

# The Supreme Court of Ohio

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## CASE ANNOUNCEMENTS AND ADMINISTRATIVE ACTIONS

April 23, 2003

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### MERIT DECISIONS WITH OPINIONS

**2002-0658. Ellwood Engineered Castings Co. v. Zaino, 2003-Ohio-1812.**

Decision affirmed in part, reversed in part and cause remanded.

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

Lundberg Stratton, J., concurs in part and dissents in part.

Pfeifer, J., dissents.

Cook, J., dissents.

**2002-2222. Disciplinary Counsel v. DeLong, 2003-Ohio-1743.**

On Certified Report by the Board of Commissioners on Grievances and Discipline of the Supreme Court, No. 02-70.

Mark E. DeLong is suspended from the practice of law for 18 months.

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

Pfeifer, J., dissents.

### MERIT DECISIONS WITHOUT OPINIONS

**2003-0303. State ex rel. Cruse v. Tenth Dist. Court of Appeals.**

In Mandamus. On complaint in mandamus of Wendell L. Cruse. On S.Ct.Prac.R. X(5) determination, cause dismissed.

Moyer, C.J., Resnick, Pfeifer and Lundberg Stratton, JJ., concur.

F.E. Sweeney, Cook and O'Connor, JJ., would deny the writ.

**2003-0412. State ex rel. Sturgill v. Cosgrove.**

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

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

Cook and O'Connor, JJ., would deny the writ.

**2003-0486. Myers v. Ohio Bur. of Workers' Comp.**

Mahoning App. No. 01CA131, 2002-Ohio-7439. On review of order certifying a conflict. The court determines that no conflict exists. This cause is therefore dismissed.

Moyer, C.J., Cook, Lundberg Stratton and O'Connor, JJ., concur.

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

**2003-0519. Mangiopane v. Ohio Adult Parole Auth.**

In Habeas Corpus. On petition for writ of habeas corpus of Samuel Mangiopane. Sua sponte, cause dismissed.

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

**MOTION AND PROCEDURAL RULINGS**

**2001-0960. Westside Cellular, Inc. v. Pub. Util. Comm.**

Public Utilities Commission, No. 93-1758-RC-CSS. On motion for clarification. Motion denied.

Moyer, C.J., and Lundberg Stratton, J., would deny as moot.

**2001-1158. Cincinnati SMSA L.P. v. Pub. Util. Comm.**

Public Utilities Commission, No. 93-1758-RC-CSS. On motion for clarification of November 19, 2002 stay order and motion for extension of stay order pending appeal to the United States Supreme Court. Motions denied.

**2002-0803 and 2002-0837. German v. Therm-O-Disc, Inc.**

Richland App. No. 01CA512, 2002-Ohio-1848. On motion to dissolve/lift stay of briefing. Motion denied.

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

On motion to dismiss case. Motion denied.

F.E. Sweeney, J., dissents.

**2002-1815 and 2002-2008. Theobald v. Univ. of Cincinnati.**

Franklin App. Nos. 02AP-560, 02AP-593, 02AP-597 and 02AP-598. On motion for admission pro hac vice of Douglas C. Holland by James P. Sullivan for Keith Theobald et al. Motion granted.

**2003-0396. State v. Finger.**

Cuyahoga App. No. 80691, 2003-Ohio-402. On review of order certifying a conflict. The court determines that a conflict exists. Sua sponte, cause held for the decisions in 2002-1879, *State v. Johnson*, Cuyahoga App. No. 80459, 2002-Ohio-4581, and 2002-1888, *State v. Jordan*, Cuyahoga App. No. 80675, 2002-Ohio-4587; briefing schedule stayed.

F.E. Sweeney, J., dissents.

**2003-0406. Keegan v. Am. Internatl. Group, Inc.**

Certified State Law Question, No. 3:02CV7127. On review of preliminary memoranda pursuant to S.Ct.Prac.R. XVIII(6). Sua sponte, cause held for the decision in 2002-1956, *Tucker v. Wilson*, Clermont App. No. CA2002-01-002, 2002-Ohio-5142; briefing schedule stayed.

Cook, J., not participating.

**2003-0417. Willow Park Convalescent Home, Inc. v. Crestmont Cleveland/Partnership.**

Cuyahoga App. Nos. 81147 and 81259, 2003-Ohio-172. On motion for stay of court of appeals' judgment. Motion granted and supersedeas bond continued.

Pfeifer and O'Connor, JJ., dissent.

**2003-0426. Weller v. Titanium Metals Corp.**

Certified State Law Question, No. C:202290. On review of preliminary memoranda pursuant to S.Ct.Prac.R. XVIII(6). The court will answer the following question certified by the United States District Court for the Southern District of Ohio, Eastern Division:

“In the absence of direct proof of age discrimination, is the fourth element in a prima facie case established under Ohio Revised Code Section 4112.02 *et seq.* where the plaintiff proves that he or she was replaced by a person substantially younger than he or she even though the replacement is over forty years old? More specifically, is the fourth element of the age discrimination prima facie case, as set forth in *Barker v. Scovill, Inc.*, 6 Ohio St.3d 146, 451 N.E.2d 807, Syl. ¶ 1 (1983), still viable in light of the United States Supreme Court decision in *O'Connor v. Consolidated Coin Caterers Corporation*, 517 U.S. 308, 313 (1996)?”

Lundberg Stratton, J., dissents.

On motion to consolidate for purposes of oral argument with 2002-1758, *Coryell v. Bank One Trust Co.*, Franklin App. No. 02AP-191, 2002-Ohio-4443. Motion granted.

Lundberg Stratton, J., dissents.

**2003-0458. State v. Wright.**

Hancock App. No. 5-01-10, 2001-Ohio-2255. On motion for leave to file delayed appeal. Motion denied.

Lundberg Stratton, J., dissents.

**2003-0465. Toledo v. Buchanan.**

Lucas App. No. L-02-1010, 2003-Ohio-480. On motion for stay of imposition of sentence. Motion denied.

Moyer, C.J., and F.E. Sweeney, J., dissent and would grant the motion with the same bond.

Cook, J., would grant.

**2003-0477. State v. Gentry.**

Hamilton App. Nos. C-020026 and C-020027. On motion for leave to file delayed appeal. Motion denied.

Pfeifer and Lundberg Stratton, JJ., dissent.

**2003-0482. State v. Stallworth.**

Stark App. No. 2001CA00372, 2002-Ohio-3482. On motion for leave to file delayed appeal. Motion denied.

**2003-0484. State v. Cuevas.**

Lorain App. No. 91CA005043. On motion for leave to file delayed appeal. Motion denied.

**2003-0516. State v. Meisenhelder.**

Licking App. No. 01CA00068, 2002-Ohio-1449. On motion for leave to file delayed appeal. Motion denied.

**2003-0524. Wiley v. Grange Mut. Cas. Co.**

Summit App. No. 21145, 2003-Ohio-539. On review of order certifying a conflict. The court determines that a conflict exists. Sua sponte, cause held for the decision in 2002-0579, *Burkhart v. CNA Ins. Co.*, Stark App. No. 2001CA00265, 2002-Ohio-903; briefing schedule stayed.

Lundberg Stratton, J., dissents.

## APPEALS ACCEPTED FOR REVIEW

### **2002-2214. Greene v. Westfield Ins. Co.**

Stark App. No. 2002CA00114. Discretionary appeal allowed; sua sponte, cause held for the decision in 2002-0579, *Burkhart v. CNA Ins. Co.*, Stark App. No. 2001CA00265, 2002-Ohio-903; briefing schedule stayed.

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

Cook, J., not participating.

### **2002-2228. Nationwide Agribusiness Ins. Co. v. Wagner.**

Summit App. No. 21013, 2002-Ohio-6119. Discretionary appeal allowed; sua sponte, cause held for the decision in 2002-1126 and 2002-1433, *Allen v. Johnson*, Wayne App. Nos. 01CA0046 and 01CA0047, 2002-Ohio-3404; briefing schedule stayed.

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

### **2003-0022. Estate of Ridley v. Hamilton Cty. Bd. of Mental Retardation & Developmental Disabilities.**

Hamilton App. No. C-010791, 2002-Ohio-6344.

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

### **2003-0028. Katz v. Ohio Ins. Guar. Assn.**

Lucas App. No. L-02-1014, 2002-Ohio-6357.

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

Resnick, J., not participating.

### **2003-0046. Kirkhart v. Keiper.**

Portage App. No. 2001-P-0069, 2002-Ohio-6472.

Resnick and Cook, JJ., dissent.

### **2003-0048. Wilson v. Brush Wellman, Inc.**

Cuyahoga App. No. 80985, 2002-Ohio-5566.

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

### **2003-0053. State v. Leach.**

Hamilton App. No. C-020106, 2002-Ohio-6654.

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

**2003-0067. Thomson v. OHIC Ins. Co.**

Butler App. No. CA2002-03-055, 2002-Ohio-6517.

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

**2003-0074. Knox v. Travelers Ins. Co.**

Franklin App. No. 02AP-28, 2002-Ohio-6958. Discretionary appeal and cross-appeal allowed; sua sponte, cause held for the decision in 2002-0579, *Burkhart v. CNA Ins. Co.*, Stark App. No. 2001CA00265, 2002-Ohio-903; briefing schedule stayed.

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

**2003-0090. State v. Zima.**

Cuyahoga App. No. 80824, 2002-Ohio-6327.

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

**2003-0106. State v. Siferd.**

Hancock App. No. 5-02-09, 2002-Ohio-6801. Discretionary appeal allowed on Proposition of Law No. X; sua sponte, cause held for the decision in 2002-0201, *State v. Fisher*, Franklin App. No. 01AP-614, 2001-Ohio-8772; briefing schedule stayed.

Resnick, Pfeifer and Cook, JJ., would also allow all other propositions of law.

F.E. Sweeney, J., dissents.

**APPEALS NOT ACCEPTED FOR REVIEW**

**2002-1931. Hahn's Elec. Co. v. Cochran.**

Franklin App. Nos. 01AP-1391 and 01AP-1394, 2002-Ohio-5009.

Moyer, C.J., dissents.

**2002-2034. Premier Assoc., Ltd. v. Loper.**

Champaign App. No. 2002CA8, 2002-Ohio-5538.

**2003-0092. Limato v. Fairfield Cty.**

Fairfield App. Nos. 02CA16, 02CA17 and 02CA20, 2002-Ohio-6732.

Pfeifer, J., dissents.

**2003-0093. State v. Lofton.**

Cuyahoga App. No. 80901, 2002-Ohio-6328.

Pfeifer, J., dissents.

**2003-0098. Menda v. Springfield Radiologists, Inc.**

Clark App. No. 2001CA91, 2002-Ohio-6785.

**2003-0103. Scioto Bay Properties v. Ezell.**

Franklin App. Nos. 02AP-329 and 02AP-645, 2002-Ohio-5415.

**2003-0104. Doe v. Roman.**

Tuscarawas App. No. 2001AP050044, 2002-Ohio-6671.

**2003-0115. Woodson v. Ohio Adult Parole Auth.**

Franklin App. No. 02AP-393, 2002-Ohio-6630.

Pfeifer, J., dissents.

**2003-0119. Feister v. Miller.**

Tuscarawas App. Nos. 2002AP050035 and 2002AP050039, 2002-Ohio-7397.

Discretionary appeal and motion to consolidate denied.

**2003-0120. State v. Robinson.**

Mahoning App. 00CA190, 2002-Ohio-6734.

**2003-0122. Eisman v. Clark Cty. Dept. of Human Serv.**

Clark App. No. 02CA0031, 2002-Ohio-6781.

Resnick and Pfeifer, JJ., dissent.

**2003-0123. Covington v. The MetroHealth Sys.**

Franklin App. No. 02AP-243, 150 Ohio App.3d 558, 2002-Ohio-6629.

Discretionary appeal, motion for admission pro hac vice, and motion to consolidate denied.

Moyer, C.J., dissents.

**2003-0127. Lachman v. Wietmarschen.**

Hamilton App. No. C-020208, 2002-Ohio-6656.

**2003-0128. State v. Neal.**

Champaign App. Nos. 2000CA16 and 2000CA18, 2002-Ohio-6786.

O'Connor, J., would allow on Proposition of Law No. I.

Pfeifer, J., would allow.

**2003-0129. State v. Bassett.**

Lucas App. No. L-01-1493, 2002-Ohio-6689.

**2003-0132. State v. Nelson.**

Ashtabula App. No. 2001-A-0076, 2002-Ohio-6701.

**2003-0134. Abel v. Safety First Industries, Inc.**

Cuyahoga App. No. 80550, 2002-Ohio-6482.

Lundberg Stratton, J., dissents.

**2003-0139. Kaffeman v. Maclin.**

Cuyahoga App. No. 79953, 2002-Ohio-6479.

Resnick and Pfeifer, JJ., dissent.

**2003-0141. Aluminum Smelting & Refining Co. v. Denmark Twp. Bd. of Zoning Appeals.**

Ashtabula App. No. 2001-A-0050, 2002-Ohio-6690.

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

**2003-0152. Gardner v. Ohio Veterinary Med. Licensing Bd.**

Clinton App. No. CA2002-05-025, 2002-Ohio-6681.

Pfeifer, J., dissents.

O'Connor, J., not participating.

**2003-0156. State v. Pough.**

Trumbull App. No. 2000-T-0151, 2002-Ohio-6927.

**2003-0160. State v. McCoy.**

Clermont App. No. CA2002-03-023, 2002-Ohio-6879.

**2003-0162. State v. King.**

Franklin App. Nos. 02AP-661 and 02AP-662, 2002-Ohio-6759.

Moyer, C.J., dissents.

**2003-0163. Costanzo v. Nationwide Mut. Ins. Co.**  
Hamilton App. No. C-020105.

**2003-0164. Myers v. Ohio Bur. of Workers' Comp.**  
Mahoning App. No. 01CA131, 2002-Ohio-7439.  
Resnick and F.E. Sweeney, JJ., dissent.

**2003-0165. Hunter v. Interpak, Inc.**  
Lake App. No. 2001-L-198, 2002-Ohio-7149.

**2003-0167. Kanjuka v. MetroHealth Med. Ctr.**  
Cuyahoga App. No. 79995, 151 Ohio App.3d 183, 2002-Ohio-6803.

**2003-0170. State v. Wasily.**  
Erie App. No. E-01-001. Discretionary appeal and cross-appeal denied.

**2003-0173. First Merit Bank, N.A. v. Glause.**  
Summit App. No. 21083, 2002-Ohio-6768.

**2003-0176. State v. McCoy.**  
Summit App. No. 21017, 2002-Ohio-6761.

**2003-0179. State v. Hubbard.**  
Jefferson App. No. 01JE4, 2002-Ohio-6904.

**2003-0181. State v. Hall.**  
Franklin App. No. 02AP-715.

**2003-0186. Milstein v. Milstein.**  
Geauga App. No. 2001-G-2374, 2002-Ohio-6918.

**2003-0188. Cincinnati ex rel. Ritter v. Cincinnati Reds, LLC.**  
Hamilton App. Nos. C-020038 and C-020039, 150 Ohio App.3d 728, 2002-Ohio-7078.  
F.E. Sweeney and Cook, JJ., dissent.

**2003-0193. Eischen v. Stark Cty. Bd. of Commrs.**  
Stark App. No. 2002CA00090, 2002-Ohio-7005.

**2003-0194. Berea Music v. Berea.**

Cuyahoga App. No. 80897, 2002-Ohio-6639.

**2003-0197. State v. Kursim.**

Clermont App. No. CA2002-04-034, 2002-Ohio-6880.

**2003-0198. Washington v. Akron Civ. Serv. Comm.**

Summit App. No. 21171, 2002-Ohio-6990.

**2003-0202. Tinlin v. White.**

Carroll App. No. 02AP0767, 2002-Ohio-6905.

**2003-0203. State v. Salemi.**

Cuyahoga App. No. 81091, 2002-Ohio-7064.

**2003-0205. State v. Jones.**

Ashtabula App. No. 2001-A-0072, 2002-Ohio-6914.

**2003-0210. State v. Breeden.**

Lake App. No. 2000-L-078, 2002-Ohio-6932.

**2003-0211. Carmell v. Future Properties, Ltd.**

Franklin App. No. 02AP-626.

**2003-0212. In re Guardianship of Brunstetter.**

Trumbull App. No. 2002-T-0008, 2002-Ohio-6940.

**2003-0214. State v. Miller.**

Cuyahoga App. Nos. 81196 and 81668, 2002-Ohio-6645.

**2003-0215. Armstrong v. Brown.**

Trumbull App. No. 2000-T-0125, 2002-Ohio-6916.

**2003-0216. State ex rel. Wallace v. State Med. Bd. of Ohio.**

Hamilton App. No. C-020125.

Pfeifer, J., dissents.

**2003-0219. State v. Steele.**

Franklin App. No. 02AP-258, 2002-Ohio-7353.

**2003-0221. State v. Shafer.**

Cuyahoga App. No. 79758, 2002-Ohio-6632.

F.E. Sweeney, J., dissents.

**2003-0224. Bedwell v. Schmitt.**

Portage App. No. 2001-P-0136, 2002-Ohio-6909.

Lundberg Stratton, J., dissents.

**2003-0228. State v. Taylor.**

Lorain App. No. 01CA007945, 2002-Ohio-6992.

**2003-0236. Kerwood v. Cincinnati Ins. Co.**

Franklin App. No. 02AP-575, 2002-Ohio-7024.

F.E. Sweeney, J., would allow.

Pfeifer, J., would allow and would reverse on the authority of *Ferrando v. Auto-Owners Mut. Ins. Co.*, 98 Ohio St.3d 186, 2002-Ohio-7217, 781 N.E.2d 927.

Cook, J., not participating.

**2003-0238. State v. Henry.**

Jefferson App. No. 01JE30, 2002-Ohio-7180.

**2003-0240. Schupp v. Cincinnati Civ. Serv. Comm.**

Hamilton App. No. C-020176, 2002-Ohio-7077.

Moyer, C.J., dissents.

**2003-0241. Kennedy v. Heckard.**

Cuyahoga App. No. 80234, 2002-Ohio-6805.

F.E. Sweeney, J., dissents.

**2003-0244. State v. Unrue.**

Summit App. No. 21105, 2002-Ohio-7002.

Lundberg Stratton, J., dissents.

**2003-0245. Bryson v. Maxwell.**

Summit App. No. 21082, 2002-Ohio-6989.

F.E. Sweeney, J., dissents.

O'Connor, J., not participating.

**2003-0247. State v. Desper.**

Jefferson App. No. 02JE30, 2002-Ohio-7176.

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

**2003-0250. State v. Foster.**

Cuyahoga App. No. 81309, 2002-Ohio-7072.

**2003-0255. Wilson v. Glastic Corp.**

Cuyahoga App. No. 80840, 2002-Ohio-6821.

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

**2003-0267. State v. Ready.**

Lake App. No. 2001-L-150, 2002-Ohio-7138.

**2003-0276. State v. Frazier.**

Lake App. No. 2002-L-003, 2002-Ohio-7132.

**2003-0277. Levine v. Levine.**

Franklin App. No. 02AP-399, 2002-Ohio-7198.

**2003-0282. Royder v. State Med. Bd. of Ohio.**

Franklin App. No. 01AP-1365, 2002-Ohio-7192.

**2003-0285. State v. Dennis.**

Pike App. No. 99CA638.

**2003-0289. State v. Allen.**

Cuyahoga App. No. 76672, 2003-Ohio-24.

**2003-0291. State v. Roberts.**

Hamilton App. No. C-020774.

**2003-0295. Ballard v. Cleveland.**

Franklin App. No. 02AP-485, 2002-Ohio-7202.

F.E. Sweeney, J., dissents.

**2003-0314. McKernan v. Massillon Community Hosp.**

Stark App. No. 2002CA00052, 2002-Ohio-7395.

Resnick, J., dissents.

**2003-0318. State v. Holcomb.**  
Summit App. No. 21235.

**2003-0339. Whittington v. Licking Cty. Coalition for Housing.**  
Licking App. No. 02CA00108, 2003-Ohio-261.

**2003-0383. Kirsh v. Travelers Prop. & Cas. Co.**  
Cuyahoga App. No. 82086.

### **RECONSIDERATION OF PRIOR DECISIONS**

**2002-1673. State ex rel. White v. Ohio Adult Parole Auth.**  
Allen App. No. 1-02-60. Reported at 98 Ohio St.3d 290, 2003-Ohio-773, 783 N.E.2d 900. On motion for reconsideration. Motion denied.

**2002-2001. State v. McCullough.**  
Fayette App. No. CA2001-10-015, 2002-Ohio-5453. Reported at 98 Ohio St.3d 1478, 2003-Ohio-974, 784 N.E.2d 711. On motion for reconsideration. Motion denied.

**2002-2166. Fishel v. Fishel.**  
Tuscarawas App. No. 2002AP030023, 2002-Ohio-6178. Reported at 98 Ohio St.3d 1480, 2003-Ohio-974, 784 N.E.2d 712. On motion for reconsideration. Motion denied.

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