

SUPREME COURT OF OHIO

COLUMBUS

ANNOUNCEMENT

1:00 P.M.

WEDNESDAY
January 21, 1998

MERIT DOCKET

97-2227. State ex rel. Alhmouz v. Dyke.

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

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Lundberg Stratton, JJ., concur.

97-2249. State ex rel. Rogers v. Wilson.

In Procedendo. *Sua sponte*, cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Lundberg Stratton, JJ., concur.

97-2265. Clough v. State.

In Quo Warranto. *Sua sponte*, cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Lundberg Stratton, JJ., concur.

97-2348. State ex rel. Walker v. Preisse.

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

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Lundberg Stratton, JJ., concur.

97-2350. State ex rel. Beverly v. Eighth Dist. Court of Appeals.

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

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Lundberg Stratton, JJ., concur.

97-2352. State ex rel. Jones v. Borchert.

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

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Lundberg Stratton, JJ., concur.

97-2355. State ex rel. Holland v. Schwartz.

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

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Lundberg Stratton, JJ., concur.

97-2361. State ex rel. Csonka v. Corrigan.

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

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Lundberg Stratton, JJ., concur.

97-2377. State ex rel. Bradley v. Ohio Dept. of Rehab.

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

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Lundberg Stratton, JJ., concur.

97-2385. State ex rel. Forsyth v. Montgomery Cty. Court of Common Pleas.

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

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Lundberg Stratton, JJ., concur.

97-2395. State ex rel. Wyrick v. Cartolano.

In Mandamus and Procedendo. 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 Lundberg Stratton, JJ., concur.

97-2399. State ex rel. Fields v. Cuyahoga Cty. Court of Common Pleas.

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

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Lundberg Stratton, JJ., concur.

97-2400. State ex rel. Simpson v. First Appellate Dist.

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

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Lundberg Stratton, JJ., concur.

97-2413. State ex rel. Ankrom v. Miller.

In Procedendo. 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 Lundberg Stratton, JJ., concur.

97-2436. Jancuk v. Jancuk.

In Habeas Corpus. *Sua sponte*, cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Lundberg Stratton, JJ., concur.

97-2453. State ex rel. Budreaux v. Ghee.

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 Lundberg Stratton, JJ., concur.

97-2454. State ex rel. Smith v. Cuyahoga Cty. Sheriff.

In Mandamus. *Sua sponte*, cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Lundberg Stratton, JJ., concur.

97-2460. State ex rel. Hullinger v. Walters.

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 Lundberg Stratton, JJ., concur.

97-2504. Martin v. Walker.

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 Lundberg Stratton, JJ., concur.

97-2547. Burrell v. Haskins.

In Habeas Corpus. *Sua sponte*, cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Lundberg Stratton, JJ., concur.

97-2629. Collins v. Carter.

In Habeas Corpus. *Sua sponte*, cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Lundberg Stratton, JJ., concur.

97-2638. State ex rel. Lovett v. Ohio Adult Parole Auth.

In Habeas Corpus. *Sua sponte*, cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Lundberg Stratton, JJ., concur.

97-2657. State ex rel. Jones v. Tate.

In Habeas Corpus. *Sua sponte*, cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Lundberg Stratton, JJ., concur.

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

97-1520. State v. Metz.

Washington App. No. 96CA03.

97-1707. State v. Mitchell.

Cuyahoga App. No. 70437.

97-1819. State v. Zanders.

Summit App. No. 18302.

97-2074. State v. Bell.

Perry App. No. 96CA27.

97-2080. State v. Smith.

Portage App. No. 96-P-0275.

97-2082. State v. Sunnycalb.

Butler App. No. CA96-11-246.

97-2098. State v. Terry.

Hamilton App. No. C-960548.

97-2105. State v. Nooks.

Madison App. No. CA97-09-039.

97-2106. State v. Turner.

Allen App. No. 1-96-27.

97-2109. State v. Alvarez.
Lorain App. No. 97CA006843.

97-2114. Osborne v. Ohio Edison, Inc.
Summit App. No. 18179.
Cook, J., not participating.

97-2117. Morris v. State Farm Auto. Ins. Co.
Tuscarawas App. Nos. 97AP010001 and 97AP010002.

97-2124. State v. Poindexter.
Hamilton App. No. C-960780.

97-2125. State v. Pendang.
Hamilton App. No. C-960644.

97-2131. State v. Becker.
Clermont App. No. CA97-03-028.

97-2132. State v. Bell.
Marion App. No. 9-97-27.

97-2151. Reynolds v. Morris.
Franklin App. No. 97APE02-227. (Appeal of Darl E. Reynolds and cross-appeal of Michael S. Morris.)
Douglas, J., dissents.

97-2152. State v. Montgomery.
Portage App. No. 95-P-0034.

97-2155. Lovejoy v. Macek.
Lake App. No. 96-L-149.
Lundberg Stratton, J., dissents.

97-2157. Koslen v. Am. Red Cross.
Cuyahoga App. No. 71733.

97-2158. State v. Brown.
Stark App. No. 1996CA00251.

97-2163. Kassouf v. Pantona.
Cuyahoga App. No. 71156.

97-2167. State v. Bates.
Cuyahoga App. No. 71383.

97-2168. State v. Mitchell.
Summit App. No. 18369.

97-2171. State v. Windmiller.
Lorain App. No. 97CA006886.
Douglas, J., not participating.

97-2172. State v. Carlisle.
Hamilton App. No. C-960675.

97-2173. State v. Jones.
Montgomery App. No. 16123.

97-2174. State v. Smith.
Wayne App. No. 96CA0081.

97-2176. State v. Baisden.
Franklin App. No. 97APA02-235.

97-2178. State v. Gawloski.
Cuyahoga App. No. 71659.

97-2180. State v. Smith.
Cuyahoga App. No. 70855.

97-2190. State v. Stevens.
Summit App. No. 18300.

97-2191. State v. Phillips.
Summit App. No. 18500.

97-2194. State v. Orr.
Montgomery App. No. 16750.

97-2195. Nolan v. Ormet Corp.
Monroe App. No. 790.

97-2196. State v. Ray.
Belmont App. No. 96-BA-12.
Pfeifer, J., dissents.

97-2201. Cunningham v. Cunningham.
Cuyahoga App. No. 72471.
Lundberg Stratton, J., dissents.

97-2203. State v. Foster.
Summit App. No. 18169.

97-2206. State v. Lenoir.
Montgomery App. No. 15469.

97-2207. State v. Holt.
Hamilton App. No. C-960140.
F.E. Sweeney and Lundberg Stratton, JJ., dissent.

97-2210. State v. Vender.
Medina App. No. 2614-M.

97-2215. Sain v. Allstate Ins. Co.
Franklin App. No. 97APG04-502.

97-2221. Natl. Lime & Stone Co. v. Ohio Div. of Mines & Reclamation.

Allen App. No. 1-97-26.

Douglas, J., dissents.

97-2224. Pingue v. Porter, Wright, Morris & Arthur.

Franklin App. No. 96APE11-1613.

97-2230. State v. McMinn.

Medina App. No. 2653-M.

97-2238. State v. Reynolds.

Montgomery App. No. 16110.

97-2240. State v. Solivan.

Cuyahoga App. No. 71972.

97-2244. State v. Burnett.

Hamilton App. No. C-960922.

97-2246. Moore v. Consol. Rail Corp.

Stark App. Nos. 1996CA00317 and 1996CA00323. Discretionary appeal and motion for admission *pro hac vice* of Nancy Winkelman denied.

Douglas and Cook, JJ., not participating.

97-2251. State v. Hayden.

Franklin App. No. 95APA05-559.

97-2252. State v. Young.

Summit App. No. 18354.

97-2260. Bouquett v. State Med. Bd. of Ohio.

Franklin App. No. 96APE12-1701.

97-2262. State v. Kendricks.

Cuyahoga App. No. 72163.

Moyer, C.J., and Douglas, J., dissent.

97-2272. State v. Vroman.
Ross App. No. 95CA2138.

97-2275. State v. Hinkle.
Perry App. No. CA9646.

97-2277. State v. Burnett.
Cuyahoga App. No. 72373.

97-2278. Howard v. Covenant Apostolic Church, Inc.
Hamilton App. No. C-960844.
Moyer, C.J., would allow on Proposition of Law No. II only.
Pfeifer, J., would allow.

97-2280. State v. Evans.
Hamilton App. No. C-960906.
Pfeifer, J., dissents.

97-2285. Stan v. Quarto Mining Co.
Monroe App. No. 787.
Moyer, C.J., and Resnick, J., dissent.

97-2287. State v. Wyckhouse.
Henry App. No. 7-96-7.
Resnick, J., not participating.

97-2288. State v. Buoscio.
Summit App. No. 18758.

97-2291. State v. Gorman.
Hamilton App. No. C-960966.

97-2295. State v. Fejes.
Wayne App. No. 96CA0088.

97-2304. State v. Gipson.
Hamilton App. Nos. C-960867 and C-960881.

97-2305. State v. Thomson.
Lucas App. No. L-97-1127.
Resnick, J., not participating.

97-2307. State v. Justice.
Summit App. No. 18141.

97-2308. State v. Lewis.
Trumbull App. No. 96-T-5577.

97-2309. State v. Justice.
Cuyahoga App. No. 72984.
Moyer, C.J., and Pfeifer, J., would allow and hold this cause for the decision in 97-1778, *State v. Rush*, Stark App. No. 96CA419.

97-2335. State v. Green.
Hamilton App. Nos. C-961016, C-970085 and C-970104.

97-2347. King v. Granville.
Licking App. Nos. 97CA29 and 97CA34.

97-2386. State v. Lemley.
Knox App. No. 97CA1.

MOTION DOCKET

95-1545. State ex rel. Scott Fetzer Co. v. Indus. Comm.
Franklin App. No. 94APD04-513. On request for oral argument. Request denied.

97-1089. In re Trust of Brooke.
Preble App. No. CA96-10-017. On motion to supplement record. Motion denied.
Resnick, Pfeifer and Lundberg Stratton, JJ., dissent.

97-1117. Simmons-Harris v. Goff.

Franklin App. Nos. 96APE08-982 and 96APE08-991. On motion for admission *pro hac vice* of Thomas G. Hungar and Eugene Scalia, and on motion for admission *pro hac vice* of Nathan J. Diament. Motions granted.

Lundberg Stratton, J., not participating.

97-1130. State v. Goff.

Clinton App. No. CA95-09-026. On motion to participate in oral argument. Presence at oral argument is granted, but participation in oral argument is denied.

Moyer, C.J., would deny the motion to participate.

Douglas, J., would grant the motion to participate.

97-1142. Sutowski v. Eli Lilly & Co.

Certified State Law Question, No. 1:97-CV1283. On motion for admission *pro hac vice* of Marc S. Klein. Motion granted.

97-1283. MIB, Inc. v. Tracy.

Board of Tax Appeals, No. 95-B-109. On request for oral argument before full court. Request denied.

Moyer, C.J., and Douglas, J., dissent.

97-1890. ALLTEL Ohio, Inc. v. Pub. Util. Comm.

Public Utilities Commission, No. 95-819-TP-CSS. On motion for leave to intervene of Ameritech Ohio. Ameritech Ohio is granted leave to intervene as an appellant; its intervention is limited and confined to raising and addressing only those issues and matters that it identified as constituting error in its application for rehearing filed in the case below.

Resnick, J., not participating.

On motion for leave to intervene of Ohio Direct Communications. Ohio Direct Communications is granted leave to intervene as an appellee.

Resnick, J., not participating.

97-2222. Parma v. Pub. Util. Comm.

Public Utilities Commission, No. 97-650-TP-CSS. On motion for leave to intervene of Ameritech Ohio. Motion granted.

Resnick, J., not participating.

97-2294. RMI Titanium Co. v. Occidental Chem. Corp.

Cuyahoga App. Nos. 71471, 71486 and 71487. On motion to seal memorandum in response. Motion granted.

Pfeifer, J., dissents.

97-2401. State v. Ashford.

Cuyahoga App. No. 68883. On motion for leave to file delayed appeal. Motion denied.

Pfeifer and Lundberg Stratton, JJ., dissent.

97-2407. State v. McGrew.

Summit App. No. 18692. On motion for leave to file delayed appeal. Motion denied.

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

97-2431. Bakos v. Insura Prop. & Cas. Ins. Co.

Cuyahoga App. No. 71949. On review of order certifying a conflict. The court determines that a conflict exists; the parties are to brief the question certified on page 4 of the court of appeals' Order Certifying a Conflict dated November 3, 1997:

“When an insurer denies the claim of an insured, for uninsured or underinsured motorist benefits, as compensation for personal injury, does that denial constitute a material breach of the insurance contract, on the part of the insurer, and, consequently, relieve the insured from the contractual obligation to notify and/or obtain the consent of its insurer, before settling with a tortfeasor, who caused the personal injury, or a tortfeasor’s insurer?”

The conflict case is *Prater v. State Auto Prop. & Cas. Ins. Co.* (May 20, 1996), Clermont App. No. CA95-12-087, unreported, 1996 WL 263635.

Moyer, C.J., and F.E. Sweeney, J., dissent.

97-2475. State v. Collier.

Butler App. No. CA96-03-059. On motion for leave to file delayed appeal. Motion denied.

97-2510. Kaiser v. Ameritemps, Inc.

Summit App. No. 18205. 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' Journal Entry filed November 4, 1997:

“May a Workers' Compensation claimant use Civ.R. 41(A)(1)(a) to voluntarily dismiss an appeal to the court of common pleas brought by an employer appealing an adverse decision by the Industrial Commission pursuant to R.C. 4123.512?”

The conflict cases are *Ross v. Wolf Envelope Co.* (Aug. 2, 1990), Cuyahoga App. No. 57015, unreported, 1990 WL 109082, and *Robinson v. B.O.C. Group, Gen. Motors Corp.* (Oct. 11, 1996), Trumbull App. No. 96-T-5419, unreported, 1996 WL 648960, conflict accepted in (1997), 77 Ohio St.3d 1545, 674 N.E.2d 1185.

Sua sponte, cause consolidated with 97-2380, *infra*.

Cook, J., would also hold this cause for the decision in 96-2634 and 96-2778, *Robinson v. B.O.C. Group, Gen. Motors Corp.*, *supra*.

97-2551. State v. Carter.

Sandusky App. No. S-96-039. On motion for leave to file delayed appeal. Motion granted.

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

97-2566. Braatz v. Braatz.

Mahoning App. No. 95 C.A. 260. 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' Journal Entry filed November 14, 1997:

“Whether a moving party must demonstrate a change of circumstances for a trial court to modify its prior judgment regarding visitation?”

“At issue is whether R.C. 3109.04 or R.C. 3109.051 is applicable to a modification of visitation.”

The conflict case is *Jacobs v. Jacobs* (1995), 102 Ohio App.3d 568, 657 N.E.2d 580.

F.E. Sweeney, J., dissents.

The parties are also to brief the issue stated at page 3 of the court of appeals' Journal Entry filed November 14, 1997:

“Whether a trial court is required to set forth findings of fact and conclusions of law upon timely request in proceedings involving a modification of visitation?”

The conflict case is *In re Thrush* (1988), 44 Ohio App.3d 40, 541 N.E.2d 119.

F.E. Sweeney, Cook and Lundberg Stratton, JJ., dissent.

97-2593. State v. Williams.

Cuyahoga App. No. 70810. On motion for leave to file delayed appeal. Motion denied.

Moyer, C.J., dissents.

97-2621. State v. Barth.

Washington App. No. 92CA22. On motion for leave to file delayed appeal. Motion denied.

97-2626. State v. Tisdell.

Cuyahoga App. No. 71054. On motion for leave to file delayed appeal. Motion granted.

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

97-2632. State v. McKenney.

Stark App. No. 1997CA00061. On motion for leave to file delayed appeal. Motion denied.

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

DISCRETIONARY APPEALS ALLOWED

91-1259. Forbes v. Midwest Air Charter, Inc.

Cuyahoga App. No. 56815. (Appeal of Ina Forbes and cross-appeal of Piper Aircraft Corp.) Discretionary appeal and cross-appeal allowed.

Lundberg Stratton, J., would allow the cross-appeal only.

Moyer, C.J., and Cook, J., would deny the appeal and cross-appeal.

97-2143. Hillyer v. State Farm Mut. Auto. Ins. Co.

Cuyahoga App. No. 71724. Discretionary appeal allowed; *sua sponte*, cause consolidated with 97-2200, *infra*, and held for the decisions in 97-1516, *Balatgek*, 97-402 and 97-551, *Ross*, and 97-2056 and 97-2301, *Davis*, *infra*; briefing schedule stayed.

Moyer, C.J., dissents.

97-2149. Manohar v. Massillon Community Hosp.

Stark App. No. 1997CA00040.

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

97-2150. Turner v. Cent. Local School Dist.

Defiance App. No. 4-97-13. (Appeal of Edward Turner et al. and cross-appeal of Central Local School District.) Discretionary appeal and cross-appeal allowed.

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

97-2162. State v. Whiting.

Miami App. No. 96CA13.

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

97-2200. Hillyer v. Great Am. Ins. Co.

Lake App. No. 96-L-148. Discretionary appeal allowed; *sua sponte*, cause consolidated with 97-2143, *supra*, and cause held for the decision in 97-402 and 97-551, *Ross v. Farmers Ins. Group of Cos.*, Montgomery App. No. 15865, 97-1516, *Balatgek*, *infra*, and 97-2056 and 97-2301, *Davis v. Farmers Ins. Group of Columbus*, Montgomery App. No. 16378; briefing schedule stayed.

97-2212. Brown v. Wallbrown.

Franklin App. No. 96APE12-1633. Discretionary appeal allowed; *sua sponte*, cause held for the decision in 97-1516, *Balatgek v. State Farm Ins. Co.*, Franklin App. No. 96APE12-1619, 97-402 and 97-551, *Ross*, and 97-2056 and 97-2301, *Davis*, *supra*; briefing schedule stayed.

Moyer, C.J., dissents.

97-2261. State v. Serrato.

Wood App. No. WD-96-051. Discretionary appeal allowed; *sua sponte*, cause held for the decision in 97-1778, *State v. Rush*, Stark App. No. 96CA419; briefing schedule stayed.

F.E. Sweeney, J., dissents.

Resnick, J., not participating.

97-2276. State v. Berenyi.

Paulding App. No. 11-97-1. Discretionary appeal allowed; *sua sponte*, cause held for the decision in 96-2865, *State v. Golphin*, Cuyahoga App. No. 69266; briefing schedule stayed.

97-2380. Kaiser v. Ameritemps, Inc.

Summit App. No. 18205.

Moyer, C.J., would allow on Propositions of Law Nos. I, II, and V only.

Pfeifer and Cook, JJ., dissent.

DISCRETIONARY APPEALS NOT ALLOWED

97-1879. Rogers v. Rogers.

Franklin App. Nos. 96APF10-1333 and 97APF01-67.

Resnick and Pfeifer, JJ., dissent.

97-2055. Neague v. Worthington City School Dist.

Franklin App. No. 96APE12-1767. (Appeal of Worthington City School District and cross-appeal of Jonathan Neague.) Discretionary appeal and cross-appeal denied.

Moyer, C.J., would allow the appeal only.

Lundberg Stratton, J., would allow the appeal and cross-appeal.

97-2075. In re Estate of Donofrio.

Lucas App. No. L-96-320.

97-2081. Local No. 74, AFSCME v. Warren Bd. of Health.

Trumbull App. No. 95-T-5364.

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

97-2113. State v. Griffin.

Morrow App. No. CA849.

97-2148. Harwood v. FirstMerit EST Bank.

Lorain App. No. 97CA006666.

97-2164. State v. Oliver.

Lorain App. No. 96CA00647.

Lundberg Stratton, J., dissents.

Douglas, J., not participating.

97-2169. Leonardi v. Lawrence Industries, Inc.

Cuyahoga App. No. 72313.

Moyer, C.J., would allow on Proposition of Law No. I only.

F.E. Sweeney and Lundberg Stratton, JJ., would allow.

97-2181. Harmon v. Philip Morris, Inc..

Cuyahoga App. No. 71605.

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

97-2188. McKinney v. McKinney.

Clermont App. No. CA97-01-003.

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

97-2192. State v. McDonald.

Geauga App. No. 96-G-2036.

97-2193. State v. Mitchell.

Hamilton App. No. C-960764.

97-2205. Doe v. Boy Scouts of Am.

Muskingum App. No. CT960040.

97-2209. Barhorst v. Sonoco Products Co.

Miami App. No. 96CA28.

Douglas, J., dissents.

97-2226. Johnston v. J.C. Penney Life Ins. Co.
Hamilton App. No. C-940482.

97-2242. Rose v. Zaring Homes, Inc.
Hamilton App. No. C-960571.

97-2243. T.P. McCully Lawn & Landscape v. Ohio Civ. Rights Comm.
Stark App. No. 1997CA00045.

97-2253. Peebles Elderly Hous. L.P. v. Titan Indemn. Co.
Adams App. No. 96CA631.
Moyer, C.J., dissents.

97-2269. Pritchett, Dlusky & Saxe v. Pingue.
Franklin App. No. 96APE11-1598.
Douglas and F.E. Sweeney, JJ., dissent.

97-2279. Markle v. Cement Transit Co.
Cuyahoga App. No. 70175. (Appeal of Joel E. Markle and cross-appeal of
Cement Transit Company, Inc.)
Moyer, C.J., would allow on Proposition of Law No. II only.
F.E. Sweeney, J., would allow.

97-2292. Knoch Corp. v. Greater E. Canton Community Dev. Assn.
Stark App. No. 1996CA00377.

**97-2296. Barnesville Exempted Village School Dist. Bd. of Edn. v.
Barnesville Assn. of Classified Emp.**
Belmont App. No. 96-BA-38.
Resnick, J., dissents.

97-2302. Popovich v. Southern Park Pontiac & Subaru, Inc.
Mahoning App. No. 95 C.A. 126.
Douglas, J., dissents.

97-2327. Williams v. J & J Motors, Inc.

Stark App. No. 1997CA00007.

Moyer, C.J., dissents.

97-2375. Indep. Ins. Agents of Ohio, Inc. v. Duryee.

Franklin App. No. 97APE03-382.

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

97-2429. Bakos v. Insura Prop. & Cas. Ins. Co.

Cuyahoga App. No. 71949. (Appeal of Insura Property and Casualty Insurance Company; appeal of St. Paul Fire and Marine Insurance Company.)

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

RECONSIDERATION DOCKET

95-653. State ex rel. Toth v. Indus. Comm.

Franklin App. No. 94APD02-236. Reported at 80 Ohio St.3d 360, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

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

96-1467. Harris v. Kennedy.

Cuyahoga App. No. 69420. Reported at 80 Ohio St.3d 1211, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

Douglas, J., dissents.

97-223. State ex rel. Norris v. Boggins.

Stark App. No. 1997CA00004. Reported at 80 Ohio St.3d 296, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

97-1826. State ex rel. Davie v. Callahan.

In Procedendo. Reported at 80 Ohio St.3d 1212, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

Cook and Lundberg Stratton, JJ., dissent.

97-1848. Ft. Defiance Constr. & Supply, Inc. v. Grover Hill.

Paulding App. No. 11-95-15. Reported at 80 Ohio St.3d 1449, ___ N.E.2d ___ . On motion for reconsideration. Motion denied.
Douglas, J., dissents.

97-1897. Adam v. Bath Twp. Bd. of Zoning Appeals.

Summit App. No. 18144. Reported at 80 Ohio St.3d 1470, ___ N.E.2d ___ . On motion for reconsideration. Motion denied.
Moyer, C.J., and Lundberg Stratton, J., dissent.

97-1912. Stickovich v. Cleveland.

Cuyahoga App. No. 72874. Reported at 80 Ohio St.3d 1470, ___ N.E.2d ___ . On motion for reconsideration. Motion denied.
Moyer, C.J., and Cook, J., would grant the motion and hold this cause for the decision in 97-1870, *Burger v. Cleveland Hts.*, Cuyahoga App. No. 72675.
Lundberg Stratton, J., would grant the motion.

97-1932. State v. Kobi.

Fulton App. No. F-96-025. Reported at 80 Ohio St.3d 1466, ___ N.E.2d ___ . On motion for reconsideration. Motion denied.
Lundberg Stratton, J., would grant the motion and hold this cause for the decision in 97-1778, *State v. Rush*, Stark App. No. 96CA419.
Resnick, J., not participating.