. v. Reed.

Hamilton App. No. C-120639. Discretionary appeal not accepted. Motion to dismiss denied as moot.

2013-0852. Tillimon v. Clifton.

Lucas App. No. L-12-1259.

O'Neill, J., dissents and would accept the appeal on proposition of law No. I.

2013-0854. State v. Leonard.

Cuyahoga App. No. 98626, 2013-Ohio-1446.

2013-0865. Arthur v. Kettering Adventist Healthcare, Inc.

Montgomery App. No. 25205, 2013-Ohio-1578.

O'Donnell, J., dissents.

2013-0868. In re C.P.

Athens App. No. 12CA18, 2013-Ohio-889.

Pfeifer, J., dissents.

O'Neill, J., dissents and would accept the appeal on proposition of law Nos. I and II.

2013-0873. State v. Cotten.

Richland App. No. 12CA60, 2013-Ohio-1960.

2013-0874. State v. Perry.

Cuyahoga App. No. 98302, 2013-Ohio-1540.

2013-0875. State v. Curtis.

Greene App. No. 2011-CA-56, 2013-Ohio-1690.

2013-0885. State v. Toudle.

Cuyahoga App. No. 98609, 2013-Ohio-1548.

2013-0886. State v. Adams.

Ashtabula App. No. 2012-A-0025, 2013-Ohio-1603.

O'Neill, J., dissents and would accept the appeal on proposition of law No. IV.

2013-0887. Huntington Natl. Bank v. D&G Ents., Inc.

Mahoning App. No. 12 MA 15, 2013-Ohio-1117.

Pfeifer, J., dissents.

2013-0888. State v. Maddox.

Cuyahoga App. No. 98484, 2013-Ohio-1544.

O'Donnell, J., dissents.

2013-0889. State v. Smith.

Montgomery App. No. 24402, 2013-Ohio-1586.

O'Connor, C.J., and Kennedy, J., dissent and would accept the appeal on proposition of law No. I.

Lanzinger, J., dissents.

2013-0893. Fifth Third Mtge. Co. v. Bell.

Madison App. No. CA2013-02-003.

2013-0894. Hardin v. Naughton.

Cuyahoga App. No. 98645, 2013-Ohio-1549.

O'Donnell, J., dissents.

2013-0895. In re Guardianship of Marshall.

Hamilton App. No. C-120323.

2013-0899. State v. Jacobs.

Highland App. No. 11CA26, 2013-Ohio-1502.

2013-0902. State v. Glenn.

Cuyahoga App. No. 97314, 2013-Ohio-1652.

2013-0904. Mittler v. OhioHealth Corp.

Franklin App. No. 12AP-119, 2013-Ohio-1634.

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

2013-0906. State v. Kiley.

Lorain App. No. 12CA010254, 2013-Ohio-634.

2013-0907. Guarino-Wong v. Hosler.

Hamilton App. No. C-120453, 2013-Ohio-1625.

O'Connor, C.J., dissents and would accept the appeal on proposition of law No. I.

2013-0912. Linnen Co., L.P.A. v. Roubic.

Summit App. No. 26494, 2013-Ohio-1022.

2013-0913. State v. Davis.

Ross App. No. 11CA3262, 2013-Ohio-1642.

2013-0919. State v. Gerth.

Hamilton App. No. C-120392, 2013-Ohio-1751.

2013-0925. State v. Romanda.

Summit App. No. 26450, 2013-Ohio-1771.

2013-0927. State v. Martin.

Franklin App. No. 13AP-16, 2013-Ohio-1810.

O'Donnell, J., dissents.

Lanzinger, J., dissents and would accept the appeal on proposition of law No. I.

2013-0929. State v. Cheno.

Lucas App. No. L-11-1187, 2013-Ohio-1709.

2013-0930. State v. Battle.

Morgan App. No. 12AP008, 2013-Ohio-1759.

2013-0937. State v. Hebdon.

Butler App. Nos. CA2012-03-052 and CA2012-06-062, 2013-Ohio-1729.

O'Neill, J., dissents.

2013-0951. State v. Hough.

Cuyahoga App. Nos. 98480 and 98482, 2013-Ohio-1543.

2013-0963. State v. Miller.

Hamilton App. Nos. C-120419 and C-120420.

2013-0965. State v. Porter.

Lucas App. No. L-12-1243, 2013-Ohio-1360.

2013-0969. State v. Rye.

Summit App. No. 26576, 2013-Ohio-1774.

Pfeifer, Acting C.J.

O'Connor, C.J., not participating.

2013-0972. State v. Ayala.

Franklin App. Nos. 12AP-1071 and 12AP-1072, 2013-Ohio-1875.

2013-0974. State v. Marbury.

Montgomery App. No. 25145, 2013-Ohio-1926.

2013-0981. State v. Dawson.

Summit App. No. 26500, 2013-Ohio-1767.

Pfeifer, Acting C.J.

O'Connor, C.J., not participating.

2013-0983. State v. McGee.

Mahoning App. No. 07 MA 137, 2013-Ohio-1853.

2013-0985. State v. Sauto.

Summit App. No. 26404, 2013-Ohio-1320.

2013-0989. State v. J.E.C.

Franklin App. No. 12AP-584, 2013-Ohio-1909.

2013-0990. State v. Patterson.

Hamilton App. No. C-120590.

2013-0994. State v. Clay.

Summit App. No. 26891.

2013-0997. State v. McGlown.

Lucas App. No. L-12-1053, 2013-Ohio-1479.

2013-1018. State v. Morrison.

Delaware App. No. 12 CAA 08 0053, 2013-Ohio-2182.

2013-1019. State v. Hamrick.

Stark App. No. 2011CA00041, 2012-Ohio-1214.

2013-1021. State v. Pratts.

Summit App. No. 26942.

Pfeifer, Acting C.J.

O'Connor, C.J., not participating.

2013-1024. State v. Ibn-Ford.

Summit App. No. 26386, 2013-Ohio-2172.

2013-1026. State v. Richardson.

Stark App. No. 2012CA00166, 2013-Ohio-2068.

2013-1029. State v. Dillingham.

Butler App. Nos. CA2012-02-037 and CA2012-02-042, 2013-Ohio-2050.

O'Neill, J., dissents.

2013-1040. State v. Andrew.

Hamilton App. No. C-120399.

2013-1421. In re C.C.

Defiance App. No. 4-13-02, 2013-Ohio-3195.

2013-1062. State v. Westley.

Cuyahoga App. No. 97650, 2013-Ohio-1654.

2013-1071. State v. King.

Cuyahoga App. No. 97904, 2013-Ohio-2088.

2013-1073. State v. Taylor.

Montgomery App. No. 23990, 2013-Ohio-186.

2013-1152. State v. DiBiase.

Lake App. No. 2011-L-124, 2012-Ohio-6125.

O'Neill, J., dissents.

RECONSIDERATION OF PRIOR DECISIONS

2012-0169. Stammco, L.L.C. v. United Tel. Co. of Ohio.

Fulton App. No. F-11-003, 2011-Ohio-6503. Reported at ___ Ohio St.3d ___, 2013-Ohio-3019, ___ N.E.2d ___. On motion for reconsideration. Motion denied. Pfeifer and O'Neill, JJ., dissent.

2013-0614. State v. Auerswald.

Medina App. No. 11CA0053-M, 2013-Ohio-742. Reported at 136 Ohio St.3d 1450, 2013-Ohio-3210, 991 N.E.2d 257. On motion for reconsideration. Motion denied.

O'Neill, J., dissents.

2013-0622. Chiquita Brands Internatl., Inc. v. Natl. Union Fire Ins. Co. of Pittsburgh, PA.

Hamilton App. No. C-120019, 2013-Ohio-759. Reported at 136 Ohio St.3d 1450, 2013-Ohio-3210, 991 N.E.2d 257. On motion for reconsideration. Motion denied.

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

2013-0635. JPMCC 2004-CIBC10 7th St. Office, L.L.C. v. URS Tower, L.L.C.

Hamilton App. No. C-120294, 2013-Ohio-796. Reported at 136 Ohio St.3d 1451, 2013-Ohio-3210, 991 N.E.2d 257. On motion for reconsideration. Motion denied. On motion for stay of implementation of trial-court order. Motion denied.

Pfeifer and O'Donnell, JJ., dissent.

2013-0650. State v. Rich.

Butler App. No. CA2012-03-044, 2013-Ohio-857. Reported at 136 Ohio St.3d 1451, 2013-Ohio-3210, 991 N.E.2d 257. On motion for reconsideration. Motion denied.

O'Donnell, J., dissents.

Lanzinger and Kennedy, JJ., dissent and would grant the motion for reconsideration as to proposition of law No. I.

2013-0695. Toliver v. Montgomery Cty. Bd. of Comms.

In Mandamus. Reported at 136 Ohio St.3d 1446, 2013-Ohio-3210, 991 N.E.2d 254. On motion for reconsideration. Motion denied.

2013-0777. State v. Painter.

Clermont App. No. CA2012-04-031, 2013-Ohio-529. Reported at 136 Ohio St.3d 1453, 2013-Ohio-3210, 991 N.E.2d 258. On motion for reconsideration. Motion denied.

Lanzinger and O'Neill, JJ., dissent.

2013-0801. State v. Painter.

Clermont App. No. CA2012-04-041. Reported at 136 Ohio St.3d 1447, 2013-Ohio-3210, 991 N.E.2d 255. On motion for reconsideration. Motion denied.

Lanzinger and O'Neill, JJ., dissent.