

The Supreme Court of Ohio

CASE ANNOUNCEMENTS

May 26, 2010

[Cite as *05/26/2010 Case Announcements*, 2010-Ohio-2212.]

MERIT DECISIONS WITH OPINIONS

2008-2230. Cleveland v. Destiny Ventures, L.L.C., Slip Opinion No. 2010-Ohio-2320.

Cuyahoga App. No. 91018, 2008-Ohio-4587. Judgment of the court of appeals reversed, and cause remanded to the trial court.

Pfeifer, Lundberg Stratton, O'Connor, O'Donnell, Lanzinger, and Cupp, JJ., concur.

Brown, C.J., not participating.

2009-0441. Cleveland v. Washington Mut. Bank, Slip Opinion No. 2010-Ohio-2219.

Cuyahoga App. No. 91379, 2008-Ohio-6956. Judgment of the court of appeals affirmed, and cause remanded to the trial court.

Pfeifer, Lundberg Stratton, O'Donnell, Lanzinger, and Cupp, JJ., concur.

O'Connor, J., concurs separately.

Brown, C.J., not participating.

2009-1282. Zanesville v. Rouse, Slip Opinion No. 2010-Ohio-2218.

Muskingum App. No. CT08-0035, 2009-Ohio-2689. Judgment of the court of appeals reversed, and judgment of the trial court reinstated.

Pfeifer, Lundberg Stratton, O'Connor, Lanzinger, and Cupp, JJ., concur.

O'Donnell, J., concurs separately.

Brown, C.J., not participating.

MERIT DECISIONS WITHOUT OPINIONS

2009-0669. In re Application of Duke Energy Ohio, Inc.

Public Utilities Commission, Nos. 08-920-EL-SSO, 08-921-EL-AAM, 08-922-EL-UNC, and 08-923-EL-ATA. Sua sponte, this cause is dismissed for failure to present a justiciable case or controversy.

Lundberg Stratton, O'Connor, O'Donnell, Lanzinger, and Cupp, JJ., concur.
Brown, C.J., and Pfeifer, J., dissent.

2010-0447. State ex rel. White v. Guzman.

In Quo Warranto. On motions to dismiss. Motions to dismiss granted. Cause dismissed.

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

2010-0452. State ex rel. Warren v. Huffman.

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

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

2010-0453. State ex rel. Butler v. Court of Appeals, Seventh Appellate Dist.

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

Pfeifer, Lundberg Stratton, O'Connor, O'Donnell, Lanzinger, and Cupp, JJ., concur.

Brown, C.J., dissents and would grant an alternative writ.

2010-0461. State ex rel. Castro v. Deters.

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

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

2010-0525. State ex rel. Lathan v. Jensen.

In Mandamus. On answer of respondent. On S.Ct.Prac.R. 10.5 determination, cause dismissed.

Brown, C.J., and Pfeifer, Lundberg Stratton, O'Connor, O'Donnell, and Cupp, JJ., concur.

Lanzinger, J., not participating.

2010-0548. HPSC, Inc. v. Estate of Scarso.

Lake App. No. 2009-L-110, 2009-Ohio-6032. On review of order certifying a conflict. The court determines that no conflict exists. This cause is therefore dismissed.

Brown, C.J., and O'Connor, Lanzinger, and Cupp, JJ., concur.
Pfeifer, Lundberg Stratton, and O'Donnell, JJ., dissent.

2010-0568. [State ex rel.] Johnson v. Sheeran.

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

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

2010-0569. Aleshire v. Knab.

In Habeas Corpus. On petition for writ of habeas corpus of Lonny J. Aleshire Jr. Sua sponte, cause dismissed.

Brown, C.J., and Pfeifer, Lundberg Stratton, O'Connor, O'Donnell, and Cupp, JJ., concur.

Lanzinger, J., dissents and would order a return on the writ.

2010-0596. Henderson v. Shaffer.

In Habeas Corpus. On petition for writ of habeas corpus of Paul S. Henderson. Sua sponte, cause dismissed.

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

2010-0604. Duff v. Kerns.

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

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

MOTION AND PROCEDURAL RULINGS

2009-2018. State v. Burnett.

Hamilton App. No. C-081265. On motion to remand to Hamilton County Court of Common Pleas. Motion denied.

2009-2131. State v. Chappell.

Cuyahoga App. No. 92455, 2009-Ohio-5371. On motion for admission pro hac vice of Emily Schlesinger by Benjamin C. Mizer. Motion granted.

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

2009-2293. State ex rel. Mahajan v. State Med. Bd. of Ohio.

In Mandamus. On answer of respondent. Sua sponte, an alternative writ is granted, and the following briefing schedule is set for presentation of evidence and filing of briefs pursuant to S.Ct.Prac.R. 10.6:

The parties shall file any evidence they intend to present within 20 days of the date of this entry; relator shall file a brief within ten days of the filing of the evidence; respondent shall file a brief within 20 days after the filing of relator's brief; and relator may file a reply brief within seven days after filing of respondent's brief.

2010-0321. State v. Ford.

Licking App. No. 2008 CA 158, 2009-Ohio-6724. On motion for leave to file delayed appeal. Motion denied.

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

2010-0508. Flagstar Bank, FSB v. Reinhold.

Hamilton App. No. C-090166. 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' Entry filed March 3, 2010:

"Under R.C. 2305.09(D), does a cause of action for professional negligence accrue on the date that the negligent act is committed, or on the date that the negligent act causes actual damages?"

The conflict cases are *JP Morgan Chase Bank NA v. Lanning*, Stark App. No. 2007CA00223, 2008-Ohio-893; *Fritz v. Brunner Cox, L.L.P.*, 142 Ohio App.3d 664, 756 N.E.2d 740; and *Gray v. Estate of Barry*, 101 Ohio App.3d 764, 656 N.E.2d 729.

Sua sponte, cause consolidated with 2010-0511, *Flagstar Bank, FSB v. Reinhold*, Hamilton App. No. C-090166.

2010-0555. State v. Rose.

Butler App. No. CA2008-04-109. On motion for leave to file delayed appeal. Motion granted.

Lundberg Stratton, Lanzinger, and Cupp, JJ., dissent.

2010-0556. State v. Chambers.

Hamilton App. No. C-080925. On motion for leave to file delayed appeal. Motion denied.

Brown, C.J., and Pfeifer, J., dissent.

2010-0588. Anderson v. State.

Hamilton App. No. C-090006. On motion for leave to file delayed appeal. Motion granted.

O'Connor and Cupp, JJ., dissent.

2010-0590. Edwards v. State.

Hamilton App. No. C-090189. On motion for leave to file delayed appeal. Motion granted.

O'Connor and Cupp, JJ., dissent.

2010-0593. Wilson v. State.

Hamilton App. No. C-090190. On motion for leave to file delayed appeal. Motion granted.

O'Connor and Cupp, JJ., dissent.

2010-0609. State v. Ulery.

Clark App. No. 2009-CA-5, 2010-Ohio-376. On motion for leave to file delayed appeal. Motion granted.

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

2010-0614. State v. Elson.

Richland App. No. 2008CA0051, 2009-Ohio-1481. On motion for leave to file delayed appeal. Motion denied.

2010-0632. State v. Broome.

Cuyahoga App. No. 94498. On motion for leave to file delayed appeal. Motion denied.

Brown, C.J., and Pfeifer and O'Donnell, JJ., dissent.

2010-0637. State v. Hall.

Morgan App. No. 09AP3. On motion for leave to file delayed appeal. Motion denied.

Brown, C.J., and Pfeifer, J., dissent.

2010-0646. State v. Crim.

Cuyahoga App. No. 82347, 2004-Ohio-2553. On motion for leave to file delayed appeal. Motion denied.

2010-0689. State v. McGhee.

Montgomery App. No. 23226, 2010-Ohio-977. On motion for stay of execution of judgment. Motion denied.

2010-0699. Schultz v. Wurdlow.

Franklin App. No. 09AP-301, 2010-Ohio-1140. On motion for stay of judgment. Motion denied.

APPEALS ACCEPTED FOR REVIEW

2010-0240. In re D.B.

Licking App. No. 2009 CA 00024, 2009-Ohio-6841.
Pfeifer, O'Donnell, and Cupp, JJ., dissent.

2010-0297. Loudin v. Radiology & Imaging Servs., Inc.

Summit App. No. 24783, 185 Ohio App.3d 438, 2009-Ohio-6947.
Brown, C.J., and Pfeifer, J., dissent.

2010-0298. New Destiny Treatment Ctr., Inc. v. Wheeler.

Summit App. No. 24404, 2009-Ohio-6956.
Lundberg Stratton and Lanzinger, JJ., dissent.
O'Connor, J., not participating.

2010-0329. State v. Taylor.

Athens App. No. 09CA22, 2010-Ohio-141. Discretionary appeal accepted; cause held for the decision in 2008-2502, *State v. Bodyke*, Huron App. Nos. H-07-040, H-07-041, and H-07-042, 2008-Ohio-6387; and briefing schedule stayed.
O'Connor, Lanzinger, and Cupp, JJ., would accept the appeal on Proposition of Law Nos. II, III, and IV only.
Motion to consolidate denied as moot.

2010-0380. State v. Gaines.

Wood App. No. WD-08-058, 2010-Ohio-91. Discretionary appeal accepted on Proposition of Law No. I; cause held for the decision in 2009-1997, *State v. Hodge*, Hamilton App. No. C-080968; and briefing schedule stayed.
Pfeifer, Lundberg Stratton, and O'Donnell, JJ., dissent.

2010-0393. Measles v. Indus. Comm.

Cuyahoga App. No. 93071, 2010-Ohio-161.

Brown, C.J., and Pfeifer and O'Connor, JJ., dissent.

2010-0397. State v. Potter.

Franklin App. No. 09AP-580, 2010-Ohio-372. Discretionary appeal accepted; cause held for the decision in 2009-1997, *State v. Hodge*, Hamilton App. No. C-080968; and briefing schedule stayed.

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

2010-0511. Flagstar Bank, FSB v. Reinhold.

Hamilton App. No. C-090166. Discretionary appeal accepted and cause consolidated with 2010-0508, *Flagstar Bank, FSB v. Reinhold*, Hamilton App. No. C-090166.

Pfeifer, J., dissents.

APPEALS NOT ACCEPTED FOR REVIEW

2009-2070. State v. Duncan.

Richland App. No. 2009CA028, 2009-Ohio-5668.

2009-2218. State v. Pilgrim.

Franklin App. No. 08AP-993, 184 Ohio App.3d 675, 2009-Ohio-5357. Discretionary appeal not accepted. Motion to strike memorandum in response denied as moot.

2009-2255. State v. Moore.

Stark App. No. 2008-CA-00228, 2009-Ohio-4958.

2010-0003. State ex rel. N. Canton v. Stark Cty. Bd. of Commrs.

Stark App. No. 2009-CA-00132, 2009-Ohio-6942.

Pfeifer, J., dissents.

2010-0044. Summit Tree & Landscaping v. Stow Contracting, L.L.C.

Summit App. No. 24515, 2009-Ohio-5794. Discretionary appeal not accepted. Motions to dismiss appeal and for sanctions denied as moot.

2010-0170. Moore v. Streetsboro.

Portage App. No. 2008-P-0017, 2009-Ohio-6511.

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

Lanzinger, J., not participating.

2010-0223. State v. Watson.

Union App. No. 14-09-01, 2009-Ohio-6713.

2010-0227. State v. Ely.

Franklin App. No. 09AP-138, 2009-Ohio-6772.

2010-0242. Accu-Check Instrument Serv., Inc. v. Sunbelt Business Advisors of Cent. Ohio.

Franklin App. Nos. 09AP-505 and 09AP-506, 2009-Ohio-6849.

Brown, C.J., not participating.

2010-0259. Lyons v. Lyons.

Crawford App. No. 3-09-12, 2009-Ohio-6868.

Cupp, J., not participating.

2010-0268. State v. Christley.

Cuyahoga App. No. 92546, 2009-Ohio-6635.

Brown, C.J., and Lundberg Stratton and Cupp, JJ., dissent.

2010-0272. Parker v. Honda of Am. Mfg.

Union App. No. 14-09-27, 2009-Ohio-6866.

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

2010-0275. West v. Carfax, Inc.

Trumbull App. No. 2008-T-0045, 2009-Ohio-6857. Discretionary appeals not accepted.

O'Connor, J., dissents and would accept the appeals on Proposition of Law Nos. I and II.

O'Donnell, J., dissents.

Lanzinger, J., not participating.

Motion for admission pro hac vice of Christopher M. Mason by Hugh E. McKay granted.

Motions for admission pro hac vice of Deepak Gupta and Allison M. Zieve by Ronald Frederick granted.

2010-0277. Kill v. CSX Transp., Inc.

Allen App. No. 1-09-13, 185 Ohio App.3d 291, 2009-Ohio-6871.

Brown, C.J., and Pfeifer, J., dissent.

2010-0279. Pahoundis v. Beamer.

Coshocton App. No. 09CA017, 2009-Ohio-6881.

2010-0280. State v. Biggs.

Stark App. No. 2008CA00285, 2009-Ohio-6885.

2010-0283. Serbin v. Hartville.

Stark App. No. 2008 CA 00293, 2009-Ohio-6940.

2010-0284. Jefferson v. Benjamin Steel Co., Inc.

Richland App. No. 09 CA 62, 2010-Ohio-50. Discretionary appeal and cross-appeal not accepted.

Brown, C.J., dissents and would accept the appeal on Proposition of Law No. II.

Pfeifer, J., dissents.

2010-0290. D'Souza v. State Med. Bd. of Ohio.

Franklin App. No. 09AP-97, 2009-Ohio-6901.

2010-0292. Estate of Hohler v. Hohler.

Carroll App. No. 09 CA 860, 185 Ohio App.3d 420, 2009-Ohio-7013.

Brown, C.J., and O'Donnell and Cupp, JJ., dissent.

2010-0295. State v. Biondo.

Portage App. No. 2009-P-0009, 2009-Ohio-7005.

Brown, C.J., dissents.

Lanzinger, J., not participating.

2010-0299. Cornwell v. N. Ohio Surgical Ctr., Ltd.

Erie App. No. E-09-001, 185 Ohio App.3d 337, 2009-Ohio-6975.

O'Connor, J., dissents.

2010-0300. Rock v. Sanislo.

Medina App. No. 09CA0031-M, 2009-Ohio-6913.

2010-0301. Platt v. Cleveland Elec. Illuminating Co.

Ashtabula App. No. 2009-A-0018, 2009-Ohio-7003.

O'Donnell, J., dissents.

Lanzinger, J., not participating.

2010-0303. State v. Phillips.

Highland App. No. 09CA13, 2009-Ohio-7069.

2010-0306. Lavery v. Akron Dept. of Pub. Serv.

Summit App. No. 24760, 2009-Ohio-6946.

2010-0315. In re Trust for Buoscio.

Mahoning App. No. 08 MA 245, 2010-Ohio-331.

2010-0319. State v. Aleshire.

Licking App. No. 09-CA-147.

2010-0323. State v. Ayers.

Cuyahoga App. No. 91847, 185 Ohio App.3d 168, 2009-Ohio-6096.

2010-0327. State v. Greene.

Cuyahoga App. No. 92638, 2009-Ohio-6307.

2010-0331. Capital One Bank v. Simes.

Montgomery App. No. 23369, 2010-Ohio-558.

2010-0332. HPSC, Inc. v. Estate of Scarso.

Lake App. No. 2009-L-110, 2009-Ohio-6032.

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

2010-0333. Brooklyn v. Kushlak.

Cuyahoga App. No. 94124. Discretionary appeal not accepted. Motion for stay denied as moot.

2010-0335. EnQuip Technologies Group, Inc. v. Tycon Technoglass, S.R.L.

Greene App. No. 2009 CA 42, 2010-Ohio-28.

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

2010-0336. State v. Gorrasi.

Hamilton App. No. C-090292.

2010-0338. Dinardo v. Chester Twp. Bd. of Zoning Appeals.

Geauga App. No. 2009-G-2884, 2010-Ohio-40.

2010-0340. State v. Moorer.

Cuyahoga App. No. 93155, 2009-Ohio-6469.

2010-0342. State v. Williams.

Tuscarawas App. No. 2009 AP 10 0056, 2010-Ohio-225.

2010-0343. Clevenger v. Univ. of Cincinnati College of Medicine.

Franklin App. No. 09AP-585, 2010-Ohio-88.

Pfeifer, J., dissents.

2010-0347. State v. Bunting.

Stark App. No. 2009CA00172.

2010-0348. State ex rel. Cordray v. Severstal Wheeling, Inc.

Belmont App. No. 09 BE 32.

2010-0349. Community Bus Servs., Inc. v. Greater Hts. Academy.

Cuyahoga App. No. 92518, 2009-Ohio-6218.

Pfeifer, J., dissents.

2010-0356. White Family Cos., Inc. v. Invesco, Ltd.

Montgomery App. No. 23305, 2010-Ohio-118.

2010-0357. Michalski v. Vance.

Delaware App. No. 09 CAE 07 0062, 2010-Ohio-97.

2010-0358. State ex rel. Cordray v. R.J. Reynolds Tobacco Co.

Franklin App. No. 09AP-259, 2010-Ohio-86. Discretionary appeal not accepted.
Motion for leave to file exhibit denied as moot.

Pfeifer and Lanzinger, JJ., dissent.

Brown, C.J., not participating.

Motion for admission pro hac vice of Noel J. Francisco by Elizabeth Kessler granted.

2010-0359. State v. Knisley.

Montgomery App. No. 22897, 2010-Ohio-116.

2010-0364. State v. Santiago.

Cuyahoga App. No. 94564.

2010-0365. State v. Gray.
Cuyahoga App. No. 92303, 2010-Ohio-240.

2010-0369. State v. Metts.
Hamilton App. No. C-090467.

2010-0370. State v. Slayback.
Hamilton App. No. C-081284.

2010-0371. Green v. Foos.
Wood App. No. WD-09-041, 2010-Ohio-93.

2010-0373. State v. Neel.
Hamilton App. No. C-090037.

2010-0374. Mattison v. Khalil.
Lucas App. No. L-08-1265, 2008-Ohio-716.

2010-0376. State v. Howes.
Summit App. No. 24665, 2010-Ohio-421.

2010-0379. State v. Allen.
Cuyahoga App. No. 92482, 2010-Ohio-9.

2010-0381. White v. State.
Cuyahoga App. No. 93632, 2009-Ohio-6828.

2010-0383. State v. Brownridge.
Marion App. No. 9-09-24, 2010-Ohio-104.

Brown, C.J., and O'Donnell, J., dissent and would accept the appeal on Proposition of Law No. I and hold the cause for the decision in 2009-1997, *State v. Hodge*, Hamilton App. No. C-080968.

2010-0384. Franks v. Chas F. Mann Painting Co.
Lucas App. No. L-09-1107, 2010-Ohio-292.

Pfeifer and Cupp, JJ., dissent.
Lanzinger, J., not participating.

2010-0388. State v. Smith.
Hamilton App. No. C-090911.

2010-0390. State v. Stewart.

Cuyahoga App. No. 94513.

2010-0394. State v. Morris.

Cuyahoga App. No. 92898.

Brown, C.J., dissents and would accept the appeal on Proposition of Law No. IV and hold the cause for the decision in 2009-1997, *State v. Hodge*, Hamilton App. No. C-080968.

2010-0398. Currier v. Erie Ins. Exchange.

Trumbull App. No. 2009-T-0040, 2010-Ohio-198.

2010-0399. State v. Brakeall.

Fayette App. Nos. CA2008-06-022 and CA2008-06-023.

2010-0402. Irby v. Strang.

Erie App. No. E-09-032, 2010-Ohio-180.

2010-0408. State v. Andrews.

Butler App. No. CA2009-02-052, 2010-Ohio-108.

2010-0409. Davis v. CNG Financial Corp.

Hamilton App. No. C-090182.

2010-0414. State v. Gray.

Cuyahoga App. No. 92646, 2010-Ohio-11.

2010-0426. State v. Flugga.

Licking App. No. 2009-CA-5.

2010-0429. State v. Bruce.

Cuyahoga App. No. 92016, 2009-Ohio-6214.

Brown, C.J., and Cupp, J., dissent and would accept the appeal on Proposition of Law No. XIX and hold the cause for the decision in 2009-1997, *State v. Hodge*, Hamilton App. No. C-080968.

2010-0432. State v. Solether.

Wood App. No. WD-08-073, 2010-Ohio-185.

Brown, C.J., dissents and would accept the appeal on Proposition of Law Nos. II and III.

Pfeifer, J., dissents.

2010-0436. State v. Simpson.

Lucas App. No. L-07-1232.

2010-0440. State v. Lenard.

Cuyahoga App. No. 93373, 2010-Ohio-81.

2010-0443. State v. Holder.

Huron App. No. H-09-015, 2010-Ohio-393.

2010-0450. State v. Moore.

Lucas App. No. L-08-1435, 2010-Ohio-396.

Brown, C.J., dissents and would accept the appeal and hold the cause for the decision in 2009-1997, *State v. Hodge*, Hamilton App. No. C-080968.

2010-0456. State v. DeWitt.

Allen App. No. 1-09-25.

2010-0463. State v. Rivera.

Butler App. No. CA2008-12-308, 2010-Ohio-323.

Brown, C.J., dissents and would accept the appeal on Proposition of Law Nos. II and III.

O'Connor, J., dissents and would accept the appeal on Proposition of Law Nos. I, II, and III.

2010-0470. State v. Unsworth.

Lucas App. Nos. L-09-1205 and L-09-1206, 2010-Ohio-398.

Lanzinger, J., not participating.

2010-0474. Windsor House, Inc. v. Ohio Dept. of Job & Family Servs.

Franklin App. No. 09AP-584, 2010-Ohio-257.

O'Donnell, J., dissents.

2010-0490. State v. Ruffin.

Cuyahoga App. No. 94217.

2010-0501. State v. Morris.

Franklin App. No. 05AP-1032, 2010-Ohio-786.

2010-0583. In re C.C.

Cuyahoga App. No. 94011, 2010-Ohio-779.

Pfeifer, J., dissents.

RECONSIDERATION OF PRIOR DECISIONS

2006-1502. State v. Fry.

Summit C.P. No. 2005-08-3007. Reported at ___ Ohio St.3d ___, 2010-Ohio-1017, ___ N.E.2d ___. On motion for reconsideration/rehearing and to stay the issuance of mandate. Motion denied.

2009-0437. Rich's Dept. Stores, Inc. v. Levin.

Board of Tax Appeals, No. 2005-T-1609. Reported at 125 Ohio St.3d 15, 2010-Ohio-957, 925N.E.2d 951. On motion for reconsideration. Motion denied.

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

2009-0678. State v. Pepka.

Lake App. No. 2008-L-016, 2009-Ohio-1440. Reported at ___ Ohio St.3d ___, 2010-Ohio-1045, ___ N.E.2d ___. On motion for reconsideration. Motion denied.

Brown, C.J., dissents.

Motion for stay of execution denied.

O'Donnell, J., dissents.

2010-0028. Smith Evergreen Nursery, Inc. v. Magnolia.

Stark App. No. 2009 CA 00003, 2009-Ohio-6560. Reported at 124 Ohio St.3d 1522, 2010-Ohio-1075, 923 N.E.2d 622. On motion for reconsideration. Motion denied.

O'Connor and Lanzinger, JJ., dissent.