

# The Supreme Court of Ohio

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## CASE ANNOUNCEMENTS

March 3, 2010

[Cite as *03/03/2010 Case Announcements, 2010-Ohio-670.*]

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## MERIT DECISIONS WITH OPINIONS

**2008-1464. State ex rel. Cambridge Home Health Care, Inc. v. Indus. Comm., Slip Opinion No. 2010-Ohio-651.**

In Mandamus. Limited writ granted.

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

**2008-1499. State v. Jackson, Slip Opinion No. 2010-Ohio-621.**

Stark App. No. 2007CA00274, 2008-Ohio-2944. Judgment of the court of appeals reversed, and judgment of the trial court reinstated.

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

Pfeifer and O'Donnell, JJ., concur separately.

Lundberg Stratton and Cupp, JJ., dissent.

**2009-0330. State v. Speer, Slip Opinion No. 2010-Ohio-649.**

Ottawa App. No. OT-07-046, 180 Ohio App.3d 230, 2008-Ohio-6947. Judgment affirmed.

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

Lanzinger and Cupp, JJ., dissent.

**2009-1522. Akron Bar Assn. v. Smithern, Slip Opinion No. 2010-Ohio-652.**

On Certified Report by the Board of Commissioners on Grievances and Discipline, No. 08-036. Michelle A. Smithern, Attorney Registration No. 0032850, is

indefinitely suspended from the practice of law in Ohio, with credit for time served under the interim suspension imposed on February 17, 2009.

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

**2009-1548. Disciplinary Counsel v. Vivyan, Slip Opinion No. 2010-Ohio-650.**

On Certified Report by the Board of Commissioners on Grievances and Discipline, No. 09-020. Thomas Fairchild Vivyan, Attorney Registration No. 0028977, is suspended from the practice of law in Ohio for six months, stayed on condition.

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

O'Donnell, J., dissents and would publicly reprimand respondent.

**MERIT DECISIONS WITHOUT OPINIONS**

**2009-2063. [State ex rel.] Pawlowski v. Toledo Police Div.**

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

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

**2009-2141. State ex rel. Sultaana v. Fidelity Invests.**

Hamilton App. No. C-090575. On motion to dismiss. Motion to dismiss granted. Notice of appeal was not timely filed. S.Ct.Prac.R. 2.2(A)(1)(a). Cause dismissed.

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

**2009-2285. State ex rel. Lucky v. Court of Appeals, Fifth Appellate Dist.**

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

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

**2009-2297. State ex rel. Smith v. Nabakowski.**

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

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

Lanzinger, J., dissents and would grant the writ.

**2009-2337. State ex rel. Hawk v. Athens Cty. Common Pleas Clerk of Court.**

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

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

**2009-2344. State ex rel. Brown v. Timmerman-Cooper.**

In Mandamus. On motion to dismiss. Motion to dismiss granted. Motion for temporary restraining order and/or preliminary injunction hearing denied as moot. Cause dismissed.

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

**2009-2354. State ex rel. Cook v. Terry.**

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

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

**2010-0278. Perry v. Karnes.**

In Habeas Corpus. On emergency petition for writ of habeas corpus of Carmella Perry. Sua sponte, cause dismissed.

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

**MOTION AND PROCEDURAL RULINGS**

**2006-1259. State ex rel. Coles v. Granville.**

In Mandamus. On motions for contempt and for leave to file a supplement to the appendix of the motion for contempt. Motion for contempt denied. Motion for leave to file a supplement to the appendix of the motion for contempt denied as moot.

O'Donnell, J., not participating.

**2009-0918. State ex rel. FedEx Ground Package Sys., Inc. v. Indus. Comm.**

Franklin App. No. 07AP-959, 182 Ohio App.3d 152, 2009-Ohio-1708. On request for oral argument. Request denied.

**2009-1497. Torrance v. Bealer.**

In Mandamus and Prohibition. On motion for sanctions for frivolous action pursuant to S.Ct.Prac.R. 14.5(A). Motion granted to the following extent: Respondents are awarded attorney fees in the amount of \$10,137.

**2009-1547. Ohio Consumers' Counsel v. Pub. Util. Comm.**

Public Utilities Commission, Nos. 07-1080-GA-AIR and 07-1081-GA-ALT. On motion for stay of execution. Motion denied.

**2010-0015. State v. Notestine.**

Ottawa App. No. OT-08-038, 2009-Ohio-3220. On motion for leave to file delayed appeal. Motion granted.

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

**2010-0022. State v. Canty.**

Mahoning App. No. 08-MA-156, 2009-Ohio-6161. On motion for leave to file delayed appeal. Motion granted.

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

**2010-0023. State v. Russell.**

Trumbull App. No. 2008-T-0074, 2009-Ohio-5213. On review of order certifying a conflict. The court determines that a conflict exists. Sua sponte, 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; cause consolidated with 2009-2078, *State v. Russell*, Trumbull App. No. 2008-T-0074, 2009-Ohio-5213; and briefing schedule stayed.

**2010-0024. Westfield Ins. Co. v. Hunter.**

Butler App. Nos. CA2009-05-134 and CA2009-06-157, 2009-Ohio-5642. On review of order certifying a conflict. The court determines that a conflict exists. The parties are to brief the issue stated at page 2 of the court of appeals' Entry filed December 8, 2009:

“When construing an insurance policy exclusion, does an injury ‘arise out’ of a premises only if some dangerous condition exists on the premises that caused or contributed to the injury, or must the injury only originate in or have a causal connection with the premises?”

The conflict case is *Am. States Ins. Co. v. Guillermin* (1995), 108 Ohio App.3d 547.

Sua sponte, cause consolidated with 2009-2214, *Westfield Ins. Co. v. Hunter*, Butler App. Nos. CA2009-05-134 and CA2009-06-157, 2009-Ohio-5642.

**2010-0033. State v. Myler.**

Cuyahoga App. No. 93670. On motion for leave to file delayed appeal. Motion denied.

**2010-0039. State v. McGrath.**

Cuyahoga App. No. 94005. On motion for leave to file delayed appeal. Motion denied.

**2010-0059. State v. Avery.**

Union App. No. 14-09-25. On motion for leave to file delayed appeal. Motion denied.

Pfeifer and O'Donnell, JJ., dissent.

**2010-0064. State v. Everette.**

Montgomery App. No. 22838, 2009-Ohio-5738. On motion for leave to file delayed appeal. Motion denied.

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

**2010-0073. State v. Petriashvili.**

Cuyahoga App. No. 92851, 2009-Ohio-6466. On motion for immediate stay of court of appeals' judgment. Motion denied.

**2010-0086. State v. Smith.**

Lucas App. No. L-07-1011, 2007-Ohio-7104. On motion for leave to file delayed appeal. Motion denied.

Moyer, C.J., dissents.

**2010-0090. State v. Frazier.**

Hamilton App. No. C-090025. On motion for leave to file delayed appeal. Motion denied.

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

**2010-0095. State v. Shaw.**

Richland App. No. 09CA52, 2009-Ohio-5469. On motion for leave to file delayed appeal. Motion granted.

O'Connor and Lanzinger, JJ., dissent.

**2010-0109. State v. Dent.**

Summit App. No. 23855, 2009-Ohio-5153. On motion for leave to file delayed appeal. Motion denied.

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

**2010-0112. Kessler v. Totus Tuus, L.L.C.**

Ashtabula App. No. 2007-A-0093, 2009-Ohio-6376. On motion for stay of court of appeals' judgment. Motion denied.

**2010-0116. State v. Driscoll.**

Clark App. No. 2008 CA 93, 2009-Ohio-6134. On motion for leave to file delayed appeal. Motion denied.

Pfeifer and Cupp, JJ., dissent.

**2010-0117. State v. Grant.**

Richland App. No. 07 CA 32, 2008-Ohio-3429. On motion for leave to file delayed appeal. Motion denied.

**2010-0129. Am. Internatl. Recovery v. Allstate Ins. Co.**

Portage App. No. 2009-P-0008, 2009-Ohio-6508. On motion for stay of court of appeals' judgment. Motion denied.

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

**APPEALS ACCEPTED FOR REVIEW**

**2009-1806. State ex rel. Merrill v. Ohio Dept. of Natural Resources.**

Lake App. Nos. 2008-L-007 and 2008-L-008, 2009-Ohio-4256. Discretionary appeals and cross-appeal accepted.

Lanzinger, J., would accept the appeals but accept the cross-appeal on Proposition of Law No. I only.

Pfeifer and O'Donnell, JJ., dissent.

Motion for admission pro hac vice of Neil S. Kagan by Peter A. Precario granted. Motion to strike supplemental memorandum in support of jurisdiction of amici curiae Ohio Bass Federation denied.

**2009-1987. State v. Feldman.**

Lake App. No. 2009-L-052, 2009-Ohio-5765. Discretionary appeal accepted on Proposition of Law No. I.

Lundberg Stratton, O'Connor, and O'Donnell, JJ., would also accept the appeal on Proposition of Law No. II.

Pfeifer, Lanzinger, and Cupp, JJ., dissent.

**2009-2078. State v. Russell.**

Trumbull App. No. 2008-T-0074, 2009-Ohio-5213. 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; cause consolidated with 2010-0023, *State v. Russell*, Trumbull App. No. 2008-T-0074, 2009-Ohio-5213; and briefing schedule stayed.

Pfeifer, J., dissents.

**2009-2208. State v. Davis.**

Cuyahoga App. No. 91324, 2009-Ohio-5217. Discretionary appeal accepted.

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

Discretionary cross-appeal not accepted.

**2009-2214. Westfield Ins. Co. v. Hunter.**

Butler App. Nos. CA2009-05-134 and CA2009-06-157, 2009-Ohio-5642. Discretionary appeal accepted and cause consolidated with 2010-0024, *Westfield Ins. Co. v. Hunter*, Butler App. Nos. CA2009-05-134 and CA2009-06-157, 2009-Ohio-5642.

Pfeifer, J., dissents.

**2009-2262. State v. Wilkins.**

Hamilton App. Nos. C-090172 and C-090173. Discretionary appeal accepted; cause held for the decision in 2009-1997, *State v. Hodge*, Hamilton App. No. C-080968; and briefing schedule stayed.

Pfeifer and Lundberg Stratton, JJ., dissent.

**APPEALS NOT ACCEPTED FOR REVIEW**

**2009-1922. State v. Christian.**

Mahoning App. No. 08 MA 160, 184 Ohio App.3d 1, 2009-Ohio-4811.

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

**2009-2008. Blake v. Home S. & L. Co.**

Columbiana App. No. 09 CO 14.

**2009-2033. State v. Garcia.**

Butler App. No. CA2009-01-021.

**2009-2041. State v. Sevayega.**

Cuyahoga App. No. 92499, 2009-Ohio-5008.

O'Donnell, J., not participating.

**2009-2167. State v. Dewitt.**

Allen App. No. 1-09-25, 2009-Ohio-5903.

**2009-2168. In re D.C.**

Hamilton App. No. C-090466, 2009-Ohio-5575.

**2009-2170. State v. McKinney.**

Defiance App. No. 4-09-30.

**2009-2172. State v. Flugga.**

Licking App. No. 2009-CA-5, 2009-Ohio-5648.

**2009-2173. State v. Mills.**

Tuscarawas App. No. 2008 AP 08 0051, 2009-Ohio-5654.

**2009-2174. State v. Mills.**

Tuscarawas App. No. 2008 AP 09 0061, 2009-Ohio-5771.

**2009-2176. Acacia on the Green Condominium Assn., Inc. v. Gottlieb.**

Cuyahoga App. No. 92145, 2009-Ohio-4878.

O'Donnell, J., dissents.

**2009-2177. State v. Cantey.**

Wayne App. No. 08CA0044, 2009-Ohio-4423.

**2009-2178. State v. Young.**

Cuyahoga App. No. 92127, 2009-Ohio-5354.

**2009-2179. Maurer v. DaimlerChrysler Corp.**

Cuyahoga App. No. 92493, 2009-Ohio-5375. Discretionary appeal not accepted.

O'Donnell, J., dissents.

Motion for admission pro hac vice of R. Douglas Gentile and Benjamin C. Fields by Paul W. Flowers granted.

**2009-2180. Milburn v. Allstate Ins. Co.**

Franklin App. No. 09AP-392, 2009-Ohio-5476.

**2009-2181. Trumbull Mem. Hosp. v. Karnofel.**

Trumbull App. No. 2009-T-0101.



**2009-2189. State v. Sturgell.**

Darke App. No. 1751, 2009-Ohio-5628.

**2009-2190. State v. Chandler.**

Franklin App. No. 09AP-294, 2009-Ohio-5858.

**2009-2194. State v. Weimer.**

Cuyahoga App. No. 92094, 2009-Ohio-4983.

O'Connor, J., dissents.

**2009-2195. State v. Pettegrew.**

Cuyahoga App. No. 91816, 2009-Ohio-4981.

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

**2009-2206. Baltes Commercial Realty v. Harrison.**

Montgomery App. No. 23177, 2009-Ohio-5868.

**2009-2210. State v. Sowell.**

Cuyahoga App. No. 90732, 2009-Ohio-5685.

**2009-2211. Drs. Kristal & Forche, D.D.S., Inc. v. Erkis.**

Franklin App. No. 09AP-06, 2009-Ohio-5671.

**2009-2213. State v. Grisson.**

Franklin App. No. 08AP-952, 2009-Ohio-5709.

**2009-2216. State v. Bond.**

Hamilton App. No. C-090762.

**2009-2225. State v. Mobley.**

Fairfield App. No. 09-CA-25, 2009-Ohio-5718.

**2009-2226. In re L.J.**

Logan App. No. 8-09-07, 2009-Ohio-5658.

**2009-2227. State v. Hammond.**

Hamilton App. Nos. C-080394, C-080431, and C-080432.

**2009-2229. State v. McCrary.**

Hamilton App. Nos. C-081164 and C-090412.

**2009-2235. Woods v. Capital Univ.**

Franklin App. No. 09AP-166, 2009-Ohio-5672.

O'Donnell, J., dissents.

**2009-2236. Cumberland v. Mirande.**

Hamilton App. No. C-090020.

**2009-2237. State v. Boles.**

Lucas App. No. L-07-1255, 2009-Ohio-512.

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

**2009-2242. Miller v. Kilcullen.**

Stark App. No. 2008 CA 00260, 2009-Ohio-5723.

**2009-2249. Painting Co. v. Ohio State Univ.**

Franklin App. No. 09AP-78, 2009-Ohio-5710.

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

**2009-2250. Bozeman v. Cleveland Metro. Hous. Auth.**

Cuyahoga App. No. 92435, 2009-Ohio-5491.

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

**2009-2253. State v. Sims.**

Clark App. No. 2008 CA 92, 2009-Ohio-5875.

**2009-2271. West v. Lukjan Metals Prods., Inc.**

Ashtabula App. No. 2009-A-0014, 2009-Ohio-5761.

O'Donnell, J., dissents.

**2009-2278. Ohio Power Co. v. Ogle.**

Hocking App. No. 09CA01/09AP1, 2009-Ohio-5953.

Pfeifer, J., dissents.

**2009-2282. State v. Caulley.**

Franklin App. No. 09AP-172, 2009-Ohio-5801.

**2009-2315. State v. Harris.**

Cuyahoga App. No. 90699, 2009-Ohio-5962.

**2009-2332. In re A.C.**

Warren App. No. CA2009-07-098, 2009-Ohio-6242.

**2010-0009. State v. Easley.**

Franklin App. Nos. 08AP-755 and 08AP-756.

O'Connor, J., dissents and would accept the appeal on Proposition of Law Nos. I and II and remand the cause to the court of appeals to apply *State v. Pelfrey*, 112 Ohio St.3d 422, 2007-Ohio-256.

**2010-0043. State v. Abdul.**

Cuyahoga App. No. 90789, 2009-Ohio-6300.

**RECONSIDERATION OF PRIOR DECISIONS**

**2008-2133 and 2008-2228. State v. Underwood.**

Montgomery App. No. 22454, 2008-Ohio-4748. Reported at \_\_\_ Ohio St.3d \_\_\_, 2010-Ohio-1, \_\_\_ N.E.2d \_\_\_. On motion for reconsideration. Motion denied.

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

**2009-0141. State ex rel. Galligan v. Indus. Comm.**

Franklin App. No. 08AP-36, 2008-Ohio-6426. Reported at 124 Ohio St.3d 233, 2010-Ohio-3, 921 N.E.2d 231. On motion for reconsideration. Motion denied.

**2009-1655. State v. Krug.**

Lake App. No. 2008-L-085, 2009-Ohio-3815. Reported at 124 Ohio St.3d 1416, 2009-Ohio-6816, 919 N.E.2d 215. On motions for reconsideration and for transmittal of supplementation of the record on appeal. Motions denied.

**2009-1718. Hitchcock v. Segedy.**

Geauga App. No. 2009-G-2907, 2009-Ohio-3941. Reported at 124 Ohio St.3d 1416, 2009-Ohio-6816, 919 N.E.2d 215. On motions for reconsideration and for settlement conference. Motions denied.

**2009-1754. State v. Little.**

Greene App. No. 2008-CA-76, 2009-Ohio-4328. Reported at 124 Ohio St.3d 1416, 2009-Ohio-6816, 919 N.E.2d 215. On motion for reconsideration. Motion denied.

**2009-1766. State v. McNeal.**

Cuyahoga App. No. 91507, 2009-Ohio-3888. Reported at 124 Ohio St.3d 1416, 2009-Ohio-6816, 919 N.E.2d 215. On motion for reconsideration. Motion denied.  
Moyer, C.J., and O'Donnell, J., dissent.

**2009-1794. Ackerman v. Fortis Benefits Ins. Co.**

Montgomery App. No. 23443. Reported at 124 Ohio St.3d 1417, 2009-Ohio-6816, 919 N.E.2d 215. On motion for reconsideration. Motion denied.

**2009-1803. Cincinnati Ins. Co. v. Cleveland.**

Cuyahoga App. No. 92305, 2009-Ohio-4043. Reported at 124 Ohio St.3d 1417, 2009-Ohio-6816, 919 N.E.2d 215. On motion for reconsideration. Motion denied.  
Pfeifer and O'Donnell, JJ., dissent.  
O'Connor, J., dissents as to Proposition of Law Nos. I and II.

**2009-1825. State v. Thomas.**

Cuyahoga App. No. 91891, 2009-Ohio-3461. Reported at 124 Ohio St.3d 1417, 2009-Ohio-6816, 919 N.E.2d 216. On motion for reconsideration. Motion denied.  
Moyer, C.J., and Lundberg Stratton, J., dissent.  
O'Connor, J., dissents as to Proposition of Law No. I.

**2009-1828. In re M.W.**

Summit App. No. 24837. Reported at 124 Ohio St.3d 1417, 2009-Ohio-6816, 919 N.E.2d 216. On motions for reconsideration, order for jurisdiction, and order for relief. Motions denied.

**2009-1941. Karnofel v. DWYCO Xerox Office Ctr.**

Mahoning App. No. 09 MA 106. Reported at 124 Ohio St.3d 1419, 2009-Ohio-6816, 919 N.E.2d 216. On motion for reconsideration. Motion denied.

**2009-2088. Johnson v. Knab.**

In Habeas Corpus. Reported at 124 Ohio St.3d 1413, 2009-Ohio-6816, 919 N.E.2d 213. On motion for reconsideration. Motion denied.