

SUPREME COURT OF OHIO

COLUMBUS

ANNOUNCEMENT

1:00 P.M.

WEDNESDAY
February 18, 1998

MERIT DOCKET

97-844. Ohio Edison Co. v. Pub. Util. Comm.

Public Utilities Commission, No. 96-406-EL-COI. On motion to dismiss. Motion to dismiss sustained. Cause dismissed.

Moyer, C.J., Deshler, P. Bryant and Lundberg Stratton, JJ., concur.

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

Dana A. Deshler, Jr., J., of the Tenth Appellate District, sitting for Resnick, J.

Peggy Bryant, J., of the Tenth Appellate District, sitting for Cook, J.

On motion for stay of execution of the PUCO decisions of December 24, 1996 and February 27, 1997. Motion denied as moot.

97-858. Centerior Energy v. Pub. Util. Comm.

Public Utilities Commission, No. 96-406-EL-COI. On motion to dismiss. Motion to dismiss sustained. Cause dismissed.

Moyer, C.J., Deshler, P. Bryant and Lundberg Stratton, JJ., concur.

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

Dana A. Deshler, Jr., J., of the Tenth Appellate District, sitting for Resnick, J.

Peggy Bryant, J., of the Tenth Appellate District, sitting for Cook, J.

On motion for leave to intervene of the city of Toledo. Motion granted.

On motion for stay of execution of the PUCO decisions of December 24, 1996 and February 27, 1997. Motion denied as moot.

97-1552. State ex rel. Cottrell v. Economy Linen & Towel Serv. of Zanesville, Inc.

Franklin App. No. 96APD05-589. On motion to dismiss. Motion to dismiss sustained. Cause dismissed.

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

Douglas and Pfeifer, JJ., dissent.

97-2537. Robert v. Fifth Appellate Dist.

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.

97-2631. State ex rel. Welch v. Court of Appeals for Lucas Cty.

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.

97-2685. Blackwell v. Bessey.

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.

97-2721. State ex rel. Laguta 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.

97-2731. Campbell v. Court of Appeals.

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.

98-4. State ex rel. Simmons v. First Appellate Dist.

In Mandamus. On motions to dismiss of Judge Hildebrandt and Judge Kraft. Motions to dismiss sustained. Cause dismissed.

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

98-127. State ex rel. Phillips 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**

97-1406. State v. Albrecht.

Stark App. No. 1996CA00165.

97-1860. State v. Rhoden.

Pike App. No. 96CA589.

97-2156. State v. Everett.

Tuscarawas App. No. 96AP040039.

97-2231. State v. Hall.

Trumbull App. No. 97-T-0137.

97-2299. State v. Smith.

Stark App. No. 1997CA00138.

97-2326. Charlton v. Money.

Marion App. No. 9-97-12.

97-2351. State v. Becker.

Tuscarawas App. No. 97APO1Q0006.

97-2353. State v. Roark.

Licking App. No. 97CA74.

97-2379. Bennett v. Revco Drug Stores, Inc.

Summit App. No. 18211.

97-2381. In re Estate of Cogan.

Cuyahoga App. No. 72334.

Moyer, C.J., dissents.

97-2392. State v. Pauley.

Washington App. No. 97CA29.

97-2397. State v. Colvin.

Auglaize App. No. 2-97-14.

97-2402. State v. Smith.

Hamilton App. No. C-960824.

97-2403. Guess v. Wilkinson.

Franklin App. No. 96APE07-977.

97-2415. State ex rel. Parnell v. Morgan.

Marion App. No. 9-97-42.

97-2416. State v. Wassermann.
Erie App. No. E-97-065.
Resnick, J., not participating.

97-2418. Norman v. Snitsky.
Cuyahoga App. No. 73270.

97-2425. State v. Sanders.
Cuyahoga App. No. 71382.

97-2437. Liebing v. Sauber.
Sandusky App. No. S-96-050.
Moyer, C.J., dissents.
Resnick, J., not participating.

97-2440. State v. Peoples.
Hamilton App. No. C-960997.

97-2451. State v. Anthony.
Franklin App. No. 96APA12-1721.
Pfeifer, J., dissents.
Lundberg Stratton, J., not participating.

97-2452. State v. Stansberry.
Cuyahoga App. No. 71004.
Moyer, C.J., and Pfeifer, J., dissent.

97-2455. State v. Taylor.
Cuyahoga App. No. 71059.

97-2466. State v. Goudy.
Knox App. No. 97CA9.

97-2467. State v. McDonald.
Lucas App. No. L-97-1037.
F.E. Sweeney, J., dissents.

97-2471. State v. Fincher.
Franklin App. No. 97APA03-352.

97-2473. State v. Stevens.
Summit App. No. 18300.

97-2479. In re Adoption of Doe.
Summit App. No. 18313.

97-2481. Burroughs v. St. Mike's Golf, Inc.
Defiance App. No. 4-97-14.
Douglas and Resnick, JJ., dissent.

97-2482. Ohio State Assn. of the United Assn. of Journeymen & Apprentices of the Plumbing & Pipefitting Industry v. Johnson Controls, Inc.
Cuyahoga App. No. 71881.
Moyer, C.J., and Cook, J., dissent.

97-2483. State v. Williams.
Cuyahoga App. Nos. 71151, 71152, 71153 and 71154.

97-2500. State v. Mitchell.
Summit App. No. 18755.

97-2505. State v. O'Connell.
Hamilton App. No. C-960723.

97-2506. Interstate Indep. Corp. v. Fayette Cty. Bd. of Zoning Appeals.
Fayette App. Nos. CA96-11-026 and CA96-11-027.

97-2508. State v. Webb.
Clermont App. No. CA96-12-108.

97-2514. State v. Rieves-Bey.
Cuyahoga App. Nos. 70827 and 70828.

97-2515. State v. Crist.

Butler App. No. CA96-08-159.

97-2516. Bailey v. Prudential Ins. Co.

Franklin App. No. 97APE04-593.

Pfeifer, J., dissents.

97-2518. State v. Pritchard.

Hamilton App. No. C-960964.

97-2524. State v. Travers.

Cuyahoga App. No. 71612.

97-2529. State v. Parrish.

Franklin App. No. 97APA10-1290.

97-2533. State v. Brannan.

Wayne App. No. 97CA0024.

97-2534. State v. Towns.

Cuyahoga App. No. 71244.

97-2543. State v. Williams.

Hamilton App. No. C-961136.

97-2559. State v. Ross.

Clark App. Nos. 96CA53 and 96CA54.

97-2563. State v. Dickerson.

Cuyahoga App. Nos. 71619 and 71748.

97-2565. State v. Howard.

Lucas App. No. L-95-183.

Resnick, J., not participating.

97-2580. State v. Taylor.

Erie App. No. E-95-066.

Resnick, J., not participating.

97-2628. State v. Shell.
Cuyahoga App. No. 71736.

98-36. State v. Smith.
Hamilton App. No. C-960671.

MOTION DOCKET

97-1595. Genaro v. Cent. Transport, Inc.
Certified State Law Question, Nos. 1:96CV2282, 1:97CV00598 and 1:97CV601. On request for oral argument of Bally Total Fitness, request for oral argument of Michael J. Genaro, Sr., request for oral argument of Central Transport, Inc., Central Cartage Company, and Alan Bassetti, and request for oral argument of Future Electronics, Inc. and Bonita Russell. Requests granted.

97-1812. State ex rel. Simms v. Sutula.
Cuyahoga App. No. 72896. On motion to commence disciplinary action. Motion denied.

On motion to dismiss motion to commence disciplinary action. Motion granted.

Cook, J., dissents.

On motion to strike motion to dismiss motion to commence disciplinary action. Motion denied.

Cook, J., dissents.

97-1890. ALLTEL Ohio, Inc. v. Pub. Util. Comm.
Public Utilities Commission, No. 95-819-TP-CSS. On motion for stay. Motion granted.

Resnick, J., not participating.

97-2197. State v. Chambers.
Hamilton App. No. C-970455. On motion for leave to file delayed appeal. Motion denied.

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

97-2276. State v. Berenyi.

Paulding App. No. 11-97-1. On motion to strike appeal and memorandum in support of jurisdiction. Motion denied.

97-2330. State v. Perry.

Washington App. No. 96CA10. On motion for leave to file delayed appeal. Motion granted.

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

97-2450. State v. Ward.

Allen App. No. 1-97-11. On motion for leave to file delayed appeal. Motion granted.

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

97-2562. State v. Ackison.

Fairfield App. No. 96CA0064. On motion for leave to file delayed appeal. Motion granted.

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

97-2717. State v. Thomas.

Hamilton App. No. C-960242. On motion for leave to file delayed appeal. Motion granted.

F.E. Sweeney, J., dissents.

97-2718. State v. Walsh.

Union App. No. 14-97-20. On motion for leave to file delayed appeal. Motion granted.

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

98-69. Berlekamp Plastics, Inc. v. Buckeye Union Ins. Co.

Sandusky App. No. S-97-004. On review of order certifying a conflict. The following issue was certified to this court by the Sandusky County Court of Appeals:

“Berlekamp Plastics, Inc. v. Buckeye Union Insurance Company (Oct. 31, 1997), Sandusky App. No. S-97-004, unreported [1997 WL 679604], is certified to the Supreme Court of Ohio as being in conflict with

Millers Mut. Ins. Co. v. Plastivax, Inc. (1996), 113 Ohio App.3d 67 [681 N.E.2d 678], on the issue of whether, in a case involving an employer intentional tort, an 'expected or intended' injury exclusion in a commercial general liability insurance policy is ineffective unless it is shown that the insured/employer not only intended the act leading to the harm but also intended the particular resulting injury."

The court determines that no conflict exists within the meaning of S.Ct.Prac.R. IV(2)(B). This cause is therefore dismissed.

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

Douglas and Cook, JJ., dissent.

Resnick, J., not participating.

98-110. State v. Welch.

Portage App. 97-P-0015. On motion for stay. Motion granted.

98-178. Boatmen's Natl. Mtge., Inc. v. Zageris.

Franklin App. No. 97APE04-503. On motion for stay. Motion denied.

DISCRETIONARY APPEALS ALLOWED

97-2341. Sudnek v. Klein.

Geauga App. No. 96-G-2018.

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

97-2342. Wightman v. Consol. Rail Corp.

Erie App. No. E-97-001. (Appeal of Darlene M. Wightman and The Michelle Wightman Charitable Foundation; and cross-appeal of Consolidated Rail Corporation.)

The discretionary appeal is allowed.

Cook, J., dissents.

The discretionary cross-appeal is allowed.

F.E. Sweeney, J., dissents.

The motion for admission *pro hac vice* of Ralph G. Wellington and Nancy Winkelman is granted.

97-2435. Ritchey Produce Co. v. Ohio Dept. of Adm. Serv.

Franklin App. No. 97APE04-567.

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

97-2492. State v. Snell.

Seneca App. No. 13-97-20. Discretionary appeal allowed; *sua sponte*, cause held for the decision in 97-1985, *State v. Cook*, Allen App. No. 1-97-21; briefing schedule stayed.

97-2493. Linndale v. State.

Franklin App. No. 97APE03-314.

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

97-2531. Northfield Homes, Inc. v. Northfield.

Summit App. No. 18296. The discretionary appeal is allowed.

Lundberg Stratton, J., dissents.

Cook, J., would hold this cause for the decision in 96-84, *Goldberg Cos., Inc. v. Richmond Hts. Council*, Cuyahoga App. Nos. 68291 and 68292.

Sua sponte, cause held for the decision in 96-84, *supra*; briefing schedule stayed.

DISCRETIONARY APPEALS NOT ALLOWED

97-2390. Columbus v. Grumm.

Franklin App. No. 97APC03-0403.

97-2414. McClure v. Goard.

Ashland App. Nos. 96COA01200 and 96COA01201.

Pfeifer, J., dissents.

97-2417. State v. Kain.

Holmes App. No. 97CA573.

97-2428. Kirk v. Ohio Dept. of Transp.

Franklin App. No. 97API04-458.

F.E. Sweeney, J., dissents.

97-2433. Knapp v. Wal-Mart Stores, Inc.

Franklin App. No. 97APE03-392.

97-2442. Wuertz v. Soltis.

Cuyahoga App. No. 71309. (Appeal of Thomas M. Soltis; cross-appeal of June Wuertz.)

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

97-2445. Govt. Emp. Ins. Co. v. Blick.

Franklin App. No. 97APE02-297.

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

97-2447. Mickey v. Vallance.

Sandusky App. No. S-96-026.

Resnick, J., not participating.

97-2476. Gwin v. Phi Gamma Delta Fraternity.

Cuyahoga App. No. 71694.

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

97-2494. Franko v. Palcko.

Cuyahoga App. No. 71639.

97-2498. State v. Cockrell.

Knox App. No. 97CA6.

97-2512. R & S Investments v. Benchmark Communities, Inc.

Wood App. No. WD-97-030.

97-2521. Mecca for Fair Govt. v. Mecca Twp. Bd. of Trustees.

Trumbull App. No. 96-T-5570.

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

97-2536. Wright v. Mt. Vernon City Council.

Knox App. No. 97CA7.

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

97-2550. Levario v. Motorists Mut. Ins. Co.

Sandusky App. No. S-97-010.

Cook and Lundberg Stratton, JJ., dissent.

Resnick, J., not participating.

97-2552. State v. Green.

Trumbull App. No. 96-T-5418.

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

97-2553. Berlekamp Plastics, Inc. v. Buckeye Union Ins. Co.

Sandusky App. No. S-97-004.

Cook, J., dissents.

Resnick, J., not participating.

97-2554. State v. Humberson.

Summit App. No. 18662.

97-2582. Greany v. Branyan.

Lucas App. No. L-97-1076.

Resnick, J., not participating.

97-2586. Wood v. Bilger.

Erie App. No. E-97-052.

Resnick, J., not participating.

97-2588. Madej v. Alkop.

Ottawa App. No. OT-97-004.

97-2596. State v. Dominguez.

Cuyahoga App. No. 73304.

97-2610. Fuller & Assoc., Inc. v. Charly B's Drive Thru, Inc.

Stark App. No. 1997CA00099.

97-2633. Progress Properties, Inc. v. Baird.

Cuyahoga App. Nos. 70286 and 70287.

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

97-2702. Hilliard v. Lease.

Franklin App. No. 97APE05-637.

Douglas, J., dissents.

RECONSIDERATION DOCKET

96-2301. State v. Palmer.

Belmont App. No. 89-B-28. Reported at 80 Ohio St.3d 543, ___ N.E.2d ___ . On motion for reconsideration. Motion denied.

97-422. Blessing v. Blessing.

Ottawa App. No. OT-96-016. Reported at 80 Ohio St.3d 428, ___ N.E.2d ___ . On motion for reconsideration. Motion denied.

Douglas, J., not participating.

97-873. Columbus Bar Assn. v. Finneran.

Reported at 80 Ohio St.3d 428, ___ N.E.2d ___ . On motion for reconsideration. Motion denied.

Lundberg Stratton, J., not participating.

97-1399. State ex rel. Sohi v. Williams.

Franklin App. No. 96APD05-687. Reported at 80 Ohio St.3d 492, ___ N.E.2d ___ . On motion for reconsideration. Motion denied.

97-1857. State ex rel. Mortemore v. Wingard.

Madison App. No. CA97-07-031. Reported at 80 Ohio St.3d 659, ___ N.E.2d ___ , *sub nom. Mortemore v. Wingard*. On motion for reconsideration. Motion denied.

97-2661. State ex rel. Ohio State Racing Comm. v. Christiansen.

In Mandamus and Prohibition. Reported at 80 Ohio St.3d 1488, ___ N.E.2d ___ . On motion for reconsideration. Motion denied.

Douglas and Lundberg Stratton, JJ., dissent.

Pfeifer, J., not participating.