

SUPREME COURT OF OHIO

COLUMBUS

ANNOUNCEMENT

1:00 P.M.

WEDNESDAY
February 3, 1999

MERIT DOCKET

97-2211. Tongren v. Pub. Util. Comm.

Public Utilities Commission, No. 95-656-GA-AIR. *Sua sponte*, cause dismissed.

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

Moyer, C.J., not participating.

98-1515. State ex rel. Jones v. Indus. Comm.

Franklin App. No. 97APD04-479. 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.

98-2041. Reed v. Kinkela.

In Habeas Corpus. On motion to dismiss and on motions for leave to supplement
the record. Motions granted and cause dismissed.

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

98-2323. State ex rel. Lamp v. Indus. Comm.

In Mandamus. On motions for judgment on the pleadings. Motions granted and cause dismissed.

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

98-2500. State ex rel. Rentz v. Ramsey.

In Mandamus. On motion to dismiss of Donald Ramsey and on motion to dismiss of Judge Erich O'Brien. Motions to dismiss sustained. Cause dismissed.

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

98-2539. State ex rel. Klopp v. Ohio Adult Parole Auth.

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.

98-2540. State ex rel. Howard 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.

98-2547. Henley v. White.

In Prohibition. On motion to dismiss of Michael R. White and on motion to dismiss of state of Ohio, Ohio General Assembly, Governor George V. Voinovich, and Dr. John M. Goff. Motions to dismiss sustained. Cause dismissed.

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

98-2588. State ex rel. Lucaj v. Craig.

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.

98-2607. State ex rel. Festi v. Bettis.

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.

98-2679. State ex rel. Hightower v. Haskins.

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

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

98-2712. State ex rel. James 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.

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

98-1832. State v. Earl.

Cuyahoga App. No. 62610.

98-1952. State v. Arnold.

Cuyahoga App. No. 72803.

98-2156. State v. Chester.

Stark App. No. 1997CA00428.

98-2160. State v. Zawacki.

Wayne App. No. 98CA0012.

98-2162. Santone v. Diaman.

Monroe App. No. 772.

98-2164. Natl. Life Ins. Co. v. Delco Dev. Co. of Harrison Road, Ltd.

Hamilton App. Nos. C-970750 and C-970777.

98-2172. Rust v. Harris-Gordon.

Lucas App. No. L-97-1415. Discretionary appeal denied.

Cook and Lundberg Stratton, JJ., would also award attorney fees as a sanction for frivolous action.

Resnick, J., not participating.

98-2181. Todd v. Shirey.

Hamilton App. No. C-970774.

98-2184. State v. Israfil.

Montgomery App. No. 16498.

98-2189. State v. Martin.

Lorain App. No. 98CA007210.

98-2191. State v. Martin.

Montgomery App. No. 16958.

98-2203. State v. List.

Summit App. No. 18316.

98-2223. State v. Gipson.

Hamilton App. No. C-970891.

98-2229. Hamilton v. Kuehne.

Butler App. No. CA97-10-198.

Douglas, J., dissents.

98-2232. Lorain v. Diewald.

Lorain App. No. 98CA007127.

98-2269. State v. Ash.

Cuyahoga App. No. 73344.

Moyer, C.J., dissents.

98-2286. State v. McKenzie.

Erie App. No. E-97-040.

Resnick, J., not participating.

98-2288. State v. Warf.
Seneca App. No. 13-98-41.

98-2293. Briskey v. Briskey.
Cuyahoga App. No. 73368.
Douglas and Resnick, JJ., dissent.

98-2294. State v. Horn.
Franklin App. No. 98AP-92.

98-2306. State v. Butler.
Montgomery App. No. 16852.

98-2308. State v. Woods.
Hamilton App. No. C-980716.

98-2320. State v. Fredenburg.
Franklin App. No. 97APA10-1340.

98-2322. State v. Hargrove.
Hamilton App. No. C-960974.

98-2326. State v. Raheem.
Hamilton App. No. C-970928.

98-2328. State v. Geneva.
Tuscarawas App. No. 95AP030011.

98-2329. State v. Maye.
Franklin App. No. 97APA11-1529.
Moyer, C.J., dissents.

98-2330. State v. Britton.
Lucas App. No. L-97-1345.
Moyer, C.J., dissents.
Resnick, J., not participating.

98-2332. State v. Davie.

Trumbull App. No. 97-T-175.

Pfeifer, J., dissents.

98-2337. State ex rel. Hitchens v. Indus. Comm.

Franklin App. No. 97APE11-1494. On appeal of James E. Hitchens. Discretionary appeal denied.

On cross-appeal of Bureau of Workers' Compensation. Discretionary cross-appeal denied.

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

98-2338. Miller v. Sports Page.

Geauga App. No. 97-G-2104.

98-2339. State v. Powell.

Lake App. No. 97-L-130.

98-2348. State v. Love.

Cuyahoga App. No. 75106.

98-2350. State v. Stevenson.

Erie App. No. E-97-008.

Resnick, J., not participating.

98-2351. State v. Pickens.

Erie App. No. E-98-005.

Resnick, J., not participating.

98-2352. State v. Roy.

Butler App. No. CA97-11-216.

98-2353. State v. Haynes.

Washington App. No. 97CA26.

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

98-2356. State v. Caslin.

Franklin App. No. 98AP-463.

98-2359. Simpson v. Sexton.

Licking App. No. 98CA41.

98-2363. State v. James.

Cuyahoga App. No. 72922.

98-2364. State v. Massengale.

Hamilton App. No. C-961100.

98-2367. State v. Brown.

Summit App. No. 18766.

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

98-2368. State v. Franks.

Summit App. No. 18767.

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

98-2372. Jones v. Tracy.

Crawford App. No. 3-98-10.

Douglas, J., dissents.

98-2374. State v. White.

Cuyahoga App. No. 72300.

98-2397. State v. Ashcraft.

Butler App. No. CA97-11-217.

98-2398. State v. Dresnek.

Ashtabula App. No. 97-A-0003.

98-2403. State v. Marcum.

Butler App. No. CA96-03-049.

98-2406. Cuyahoga Child Support Enforcement Agency ex rel. Drews v. Ambrosi.

Cuyahoga App. No. 73761.

Pfeifer and Lundberg Stratton, JJ., dissent.

98-2435. Hillabrand v. Drypers Corp.

Marion App. No. 9-98-23.

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

98-2437. In re Mikalopas.

Hamilton App. No. C-970910.

98-2441. State v. Logan.

Summit App. No. 18958.

Lundberg Stratton, J., dissents.

98-2448. Hottel v. Timothy L. Hottel, DDS., Inc.

Cuyahoga App. No. 73431.

Pfeifer, J., dissents.

98-2453. State v. Wilson.

Montgomery App. Nos. 16728 and 16752.

98-2455. State v. Harris.

Sandusky App. No. S-97-048.

Lundberg Stratton, J., dissents.

Resnick, J., not participating.

98-2532. State v. Sutton.

Richland App. No. 97CA2.

MOTION DOCKET

96-2225. State ex rel. Jones v. Kaiser Found. Hosp. Cleveland.

Franklin App. No. 95APD11-1430. On request for oral argument. Request denied.

97-123. State ex rel. Ramos v. Indus. Comm.

Franklin App. No. 95APD11-1431. On request for oral argument. Request denied.

98-299. State ex rel. Longworth v. O'Neill.

In Mandamus. *Sua sponte*, alternative writ granted.

Resnick and Pfeifer, JJ., dissent.

98-980. State v. Campbell.

Franklin C.P. No. 97CR042020. On motion for leave to supplement the record. Motion granted.

98-1336. State ex rel. Kleve v. Green Twp. Bd. of Trustees.

In Mandamus. On motion for relief from judgment. Motion denied.

Resnick and Pfeifer, JJ., would dismiss.

F.E. Sweeney, J., would grant.

98-1428. State ex rel. Youngstown City School Dist. Bd. of Edn. v. Youngstown.

In Mandamus. On relator's bill and documentation in support of attorney fees and costs. Relator is awarded attorney fees in the amount of \$6,352.50 and a refund of costs of \$140.

98-1974. State ex rel. Sysco Food Serv. of Cleveland, Inc. v. Indus. Comm.

In Mandamus. *Sua sponte*, alternative writ granted.

98-2093. State ex rel. Cyclops Corp./Empire Detroit Steel Div. v. Conrad.

In Mandamus. *Sua sponte*, alternative writ granted.

98-2105. Cleveland v. Garfield.

Cuyahoga App. No. 74258. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

98-2365. Duquesne Light Co. v. Tracy.

Board of Tax Appeals, Nos. 95-K-40, 95-K-71 and 95-K-72. On motion to brief constitutional issues separately and exceed page limitation. Motion denied.

98-2404. Estep v. Capital Resin Corp.

Franklin App. No. 98AP-991. On motion for stay of consideration of appeal pending common pleas court approval of settlement. Stay granted for thirty days.

98-2479. Symmes Twp. Bd. of Trustees v. Smyth.

Hamilton App. No. C-971028. On review of order certifying a conflict. The court determines that a conflict exists; the parties are to brief the issue stated at page 18 of the court of appeals' opinion filed November 6, 1998:

“The rule of law on which the conflict exists is whether the language ‘in an area zoned for residential use,’ as used in R.C. 519.211(B)(1)(c), means an area zoned as a residential district primarily for residential use or an area which, regardless of its zoned designation, permits residences within its boundaries.”

Pfeifer and Lundberg Stratton, JJ., would accept this cause and hold it for the decision in 98-46, *Campanelli v. AT&T Wireless Serv.*, Stark App. Nos. 1997CA00109 and 1997CA00110.

Resnick, J., not participating.

The conflict case is *AT&T Wireless PCS, Inc. v. Beavercreek Twp. Bd. of Zoning Appeals* (Oct. 9, 1998), Greene App. No. 98CA18, unreported, 1998 WL 698374.

98-2579. State v. Merritt.

Hamilton App. No. C-970479. On motion for leave to file delayed appeal. Motion denied.

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

98-2585. State v. Bolding.

Cuyahoga App. No. 73689. On motion for leave to file delayed appeal. Motion denied.

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

98-2590. State v. Lambert.

Richland App. No. 97CA342. On motion for leave to file delayed appeal. Motion denied.

98-2610. Marshall v. Ortega.

Cuyahoga App. No. 72096. 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’ Journal Entry filed December 3, 1998:

“Having determined that our October 8, 1998 decision in the present case conflicts with *Woods v. Dutta* (Jackson County, 1997), 119 Ohio App.3d 228 [695 N.E.2d 18], we hereby grant appellee’s motion requesting certification and certify the following issue to the Ohio Supreme Court:

“Where a party timely files more than one statutory notice of intent to sue in accordance with R.C. 2305.11(B)(1), does the statute of limitations for medical malpractice bar prosecution of an action for malpractice commenced within 180 days of the latest of these notices?”

Douglas, J., dissents.

Sua sponte, cause consolidated with 98-2543, *infra*.

Douglas, J., dissents.

98-2627. State v. Hudson.

Shelby App. No. 17-97-24. On motion for leave to file delayed appeal. Motion denied.

98-2629. State v. Jones.

Richland App. No. 97CA24. On motion for leave to file delayed appeal. Motion denied.

Lundberg Stratton, J., dissents.

98-2648. State v. North.

Hamilton App. No. C-970494. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

98-2667. Hubbard v. Canton City School Bd. of Edn.

Stark App. No. 1998CA00089. 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’ Judgment Entry filed December 7, 1998:

“On November 3, 1998, appellants, the Canton City School Board of Education et al., filed a Motion to Certify Conflict. On November 19, 1998, appellees, Regina Hubbard et al., filed a Motion for Leave to File a Response Instanter. The proposed Response was attached to the Motion. The Motion for Leave to File Instanter is granted, and we have considered appellees’ Response to the Motion to Certify Conflict. Upon review of both the Motion to Certify Conflict, the Response, and the cited cases, we find that the Opinion of this Court, filed October 26, 1998, is in conflict with *Doe v. Jefferson Area Local School District* (1994), 97 Ohio App.3d 11 [646 N.E.2d 187], and *Zellerman v. Kenton Board of Education* (1991), 71 Ohio App.3d 287 [593 N.E.2d 392]. We propose the following issue for certification: Is the exception to the political subdivision immunity found in R.C. 2744.02(B)(4), effective 7/1/89, applicable only to

negligence occurring in connection with the maintenance of school property or equipment, or to physical defects within or on the grounds of school property?"

99-6. Kimberly Y. v. Charles M.

Lucas App. No. L-98-1163. On motion for stay of judgment of court of appeals. Motion granted; *sua sponte*, discretionary appeal allowed; cause held for the decision in 97-2398, *Cuyahoga Child Support Enforcement Agency v. Guthrie*, Cuyahoga App. No. 72216; briefing schedule stayed.

DISCRETIONARY APPEALS ALLOWED

98-2225. State v. Jeffers.

Hamilton App. No. C-980150. Discretionary appeal allowed; *sua sponte*, cause held for the decision in 98-1779, *State v. Conyers*, Lucas App. No. L-97-1327, and 98-1929, *State v. Schultz*, Hamilton App. No. C-970954; briefing schedule stayed.

98-2276. State v. Bruni.

Stark App. No. 98CA00105. Discretionary appeal allowed; *sua sponte*, cause held for the decision in 98-1627, *State v. Calhoun*, Lake App. No. 97-L-063; briefing schedule stayed.

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

98-2292. State v. Koogler.

Franklin App. No. 98AP-219. Discretionary appeal allowed; *sua sponte*, cause held for the decision in 98-2603, *State v. Edmonson*, Portage App. No. 97-P-0067; briefing schedule stayed.

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

98-2336. State v. Hawkins.

Summit App. No. 18765.

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

98-2358. McCullen v. Ohio State Univ. Hosp.

Franklin App. Nos. 97API10-1301 and 97API10-1324.

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

Cook and Lundberg Stratton, JJ., dissent.

98-2383. State ex rel. State Teachers Retirement Bd. v. W. Geauga Local School Dist. Bd. of Edn.

Geauga App. Nos. 97-G-2066 and 97-G-2067.

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

98-2386. Bielat v. Bielat.

Summit App. No. 18930.

Resnick, Cook and Lundberg Stratton, JJ., dissent.

98-2543. Marshall v. Ortega.

Cuyahoga App. No. 72096. Discretionary appeal allowed; *sua sponte*, cause consolidated with 98-2610, *supra*.

Douglas, Resnick and Pfeifer, JJ., dissent.

DISCRETIONARY APPEALS NOT ALLOWED

98-2268. H.C.C.O.A., Inc. v. Veard/Towner Oak Point Partnership.

Lorain App. No. 97CA006872.

98-2283. Ondrejcek v. Jelly Rolls, Inc.

Cuyahoga App. No. 73997.

98-2291. Ohio Edison Co. v. Roman.

Lorain App. No. 97CA006735.

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

Cook, J., not participating.

98-2303. Sweeney v. Sweeney.

Franklin App. No. 98AP-66.

Moyer, C.J., dissents.

98-2309. State v. Jackson.

Montgomery App. No. 17056.

98-2310. Steinfels v. Ohio Dept. of Commerce, Div. of Securities.

Franklin App. No. 98AP-470.

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

98-2317. Crowinshield/Old Town Community Urban Redev. Corp. v. Campeon Roofing & Waterproofing, Inc.

Hamilton App. No. C-970420.

98-2345. Boettner v. Boettner.

Summit App. No. 18696.

Cook, J., not participating.

98-2346. State v. Gastaldo.

Tuscarawas App. No. 98AP010006.

98-2361. Kaiser v. Flege.

Franklin App. No. 98AP-146.

Pfeifer, J., dissents.

98-2366. Simpson v. Valenti.

Allen App. No. 1-98-33.

Douglas and Pfeifer, JJ., dissent.

98-2396. Neuendorff v. Toledo City Planning Comm.

Lucas App. No. L-98-1089.

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

98-2408. Stratton v. Odyssey Homes, Inc.

Cuyahoga App. No. 74068.

98-2442. Kosek v. Salem Community Hosp.

Columbiana App. No. 96CO28.

98-2488. Watt v. Watt.

Ottawa App. No. OT-98-021.

98-2530. Briggs v. Cincinnati Court Index.

Hamilton App. No. C-971083.

RECONSIDERATION DOCKET

96-1421. State ex rel. Ooten v. Siegel Interior Specialist Co.

Franklin App. No. 95APD05-607. Reported at 84 Ohio St.3d 255, ___ N.E.2d ___.

On motion for reconsideration. Motion denied.

Douglas, Resnick and Pfeifer, JJ., dissent.

96-2346. State v. Getsy.

Trumbull C.P. No. 95CR399. Reported at 84 Ohio St.3d 180, ___ N.E.2d ___.
On motion for reconsideration. Motion denied.

97-730. State ex rel. Feldkamp v. E. Ohio Gas Co.

Franklin App. No. 96APD05-649. Reported at 84 Ohio St.3d 221, ___ N.E.2d ___.
On motion for reconsideration. Motion denied.
Cook, J., not participating.

97-1474. State v. Sheppard.

Hamilton App. Nos. C-950402 and C-950744. Reported at 84 Ohio St.3d 230,
___ N.E.2d ___. On motion for reconsideration. Motion denied.

98-1478. State ex rel. Grove v. Nadel.

Hamilton App. No. C-970324. Reported at 84 Ohio St.3d 252, ___ N.E.2d ___.
On motion for reconsideration. Motion denied.
Lundberg Stratton, J., dissents.

98-1673. Shie v. Leonard.

Allen App. No. 1-98-36. Reported at 84 Ohio St.3d 160, ___ N.E.2d ___. On
motion for reconsideration. Motion denied.

98-1875. Ohio Civ. Rights Comm. v. Kent State Univ.

Portage App. No. 97-P-0066. Reported at 84 Ohio St.3d 1439, ___ N.E.2d ___.
On motion for reconsideration. Motion denied.

98-1937. State v. White.

Ashland App. No. 97COA01229. Reported at 84 Ohio St.3d 1445, ___ N.E.2d ___.
On motion for reconsideration. Motion denied.

98-1942. State v. Sherrills.

Cuyahoga App. No. 56777. Reported at 84 Ohio St.3d 1445, ___ N.E.2d ___. On
motion for reconsideration. Motion denied.

98-1943. State v. Sherrills.

Cuyahoga App. No. 62067. Reported at 84 Ohio St.3d 1446, ___ N.E.2d ___. On
motion for reconsideration. Motion denied.

98-1985. State v. Hoffman.

Huron App. No. H-97-52. Reported at 84 Ohio St.3d 1446, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

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

98-2011. State v. Waldrop.

Franklin App. No. 98AP-102. Reported at 84 Ohio St.3d 1446, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

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

98-2018. Howard v. Seaway Food Town, Inc.

Lucas App. No. L-97-1322. Reported at 84 Ohio St.3d 1446, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

Resnick, J., not participating.

98-2028. Third Fed. S. & L. Assn. of Cleveland v. Hayward.

Summit App. No. 18561. Reported at 84 Ohio St.3d 1450, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

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

98-2057. State v. Keith.

Crawford App. No. 3-98-05. Reported at 84 Ohio St.3d 1447, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

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

98-2084. State ex rel. Strothers v. Cleveland Parking Violations Bur.

In Mandamus. Reported at 84 Ohio St.3d 1426, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

98-2157. Erie Ins. Co. v. Favor.

Franklin App. No. 97APE12-1693. Reported at 84 Ohio St.3d 1451, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

Douglas, Resnick and Pfeifer, JJ., dissent.

98-2226. State ex rel. Tinsler v. Muehlfeld.

In Prohibition. Reported at 84 Ohio St.3d 1444, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

98-2369. State v. Walker.

Hamilton App. No. C-970647. Reported at 84 Ohio St.3d 1449, ___ N.E.2d ___.

On motion for reconsideration. Motion denied.

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