

The Supreme Court of Ohio

CASE ANNOUNCEMENTS AND ADMINISTRATIVE ACTIONS

May 26, 2004

MERIT DECISIONS WITH OPINIONS

2003-0664. Modzelewski v. Yellow Freight Sys., Inc., 2004-Ohio-2365.

Summit App. No. 21205, 151 Ohio Ap.3d 666, 2003-Ohio-827. Judgment affirmed.

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

Pfeifer, J., concurs and concurs in judgment only.

Moyer, C.J., and O'Connor, J., concur in judgment only.

Lundberg Stratton and O'Donnell, JJ., dissent.

2003-2202. Medina Cty. Bar Assn. v. Kerek, 2004-Ohio-2286.

On Certified Report by the Board of Commissioners on Grievances and Discipline of the Supreme Court, No. 02-39.

Wayne L. Kerek, Attorney Registration No. 0029211, is publicly reprimanded.

Moyer, C.J., Resnick, F.E. Sweeney, Pfeifer, Lundberg Stratton, O'Connor and O'Donnell, JJ., concur.

2003-2232. Spears v. DeWeese, 2004-Ohio-2364.

Richland App. No. 03-CA-112. Judgment affirmed.

Moyer, C.J., Resnick, F.E. Sweeney, Pfeifer, Lundberg Stratton, O'Connor and O'Donnell, JJ., concur.

MERIT DECISIONS WITHOUT OPINIONS

2004-0465. State ex rel. Romes v. Horvath.

In Mandamus and Prohibition. On motion to dismiss and motion of city of Avon Lake for leave to file amicus curiae memo in support of respondent's motion to dismiss. Motion to dismiss sustained and cause dismissed; motion for leave denied as moot.

Moyer, C.J., Resnick, F.E. Sweeney, Lundberg Stratton and O'Connor, JJ., concur.

Pfeifer, J., dissents and would grant the writ.

O'Donnell, J., not participating.

2004-0508. State ex rel. Kafele v. Tenth Dist. Court of Appeals.

In Mandamus. On motion to dismiss. Motion to dismiss sustained and cause dismissed; motion to show cause denied as moot.

Moyer, C.J., Resnick, F.E. Sweeney, Pfeifer, Lundberg Stratton, O'Connor and O'Donnell, JJ., concur.

2004-0513. State ex rel. Avery v. Court of Appeals of Greene Cty.

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

Moyer, C.J., Resnick, F.E. Sweeney, Pfeifer, Lundberg Stratton, O'Connor and O'Donnell, JJ., concur.

2004-0515. State ex rel. Nicholson v. Ohio Dept. of Rehab. & Corr.

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

Moyer, C.J., Resnick, F.E. Sweeney, Pfeifer, Lundberg Stratton, O'Connor and O'Donnell, JJ., concur.

2004-0517. Young v. Thomas.

In Prohibition. On motion to dismiss of Linda J. Thomas, Catherine Stinson, and Carol O'Brien. Motion to dismiss sustained. Cause dismissed.

Moyer, C.J., Resnick, F.E. Sweeney, Pfeifer, Lundberg Stratton, O'Connor and O'Donnell, JJ., concur.

2004-0539. State ex rel. Goins v. Bressler.

In Mandamus. On motion to dismiss of Hon. H.J. Bressler, Butler County Common Pleas Court judge, and motion dismiss of Hon. Anthony Valen et al.,

Butler County Court of Appeals judges. Motions to dismiss sustained. Cause dismissed.

Moyer, C.J., Resnick, F.E. Sweeney, Pfeifer, Lundberg Stratton, O'Connor and O'Donnell, JJ., concur.

2004-0552. State ex rel. Waire v. Tracey.

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

Moyer, C.J., Resnick, F.E. Sweeney, Pfeifer, Lundberg Stratton, O'Connor and O'Donnell, JJ., concur.

2004-0614. Young v. Tibbals.

In Habeas Corpus. On petition for writ of habeas corpus of William J. Young. Sua sponte, cause dismissed.

Moyer, C.J., Resnick, F.E. Sweeney, Pfeifer, Lundberg Stratton, O'Connor and O'Donnell, JJ., concur.

2004-0615. State ex rel. Dotson v. Ohio Adult Parole Auth.

In Habeas Corpus. On petition for writ of habeas corpus of James V. Dotson. Sua sponte, cause dismissed.

Moyer, C.J., Resnick, F.E. Sweeney, Pfeifer, Lundberg Stratton, O'Connor and O'Donnell, JJ., concur.

MOTION AND PROCEDURAL RULINGS

1999-0972. State v. Taylor.

Greene C.P. No. 98CR0054. On motion to set execution date. Motion granted.

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

2003-2159. Constellation NewEnergy, Inc. v. Pub. Utilities Comm.

Public Utilities Commission, No. 02-2779-EL-ATA. On motion for admission pro hac vice of Kelly Karn by Paul A. Colbert. Motion granted.

2004-0314. Holt v. Warden.

In Habeas Corpus. On motion for appropriate relief. Motion denied.

2004-0448. State ex rel. Plain Dealer Publishing Co. v. Cleveland.

In Mandamus. On answer of respondent city of Cleveland. Sua sponte, alternative writ granted.

F.E. Sweeney, J., dissents and would dismiss.

Lundberg Stratton, J., dissents.

2004-0529. State ex rel. Howard v. Lucas Cty. Court of Common Pleas.

Lucas App. No. L-04-1031, 2004-Ohio-1337. On motion for stay of enforcement of judgment pending final disposition of instant appeal. Motion denied.

2004-0557. State ex rel. Kelley v. Wilson.

Richland App. No. 04CA12. On motion for emergency relief in the interest of justice. Motion denied.

2004-0574. Henderson v. Lawyers Title Ins. Co.

Cuyahoga App. No. 82654, 2004-Ohio-744. On motion for stay of court of appeals' judgment. Motion granted.

Pfeifer, J., dissents.

2004-0589. State v. McNeil.

Hamilton App. No. C-000808. On motion for leave to file delayed appeal. Motion denied.

2004-0599. State v. Jackson.

Cuyahoga App. No. 75354, 2002-Ohio-5817. On motion for leave to file delayed appeal. Motion denied.

2004-0604. State v. Farris.

Wayne App. No. 03CA0022, 2004-Ohio-826. On motion for stay of court of appeals' judgment. Motion denied.

2004-0609. Vos v. Washingtonville.

Columbiana App. No. 03CO20, 2004-Ohio-1388. On motion for stay of court of appeals' judgment. Motion denied.

2004-0617. Williamson v. Williams.

Allen App. No. 1-04-04. On motion for stay of court of appeals' judgment. Motion denied.

2004-0655. State v. Creary.

Cuyahoga App. No. 82767, 2004-Ohio-858. On motion for stay of lower court proceedings. Motion granted.

Pfeifer, J., dissents.

2004-0676. In re K.P.

Cuyahoga App. No. 82709, 2004-Ohio-1448 and 2004-Ohio-1674. On motion for stay of court of appeals' judgment. Motion denied.

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

2004-0695. Akron v. Williams.

Summit App. No. 21306, 2003-Ohio-7197. On review of order certifying a conflict. The court determines that a conflict exists. The parties are to brief the issue stated at page 3 of the court of appeals' Journal Entry filed April 12, 2004:

“Whether a court can return to consider the prima facie case after a trial on the merits in a discrimination case.”

F.E. Sweeney, Pfeifer and O'Connor, JJ., dissent.

The conflict cases are *Pelletier v. Rumpke Container Serv.* (2001), 142 Ohio App.3d 54, 753 N.E.2d 958; *Yelton v. Stehlin* (Aug. 20, 1999), 1st Dist. No. C-980503, 1999 WL 631002; and *Toole v. Cook* (May 6, 1999), 10th Dist. No. 98AP-486, 1999 WL 280804.

APPEALS ACCEPTED FOR REVIEW

2004-0183. State v. King.

Cuyahoga App. No. 81905, 2003-Ohio-6489. Discretionary appeal accepted; cause held for the decision in 2002-1888, *State v. Jordan*, Cuyahoga App. No. 80675, 2002-Ohio-4587; and briefing schedule stayed.

2004-0285. State v. Reese.

Trumbull App. No. 2002-T-0068, 2004-Ohio-341.

F.E. Sweeney, Pfeifer and O'Connor, JJ., dissent.

2004-0289. State v. Alvarez.

Cuyahoga App. No. 82337, 2003-Ohio-6888. Discretionary appeal accepted; cause held for the decision in 2003-0252 and 2003-0283, *State v. Thompson*, Cuyahoga App. No. 78919, 2002-Ohio-6478; and briefing schedule stayed.

Pfeifer, J., dissents.

2004-0320. Hoover v. Transcontinental Ins. Co.

Greene App. No. 2003CA46, 2004-Ohio-72.

Resnick, O'Connor and O'Donnell, JJ., dissent.

2004-0354. State v. Ridenour.

Miami App. No. 2003CA7, 2004-Ohio-78. Discretionary appeal accepted on Proposition of Law No. I; cause held for the decision in 2003-0083 and 2003-0319, *State v. Evans*, Franklin App. No. 02AP-230, 2002-Ohio-6559; and briefing schedule stayed.

Lundberg Stratton, O'Connor and O'Donnell, JJ., concur but would accept all propositions of law.

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

APPEALS NOT ACCEPTED FOR REVIEW

2004-0171. State v. Steele.

Hamilton App. No. C-020693, 155 Ohio App.3d 659, 2003-Ohio-7103.

Pfeifer, J., dissents.

2004-0173. Grenga v. Bank One N.A.

Mahoning App. No. 03MA195. On discretionary appeal, Jerry Bryan's motion to dismiss appeal, and Jerry Bryan's motion to strike the notice of appeal and memorandum in support of jurisdiction. Discretionary appeal not accepted and motions denied as moot.

2004-0177. State v. Todd.

Clermont App. No. CA2003-02-013.

2004-0178. State v. Todd.

Clermont App. No. CA2003-02-012, 2003-Ohio-6786.

2004-0269. State v. Coldiron.

Auglaize App. No. 2-03-19, 2003-Ohio-7114.

2004-0270. State v. Burns.

Montgomery App. No. 19931, 2004-Ohio-80.

2004-0274. Gruenstein v. Tallarigo.

Hamilton App. No. C-030011.

2004-0278. State v. Rice.

Cuyahoga App. No. 82547, 2003-Ohio-6947.

2004-0279. State v. Barstow.

Hocking App. No. 02CA27, 2003-Ohio-7336.

2004-0282. State v. Peoples.

Hamilton App. No. C-980611.

Pfeifer, J., dissents.

2004-0283. Jordan v. Jordan.

Hancock App. No. 5-03-07, 2003-Ohio-7116.

Pfeifer and O'Connor, JJ., dissent.

2004-0286. State v. Allen.

Cuyahoga App. No. 82618, 2003-Ohio-6908.

O'Donnell, J., dissents.

2004-0288. State v. Knode.

Cuyahoga App. No. 82746, 2003-Ohio-6876.

2004-0292. State v. Grays.

Cuyahoga App. No. 82410, 2003-Ohio-6889.

Moyer, C.J., and O'Connor, J., dissent.

2004-0293. State v. Taylor.

Allen App. No. 1-03-20, 2003-Ohio-7115.

2004-0294. State v. Sullivan.

Cuyahoga App. No. 82953, 2003-Ohio-6628.

2004-0297. Cleveland v. Carpenter.

Cuyahoga App. No. 82786, 2003-Ohio-6923.

2004-0298. State v. Strong.

Lake App. No. 2002-L-067, 2003-Ohio-7219.

2004-0301. Dater v. Charles H. Dater Found.

Hamilton App. Nos. C-020675 and C-020784, 2003-Ohio-7148.

2004-0302. State v. Zaffino.

Summit App. No. 21514, 2003-Ohio-7202.

Moyer, C.J., dissents and would accept on Proposition of Law No. I.

2004-0303. State v. Girard.

Medina App. No. 02CA0057M, 2003-Ohio-7178.

Pfeifer, J., dissents.

2004-0306. Burns v. Zuck-Spriggs.

Fayette App. No. CA2002-09-020, 2003-Ohio-7215.

2004-0308. State v. Rodriguez.

Cuyahoga App. No. 82265, 2003-Ohio-7056.

Resnick, J., dissents.

2004-0310. Westfield Cos. v. O.K.L. Can Line.

Hamilton App. Nos. C-030151, C-030197 and C-030298, 155 Ohio App.3d 747, 2003-Ohio-7151.

Lundberg Stratton and O'Connor, JJ., dissent.

2004-0312. Deadwyler v. Akron Pub. Schools.

Summit App. No. 21549, 2003-Ohio-7173.

2004-0315. Konstand v. Barberton.

Summit App. No. 21651, 2003-Ohio-7187.

Moyer, C.J., Lundberg Stratton and O'Donnell, JJ., dissent.

2004-0316. State v. Elersic.

Geauga App. Nos. 2001-G-2335 and 2003-G-2512, 2003-Ohio-7218.

2004-0317. State v. Hutzler.

Summit App. No. 21343, 2003-Ohio-7193.

2004-0321. Bowling Green v. Bailey.

Wood App. No. WD-03-025, 2003-Ohio-7253.

2004-0322. State v. Grant.

Montgomery App. No. 19824, 2003-Ohio-7240.

2004-0323. Bouffard v. Robinson Mem. Hosp.

Portage App. No. 2002-P-0004, 2003-Ohio-7224.

F.E. Sweeney, J., dissents.

2004-0324. McPherson v. Goodyear Tire & Rubber Co.
Summit App. No. 21499, 2003-Ohio-7190.

2004-0325. Williams v. Akron.
Summit App. No. 21306, 2003-Ohio-7197.
Moyer, C.J., and O'Donnell, J., dissent.

2004-0327. State v. Young.
Adams App. No. 03CA773, 2004-Ohio-372.

2004-0328. Kennedy v. Streibel.
Montgomery App. No. 19777, 2003-Ohio-7241.
Pfeifer, J., dissents.

2004-0329. State v. Copley.
Medina App. No. 03CA0028M, 2003-Ohio-7172.

2004-0330. State v. Reames.
Cuyahoga App. No. 82329, 2003-Ohio-7058.

2003-0332. Brown v. Travelers Ins. Co.
Stark App. No. 2003CA00078, 2003-Ohio-6151 and 2004-Ohio-20.
Pfeifer, J., dissents.

2004-0333. Brown v. Travelers Ins. Co.
Stark App. No. 2003CA00076, 2003-Ohio-6150 and 2004-Ohio-19.
Pfeifer, J., dissents.

2004-0337. State v. Wilhelm.
Knox App. No. 03CA000025, 2004-Ohio-40.
Pfeifer, J., dissents.

2004-0338. State v. West.
Cuyahoga App. No. 82579, 2003-Ohio-7067.

2004-0339. Village/Chagrin Partners, L.L.C. v. Orange City School Dist. Bd. of Edn.
Cuyahoga App. No. 83008, 2003-Ohio-7075.
Moyer, C.J., and Pfeifer, J., dissent.

2004-0341. State v. Gray.

Cuyahoga App. No. 82841, 2003-Ohio-6643.

2004-0342. Hayner v. Maintenance Unlimited.

Richland App. No. 03CA26, 2004-Ohio-257.

2004-0344. Summit Cty. Children Serv. Bd. v. DeGasperis.

Summit App. No. 21650, 2004-Ohio-29.

O'Donnell, J., dissents.

2004-0348. State v. Martin.

Lake App. No. 2002-L-110, 2004-Ohio-518.

2004-0349. State v. Cvijetinovic.

Cuyahoga App. No. 82894, 2003-Ohio-7071.

2004-0351. State v. Niles.

Muskingum App. No. CT20030018, 2004-Ohio-119.

2004-0356. State v. Price.

Clermont App. No. CA2003-11-097.

2004-0359. State v. Green.

Mahoning App. No. 03MA237.

2004-0360. State v. Devaughn.

Cuyahoga App. No. 82843, 2004-Ohio-154.

2004-0362. State v. Carothers.

Cuyahoga App. No. 82860, 2004-Ohio-51.

2004-0368. Nelson v. Curfman.

Franklin App. No. 03AP-554.

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

2004-0369. Wloszek v. Weston, Hurd, Fallon, Paisley & Howley, LLP.

Cuyahoga App. No. 82412, 2004-Ohio-146.

F.E. Sweeney, J., dissents.

2004-0371. State v. Hundley.
Hamilton App. No. C-030341.

2004-0375. Rossetti v. Am. Elec. Power, Inc.
Licking App. No. 2003CA37, 2004-Ohio-118.

2004-0378. Urban v. State Med. Bd. of Ohio.
Franklin App. No. 03AP-426, 2004-Ohio-104.
F.E. Sweeney, J., dissents.

2004-0380. State v. Thomas.
Hamilton App. No. C-880637.

2004-0381. State v. York.
Seneca App. No. 13-01-19, 2002-Ohio-1398. Discretionary appeal and motion for stay of court of appeals' judgment denied.

2004-0383. Roberson v. Ohio State Racing Comm.
Franklin App. No. 03AP-480, 2004-Ohio-127.

2004-0386. State v. Diederich.
Hamilton App. No. C-020042.

2004-0391. Jelic v. Ohio Bur. of Unemp. Comp.
Cuyahoga App. No. 82285, 2004-Ohio-46.

2004-0393. State v. Norman.
Cuyahoga App. No. 80702, 2004-Ohio-226.

2004-0402. Kroboth v. N. Coast Obstetrics.
Lorain App. No. 03CA008295, 2004-Ohio-197.

2004-0408. Fitzmaurice v. Great Lakes Computer Corp.
Cuyahoga App. No. 82711, 155 Ohio App.3d 724, 2004-Ohio-235.

2004-0415. Hansman v. Ohio Dept. of Job & Family Serv.
Butler App. No. CA2003-09-224, 2004-Ohio-505.
Resnick, J., dissents.

2004-0419. State v. Hernandez.

Columbiana App. No. 87C56.

2004-0421. State v. Draughon.

Franklin App. No. 02AP-895, 2004-Ohio-320.

2004-0426. State v. Hoffert.

Hamilton App. No. C-020168, 2002-Ohio-6343.

2004-0455. State v. Loch.

Franklin App. No. 02AP-1065, 2003-Ohio-4701.

2004-0473. State v. Lewis.

Madison App. No. CA2001-12-030, 2003-Ohio-4464.

2004-0483. State v. Buehner.

Cuyahoga App. No. 81722, 2004-Ohio-463.

2004-0493. State v. Barclay.

Summit App. No. 21336, 2003-Ohio-5468.

2004-0566. State v. Pierce.

Franklin App. No. 02AP-1133, 2003-Ohio-4179.

RECONSIDERATION OF PRIOR DECISIONS

2003-2011. State v. Skatzes.

Montgomery App. No. 15848, 2003-Ohio-516. Reported at 102 Ohio St.3d 1402, 2004-Ohio-1727, 806 N.E.2d 167. On motion for reconsideration. Motion denied.
Lundberg Stratton and O'Connor, JJ., dissent.

2003-2077. Ruble v. Kaufman.

Cuyahoga App. No. 81378, 2003-Ohio-5375. Reported at 101 Ohio St.3d 1488, 2004-Ohio-1293, 805 N.E.2d 539. On motion for reconsideration. Motion denied.
Resnick, J., dissents.

2003-2106. State v. Siler.

Ashland App. No. 02COA028, 2003-Ohio-5749. Reported at 101 Ohio St.3d 1489, 2004-Ohio-1293, 805 N.E.2d 539. On motion for reconsideration. Motion denied.

2003-2164. Garg v. State Auto. Mut. Ins. Co.

Miami App. No. 2003CA12, 155 Ohio App.3d 258, 2003-Ohio-5960. Reported at 101 Ohio St.3d 1490, 2004-Ohio-1293, 805 N.E.2d 540. On motion for reconsideration. Motion denied.

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

2003-2185. State v. Lofton.

Cuyahoga App. No. 80901, 2002-Ohio-6328. Reported at 101 Ohio St.3d 1490, 2004-Ohio-1293, 805 N.E.2d 540. On motion for reconsideration. Motion denied.

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

Lundberg Stratton, J., dissents, would grant, and would hold this cause for the decision in 2003-0567, *State v. Finger*, Cuyahoga App. No. 80691, 2003-Ohio-402.

2003-2236. State v. Stephens.

Hamilton App. No. C-020683, 2003-Ohio-6193. Reported at 102 Ohio St.3d 1410, 2004-Ohio-1763, 806 N.E.2d 562. On motion for reconsideration. Motion denied.

2004-0137. State v. Millender.

Summit App. No. 21349, 2003-Ohio-4384. Reported at 101 Ohio St.3d 1494, 2004-Ohio-1482, 805 N.E.2d 1133. On motion for reconsideration. Motion denied.

Lundberg Stratton and O'Donnell, JJ., dissent.

2004-0179. State ex rel. Jones v. Slaby.

In Mandamus. Reported at 101 Ohio St.3d 1483, 2004-Ohio-1293, 805 N.E.2d 536. On motion for reconsideration. Motion denied.

Moyer, C.J., dissents.

2004-0326. State v. Levitt.

Stark App. No. 2002CA00307. Reported at 101 Ohio St.3d 1486, 2004-Ohio-1293, 805 N.E.2d 538. On motion for reconsideration. Motion denied.

Pfeifer and O'Donnell, JJ., dissent.
