

The Supreme Court of Ohio

MARCH 4, 2002

CASE ANNOUNCEMENTS

MERIT DECISIONS WITHOUT OPINIONS

01-2278. State ex rel. White v. Suster.

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.

01-2280. State ex rel. White v. Suster.

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.

02-43. State ex rel. Penhollow v. Judges of the Eleventh Dist. Court of Appeals.

In Procedendo. On answer of respondent and motion for judgment on pleadings.
On S.Ct.Prac.R. X(5) determination, cause dismissed.

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

MOTION DOCKET

98-1474. State v. Coley.

Lucas C.P. No. CR971449. On application for reopening under S.Ct.Prac.R. XI(5)
and motion to strike opposition to application for reopening. Application denied.

01-1176. State ex rel. Kim v. Wachenschwanz.

In Mandamus. On relator's motion for order of contempt of writ and for sanctions.

IT IS HEREBY ORDERED by the court that respondent is found to be in CONTEMPT of the court's November 14, 2001 writ of mandamus, and that relator be awarded attorney fees relating to her motion. Relator's attorney is ordered to submit a bill and documentation in support of the request for attorney fees within ten days of this entry.

IT IS FURTHER ORDERED that respondent immediately comply with the court's November 14, 2001 writ of mandamus by giving Kim access to the requested records.

01-1394. State ex rel. Howard v. Seaway Foodtown, Inc.

Franklin App. No. 00AP-1097. On motion for stay of execution of judgment of this court pending petition to the United States Supreme Court. Motion denied.

02-53. Pearce v. Fouad.

Franklin App. No. 00AP-837. On notice of bankruptcy filing and suggestion of stay. Stay granted.

02-99. Stern v. Stern.

Jefferson App. No. 00JE17. On motion for stay of court of appeals' judgment. Motion denied.

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

02-114. State v. Jenkins.

Montgomery App. No. 18551. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

02-116. State v. Brady.

Montgomery App. No. 18682. On motion for leave to file delayed appeal. Motion denied.

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

02-137. State v. Youngblood.

Greene App. No. 01CA67. On motion for stay of Supreme Court proceedings pending appointment of counsel by court of appeals. Motion denied.

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

02-142. State v. Washington.

Hamilton App. No. C-000754. On motion for leave to file delayed appeal. Motion granted.

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

02-159. State v. Woods.

Stark App. No. 1997CA00124. On motion for leave to file delayed appeal. Motion denied.

02-174. Norwood v. Robinson.

Hamilton App. No. C-010307. On motion for stay of sentence of trial court pending appeal. Motion denied.

02-196. State v. James.

Summit App. No. 20790. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

02-199. State v. Nicholson.

Erie App. No. E-99-083. On motion for leave to file delayed appeal. Motion denied.

Resnick, J., not participating.

02-201. State v. Fisher.

Franklin App. No. 01AP-614. 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 January 29, 2002:

“This case is before the court as the result of the filing of a motion to certify a conflict between our opinion issued December 20, 2001, and the now reported case of *State v. Gilden* (2001), 144 Ohio App.3d 69 [759 N.E.2d 468]. We perceive a clear conflict and therefore certify the following issue:

“Is the practice of a trial court of allowing members of a jury to submit questions to the court and attorneys for possible submission to witnesses *per se* prejudicial to a criminal defendant?”

F.E. Sweeney, J., dissents.

02-212. State v. Harris.

Cuyahoga App. No. 78591. On motion for leave to file delayed appeal. Motion denied.

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

02-217. Uz Engineered Prod. Co. v. Midwest Motor Supply Co.

Franklin App. No. 01AP-551. On motion for stay of court of appeals' judgment. Motion granted and bond continued.

F.E. Sweeney, J., dissents.

02-232. State v. Harrison.

Lake App. No. 2000-L-212. On motion for stay of court of appeals' judgment. Motion denied.

Moyer, C.J., dissents.

02-246. In re Hoffman.

Stark App. No. 2001CA00207. 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 January 28, 2002:

“This matter came before this Court upon a Motion Requesting Certificate to the Supreme Court of Ohio Based Upon Conflict Between Jurisdictions filed by appellee Stark County Department of Job and Family Services. The motion asserts our opinion in the within action is in conflict with opinions issued by other courts of appeals.

“Upon review, we find our opinion is in conflict with *In re Stephen Fox, Jr.* (Sept. 27, 2000), Wayne County App. Nos. 00CA0039, 00CA0038, 00CA0040, 00CA0041, unreported [2000 WL 1420276]. The motion to certify conflict is sustained.

“Pursuant to App.R. 25(A), we certify the issue of the law to the Ohio Supreme Court for review and final resolution:

“Whether, in a permanent custody action, a party may cross-examine the guardian ad litem, notwithstanding the language of R.C. 2151.414(C).”

F.E. Sweeney, J., dissents.

APPEALS ALLOWED

01-2107. State v. Riemer.

Cuyahoga App. No. 78952. Discretionary appeal allowed on Proposition of Law No. II.

Moyer, C.J., and Cook, J., concur.

Resnick, Pfeifer and Lundberg Stratton, JJ., concur but would also allow all other propositions of law.

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

01-2118. Kimble v. Kimble.

Licking App. No. 01CA55.

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

01-2134. Gorslone v. Huck.

Licking App. No. 01CA40.

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

01-2154. Rancman v. Interim Settlement Funding Corp.

Summit App. No. 20523. On discretionary appeal. Appeal allowed.

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

On motion for admission *pro hac vice* of Connie J. Elliano by Robert M. Stefancin and Rebecca A. Kucera, and on motion for admission *pro hac vice* of Andrew T. Savage by Robert M. Stefancin and Rebecca A. Kucera. Motions granted.

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

On motion to strike memos of Future Settlement, *amici* memo of Lawfunds, LLC, et al., and amended memo of Interim Settlement. Motion denied.

APPEALS NOT ALLOWED

99-1660. State v. Were.

Hamilton App. No. C-980537.

01-2109. State v. Paletta.

Lorain App. No. 00CA007717.

01-2135. State v. Grays.

Madison App. No. CA2001-02-007.

01-2136. State v. Olah.

Lorain App. No. 01CA007826.

01-2137. State v. Leigh.

Montgomery App. No. 18841.

01-2138. Harris v. Wilkinson.

Franklin App. No. 01AP-598.

Moyer, C.J., dissents, would allow, and would hold this cause for the decision in 01-1253 and 01-1266, *Layne v. Ohio Adult Parole Auth.*, Marion App. Nos. 9-01-06 and 9-2001-06.

01-2139. State v. Leigh.

Montgomery App. No. 18294.

01-2140. State v. McClellan.

Meigs App. No. 00CA31.

01-2145. State v. Holland.

Montgomery App. No. 18556.

01-2149. State v. Lane.

Allen App. No. 1-01-69.

01-2152. State v. Merriweather.

Hamilton App. No. C-010638.

01-2153. Bank One, Akron, N.A. v. Malz.

Medina App. No. 3167-M. On discretionary appeal, motion to strike memorandum in response of Michael and Tawnya Smith by Bank One, Akron, N.A., and motion to strike appellee Bank One's motion to strike the memorandum in response of Michael and Tawnya Smith. Appeal and motions denied.

01-2157. State v. Stedman.

Cuyahoga App. No. 77334. On discretionary appeal, *pro se* motion to dismiss counsel, and *pro se* motion to strike memorandum in support of jurisdiction submitted by attorney. Appeal and motions denied.

01-2158. Perotti v. Ishee.

Mahoning App. No. 01CA88.

01-2160. State v. Engelhart.

Lorain App. No. 01CA007901.

01-2161. State v. Carnail.
Cuyahoga App. No. 78921.

01-2162. INF Ent., Inc. v. Donnellon.
Hamilton App. No. C-000790. On discretionary appeal, motion to strike notice of appeal and memorandum in support of jurisdiction, and motion to dismiss the appeal. Appeal and motions denied.

01-2163. State v. Smith.
Cuyahoga App. No. 79292.

01-2164. State v. McGonegal.
Montgomery App. No. 18639.

01-2165. Herron v. Herron.
Allen App. No. 1-01-58.
Douglas, J., dissents.

01-2172. Huffman v. Huffman.
Adams App. Nos. 00CA704 and 01CA709.
Moyer, C.J., and Resnick, J., dissent.

01-2174. Guerry v. Guerry.
Cuyahoga App. No. 77819.

01-2178. Am. Express Travel Related Serv. Co. v. Scott.
Franklin App. No. 01AP-842.
Cook, J., not participating.

01-2179. State v. Wobbler.
Putnam App. No. 12-01-01.

01-2182. State v. Johnson.
Crawford App. No. 3-2000-15.

01-2184. State v. Linscott.
Summit App. No. 20525.
Cook and Lundberg Stratton, JJ., dissent.

01-2186. Sachdeva v. Conrad.

Franklin App. No. 01AP-406.

01-2188. State v. Lloyd.

Cuyahoga App. No. 78852. On discretionary appeal and cross-appeal. Appeal and cross-appeal denied.

Moyer, C.J., dissents.

01-2190. Novomont Corp. v. Lincoln Elec. Co.

Cuyahoga App. No. 78389.

F.E. Sweeney, J., dissents.

01-2191. Simpson v. Bakers Local No. 57 of Bakery, Confectionery & Tobacco Workers Internatl. Union, AFL-CIO.

Hamilton App. Nos. C-000691 and C-010008. On discretionary appeal and cross-appeal. Appeal and cross-appeal denied.

01-2198. Rimel v. Northland Ins. Co.

Stark App. No. 2001CA00177.

01-2200. State v. Turner.

Trumbull App. No. 2000-T-0074.

01-2208. Brooks v. Jo Ann Stores, Inc.

Butler App. No. CA2001-05-107.

01-2209. Baker v. Gerber.

Tuscarawas App. No. 2001AP040034.

01-2211. Ray v. Kaufmann's Dept. Store.

Cuyahoga App. No. 78888.

01-2212. State v. Thurman.

Cuyahoga App. No. 78230.

01-2215. In re Wint.

Cuyahoga App. No. 80323.

Moyer, C.J., dissents, would allow, and would reverse this cause on the authority of *In re Anderson* (2001), 92 Ohio St.3d 63, 748 N.E.2d 67.

01-2216. State v. Kearns.
Richland App. No. 01CA6.
Pfeifer, J., dissents.

01-2217. State v. Cullers.
Montgomery App. No. 18602.

01-2218. State ex rel. WCCSEA v. Tanner.
Wayne App. No. 01CA0013.
Pfeifer, J., dissents.

01-2219. Klostermeyer v. Ohio Dept. of Rehab. & Corr.
Cuyahoga App. No. 79248.

01-2223. State v. Scharf.
Ottawa App. No. OT-01-010.

01-2225. State v. Moore.
Carroll App. No. 00AP0741. On discretionary appeal and motion for bond pending appeal. Appeal and motion denied.

01-2232. Steiner v. Dacio.
Tuscarawas App. No. 2000AP120098.

01-2234. State v. Julious.
Hamilton App. Nos. C-010048, C-010049 and C-010050.

01-2235. State v. Latson.
Cuyahoga App. No. 79093.

01-2237. Kurincic v. Stein, Inc.
Cuyahoga App. No. 79089.

01-2239. State v. Davis.
Cuyahoga App. No. 79191.

Moyer, C.J., dissents, would allow, and would remand this cause for application of *State v. Edmondson* (2001), 92 Ohio St.3d 393, 750 N.E.2d 587.

01-2240. Orshoski v. Krieger.

Ottawa App. No. OT-01-009.

Moyer, C.J., and Cook, J., dissent.

Resnick, J., not participating.

01-2241. State v. Gibbs.

Franklin App. No. 01AP-578.

01-2242. Rust v. Brewer.

Lucas App. No. L-00-1219.

Resnick, J., not participating.

01-2243. Felix v. Aquameter, Inc.

Franklin App. No. 01AP-540.

01-2244. State v. Salsgiver.

Trumbull App. No. 2000-T-0048.

01-2245. Ohio Crime Victims Reparations Fund v. Gray.

Franklin App. No. 01AP-787.

01-2249. State v. Johnson.

Clinton App. No. CA2001-02-008.

01-2252. State v. Bobo.

Cuyahoga App. No. 77793.

01-2253. Beachwood Bd. of Zoning Appeals v. Moriyama.

Cuyahoga App. No. 78477.

01-2255. State v. Gruber.

Lake App. No. 2000-L-031.

01-2256. Elias v. Macek.

Cuyahoga App. No. 78828.

01-2258. State v. Ross.

Cuyahoga App. No. 78698.

01-2260. State v. Green.

Pickaway App. No. 01CA8.

01-2261. State v. Yerkey.

Stark App. No. 2001CA00007.

01-2262. State v. Stewart.

Stark App. Nos. 2000CA0356 and 2000CA0357.

Pfeifer, J., dissents.

01-2264. Mastro v. Mathews.

Marion App. No. 9-01-08.

Pfeifer, J., dissents.

01-2265. State v. Nolley.

Hamilton App. No. C-000862.

01-2268. State v. Morgan.

Cuyahoga App. No. 79153.

01-2269. State v. Stropkaj.

Montgomery App. No. 18712.

01-2271. State v. Ramirez.

Cuyahoga App. No. 78364.

02-14. State v. London.

Fairfield App. No. 2001CA00025.

02-15. State v. Howard.

Richland App. No. 01CA87.

02-27. State v. Bragg.

Cuyahoga App. No. 58859.

02-28. State v. Green.

Hamilton App. No. C-010503.

02-30. State v. Williams.

Stark App. No. CA8194.

02-32. State v. Napier.

Hamilton App. No. C-980999.

02-49. State v. Newcomb.

Logan App. No. 8-01-07.

02-60. State v. Wesseler.

Butler App. No. CA2001-08-187.

02-71. In re Adoption of Tucker.

Trumbull App. No. 2000-T-0144.

Moyer, C.J., dissents.

02-76. In re Jones.

Franklin App. No. 01AP-616.

02-86. In re Milgrim.

Cuyahoga App. No. 79330.

RECONSIDERATION DOCKET

00-1267. Complete Gen. Constr. Co. v. Ohio Dept. of Transp.

Franklin App. No. 98AP-1619. Reported at 94 Ohio St.3d 54, ___ N.E.2d ___.
On motion for reconsideration. Motion denied.

01-829. State ex rel. Akers v. Robertshaw Controls.

Franklin App. No. 00AP-660. Reported at 94 Ohio St.3d 36, ___ N.E.2d ___. On
motion for reconsideration of Robertshaw Controls and motion to strike
Robertshaw Controls' motion for reconsideration. Motion for reconsideration
denied.

Cook, J., dissents.

01-877. Disciplinary Counsel v. Karto.

Reported at 94 Ohio St.3d 109, ___ N.E.2d ___. On motion for reconsideration.
Motion denied.

Douglas and Pfeifer, JJ., dissent.

01-1144. State ex rel. Gauvey v. Indus. Comm.

Franklin App. No. 00AP-979. Reported at 94 Ohio St.3d 38, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

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

01-1926. State v. Hensley.

Lorain App. No. 01CA007796. Reported at 94 Ohio St.3d 1431, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

01-1961. B&T Express, Inc. v. Pub. Util. Comm.

Franklin App. No. 01AP-154. Reported at 94 Ohio St.3d 1432, ___ N.E.2d ___, *sub nom. In re B&T Express, Inc.*, Franklin App. No. 01AP-154. On motion for reconsideration. Motion denied.

Pfeifer, J., dissents.

01-1986. State v. Ferko.

Summit App. No. 20608. Reported at 94 Ohio St.3d 1433, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

Cook, J., dissents.

01-1989. State ex rel. Dougherty v. Stark-Tuscarawas-Wayne Joint Solid Waste Mgt. Dist.

In Mandamus. Reported at 94 Ohio St.3d 1425, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

Douglas, J., dissents.

01-1991. Snow v. Brown.

Franklin App. No. 01AP-243. Reported at 94 Ohio St.3d 1433, ___ N.E.2d ___. On amended motion for reconsideration. Motion denied.

01-1995. State v. Brooks.

Franklin App. No. 00AP-1440. Reported at 94 Ohio St.3d 1433, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

01-2054. State ex rel. Commt. for the Referendum of Ordinance No. 3621-00 v. White.

In Mandamus. Reported at 94 Ohio St.3d 1425, ___ N.E.2d ___. On motion for reconsideration and motion to clarify court order/decision. Motions denied.