

SUPREME COURT OF OHIO

COLUMBUS

ANNOUNCEMENT

9:00 A.M. WEDNESDAY
October 23, 1996

MERIT DOCKET

96-1832. Uncrop v. Natl. Inst. of Health.
Cuyahoga App. No. 70341. Motion to dismiss sustained. Cause dismissed.
Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton,
JJ., concur.

96-1901. Clyde v. Pub. Util. Comm.
Public Utilities Commission, No. 95-02-EL-ABN. On motion to dismiss. Motion to
dismiss sustained. Cause dismissed.
Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Cook and Stratton, JJ.,
concur.
Pfeifer, J., dissents.

96-1994. State ex rel. Walker Ambulance Serv. v. Mengel.
In Mandamus. On answer of respondent. Answer treated as motion to dismiss.
Motion to dismiss sustained. Cause dismissed.
Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton,
JJ., concur.

96-2042. Stevenson v. Fuerst.
In Mandamus. On motion to dismiss. Motion to dismiss sustained. Cause
dismissed.
Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton,
JJ., concur.

96-2064. State ex rel. Hart v. Ninth Dist. Court of Appeals.
In Procedendo. Sua sponte, cause dismissed.
Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Stratton,
JJ., concur.

96-2096. State ex rel. Clyde v. Pub. Util. Comm.
In Mandamus. On motion to dismiss. Motion to dismiss sustained. Cause
dismissed.
Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Cook and Stratton, JJ.,
concur.
Pfeifer, J., dissents.

DISMISSALS, SUA SPONTE, NO SUBSTANTIAL
CONSTITUTIONAL QUESTION AND DISCRETIONARY
APPEALS, IF APPLICABLE, NOT ALLOWED

96-745. Stover v. Wallace.
Franklin App. No. 95APE06-743.
Stratton, J., not participating.

96-770. In re Davis.
Cuyahoga App. No. 68302.

96-1202. State v. Courtright.
Franklin App. No. 96APA01-34.
Moyer, C.J., not participating.

96-1203. State v. Smith.
Portage App. No. 95-P-0071.

96-1205. State v. May.
Hamilton App. No. C-960124.
Stratton, J., not participating.

96-1222. Baggs v. Clarklift of Columbus.
Franklin App. No. 95APE11-1501.

96-1225. Harris v. Toledo.
Lucas App. No. L-96-127.
Resnick, J., not participating.

96-1226. State v. McArdle.
Medina App. No. 2561-M.

96-1235. Costakos v. Frick.
Franklin App. No. 95APE07-837.
Stratton, J., not participating.

96-1238. State v. Derugen.
Marion App. No. 9-96-1.
Moyer, C.J., dissents.

96-1243. State v. Robertson.
Delaware App. No. 95CAA05036.

96-1246. Sentinel Police Assn. v. Cincinnati.
Hamilton App. No. C-940610.
Douglas, Resnick and F.E. Sweeney, JJ., dissent.

96-1248. Shteivi/David, Inc. v. Henry.
Hamilton App. No. C-950794.

96-1249. Carver v. Swallens, Inc.
Richland App. No. 95CA95.

96-1250. State v. Ramey.
Cuyahoga App. No. 69080.

96-1260. State v. Rowland.
Hamilton App. No. C-950623.

Douglas, J., dissents.
Stratton, J., not participating.

96-1267. State v. Lewis.
Summit App. No. 17603.
Cook, J., not participating.

96-1275. In re Joseph S.
Lucas App. No. L-95-148.

96-1277. Oak Furniture Showroom, Inc. v. Normandy Point Assoc.
Montgomery App. Nos. 14924 and 14955. Discretionary appeal and cross-appeal denied.

96-1287. Barnes v. State.
Franklin App. No. 95API09-1153.

96-1306. State v. Black.
Butler App. No. CA95-06-102.

96-1310. State v. Gary.
Cuyahoga App. No. 69532.

96-1317. Marshall v. Rahrig.
Hardin App. No. 6-94-8.
Stratton, J., dissents.

96-1318. Davis v. Brown.
Franklin App. No. 95APE11-1478.

96-1337. Andrews v. Columbus Civ. Serv. Comm.
Franklin App. Nos. 95APE10-1324 and 96APE01-33.

96-1371. State v. Manning.
Delaware App. No. 95CAA07044.
Douglas, J., dissents.

96-1403. State v. Sells.
Crawford App. No. 3-96-12.

96-1405. State v. Boone.
Lorain App. No. 95CA006191.

96-1457. State v. Smith.
Miami App. No. 95CA17.

96-1464. Kelly Greens Invest. Co. v. Ohio Liquor Comm.
Trumbull App. No. 95-T-5308.
Moyer, C.J., and Cook, J., dissent.

96-1473. In re Bowser.
Richland App. No. 95CA362.
Stratton, J., dissents.

96-1494. State v. Lavette.
Richland App. No. 91CA2829.

96-1506. Consol. Rail Corp. v. Gahanna.
Franklin App. No. 95APE12-1578.
Moyer, C.J., and Resnick, J., dissent.

96-1534. Austin v. Andrews.
Hamilton App. No. C-950699.

96-1544. Shearer v. Shearer.
Ashland App. No. 96COA01147.

96-1550. State v. Mason.
Cuyahoga App. No. 69280.

96-1552. State v. Duncan.
Cuyahoga App. No. 69959.

96-1568. State v. Schlosser.
Montgomery App. Nos. 14968 and 14976.

96-1615. State v. Workman.
Summit App. No. 17575.

96-1652. State v. Singleton.
Hamilton App. Nos. C-940424 and C-940425.
Stratton, J., not participating.

96-1680. Felman v. Coleman.
Montgomery App. No. 15686.

MOTION DOCKET

96-1712, 96-1745, 96-2016, 96-2070, 96-2122 and 96-2173. Smith v. Ohio Dept. of Human Serv.
Clermont App. No. CA96-05-045. On motion to strike. Motion granted.
Pfeifer, J., dissents.

On motion to prevent future filings. Motion granted; the Clerk of this court is directed to refuse for filing future filings of the subject parties related to the subject parties.
Pfeifer, J., dissents.

96-2025. Minton v. Honda of Am. Mfg., Inc.
Montgomery App. No. 14949. On review of order certifying a conflict. The court determines that a conflict exists; the parties are to brief the issue stated in the court of appeals' Decision & Entry filed August 27, 1996, as follows:

"This matter comes before the court upon the appellant's motion to certify the existence of a conflict between the judgment of this court rendered in this case on July 19, 1996, and the judgment of the Eleventh District Court of Appeals in Nelson v. Ford Motor Co. [(1996), ___ Ohio App.3d ___, ___ N.E.2d ___]. The appellant asserts, and we agree, that our judgment is in conflict with the judgment in Nelson, supra.

"* * *

"The issue presented is whether an Ohio tort law claim of defective design based upon the absence of an airbag in a manufactured automobile is preempted by the National Traffic & Motor Vehicle Safety Act of 1966 found at 15 U.S.C. §

1381 et seq. ('the Safety Act'). In Nelson, the Eleventh District Court of Appeals found that 'no airbag' tort claims are neither expressly nor impliedly preempted by the federal law. Conversely, we have found that the 'no airbag' claim is impliedly preempted by the Safety Act.

"* * *

"We find that there is a conflict between our judgment in this case and the judgment in Nelson. The motion to certify is GRANTED. The question certified to the Supreme Court of Ohio for review and final determination is as follows:

"Is a 'no air bag' claim brought under Ohio's tort law preempted by the National Traffic & Motor Vehicle Safety Act found at 15 U.S.C. §1381 et seq.?"
Sua sponte, cause consolidated with 96-2006, infra.

96-2153. Internatl. Thompson Publishing, Inc. v. Tracy.
Board of Tax Appeals, Nos. 94-T-1078 and 94-T-1079. On motion for admission pro hac vice by George H. Boerger, Esq. for Hollis B. Hyans and Michael A. Pearl.
Motion granted.

96-2172. State v. Miller.
Cuyahoga App. No. 59987. On motion for leave to file delayed appeal. Motion denied.

96-2174 and 96-2175. Smith v. Ohio Dept. of Human Serv.
Clermont App. No. CA96-05-045. On motion for stay. Motion denied.
Pfeifer, J., would dismiss.
On motion to prevent future filings. Motion granted; the Clerk of this court is directed to refuse for filing future filings of the subject parties related to the subject parties.
Pfeifer, J., would dismiss.

96-2194. State v. Patrick.
Montgomery App. No. 15225. On motion for leave to file delayed appeal. Motion denied.
Moyer, C.J., Resnick and Stratton, JJ., dissent.

96-2204. State v. Moore.
Hamilton App. No. C-950009. On motion for leave to file delayed appeal. Motion granted.
On motion for appointment of counsel. Motion granted and State Public Defender appointed.

DISCRETIONARY APPEALS ALLOWED

96-1211. Jim's Steak House v. Cleveland.
Cuyahoga App. Nos. 68456 and 68506.
Pfeifer, J., dissents.

96-1447. Burgos v. Areway, Inc.
Cuyahoga App. No. 69447.
Moyer, C.J., Cook and Stratton, JJ., dissent.

96-1509. Didier v. Johns.
Montgomery App. No. 15602.
Moyer, C.J., Cook and Stratton, JJ., dissent.

96-2006. Minton v. Honda of Am. Mfg., Inc.

Montgomery App. No. 14949.
Cook and Stratton, JJ., dissent.

DISCRETIONARY APPEALS NOT ALLOWED

96-1201. Lorain v. United Steel Workers of Am.
Lorain App. No. 95CA006185.

96-1206. Blatnick v. Sheller-Globe Corp.
Cuyahoga App. No. 69026.
Stratton, J., dissents.

96-1208. McSwigan v. Ohio Bur. of Emp. Serv.
Hamilton App. No. C-950792.
Douglas, Resnick and F.E. Sweeney, JJ., dissent.

No. 96-1218. Ohl v. HSO, Inc.
Hamilton App. No. C-950522.
Stratton, J., not participating.

96-1231. Estes v. Tecumseh Products Co.
Lucas App. No. L-95-231.
Resnick, J., not participating.

96-1237. Davis v. Kempfer.
Union App. No. 14-95-31.
Moyer, C.J., dissents.

96-1240. Master v. O'Malley.
Cuyahoga App. No. 68895.
Resnick, J., dissents.

96-1247. Zelch v. Plain Dealer Publishing Co.
Cuyahoga App. No. 70460.

96-1252. State v. Mayes.
Medina App. No. 2393-M.

96-1253. Edgewater Ins. Serv., Ltd. v. WMI Real Estate, Inc.
Stark App. No. 1995CA00325.
Douglas, J., dissents.

96-1256. Smith v. Ohio State Hosp.
Franklin App. No. 95API08-1035.
Moyer, C.J., and Stratton, J., dissent.

96-1258. State v. Taylor.
Adams App. No. 95CA601.

96-1264. State v. Pleasant.
Lawrence App. No. 94CA39.

96-1272. Seagraves v. Seagraves.
Montgomery App. No. 15588. On motion for attorney fees. This court finds the appeal to this court frivolous and awards appellee reasonable attorney fees in

an amount to be determined upon submission by appellee of a statement of fees incurred in case No. 96-1272.

F.E. Sweeney, J., dissents.

96-1279. Pettit v. Buhrts.
Franklin App. No. 95APE06-765.

96-1280. Crowninshield/Old Town Community Urban Redevelopment Corp. v. Campeon Roofing & Waterproofing, Inc.
Hamilton App. Nos. C-940731 and C-940748.
Douglas, J., would allow on Proposition of Law No. II only.

96-1291. Swain v. State Farm Ins. Co.
Cuyahoga App. No. 69203.
Douglas, J., dissents.

96-1302. Council of Smaller Enterprises v. Gates, McDonald & Co.
Cuyahoga App. Nos. 68510 and 69868.
Douglas, Resnick and F.E. Sweeney, JJ., dissent.

96-1305. Riverside Nursing Ctr. v. Ohio Dept. of Health.
Franklin App. No. 95APE07-909.
Douglas, J., dissents.

96-1313. Heritage Mut. Ins. Co. v. Cletzer & Assoc. Ins. Agency, Inc.
Medina App. No. 2455-M.
Stratton, J., dissents.

96-1319. Griffin v. Porco.
Hamilton App. No. C-941013.

96-1341. Hoadley v. Quality Castings Co.
Wayne App. No. 95CA0070.
Resnick, F.E. Sweeney and Pfeifer, JJ., dissent.

96-1342. State v. Doss.
Cuyahoga App. No. 68785.
Resnick, J., dissents.

96-1378. Hussey v. Daum.
Montgomery App. No. 15434.

96-1380. State v. Gaston.
Lake App. No. 95-L-126.

96-1459. Shelar v. Shelar.
Lucas App. No. L-95-190.
Resnick, J., not participating.

96-1523. Fairchild v. Curtis.
Guernsey App. Nos. 95CA16, 95CA17 and 95CA23.
Douglas and Stratton, JJ., dissent.

96-1533. Francis v. Diewald.
Lorain App. No. 95CA006264.

96-1537. Foltz v. Nationwide Prop. & Cas. Co.
Licking App. No. 95CA00125.

96-1562. Harris v. Mid-Century Ins. Co.
Crawford App. No. 3-95-16.
Douglas, Resnick and F.E. Sweeney, JJ., dissent.

96-1571. Grob v. Justice.
Lucas App. No. L-95-223.
Douglas, J., dissents.

96-1625. Barbalics v. Kohout.
Cuyahoga App. No. 69140.

96-2008. State v. Sellers.
Montgomery App. No. 14628.

96-2049. State v. Smith.
Summit App. No. 16910.

RECONSIDERATION DOCKET

95-2560. State ex rel. Lewis v. Collins.
In Mandamus. Reported at 76 Ohio St.3d 1471, ___ N.E.2d ___. On motion for
reconsideration. Motion denied.

96-518. McAndrews v. McAndrews.
Hamilton App. No. C-940684. Reported at 76 Ohio St.3d 1472, ___ N.E.2d ___. On
motion for reconsideration. Motion denied.
Stratton, J., not participating.

96-820. State v. Lorraine.
Trumbull App. No. 95-T-5196. Reported at 76 Ohio St.3d 1473, ___ N.E.2d ___.
On motion for reconsideration. Motion denied.
Pfeifer, J., dissents.

96-849. State v. Russell.
Lake App. No. 95-L-135. Reported at 76 Ohio St.3d 1473, ___ N.E.2d ___. On
motion for reconsideration. Motion denied.

96-900. State v. McGriff.
Logan App. No. 8-94-16. Reported at 76 Ohio St.3d 1473, ___ N.E.2d ___. On
motion for reconsideration. Motion denied.
Douglas and Pfeifer, JJ., dissent.

96-1647. Walls v. P.W. Lewis Ctr., Clinton-Warren Bd. of Mental Health.
In Mandamus. Reported at 76 Ohio St.3d 1471, ___ N.E.2d ___. On motion for
reconsideration. Motion denied.

