

# The Supreme Court of Ohio

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## CASE ANNOUNCEMENTS AND ADMINISTRATIVE ACTIONS

December 13, 2006

[Cite as *12/13/2006 Case Announcements, 2006-Ohio-6447.*]

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## MERIT DECISIONS WITH OPINIONS

**2004-0041. State v. Elmore, 2006-Ohio-6207.**

Licking C.P. No. 02 CR 275. Judgment affirmed, but cause remanded for resentencing on non-capital offenses.

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

**2004-1163. State v. Johnson, 2006-Ohio-6404.**

Guernsey C.P. No. 03-CR-116. Judgment affirmed.

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

**2005-0880. Thornton v. Salak, 2006-Ohio-6407.**

Fairfield App. Nos. 03 CA 63 and 03 CA 64, 2005-Ohio-1612. Judgment affirmed and cause remanded.

Moyer, C.J., Pfeifer, Lundberg Stratton, O'Connor, O'Donnell and Lanzinger, JJ., concur.

McMonagle, J., dissents.

Christine T. McMonagle, J., of the Eighth Appellate District, sitting for Resnick, J.

**2005-0896. Theobald v. Univ. of Cincinnati, 2006-Ohio-6208.**

Franklin App. No. 02AP-560, 160 Ohio App.3d 342, 2005-Ohio-1510. Judgment affirmed.

Moyer, C.J., Resnick, Lundberg Stratton, O'Connor, O'Donnell and Lanzinger, JJ., concur.

Pfeifer, J., dissents.

**2005-1642. Holdeman v. Epperson, 2006-Ohio-6209.**

Clark App. No. 2004-CA-49, 2005-Ohio-3750. Judgment affirmed.

Moyer, C.J., Resnick, Pfeifer, O'Connor and Lanzinger, JJ., concur.

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

**2005-1685. State ex rel. Butler Twp. Bd. of Trustees v. Montgomery Cty. Bd. of Commrs., 2006-Ohio-6411.**

Montgomery App. No. 20725, 162 Ohio App.3d 394, 2005-Ohio-3872. Judgment affirmed.

Moyer, C.J., Resnick, Pfeifer, O'Connor, O'Donnell and Lanzinger, JJ., concur.

Lundberg Stratton, J., dissents.

**2005-1932 and 2005-1933. Time Warner Operations, Inc. v. Wilkins, 2006-Ohio-6210.**

Board of Tax Appeals, Nos. 2003-R-1810 and 2003-R-1811. Decision reversed.

Moyer, C.J., Gwin, Pfeifer, Lundberg Stratton and O'Donnell, JJ., concur.

O'Connor and Lanzinger, JJ., dissent.

W. Scott Gwin, J., of the Fifth Appellate District, sitting for Resnick, J.

**2005-2135. State ex rel. Lange v. Indus. Comm., 2006-Ohio-6211.**

Franklin App. No. 04AP-1330, 2005-Ohio-5487. Judgment affirmed.

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

**MERIT DECISIONS WITHOUT OPINIONS**

**2006-1081. Acordia of Ohio, LLC v. Davis.**

Hamilton App. No. C-050559. On consideration of appellee's suggestion of mootness. Sua sponte, the court determines that the cause should be dismissed as moot. Cause dismissed.

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

**2006-1844. State ex rel. O'Neal v. Brunswick Police Dept.**

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

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

**2006-1877. Day v. McMonagle.**

In Prohibition. On motion for summary judgment. On S.Ct.Prac.R. X(5) determination, cause dismissed.

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

**2006-1907. State ex rel. Hayden v. Davis.**

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

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

**2006-1952. State ex rel. Weaver v. Winkler.**

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

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

**2006-1961. Moton v. Kelly.**

In Habeas Corpus. On petition for writ of habeas corpus of Bert. L. Moton. Sua sponte, cause dismissed. Motion to replace respondent denied as moot.

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

**MOTION AND PROCEDURAL RULINGS**

**2003-0647. State v. Conway.**

Franklin C.P. No. 02CR-1153. On motion to set execution date. Motion denied.

**2006-0540. Zappitelli v. Miller.**

Cuyahoga App. No. 85895, 2006-Ohio-279. On appellees' motion to strike appellants' merit brief and motion to dismiss appeal and appellants' motion to strike appellees' motions. All motions denied.

**2006-1853. Fisher v. Hasenjager.**

Mercer App. No. 10-05-14, 2006-Ohio-4190. 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 September 27, 2006:

“Is a change in the designation of residential parent and legal custodian of children a ‘term’ of a court approved shared parenting decree, allowing the designation to be modified solely on a finding that the modification is in the best interest of the children pursuant to R.C. 3109.04(E)(2)(b) and without a determination that a ‘change in circumstances’ has occurred pursuant to R.C. 3109.04(E)(1)(a)?”

The conflict cases are *Schoettle v. Bering* (Apr. 22, 1996), Brown App. No. CA95-07-011, and *Fisher v. Campbell* (June 23, 1997), Butler App. No. CA96-11-248.

Sua sponte, cause consolidated with 2006-1815, *Fisher v. Hasenjager*, Mercer App. No. 10-05-14, 2006-Ohio-4190.

**2006-1897. Williams v. Williams.**

Wyandot App. No. 16-06-09. On motion for stay of temporary custody order granted by the Common Pleas Court of Wyandot County pending appeal. Motion denied.

**2006-1959. State v. Siwik.**

Cuyahoga App. No. 88093. On motion for leave to file delayed appeal. Motion denied.

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

**2006-1963. State v. Carter.**

Montgomery App. No. 21145, 2006-Ohio-2823. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

**2006-1989. State v. Herron.**

Montgomery App. No. 21398, 2006-Ohio-4400. On motion for leave to file delayed appeal. Motion granted.

Resnick, J., dissents.

**2006-1994. Toledo Bar Assn. v. Cook.**

Board of Commissioners on Grievances and Discipline, No. 05-047. On motion for admission pro hac vice of Robert P. Golden and Armand D. Kunz by Craig J. Wakefield. Motion granted.

**2006-1998. State v. Lowery.**

Hamilton App. No. C-040157, 160 Ohio App.3d 138, 2005-Ohio-1181. On motion for leave to file delayed appeal. Motion denied.

**2006-2026. State v. Gross.**

Muskingum App. No. CT05-0001. On motion for leave to file delayed appeal. Motion denied.

**2006-2039. Baker v. Domokur.**

Mahoning App. No. 05-MA-159, 2006-Ohio-5227. On motion for stay of court of appeals' judgment. Motion denied.

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

**2006-2048. State v. Powell.**

Scioto App. No. 05CA3024, 2006-Ohio-5031. On motion for stay of court of appeals' judgment. Motion denied.

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

**2006-2082. In re Guardianship of Roper.**

Summit App. No. 23403. On motion for stay of court of appeals' judgment. Motion denied.

**2006-2098. State v. Rose.**

Highland App. No. 06CA5, 2006-Ohio-5292. On application to continue to suspend execution of sentence and for continuation of bond pending appeal. Application denied.

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

**APPEALS ACCEPTED FOR REVIEW**

**2006-1604. Sinnott v. Aqua-Chem, Inc.**

Cuyahoga App. No. 88062.

Lundberg Stratton and O'Connor, JJ., would also hold the cause for the decision in 2006-1279, *In re Special Docket No. 73958*, Cuyahoga App. No. 87777 and 87816.

Resnick, Pfeifer and Lanzinger, JJ., dissent.

**2006-1616. Greer-Burger v. Temesi.**

Cuyahoga App. No. 87104, 2006-Ohio-3690.

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

**2006-1765. State v. Allen.**

Cuyahoga App. No. 86880, 2006-Ohio-3838. Discretionary appeal accepted on Proposition of Law No. I; cause held for the decision in 2005-2186, *State v. Wilson*, Cuyahoga App. No. 85015, 2005-Ohio-4994; and briefing schedule stayed. Pfeifer, J., dissents.

**2006-1815. Fisher v. Hasenjager.**

Mercer App. No. 10-05-14, 2006-Ohio-4190. Discretionary appeal accepted and cause consolidated with 2006-1853, *Fisher v. Hasenjager*, Mercer App. No. 10-05-14, 2006-Ohio-4190.

**APPEALS NOT ACCEPTED FOR REVIEW**

**2006-1551. Pritchard v. Algis Sirvaitis & Assoc.**

Cuyahoga App. No. 86965, 2006-Ohio-3153. Discretionary appeal and cross-appeal not accepted.

Lundberg Stratton, J., dissents and would accept the appeal.

O'Donnell, J., dissents and would accept the appeal and the cross-appeal.

**2006-1552. State v. Griffin.**

Summit App. No. 23306. Discretionary appeal not accepted. Motion for leave to file a notice of conflict denied as moot.

**2006-1593. State v. Baker.**

Wood App. No. WD-05-033, 2006-Ohio-3611.

**2006-1597. Kelly v. Auto-Owners Ins. Co.**

Hamilton App. No. C-050450, 2006-Ohio-3599.

**2006-1598. Slingsluff v. State Med. Bd. of Ohio.**

Franklin App. No. 05AP-918, 2006-Ohio-3614.

**2006-1602. State v. Isabell.**

Cuyahoga App. No. 87113, 2006-Ohio-3350.

**2006-1605. Thomas v. Cincinnati.**

Hamilton App. No. C-050643, 2006-Ohio-3598.

Lundberg Stratton, J., dissents.

**2006-1609. Solon v. Mazala.**

Cuyahoga App. No. 87055.

**2006-1610. DeMarco, Inc. v. Johns-Manville Corp.**

Franklin App. No. 05AP-445, 2006-Ohio-3587.

**2006-1612. Swim Rite Pool Co. v. Stausbaugh.**

Sandusky App. No. S-05-026, 2006-Ohio-3612.

**2006-1619. Flynn v. Westfield Ins. Co.**

Hamilton App. No. C-050909, 2006-Ohio-3719. Discretionary appeal and cross-appeal not accepted. Motion for admission pro hac vice of Sarah H. Dearing by Bradley L. Snyder granted. Motion to strike memorandum in response to memorandum in support of cross-appeal denied as moot.

Lundberg Stratton, O'Connor and O'Donnell, JJ., dissent and would accept the cross-appeal on Proposition of Law No. I.

**2006-1624. Non-Employees of Chateau Estates Resident Assn. v. Chateau Estates, Ltd.**

Clark App. No. 2005 CA 109, 2006-Ohio-3742.

**2006-1626. Armaly v. Wapakoneta.**

Auglaize App. No. 2-05-45, 2006-Ohio-3629.

Resnick, J., dissents.

**2006-1628. State v. Smith.**

Hamilton App. No. C-040778, 2006-Ohio-3720.

**2006-1629. State v. Jennings.**

Franklin App. No. 05AP-1051, 2006-Ohio-3704.

Pfeifer, J., dissents.

**2006-1630. State v. Baumgartner.**

Erie App. No. E-06-045, 2006-Ohio-3792.

Resnick and Lanzinger, JJ., not participating.

**2006-1631. Complete Personnel Logistics, Inc. v. Patton.**

Cuyahoga App. No. 86857, 2006-Ohio-3356.

Lundberg Stratton, J., dissents and would accept the appeal on Proposition of Law No. I.

**2006-1635. Automated Solutions Corp. v. Paragon Data Sys., Inc.**

Cuyahoga App. No. 86067, 2006-Ohio-3492.

**2006-1636. Davis v. Cuyahoga Cty. Juvenile Court.**

Cuyahoga App. No. 87953.

Lundberg Stratton, J., dissents and would accept the appeal and hold the cause for the decision in 2006-0373, *Miller v. First Internatl. Fidelity & Trust Bldg., Ltd.*, Lucas App. No. L-05-1311, 2006-Ohio-187.

**2006-1643. Elliott v. Elliott.**

Muskingum App. No. CT05-0057, 2006-Ohio-3797.

Lundberg Stratton, J., dissents.

O'Connor, J., dissents and would accept the appeal on Proposition of Law No. I and reverse the judgment of the court of appeals on the authority of *Seger v. For Women, Inc.*, 110 Ohio St.3d 451, 2006-Ohio-4855.

O'Donnell, J., dissents and would accept the appeal on Proposition of Law No. I.

**2006-1644. Middleburg Hts. v. Henniger.**

Cuyahoga App. No. 86882, 2006-Ohio-3715.

Moyer, C.J., and Lanzinger, J., dissent.

**2006-1645. State v. Moore.**

Cuyahoga App. No. 86630, 2006-Ohio-3680.

Resnick and O'Connor, JJ., dissent.

**2006-1648. State v. Jordan.**

Muskingum App. No. CT06-0004, 2006-Ohio-3829.

**2006-1649. Holm v. Clark Cty. Auditor.**

Clark App. No. 2005 CA 117, 2006-Ohio-3748.

**2006-1651. State v. Summers.**

Washington App. No. 06CA26.

**2006-1655. Pingue v. Delaware.**

Delaware App. No. 05 CAH 06-0037, 2006-Ohio-3796.

Pfeifer and Lundberg Stratton, JJ., dissent.

**2006-1656. Kelsey's Learning Ctr. v. Ohio Dept. of Job & Family Servs.**

Franklin App. No. 05AP-1311, 2006-Ohio-3657.

**2006-1664. Pengov v. Ohio Dept. of Taxation.**

Franklin App. No. 06AP-60, 2006-Ohio-3711.

**2006-1666. State v. Alexander.**

Erie App. No. E-06-038.

**2006-1668. State v. Sullivan.**

Licking App. No. 2006 CA 00033, 2006-Ohio-4060. Discretionary appeal not accepted. Motion for stay of consideration denied as moot.

**2006-1676. State v. Ward.**

Franklin App. No. 06AP-678.

**2006-1683. State v. Dawson.**

Cuyahoga App. No. 87102, 2006-Ohio-3503.

**2006-1684. Fifth Third Bank v. Ducru Ltd. Partnership.**

Hamilton Appeals No. C-050564, 2006-Ohio-3860.

Resnick, J., not participating.

**2006-1691. State v. Reddick.**

Cuyahoga App. No. 87086, 2006-Ohio-3687.

**2006-1692. Hilsinger v. Cincinnati Ins. Co.**

Hamilton App. No. C-050089.

**2006-1698. State v. Atkinson.**

Cuyahoga App. No. 88425.

**2006-1700. State v. Holloman.**

Franklin App. No. 06AP-608.

**2006-1708. State v. Mitchell.**

Lucas App. No. L-05-1410, 2006-Ohio-3983.

**2006-1710. State v. Roden.**

Cuyahoga App. No. 86841, 2006-Ohio-3679.

Resnick and O'Donnell, JJ., dissent.

- 2006-1716. State v. Parker.**  
Cuyahoga App. No. 87145, 2006-Ohio-3684.
- 2006-1717. State v. Mitchell.**  
Cuyahoga App. No. 87020, 2006-Ohio-3692.
- 2006-1719. State v. Gay.**  
Cuyahoga App. No. 86944, 2006-Ohio-3683.
- 2006-1722. State v. Williams.**  
Hamilton App. No. C-060583.
- 2006-1723. State v. Fields.**  
Cuyahoga App. No. 87044, 2006-Ohio-3730.
- 2006-1730. State v. Wilder.**  
Cuyahoga App. No. 88394.
- 2006-1733. State v. Lopez.**  
Hamilton App. No. C-060608.
- 2006-1740. Kellogg v. Daulton.**  
Franklin App. No. 06AP-106, 2006-Ohio-4115.
- 2006-1743. State v. Baldwin.**  
Hamilton App. No. C-050850.
- 2006-1744. State v. Reardon.**  
Lucas App. No. L-05-1275, 2006-Ohio-3984.
- 2006-1752. State v. Haning.**  
Tuscarawas App. No. 06 AP 08 0043.
- 2006-1754. State v. Lawson.**  
Clermont App. No. CA2006-06-044.
- 2006-1770. State v. Garrett.**  
Cuyahoga App. No. 86804, 2006-Ohio-3836.
- 2006-1777. State v. Wright.**

Clermont App. No. CA2006-07-049.

**2006-1784. State v. Weir.**

Hamilton App. No. C-050236, 2006-Ohio-4127.  
Pfeifer, J., dissents.

**2006-1789. State v. Harrington.**

Scioto App. No. 05CA3038, 2006-Ohio-4388.

**2006-1792. State v. Goens.**

Butler App. No. CA2005-06-174, 2006-Ohio-4324.

**2006-1794. State v. Skipworth.**

Cuyahoga App. No. 80662, 2005-Ohio-882.  
Resnick and Lundberg Stratton, JJ., dissent.

**2006-1856. State v. Fisher.**

Delaware App. No. 05 CAA 04 020, 2006-Ohio-2201.

**RECONSIDERATION OF PRIOR DECISIONS**

**2004-0485. State v. Ketterer.**

Butler C.P. No. CR2003-03-0309. Reported at 111 Ohio St.3d 70, 2006-Ohio-5283, 855 N.E.2d 48. On motion for reconsideration. Motion denied.

**2006-1297. Welch v. Ameritech Credit Corp.**

Franklin App. No. 04AP-1123, 2006-Ohio-2528. Reported at 111 Ohio St.3d 1431, 2006-Ohio-5351, 855 N.E.2d 496. On motion for reconsideration. Motion denied.

Lundberg Stratton, J., dissents.

Resnick, J., not participating.

**2006-1347. Chase Mtge. Co. W. v. Coleman.**

Cuyahoga App. No. 88158. Reported at 111 Ohio St.3d 1432, 2006-Ohio-5351, 855 N.E.2d 496. On motion for reconsideration. Motion denied.

**2006-1356. State v. Copley.**

Franklin App. No. 04AP-1128, 2006-Ohio-2737. Reported at 111 Ohio St.3d 1432, 2006-Ohio-5351, 855 N.E.2d 497. On motion for reconsideration. Motion denied.

**2006-1373. State v. Burrell.**

Cuyahoga App. No. 86702, 2006-Ohio-2593. Reported at 111 Ohio St.3d 1432, 2006-Ohio-5351, 855 N.E.2d 497. On motion for reconsideration. Motion denied.

Lundberg Stratton and Lanzinger, JJ., dissent and would grant the motion, accept the appeal, and hold the cause for the decision in 2006-0294 and 2006-0298, *State v. Crager*, Marion App. No. 9-04-54, 2005-Ohio-6868.

**2006-1388. Mack Trucks, Inc. v. Motor Vehicle Dealers Bd.**

Franklin App. No. 05AP-768, 2006-Ohio-2748. Reported at 111 Ohio St.3d 1433, 2006-Ohio-5351, 855 N.E.2d 497. On motions for reconsideration of Toledo Mack Sales & Service, Inc. and Ohio Motor Vehicle Dealers Board. Motions denied.

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

**2006-1458. Hardy v. Belmont Correctional Inst.**

Franklin App. No. 06AP-116, 2006-Ohio-3316. Reported at 111 Ohio St.3d 1434, 2006-Ohio-5351, 855 N.E.2d 497. On motion for reconsideration. Motion denied.

**2006-1654. State v. Wilson.**

Montgomery App. No. 20910, 2005-Ohio-6666. Reported at 111 Ohio St.3d 1430, 2006-Ohio-5351, 855 N.E.2d 495. On motion for reconsideration. Motion denied.