

The Supreme Court of Ohio

CASE ANNOUNCEMENTS AND ADMINISTRATIVE ACTIONS

October 2, 2002

MERIT DECISIONS WITH OPINIONS

2001-0165. Miller v. Gunckle, 2002-Ohio-4932.

Butler App. No. CA2000-02-026. Judgment reversed and cause remanded.
Moyer, C.J., Douglas, Resnick, F.E. Sweeney and Pfeifer, JJ., concur.
Cook, J., concurs in judgment.
Lundberg Stratton, J., dissents.

2001-0916. Osborne v. AK Steel/Armco Steel Co., 2002-Ohio-4846.

Hamilton App. No. C-000320. Judgment reversed and cause remanded.
Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Lundberg
Stratton, JJ., concur.

2001-0923. FirstEnergy Corp. v. Pub. Util. Comm., 2002-Ohio-4847.

Public Utilities Commission, No. 99-1212-EL-ETP. Order affirmed.
Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, DeGenaro and
Lundberg Stratton, JJ., concur.
Mary DeGenaro, J., of the Seventh Appellate District, sitting for Cook, J.

2001-1102. Kelleys Island Caddy Shack, Inc. v. Zaino, 2002-Ohio-4930.

Board of Tax Appeals, No. 2000-B-819. Decision affirmed.
Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Cook and Lundberg Stratton,
JJ., concur.
Pfeifer, J., dissents.

2001-1325. State ex rel. Shemo v. Mayfield Hts., 2002-Ohio-4905.

In Mandamus. On motion for reconsideration. Motion denied in part. See
opinion.

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

Pfeifer and Cook, JJ., concur in part and dissent in part.

2001-1481. State v. Miller, 2002-Ohio-4931.

Ashtabula App. No. 99-A-0078. Judgment reversed and verdict reinstated.

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

Moyer, C.J., Pfeifer and Cook, JJ., concur in judgment only.

2001-2079. State ex rel. White v. Kilbane Koch, 2002-Ohio-4848.

Cuyahoga App. No. 80426, 2001-Ohio-4144. Appeal dismissed.

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

Douglas, J., dissents.

2001-2082. State ex rel. Chagrin Falls v. Geauga Cty. Bd. Comms., 2002-Ohio-4906.

Geauga App. No. 2001-G-2384. Judgment affirmed.

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

2002-0305. State ex rel. Kline v. Carroll, 2002-Ohio-4849.

Cuyahoga App. No. 79737. Judgment affirmed.

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

2002-0313. Disciplinary Counsel v. Conese, 2002-Ohio-4797.

On Certified Report by the Board of Commissioners on Grievances and Discipline of the Supreme Court, No. 00-41.

Michael Conese is suspended from the practice of law for one year with six months stayed on condition.

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

Douglas, J., concurs in judgment only.

Cook, J., dissents.

Resnick, J., not participating.

2002-0323. State ex rel. Nalls v. Russo, 2002-Ohio-4907.

Cuyahoga App. No. 80410, 2002-Ohio-583. Judgment affirmed.

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

2002-0538. Malone v. Lane, 2002-Ohio-4908.

Marion App. No. 9-02-07. Judgment affirmed.

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

2002-0681. Cuyahoga Cty. Bar Assn. v. Judge, 2002-Ohio-4741.

On Certified Report by the Board of Commissioners on Grievances and Discipline of the Supreme Court, No. 01-89.

Thomas J. Judge is indefinitely suspended from the practice of law.

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

Cook, J., dissents.

2002-0677. Columbus Bar Assn. v. Moushey, 2002-Ohio-4850.

On Certified Report by the Board of Commissioners on Grievances and Discipline of the Supreme Court, No. 01-59.

Michael Lee Moushey is indefinitely suspended from the practice of law.

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

2002-0678. Disciplinary Counsel v. Sims, 2002-Ohio-4798.

On Certified Report by the Board of Commissioners on Grievances and Discipline of the Supreme Court, No. 01-91.

David Scott Sims is suspended from the practice of law for two years.

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

Cook and Lundberg Stratton, JJ., dissent.

2002-0699. Dayton Bar Assn. v. Graham, 2002-Ohio-4910.

On Certified Report by the Board of Commissioners on Grievances and Discipline of the Supreme Court, No. 01-64.

V. Ellen Graham is suspended from the practice of law for one year, stayed on conditions.

Douglas, Resnick, F.E. Sweeney and Pfeifer, JJ., concur.

Moyer, C.J., dissents.

Cook and Lundberg Stratton, JJ., dissent.

MERIT DECISIONS WITHOUT OPINIONS

2002-1369. State ex rel. Morris v. O'Grady.

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.

2002-1456. State ex rel. Troutman v. Zaleski.

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.

2002-1540. Pegg v. Wilkinson.

In Habeas Corpus. On petition for writ of habeas corpus of Maurice S. Pegg. Sua sponte, cause dismissed.

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

MOTION AND PROCEDURAL RULINGS

1988-1630. State v. Floyd.

Franklin App. No. 87AP-808. On pro se motion to clarify court order/decision. Motion denied.

2001-1303. Wiles v. Medina Auto Parts.

Medina App. No. 3131-M. On amici curiae motion for leave to file under S.Ct.Prac.R. XI of Ohio Employment Lawyers Association et al. Motion granted.

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

2002-1271. Estate of Houser v. Motorists Ins. Co.

Auglaize App. No. 2-02-02, 2002-Ohio-2845. 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 July 18, 2002:

“Do the notice, consent or subrogation clauses in a commercial motor vehicle policy bar underinsured motorist recovery thereunder where a settlement was effectuated with the tortfeasor prior to the Ohio Supreme Court’s decision in *Scott-Pontzer v. Liberty Mut. Fire Ins. Co.* (1999), 85 Ohio St.3d 660?”

Lundberg Stratton, J., dissents.

Sua sponte, cause consolidated with 2002-1245, *Estate of Houser v. Motorists Ins. Co.*, Auglaize App. No. 2-02-02, 2002-Ohio-2845.

Lundberg Stratton, J., dissents.

The conflict case is *Rohr v. Cincinnati Ins. Co.*, Stark App. No. 2001CA00237, 2002-Ohio-1583.

2002-1359. State v. Belfoure.

Cuyahoga App. No. 80159, 2002-Ohio-2959. On review of order certifying a conflict. The court determines that a conflict exists. Sua sponte, cause consolidated with 2002-1185, *State v. Belfoure*, Cuyahoga App. No. 80159, 2002-Ohio-2959, causes held for the decision in 2002-0201, *State v. Fisher*, Franklin App. No. 01AP-614, 2001-Ohio-8772, and briefing schedule stayed.

2002-1459. Alatsis v. Nationwide Ins. Enterprise.

Franklin App. No. 01AP-1038, 2002-Ohio-2906. On review of order certifying a conflict. The court determines that a conflict exists. Sua sponte, cause consolidated with 2002-1122, *Alatsis v. Nationwide Ins. Enterprise*, Franklin App. No. 01AP-1038, 2002-Ohio-2906, causes held for the decision in 2002-0579, *Burkhart v. CNA Ins. Co.*, Stark App. No. 2001CA00265, 2002-Ohio-903, and briefing schedule stayed.

Lundberg Stratton, J., dissents.

2002-1518. Maye v. Auto-Owners Mut. Ins. Co.

Lucas App. No. L-01-1418, 2002-Ohio-3572. On review of order certifying a conflict. The court determines that a conflict exists. Sua sponte, cause held for the decision in 2001-1786, *Lemm v. The Hartford*, Franklin App. No. 01AP-251; briefing schedule stayed.

2002-1520. State v. Martin.

Cuyahoga App. No. 73456. On motion for leave to file delayed appeal. Motion denied.

APPEALS ACCEPTED FOR REVIEW

2002-1040. Park Corp. v. Brook Park.

Cuyahoga App. No. 79410, 2002-Ohio-2246.

Cook and Lundberg Stratton, JJ., dissent.

2002-1042. Coventry v. Ghee.

Licking App. No. 01CA89, 2002-Ohio-2523. Discretionary appeal allowed and cause held for the decision in 2001-1825, *Lee v. Ohio Adult Parole Auth.*, Montgomery App. No. 18833, 2001-Ohio-1466; briefing schedule stayed.

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

2002-1106. Worthington v. Columbus.

Franklin App. Nos. 01AP-1119 and 01AP-1120, 2002-Ohio-2330.

Douglas and Cook, JJ., dissent.

Lundberg Stratton, J., not participating.

2002-1122. Alatsis v. Nationwide Ins. Enterprise.

Franklin App. No. 01AP-1038, 2002-Ohio-2906. Discretionary appeal allowed, cause consolidated with 2002-1459, *Alatsis v. Nationwide Ins. Enterprise*, Franklin App. No. 01AP-1038, 2002-Ohio-2906, causes held for the decision in 2002-0579, *Burkhart v. CNA Ins. Co.*, Stark App. No. 2001CA00265, 2002-Ohio-903, and briefing schedule stayed.

Lundberg Stratton, J., dissents.

2002-1126. Allen v. Johnson.

Wayne App. Nos. 01CA0046 and 01CA0047, 2002-Ohio-3404. Discretionary cross-appeal allowed and motions to dismiss denied.

Resnick, Pfeifer and Cook, JJ., dissent.

2002-1185. State v. Belfoure.

Cuyahoga App. No. 80159, 2002-Ohio-2959. Discretionary appeal allowed, cause consolidated with 2002-1359, *State v. Belfoure*, Cuyahoga App. No. 80159, 2002-Ohio-2959, causes held for the decision in 2002-0201, *State v. Fisher*, Franklin App. No. 01AP-614, 2001-Ohio-8772, and briefing schedule stayed.

2002-1245. Estate of Houser v. Motorists Ins. Co.

Auglaize App. No. 2-02-02, 2002-Ohio-2845. Discretionary appeal allowed and cause consolidated with 2002-1271, *Estate of Houser v. Motorists Ins. Co.*, Auglaize App. No. 2-02-02, 2002-Ohio-2845.

Cook, J., would allow on Proposition of Law No. I and hold on that proposition for the decision in 2002-0932, *Westfield Ins. Co. v. Galatsis*, Summit App. No. 20784, 2002-Ohio-1502; and would allow on Proposition of Law No. II.

Lundberg Stratton, J., dissents.

APPEALS NOT ALLOWED FOR REVIEW

2002-0972. State v. Beauford.

Franklin App. No. 01AP-1166, 2002-Ohio-2016.

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

2002-1059. Cleveland v. Vento.

Cuyahoga App. No. 79913, 2002-Ohio-2613.

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

2002-1121. Amburgy v. S. Lebanon.

Warren App. No. CA2001-07-065.

Resnick, J., would allow on Propositions of Law Nos. I and II.
Douglas and Cook, JJ., would allow.

2002-1139. State v. Miller.

Holmes App. No. 00CA21, 2002-Ohio-2850.

2002-1144. State v. Kitchen.

Cuyahoga App. No. 79943, 2002-Ohio-2256.

2002-1153. Augustiniak v. Toledo Hosp.

Lucas App. No. L-01-1437, 2002-Ohio-2628.

Resnick, J., not participating.

2002-1154. State v. McVeigh.

Lorain App. No. 02CA008051.

2002-1155. State v. McVeigh.

Lorain App. No. 02CA008050.

2002-1156. MacCurrach Golf Constr., Inc. v. Desert Village L.P.

Lucas App. No. L-01-1489, 2002-Ohio-2635.

Resnick, J., not participating.

2002-1158. State v. Hendricks.

Erie App. No. E-01-050.

Resnick, J., not participating.

2002-1166. Bryant v. Walt Sweeney Automotive, Inc.

Hamilton App. Nos. C-010395 and C-010404.

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

2002-1167. State v. Arnder.

Tuscarawas App. No. 2001AP080073, 2002-Ohio-2860.

Pfeifer, J., dissents.

2002-1168. Hayes v. Heintz.

Cuyahoga App. No. 79335, 2002-Ohio-2608.

Douglas and Resnick, JJ., dissent.

2002-1174. Fraternal Order of Police, Akron Lodge No. 7 v. Akron.

Summit App. No. 20646, 2002-Ohio-2649.

Douglas and Pfeifer, JJ., dissent.

2002-1180. State v. Baumgartner.

Mahoning App. No. 00CA63, 2002-Ohio-3174.

Moyer, C.J., F.E. Sweeney and Lundberg Stratton, JJ., dissent.

2002-1184. State v. Taylor.

Cuyahoga App. No. 80271, 2002-Ohio-2742.

2002-1186. Van Sweden v. Goodyear Tire & Rubber Co.

Summit App. No. 20710, 2002-Ohio-2654.

2002-1193. Starks v. Ohio Adult Parole Auth.

Franklin App. No. 01AP-1160.

2002-1195. Toledo v. Emery.

Lucas App. No. L-01-1361, 2002-Ohio-2694.

2002-1199. Elyria v. Bozman.

Lorain App. No. 01CA007899, 2002-Ohio-2644.

2002-1201. State v. Moyer.

Auglaize App. No. 2-02-06.

2002-1202. State v. Schwaben.

Ashland App. No. 01COA1429, 2002-Ohio-2856.

2002-1203. State v. Roots.

Morrow App. No. CA938, 2002-Ohio-2853.

2002-1204. Southridge Civic Assn. v. Parma.

Cuyahoga App. No. 80230, 2002-Ohio-2748.

2002-1205. Bhatti v. Singh.

Butler App. No. CA2001-09-215, 2002-Ohio-3348.

2002-1208. Mack v. Ohio Dept. of Taxation.

Ashland App. No. 01COA01413, 2002-Ohio-2682.

2002-1210. Wilson v. Uwaydah.

Van Wert App. No. 15-01-19, 2002-Ohio-2735.

2002-1217. State v. Reynolds.

Putnam App. No. 12-01-11, 2002-Ohio-2823.

2002-1227. State v. Brown.

Franklin App. No. 01AP-587, 2002-Ohio-2802.

2002-1232. State v. Grant.

Hamilton App. No. C-010632.

2002-1237. Fortin v. Normandy Holding, Inc.

Cuyahoga App. No. 81184.

2002-1238. State v. Black.

Stark App. No. 2001CA00251, 2002-Ohio-2864.

2002-1241. State v. Evans.

Cuyahoga App. No. 79895, 2002-Ohio-2610.

2002-1242. State v. Yirga.

Wyandot App. No. 16-01-24, 2002-Ohio-2832.

Douglas, J., dissents.

2002-1243. Powers v. Ferro Corp.

Cuyahoga App. No. 79383, 2002-Ohio-2612.

F.E. Sweeney, J., dissents.

2002-1244. Morning View Care Center-Fulton v. Ohio Dept. of Human Serv.

Franklin App. No. 01AP-931, 2002-Ohio-2878. Discretionary appeal and cross-appeal denied.

Moyer, C.J., dissents.

2002-1246. Andrews v. Montgomery.

Hamilton App. No. C-010480.

2002-1247. State v. Willey.

Washington App. No. 01CA37, 2002-Ohio-2849.

2002-1254. State v. Clark.

Montgomery App. No. 19016.

Moyer, C.J., dissents.

2002-1256. Cho v. Bowns.

Hamilton App. No. C-010513.

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

2002-1257. State v. Dubose.

Mahoning App. No. 00CA60.

2002-1258. State v. Simmons.

Hamilton App. No. C-010705.

2002-1260. State v. McKay.

Ashtabula App. No. 2002-A-0022.

2002-1263. Widlar v. MatchMaker Internatl.

Lucas App. No. L-01-1433, 2002-Ohio-2836.

Pfeifer, J., dissents.

Resnick, J., not participating.

2002-1264. Fox v. Stockmaster.

Seneca App. Nos. 13-01-34 and 13-01-35, 2002-Ohio-2824.

Pfeifer, J., dissents.

2002-1265. State v. Wright.

Scioto App. No. 01CA2804, 2002-Ohio-3138.

2002-1266. Pingue v. Hyslop.

Franklin App. No. 01AP-1000, 2002-Ohio-2879.

F.E. Sweeney, J., dissents.

2002-1267. State v. Williams.

Cuyahoga App. No. 80965.

2002-1269. Trangenstein v. Wheaton College Bd. of Trustees.

Greene App. No. 01CA136, 2002-Ohio-2937.

Resnick, J., dissents.

2002-1272. State v. Johnson.

Cuyahoga App. No. 80247, 2002-Ohio-2712.

Lundberg Stratton, J., dissents.

2002-1279. State v. Evans.

Mahoning App. No. 00CA93, 2002-Ohio-3047.

2002-1295. State v. Wilburn.

Lawrence App. No. 02CA18.

2002-1302. State v. Smith.

Hamilton App. No. C-010517, 2002-Ohio-2886.

2002-1303. State v. Villa.

Montgomery App. No. 18868, 2002-Ohio-2939.

2002-1325. State v. Franklin.

Butler App. No. CA2001-04-074, 2002-Ohio-3876.

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

2002-1327. State v. Kachermeyer.

Franklin App. No. 99AP-439, 2002-Ohio-3342.

2002-1337. State v. Gray.

Hamilton App. Nos. C-010527 and C-010533.

2002-1343. State v. York.

Hamilton App. No. C-010278.

2002-1360. State v. Evans.

Franklin App. No. 01AP-1112, 2002-Ohio-3322.

2002-1430. Yeager v. Ohio Civ. Rights Comm.

Trumbull App. No. 2001-T-0076, 2002-Ohio-3383.

Resnick, J., not participating.