

SUPREME COURT OF OHIO

COLUMBUS

FIRST SUPPLEMENTAL ANNOUNCEMENT LIST

WEDNESDAY
March 6, 1996

MERIT DOCKET

96-107. State ex rel. Meros v. Sweeney.
In Mandamus. On motion to dismiss. Motion to dismiss sustained. Cause dismissed.
Moyer, C.J., Douglas, Wright, Resnick, F.E. Sweeney, Pfeifer and Cook, JJ., concur.
Pfeifer and Cook, JJ., would also award attorney fees to respondent.

96-125. Rivers v. Speakman.
In Mandamus. On motion to dismiss. Motion to dismiss sustained. Cause dismissed.
Moyer, C.J., Douglas, Wright, Resnick, F.E. Sweeney, Pfeifer and Cook, JJ., concur.

96-129. Turner v. Wilkinson.
In Mandamus. On motion to dismiss. Motion to dismiss sustained. Cause dismissed.
Moyer, C.J., Douglas, Wright, Resnick, F.E. Sweeney, Pfeifer and Cook, JJ., concur.

96-173. Brenneman v. Police Chief of Police Dept.
In Mandamus. On motion to dismiss. Motion to dismiss sustained. Cause dismissed.
Moyer, C.J., Douglas, Wright, Resnick, F.E. Sweeney, Pfeifer and Cook, JJ., concur.

96-187. Fetters v. Dues.
In Mandamus. On motion to dismiss. Motion to dismiss sustained. Cause dismissed.
Moyer, C.J., Douglas, Wright, Resnick, F.E. Sweeney, Pfeifer and Cook, JJ., concur.

96-194. State ex rel. Doss v. Spellacy.
In Mandamus. On motion to dismiss. Motion to dismiss sustained. Cause dismissed.
Moyer, C.J., Douglas, Wright, Resnick, F.E. Sweeney, Pfeifer and Cook, JJ., concur.

96-197. Boigner v. Ohio Adult Parole Auth.
In Mandamus. On motion to dismiss. Motion to dismiss sustained. Cause dismissed.

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

96-301. In re Petition for a Writ of Habeas Corpus for Pianowski.
In Habeas Corpus. Sua sponte, cause dismissed.

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

96-306. Guess v. Judges.

In Procedendo. On answer of respondent. Answer treated as motion to dismiss. Motion to dismiss sustained. Cause dismissed.

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

96-321. Davis v. Weston.

In Mandamus and Habeas Corpus. Sua sponte, cause dismissed.

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

96-324. State ex rel. Timson v. Nicholson.

In Mandamus. On answer of respondent. Answer treated as motion to dismiss. Motion to dismiss sustained. Cause dismissed.

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

Wright, J., not participating.

MOTION DOCKET

89-310. State v. Wickline.

Franklin County, No. 87AP-46. On motion for reconsideration under S.Ct.Prac.R. XI(1)(B). Motion denied.

Wright, J., not participating.

On motion to set execution date. Motion granted.

Wright, J., not participating.

On motion to strike. Motion denied.

Wright, J., not participating.

94-1493. State ex rel. Pope v. Indus. Comm.

Franklin County, No. 93APD06-862. On request for oral argument. Request granted and briefing ordered to proceed on the issue raised.

Cook, J., dissents.

94-1494. State ex rel. Davis v. Indus. Comm.

Franklin County, No. 93APD06-914. On request for oral argument. Request denied.

95-1209. Wagner v. Roche Laboratories.

Lucas County, Nos. L-93-187 and L-93-277. On motion for admission pro hac vice of John Winter by Irene Keyse-Walker. Motion granted.

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

95-1297. State ex rel. Midwest Pride IV, Inc. v. Pontious.

Fayette County, No. CA94-09-008. On request for oral argument. Request denied.

95-1514. Texas E. Transm. Corp. v. Tracy.
Board of Tax Appeals, No. 93-P-594. On request for oral argument before full court. Request granted. Sua sponte, cause consolidated with 95-1515, Panhandle E. Pipeline Co., Board of Tax Appeals, No. 93-P-595.

95-1762. State v. Cook.
Hamilton County, No. C-900676. On motion for reconsideration under S.Ct.Prac.R. XI(1)(B). Motion denied.
Wright, J., not participating.

95-2066. DeRolph v. State.
Perry County, No. CA-477. On motion to exceed page limitation. Motion granted and limit increased from fifty to seventy-five pages.
Resnick, F.E. Sweeney and Cook, JJ., dissent.

95-2374. State ex rel. Gerstenberger v. Migliorini.
In Mandamus. On motion to clarify court order. Motion denied.
Douglas, J., dissents.

95-2429. State v. Sargeant.
Butler County, No. CA95-03-049. On motion to consolidate case with 95-2440, State v. Elfrink, Franklin County, No. 95APC03-364. Motion granted; sua sponte, discretionary appeal allowed.
F.E. Sweeney, J., dissents.

95-2588. Scott v. Moyer.
In Prohibition. On request for findings of fact and conclusions of law.
Request denied.

95-2591. Sharon Village, Ltd. v. Licking Cty. Bd. of Revision.
Board of Tax Appeals, No. 94-M-1214. On motion to consolidate case with 95-2594, Derby Downs, Ltd. v. Licking Cty. Bd. of Revision, Board of Tax Appeals, No. 94-M-1215, and 95-2596, Cherry Lee, Ltd. v. Realty Dev. Co. #3, Board of Tax Appeals, Nos. 94-M-1325 and 94-M-1326. Motion granted.

96-52. Valvoline Instant Oil Change, Inc. v. Tracy.
Board of Tax Appeals, No. 94-B-1179. On motion to consolidate case with 96-53, Ashland Branded Marketing, Inc. v. Tracy, Board of Tax Appeals, No. 94-B-1180, and 96-54, SuperAmerica Group, Inc. v. Tracy, Board of Tax Appeals, No. 94-B-1181. Motion granted.

96-138. State v. Mitchell.
Cuyahoga County, No. 56575. On motion for leave to file delayed appeal. Motion denied.
Moyer, C.J., Resnick and Cook, JJ., dissent.

96-216. State v. Perry.
Franklin County, No. 95APC08-991. On review of order certifying a conflict. The court determines that a conflict exists; sua sponte, cause held for the decision in 95-1377 and 95-1466, State v. Gustafson, Mahoning County, No. 94 C.A. 232; briefing schedule stayed and cause consolidated with 96-175, infra.

96-236. State v. Woodgeard.
Fairfield County, No. 95CA0013. On motion for leave to file delayed appeal. Motion denied.
Moyer, C.J., and Douglas, J., dissent.

96-262. State v. Kirk.
Franklin County, No. 93AP-726. On motion for leave to file delayed appeal.
Motion denied.

96-263. State v. Potter.
Stark County, No. 1995CA00027. On motion for leave to file delayed appeal.
Motion granted.
Moyer, C.J., Wright and F.E. Sweeney, JJ., dissent.

96-298. State v. Evans.
Hamilton County, No. C-940911. On motion for leave to file delayed appeal.
Motion denied.
Resnick and Pfeifer, JJ., dissent.

96-302. State v. Conschafsky.
Scioto County, No. 95CA2345. On motion for leave to file delayed appeal.
Motion denied.
Resnick and Pfeifer, JJ., dissent.

96-308. State v. Gaskill.
Cuyahoga County, No. 69372. On motion for leave to file delayed appeal. Motion
denied.
Wright and Resnick, JJ., dissent.

96-309. State v. Plassman.
Fulton County, No. F-95-025. On review of order certifying a conflict. The
court determines that a conflict does not exist. Sua sponte, cause dismissed.
Moyer, C.J., Pfeifer and Cook, JJ., dissent.

96-350. State v. McFarland.
Muskingum County, No. CT950004. On motion for leave to file delayed appeal.
Motion denied.
Resnick, Pfeifer and Cook, JJ., dissent.

96-368. State v. Worthy.
Lorain County, No. 95CA006089. On motion for leave to file delayed appeal.
Motion denied.
Resnick and Pfeifer, JJ., dissent.

96-373. State v. Dennis.
Marion County, No. 9-95-9. On motion for leave to file delayed appeal. Motion
denied.

96-377. State v. Javorina.
Franklin County, No. 95APA06-689. On motion for leave to file delayed appeal.
Motion denied.
Resnick and Pfeifer, JJ., dissent.

96-378. State v. Wilmoth.
Ross County, No. 94CA2034. On motion for leave to file delayed appeal. Motion
denied.
Resnick and Pfeifer, JJ., dissent.

96-382. State v. Scott.

Cuyahoga County, No. 67148. On motion for leave to file delayed appeal. Motion denied.

Douglas, Resnick and Pfeifer, JJ., dissent.

96-425. Harbert v. Harbert.

Greene County, No. 95CA41. On review of order certifying a conflict. The court determines that a conflict exists. The parties are to brief the issue found at pages 2-3 of the court of appeals' Decision and Entry dated January 31, 1996:

"Harbert asserts, and we agree, that our decision is in conflict with the decision of the Third District Court of Appeals in *Wolding v. Wolding* (1992), 82 Ohio App.3d 235 [611 N.E.2d 860].

"The issue presented is whether a trial court may retain jurisdiction to modify spousal support even though it orders no spousal support at the time of the divorce, especially where there is some uncertainty as to the parties' incomes. *Wolding* held that a trial court is not authorized to retain jurisdiction over the issue of spousal support when it has made a specific finding that no alimony was warranted at the time of the divorce.

"We have held that allowing the trial court to retain jurisdiction without ordering current spousal support is consistent with the purposes of R.C. 3105.18(E), which provides for the modification of spousal support orders where a change of circumstances has been demonstrated. We are also of the view that a contrary holding would have the undesirable effect of encouraging trial courts to award nominal spousal support, thereby unnecessarily invoking the administrative processes associated with the collection of spousal support, simply for the purpose of retaining jurisdiction.

"Having found that a conflict exists, we certify the following question to the Supreme Court of Ohio for review and final determination:

"May a trial court retain jurisdiction over the issue of spousal support if it does not order spousal support at the time of the divorce?"

DISCRETIONARY APPEALS ALLOWED

95-2262. State v. Walton.

Crawford County, No. 3-95-11. Discretionary appeal allowed on Propositions of Law Nos. 1, 2, and 3 only; sua sponte, cause held for the decision in 95-1377 and 95-1466, supra; briefing schedule stayed.

Cook, J., dissents.

96-175. Columbus v. Perry.

Franklin County, No. 95APC08-991. Discretionary appeal allowed; sua sponte, cause consolidated with 96-216, supra, and held for the decision in 95-1377 and 95-1466, supra; briefing schedule stayed.

RECONSIDERATION DOCKET

94-835. Gallagher v. Cleveland Browns Football Co.

Cuyahoga County, No. 63311. Reported at 74 Ohio St.3d 427, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

Moyer, C.J., Douglas and Wright, JJ., dissent.

94-1445. In re Columbus Skyline Securities, Inc.

Franklin County, No. 93AP-790. Reported at 74 Ohio St.3d 495, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

94-1869. Am. Cyanamid Co. v. Tracy.

Board of Tax Appeals, No. 92-G-1380. Reported at 74 Ohio St.3d 468, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

Wright and Pfeifer, JJ., dissent.

94-2537. State v. Wilson.
Lorain County, No. 92CA005396. Reported at 74 Ohio St.3d 381, ___ N.E.2d ____.
On motion for reconsideration. Motion denied.
Cook, J., not participating.

94-2656. PPG Industries, Inc. v. Tracy.
Board of Tax Appeals, No. 93-M-415. Reported at 74 Ohio St.3d 449, ___ N.E.2d ____.
On motion for reconsideration. Motion denied.
Pfeifer, J., dissents.

95-7. State v. Floyd.
Mahoning County, No. 92 C.A. 151. Reported at 71 Ohio St.3d 1501, ___ N.E.2d ____.
On motion for reconsideration. Motion denied.

95-1813. State v. Hawkins.
Hamilton County, Nos. C-900092 and C-910017. Reported at 74 Ohio St.3d 530, ___ N.E.2d ____.
On motion for reconsideration. Motion denied.
Wright, J., dissents.

95-1912. Hill v. B.F. Goodrich Co.
Marion County, No. 9-94-59. Reported at 74 Ohio St.3d 1512, ___ N.E.2d ____.
On motion for reconsideration. Motion denied.
Resnick and F.E. Sweeney, JJ., dissent.

95-2054. Hudson v. Corsaut.
Defiance County, No. 4-94-16. Reported at 74 Ohio St.3d 1512, ___ N.E.2d ____.
On motion for reconsideration. Motion denied.
Moyer, C.J., Douglas and F.E. Sweeney, JJ., dissent.

95-2055. Dunkle v. Kinsey.
Summit County, No. 17114. Reported at 74 Ohio St.3d 1509, ___ N.E.2d ____.
On motion for reconsideration. Motion denied.
Cook, J., not participating.

95-2068. Bargar v. MTD Products, Inc.
Medina County, No. 2418-M. Reported at 74 Ohio St.3d 1509, ___ N.E.2d ____.
On motion for reconsideration. Motion denied.

95-2078. White v. Internatl. Union Plant Guard Workers, Local No. 166.
Montgomery County, No. 15252. Reported at 74 Ohio St.3d 1524, ___ N.E.2d ____.
On motion for reconsideration. Motion denied.

95-2102. Takacs v. Baldwin.
Huron County, No. H-94-035. Reported at 74 Ohio St.3d 1513, ___ N.E.2d ____.
On motion for reconsideration. Motion denied.
Moyer, C.J., and Wright, J., dissent.
Resnick, J., not participating.

95-2149. McKeegan v. Sears, Roebuck & Co.
Cuyahoga County, No. 68111. Reported at 74 Ohio St.3d 1513, ___ N.E.2d ____.
On motion for reconsideration. Motion denied.
Moyer, C.J., dissents.

95-2173. D'Antonio v. Allegheny Gen. Hosp.

Mahoning County, No. 94 C.A. 191. Reported at 74 Ohio St.3d 1522, ___ N.E.2d ___ . On motion for reconsideration. Motion denied.

95-2197. Emery v. Galose.

Lucas County, No. L-95-172. Reported at 74 Ohio St.3d 1523, ___ N.E.2d ___ . On motion for reconsideration. Motion denied.

Douglas and Resnick, JJ., not participating.

95-2235. Brown v. Ohio Bur. of Emp. Serv.

Marion County, No. 9-95-13. Reported at 74 Ohio St.3d 1513, ___ N.E.2d ___ . On motion for reconsideration. Motion denied.

Wright, Pfeifer and Cook, JJ., dissent.

96-349. State ex rel. Drew v. Vinton Cty. Bd. of Elections.

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