

The Supreme Court of Ohio

CASE ANNOUNCEMENTS AND ADMINISTRATIVE ACTIONS

April 14, 2003

MERIT DECISIONS WITH OPINIONS

2001-0013. State v. Dixon, 2004-Ohio-1585.

Lucas App. No. L-96-004. Judgment affirmed.

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

Lundberg Stratton, J., concurs in part and dissents in part.

2001-1429. State v. Mink, 2004-Ohio-1580.

Montgomery C.P. No. 2000CR2900. Judgment affirmed.

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

2002-1815 and 2002-2008. Theobald v. Univ. of Cincinnati, 2004-Ohio-1527.

Franklin App. Nos. 02AP-560, 02AP-593, 02AP-597 and 02AP-598. Judgment affirmed and certified question answered. See opinion.

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

2003-0019 and 2003-0469. State v. Cowan, 2004-Ohio-1583.

Portage App. No. 2001-P-0109, 151 Ohio App.3d 228, 2002-Ohio-7271. Judgment affirmed.

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

2003-0046. Kirkhart v. Keiper, 2004-Ohio-1496.

Portage App. No. 2001-P-0069, 2002-Ohio-6472. Judgment reversed.

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

Resnick and Pfeifer, JJ., dissent.

2003-0157. State ex rel. Cincinnati Enquirer v. Winkler, 2004-Ohio-1581.

Hamilton App. No. C-010763, 151 Ohio App.3d 10, 2002-Ohio-7334. Judgment affirmed.

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

2003-0393. State ex rel. Nestle USA–Prepared Foods Div., Inc. v. Indus. Comm., 2004-Ohio-1667.

Franklin App. No. 01AP-1214, 2003-Ohio-413. Judgment affirmed.

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

Resnick, J., not participating.

2003-1108. State ex rel. Rademacher v. Marriott Internatl., Inc., 2004-Ohio-1672.

Franklin App. No. 02AP-932, 2003-Ohio-2728. Judgment affirmed.

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

2003-1115. Cleveland Bar Assn. v. Smith, 2004-Ohio-1582.

On Certified Report by the Board of Commissioners on Grievances and Discipline of the Supreme Court, No. 02-60.

Cynthia D. Smith, Attorney Registration No. 0023694, is suspended from the practice of law for six months, stayed on condition.

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

Moyer, C.J., dissents.

2003-1158. State ex rel. Bowen v. Do It Best Corp., 2004-Ohio-1670.

Franklin App. No. 02AP-890, 2003-Ohio-2943. Judgment reversed in part and affirmed in part.

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

2003-1162. State v. Mack, 2004-Ohio-1526.

Cuyahoga App. No. 62366, 2003-Ohio-2605. Judgment affirmed.

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

2003-1366. In re Application of Cvammen, 2004-Ohio-1584.

On Report of the Board of Commissioners on Character and Fitness of the Supreme Court, No. 252.

Bradford Cvammen is permanently denied application to register as a candidate for admission to the Ohio bar.

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

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

2003-1466. In re Williams, 2004-Ohio-1500.

Geauga App. Nos. 2003-G-2498 and 2003-G-2499, 2003-Ohio-3550. Judgment affirmed.

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

2003-1476. State ex rel. WBNS TV, Inc. v. Dues, 2004-Ohio-1497.

In Mandamus. Writ granted. See opinion.

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

Resnick, J., dissents.

2003-1534. Cincinnati Bar Assn. v. Deaton, 2004-Ohio-1587.

On Certified Report by the Board of Commissioners on Grievances and Discipline of the Supreme Court, No. 02-23.

John Reno Denton II, Attorney Registration No. 0066990, is permanently disbarred.

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

2003-1693. Elersic v. Wilson, 2004-Ohio-1501.

Trumbull App. No. 2003-T-0070, 2003-Ohio-4229. Judgment affirmed.

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

2003-1811. Toledo Bar Assn. v. Pommeranz, 2004-Ohio-1586.

On Certified Report by the Board of Commissioners on Grievances and Discipline of the Supreme Court, No. 02-63.

Melvin R. Pommeranz, Attorney Registration No. 0031840, is permanently disbarred.

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

2003-1864. Disciplinary Counsel v. Kaup, 2004-Ohio-1525.

On Certified Report by the Board of Commissioners on Grievances and Discipline of the Supreme Court, No. 03-017.

Gerhard H. Kaup, Attorney Registration No. 0011210, is suspended from the practice of law for six months, stayed on condition.

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

2003-1916. Johnson v. Marshall, 2004-Ohio-1498.

Scioto App. No. 03CA2895. Judgment affirmed.

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

MERIT DECISIONS WITHOUT OPINIONS

2004-0280. State ex rel. Sneed v. Eighth Dist. Court of Appeals.

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

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

2004-0313. State ex rel. Turner v. Wilkinson.

In Mandamus. On answer of respondents Reginald Wilkinson, Ohio Adult Parole Authority, Mrs. Shafer, and Bureau of Criminal Identification and Investigation, and motion for summary judgment of Reginald Wilkinson, Ohio Adult Parole Authority, Mrs. Shafer, and Bureau of Criminal Identification and Investigation. Motion for summary judgment granted and cause dismissed.

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

MOTION AND PROCEDURAL RULINGS

2003-1443. Brady Fray v. Toledo Edison Co.

Lucas App. No. L-02-1260, 2003-Ohio-3422. On motion to strike appellant Asplundh Tree Expert Company's merit brief and supplement. Motion denied.

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

2004-0276. State v. Fraley.

Erie App. No. E-02-050, 2003-Ohio-6976. On review of order certifying a conflict. The court determines that a conflict exists. Sua sponte, cause consolidated with 2004-0225, *State v. Fraley*, Erie App. Nos. E-02-050 and E-02-051, 2003-Ohio-6976; causes held for the decision in 2003-1380, *State v. Brooks*, Summit App. No. 21360, 2003-Ohio-3143 and 2003-Ohio-3364; and briefing schedule stayed.

F.E. Sweeney, J., dissents.

2004-0340. Hawkins v. S.O.C.F.

Scioto App. No. 03CA2904. On motion for stay of court of appeals' judgment and motion for appointment of counsel. Motions denied.

F.E. Sweeney, J., dissents.

2004-0372. State v. May.

Ashtabula App. No. 2001-A-0037, 2003-Ohio-6979. On review of order certifying a conflict. The court determines that a conflict exists. Sua sponte, cause consolidated with 2004-0240, *State v. May*, Ashtabula App. No. 2001-A-0037, 2003-Ohio-6979; causes held for the decision in 2003-1048 and 2003-1049, *State v. White*, Guernsey App. No. 02CA23, 2003-Ohio-2289; and briefing schedule stayed.

F.E. Sweeney, J., dissents.

2004-0378. Urban v. State Med. Bd. of Ohio.

Franklin App. No. 03AP-426, 2004-Ohio-104. On motion for stay of enforcement of judgment and administrative order pending appeal. Motion denied.

Moyer, C.J., F.E. Sweeney and O'Connor, JJ., dissent.

2004-0406. State v. Cheatham.

Summit App. No. 21601, 2003-Ohio-6320. On motion for leave to file delayed appeal. Motion denied.

Pfeifer and O'Connor, JJ., dissent.

2004-0407. Allen v. McBride.

Franklin App. No. 03AP-432, 2003-Ohio-7158. On review of order certifying a conflict. The court determines that a conflict exists. The parties are to brief the issue stated on page 2 of the court of appeals' Memorandum Decision dated February 5, 2004:

“[W]hether R.C. 2305.19 applies in will contest actions.”

F.E. Sweeney, J., dissents.

Sua sponte, cause consolidated with 2004-0242, *Allen v. McBride*, Franklin App. No. 03AP-432, 2003-Ohio-7158.

The conflict cases are *Barnes v. Anderson* (1984), 17 Ohio App.3d 142, 17 OBR 242, 478 N.E.2d 248; *Peltz v. Peltz* (June 27, 1997), Geauga App. No. 96-G-2026, 1997 WL 402373; and *Cross v. Conley* (July 12, 2000), Highland App. No. 99CA5, 2000 WL 1010771.

Sua sponte, cause consolidated with 2004-0242, *Allen v. McBride*, Franklin App. No. 03AP-432, 2003-Ohio-7158.

APPEALS ACCEPTED FOR REVIEW

2004-0048. Beard v. Meridia Huron Hosp.

Cuyahoga App. No. 82541, 2003-Ohio-5929.

Pfeifer, J., dissents.

2004-0049. State v. Barlow.

Montgomery App. No. 19628, 2003-Ohio-6530. Discretionary appeal accepted; cause held for the decision in 2003-1048 and 2003-1049, *State v. White*, Guernsey App. No. 02CA23, 2003-Ohio-2289; and briefing schedule stayed.

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

2004-0225. State v. Fraley.

Erie App. Nos. E-02-050 and E-02-051, 2003-Ohio-6976. Discretionary appeal accepted; cause consolidated with 2004-0276, *State v. Fraley*, Erie App. No. E-02-050, 2003-Ohio-6976; causes held for the decision in 2003-1380, *State v. Brooks*, Summit App. No. 21360, 2003-Ohio-3143 and 2003-Ohio-3364; and briefing schedule stayed.

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

2004-0240. State v. May.

Ashtabula App. No. 2001-A-0037, 2003-Ohio-6979. Discretionary appeal accepted; cause consolidated with 2004-0372, *State v. May*, Ashtabula App. No. 2001-A-0037, 2003-Ohio-6979; causes held for the decision in 2003-1048 and

2003-1049, *State v. White*, Guernsey App. No. 02CA23, 2003-Ohio-2289; and briefing schedule stayed.

Pfeifer, J., dissents.

2004-0242. Allen v. McBride.

Franklin App. No. 03AP-432, 2003-Ohio-7158. Discretionary appeal accepted and cause consolidated with 2004-0407, *Allen v. McBride*, Franklin App. No. 03AP-432, 2003-Ohio-7158.

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

APPEALS NOT ACCEPTED FOR REVIEW

2003-1564. Coop v. Brown.

Lucas App. No. L-02-1352, 2003-Ohio-3840. Discretionary appeal and cross-appeal not accepted.

2003-2083. Rich v. McDonald's Corp.

Cuyahoga App. Nos. 80992 and 81111, 155 Ohio App.3d 1, 2003-Ohio-5373. Discretionary appeal not accepted and motion for admission pro hac vice of Nikki J. Palmer by Rebecca J. Brinsfield and motion for admission pro hac vice of Brett Rawitz by Rebecca J. Brinsfield denied as moot.

Pfeifer, J., dissents.

2003-2138. State v. Meeks.

Paulding App. No. 11-03-05, 2003-Ohio-3721.

2003-2192. State v. Glagola.

Stark App. No. 2003CA00006, 2003-Ohio-6018.

2003-2206. State v. Essinger.

Hancock App. No. 5-03-15, 2003-Ohio-6000 and 2003-Ohio-6192.

2003-2208. State v. Jones.

Franklin App. No. 02AP-1390, 2003-Ohio-5994. Discretionary appeal not accepted and motion to strike notice of appeal and memorandum in support of jurisdiction denied as moot.

2003-2211. State v. Richard.

Cuyahoga App. No. 82247, 2003-Ohio-5921.

2003-2213. Svoboda v. Clear Channel Communications, Inc.

Lucas App. No. L-02-1149, 2003-Ohio-6201.

Resnick, J., not participating.

2003-2215. Steadman v. Nelson.

Hamilton App. No. C-030321, 2003-Ohio-6057.

2003-2216. Dean v. Royal Ins. Co. of Am.

Stark App. No. 2003CA00018, 2003-Ohio-6147.

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

2003-2218. Rodgers v. Henninger-Rodgers.

Licking App. No. 03CA97.

2003-2219. Dean v. Fed. Ins. Co.

Stark App. No. 2003CA00013, 2003-Ohio-6145.

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

2003-2226. In re Conservatorship of Ahmed.

Belmont App. No. 03BE71.

2003-2229. Vitatoe v. Lawrence Industries, Inc.

Cuyahoga App. No. 81984, 2003-Ohio-4187.

Pfeifer, J., dissents.

2003-2230. Rumbaugh v. Ohio Dept. of Commerce.

Franklin App. No. 02AP-1335, 2003-Ohio-6107.

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

2003-2231. State v. Class.

Tuscarawas App. Nos. 2003AP010001 and 2003AP010006.

2003-2233. State v. Guess.

Franklin App. No. 94AP-1278. Discretionary appeal not accepted, and motion for oral argument and order to compel testimony, emergency motion for oral hearing and compelled testimony from Chief Psychiatrist Gary Beven, motion for in camera document inspection of Dr. Beven's statement and motion for appointment of counsel to assist mentally ill appellant, motion for in camera inspection of attached medical forms, and motion for appointment of counsel denied as moot.

2003-2235. Ponser v. St. Paul Fire & Marine Ins. Co.

Licking App. No. 2002CA00072, 2003-Ohio-4377. Discretionary appeal not accepted.

O'Connor, J., would dismiss as moot.

2003-2236. State v. Stephens.

Hamilton App. No. C-020683, 2003-Ohio-6193.

2004-0002. Fenton v. Time Warner Entertainment Co.

Montgomery App. No. 19755, 2003-Ohio-5326 and 2003-Ohio-6317.

Pfeifer and O'Connor, JJ., dissent and would remand to the trial court to apply *Coryell v. Bank One Trust Co., N.A.*, 101 Ohio St.3d 175, 2004-Ohio-723, 803 N.E.2d 781.

2004-0004. Brady v. Hickman & Lowder Co., L.P.A.

Cuyahoga App. No. 82461, 2003-Ohio-5649.

F.E. Sweeney, J., dissents.

2004-0005. In re Davis.

Cuyahoga App. No. 82233, 2003-Ohio-5074.

F.E. Sweeney, J., dissents.

2004-0007. State v. Gross.

Muskingum App. No. CT20020037, 2003-Ohio-5085 and 2003-Ohio-6295.

Moyer, C.J., would accept and remand to the court of appeals to address the issues related to appellant's conviction.

2004-0008. State v. Whitt.

Cuyahoga App. No. 82293, 2003-Ohio-5934.

Lundberg Stratton, J., dissents.

2004-0011. Brown v. Vaniman.

Montgomery App. No. 19835, 2003-Ohio-6234.

2004-0012. State v. Larkins.

Cuyahoga App. No. 82325, 2003-Ohio-5928.

Resnick, J., dissents.

2004-0015. Gaydeski v. Ohio Liquor Control Comm.

Franklin App. No. 03AP-329, 155 Ohio App.3d 349, 2003-Ohio-6190.

2004-0016. State v. Chandler.

Cuyahoga App. No. 81817, 2003-Ohio-6037.

2004-0018. State v. Kimbrough.

Cuyahoga App. No. 82728, 2003-Ohio-6922.

2004-0021. State v. Jones.

Franklin App. No. 03AP-696.

2004-0023. State v. Jackson.

Franklin App. No. 02AP-867, 2003-Ohio-6183. Discretionary appeal not accepted and motion for delayed cross-appeal denied.

2004-0026. McCollam v. Am. & Foreign Ins. Co.

Stark App. No. 2003CA00095, 2003-Ohio-6403.

Pfeifer, J., dissents.

2004-0031. Pitsenbarger v. Foos.

Miami App. Nos. 2003CA22, 2003CA26 and 2003CA27, 2003-Ohio-6534.

2004-0037. Johnson v. Ohio Govt. Risk Mgt. Plan.

Marion App. No. 9-03-24, 2003-Ohio-6285.

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

2004-0038. Fowler v. Smith.

Butler App. No. CA2003-02-042, 2003-Ohio-6257.

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

2004-0040. Covington v. HKM Direct Market Communications, Inc.

Franklin App. No. 03AP-52, 2003-Ohio-6306.

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

2004-0042. State v. Daniels.

Cuyahoga App. No. 82586, 2003-Ohio-6479.

2004-0056. State v. Thomas.

Hardin App. No. 6-03-15.

Resnick, O'Connor and O'Donnell, JJ., dissent.

2004-0057. Campagna v. Clark Grave Vault Co.
Franklin App. No. 02AP-1106, 2003-Ohio-6301.

2004-0061. State v. White.
Hamilton App. No. C-030124.

Pfeifer, J., would accept and hold for the decision in 2003-1048 and 2003-1049, *State v. White*, Guernsey App. No. 02CA23, 2003-Ohio-2289.

2004-0063. State v. Nawash.
Cuyahoga App. No. 82911, 2003-Ohio-6040.

2004-0073. Leffler v. State Farm Ins. Co.
Cuyahoga App. No. 83009, 2003-Ohio-6487.

2004-0079. McDonald v. Williamson.
Cuyahoga App. No. 81590, 2003-Ohio-4801 and 2003-Ohio-6606.

2004-0086. Hawk v. Ketterer.
Allen App. No. 1-03-53, 2003-Ohio-6389.
Resnick, J., dissents.

2004-0091. Burchett v. Frey.
Shelby App. No. 17-03-15, 2003-Ohio-6388.
Pfeifer, J., dissents.

2004-0098. Cincinnati Ins. Co. v. Canton Financial.
Stark App. No. 2003CA00150, 2003-Ohio-7348.
Lundberg Stratton and O'Connor, JJ., dissent.

2004-0104. Wynn v. Taylor-Dunn Mfg.
Franklin App. No. 02AP-1445, 2003-Ohio-6472.

2004-0115. State v. Barnes.
Portage App. No. 2002-P-0079, 2003-Ohio-6674.

2004-0121. Rudloff v. Efstathiadis.
Trumbull App. No. 2002-T-0119, 2003-Ohio-6686. Discretionary appeal not accepted and motion to dismiss appeal denied as moot.

2004-0126. State v. Houser.

Summit App. No. 21555, 2003-Ohio-6811.

2004-0140. Powers v. Ohio Dept. of Rehab. & Corr.

Franklin App. No. 03AP-504, 2003-Ohio-6566.

2004-0154. State v. Campbell.

Hamilton App. No. C-020822, 2003-Ohio-7149. Discretionary appeal not accepted and pro se motion for in camera inspection of sealed proceedings and records filed for post-conviction petition and evidentiary hearing denied.

2004-0162. State v. Lowe.

Summit App. No. 21856.

2004-0166. State v. Beckman.

Montgomery App. No. 19544, 2003-Ohio-3837.

2004-0169. State v. Ellison.

Lucas App. No. L-02-1292, 2003-Ohio-6748.

2004-0176. State v. Hickman.

Summit App. No. 20883, 2002-Ohio-3406.

2004-0208. State v. Matos.

Cuyahoga App. No. 81302, 2003-Ohio-3214.

2004-0237. Shaffer-Goggin v. Ohio Unemp. Comp. Review Comm.

Richland App. No. 03CA2, 2003-Ohio-6907.

2004-0243. State v. Young.

Montgomery App. No. 19466, 2003-Ohio-4706.

2004-0376. In re Adoption of Baby Doe.

Franklin App. No. 03AP-917, 2004-Ohio-689.

Resnick, J., dissents.

2004-0382. In re Adoption of Mineer.

Adams App. No. 03CA768, 2004-Ohio-656.

Moyer, C.J., dissents.

RECONSIDERATION OF PRIOR DECISIONS

2002-1488. Yajnik v. Akron Dept. of Health, Hous. Div.

Summit App. No. 20844, 2002-Ohio-3501. Reported at 101 Ohio St.3d 106, 2004-Ohio-357, 802 N.E.2d 632. On motion for reconsideration. Motion denied.

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

2003-0796. Giles v. Simonds, 2004-Ohio-1620.

Columbiana App. No. 02CO18, 2003-Ohio-1428. Reported at 101 Ohio St.3d 1420, 2004-Ohio-123, 802 N.E.2d 152. On motion for reconsideration. Motion denied.

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

Lundberg Stratton, J., concurs separately.

2003-1511. Washington v. Tyson-Parker.

Lorain App. No. 03CA008301. Reported at 101 Ohio St.3d 131, 2004-Ohio-298, 802 N.E.2d 655. On motion for reconsideration. Motion denied.

2003-1520. State ex rel. Cammon v. Brigano.

Warren App. No. CA2003-04-052. Reported at 101 Ohio St.3d 133, 2004-Ohio-316, 802 N.E.2d 656. On motion for reconsideration. Motion denied.

2003-1948 and 2003-1949. Welsh v. Indiana Ins. Co., 2004-Ohio-1621.

Stark App. No. 2002CA00378, 2003-Ohio-5054 and 2003-Ohio-5244. Reported at 101 Ohio St.3d 1424, 2004-Ohio-123, 802 N.E.2d 154, and 101 Ohio St.3d 1418, 2004-Ohio-123, 802 N.E.2d 150. On motion for reconsideration. Motion denied.

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

Lundberg Stratton, J., concurs separately.