THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CASE SUMMARIES
October 1, 2021

These case summaries are issued for the convenience of the public, the bench, and the bar. They are a brief statement of the court's holdings and are not to be considered headnotes or syllabi. Copies of opinions are available from the particular county's clerk of courts. The full text of each opinion will be available on the Ohio Supreme Court's website at http://www.supremecourt.ohio.gov/rod/docs/?source=2.

Case Name: *City of Dayton v. Oscar H. Stewart*
Case No: Montgomery App. No. 29056; T.C. Case No. 2020-CRB-3184
Panel: Tucker, Hall, Epley
Author: Michael L. Tucker
Summary: State's appeal. Appellee was found not guilty of littering under R.C. 3767.32(A), apparently based upon the trial court's conclusion that tree stumps, branches, and other yard debris are not included in the definition of litter set forth in R.C. 3767.32(D)(1). The State's discretionary appeal was accepted under R.C. 2945.67(A). In pertinent part, litter is defined as "trash," "waste," "rubbish," "garbage," and "refuse." The trial court erred in concluding that tree stumps, branches, and other yard debris are not included in the common definition and usage of these words. Error sustained. (Epley, J., concurring in judgment only.)

Case Name: *City of Dayton v. John Albert Tomlin Johnson*
Case No: Montgomery App. No. 29057; T.C. Case No. 2020-CRB-3123
Panel: Tucker, Hall, Epley
Author: Michael L. Tucker
Summary: State's appeal. Appellee was found not guilty of littering under R.C. 3767.32(A), apparently based upon the trial court's conclusion that tree stumps, branches, and other yard debris are not included in the definition of litter set forth in R.C. 3767.32(D)(1). The State's discretionary appeal was accepted under R.C. 2945.67(A). Litter, in pertinent part, is defined as "trash," "waste," "rubbish," "garbage," and "refuse." The trial court erred in concluding that tree stumps, branches, and other yard debris are not included in the common definition and usage of these words. Error sustained. (Epley, J., concurring in judgment only.)

Case Name: *In re: R.R. & C.R.*
Case No: Miami App. No. 2021-CA-18;
T.C. Case Nos. 21930077 & 21930078
Panel: Tucker, Donovan, Epley
Author: Christopher B. Epley
Summary: The trial court did not abuse its discretion when it awarded permanent custody of two minor children to Miami County Child Protective Services. The children had been in the agency's temporary custody for 12 or more months of a consecutive 22-month period, and awarding CPS permanent custody was in the children's best interest. Judgment affirmed.

Case Name: *State of Ohio v. Jeramie Perry, Sr.*
Case No: Montgomery App. No. 29049; T.C. Case No. 2020-CR-3112
Panel: Tucker, Hall, Epley
Author: Christopher B. Epley
Summary: Appellant appeals from his convictions for felonious assault and misdemeanor domestic violence. Although appellant has completed his jail term, the appeal is not moot due to the trial court's imposition of post-release control on both the felonious assault and the domestic violence. Because R.C. 2967.28 does not authorize post-release control on misdemeanors, the trial court erred in imposing post-release control on the domestic violence. The trial court's imposition of post-release control for misdemeanor domestic violence is vacated. Vacation of post-release control renders the allied-offense issue moot on appeal. The matter will be remanded for the limited purpose of the trial court's filing a nunc pro tunc entry without the imposition of post-release control for the domestic violence offense. In all other respects, judgment affirmed.

Case Name: *Jennifer Martcheva v. Dayton Board of Education, et al.*
Case No: Montgomery App. No. 29144; T.C. Case No. 2019-CV-3897
Panel: Tucker, Hall, Epley
Author: Christopher B. Epley
Summary: In this multi-party, multi-claim employment suit, the trial court did not err in its damages determination. It also did not abuse its discretion by not granting appellant's request for attorney fees, as she did not demonstrate that appellee, Dayton Board of Education, acted in bad faith. Further, the trial court did not err in granting appellees' motion for summary judgment on various tort claims raised against both the Board of Education and individual district employees. Similarly, the trial court did not err in overruling appellant's motion for summary judgment against school district employees. Finally, the trial court did not abuse its discretion when it ordered appellant's counsel to pay $470 in attorney fees. Judgments affirmed.

Case Name: *State of Ohio v. Joshua N. Guild*
Case No: Montgomery App. No. 29133; T.C. Case No. 20CRB1404
Panel: Tucker, Hall, Epley
Author: Christopher B. Epley
Summary: Appellant's conviction for voyeurism was based on sufficient evidence and was not against the manifest weight of the evidence. Judgment affirmed.

Case Name: *State of Ohio v. Lee Edward Boyd*
Case No: Champaign App. No. 2021-CA-8; T.C. Case No. 2017-CR-63
Panel: Tucker, Hall, Epley
Author: Michael T. Hall
Summary: Upon revoking appellant's community control and imposing a prison sentence, the trial court erred in failing to award him jail-time credit for a period of confinement at the West Central community-based correctional facility. Appellant was entitled to such jail-time credit because he was ordered to complete the West Central program as a condition of community control in this case, and he did not receive jail-time credit for that period of confinement in connection with a prior 2013 case. Judgment reversed and remanded.

Case Name: *In re: L.H.*
Case No: Montgomery App. No. 29119; T.C. Case No. 2017-4297
Panel: Donovan, Hall, Welbaum
Author: Michael T. Hall
Summary: The trial court abused its discretion in terminating Mother's parental rights and awarding appellee Montgomery County Children Services (MCCS) permanent custody of her child. The record lacks clear and convincing evidence to support such a disposition. The trial court also abused its discretion in denying Mother's motion to have legal custody of the child returned to her. The preponderance of the evidence presented at a dispositional hearing supported returning legal custody to Mother, and the trial court's contrary decision was unreasonable. At the time of the hearing, the child was in a residential-treatment facility for sexual offenders. Mother and MCCS both agreed to keep the child there, and the record supported awarding Mother legal custody while the child completed the program rather than granting MCCS permanent custody. Mother also had made reasonable plans to prevent a recurrence of the sexual touching act that her child had committed in her home. Judgment reversed and remanded.

Case Name: *In re P.L.H.*
Case No: Greene App. No. 2021-CA-6; T.C. Case No. C0049012
Panel: Donovan, Hall, Welbaum
Author: Jeffrey M. Welbaum
Summary: The juvenile court did not abuse its discretion by awarding legal custody of a child to her grandmother rather than to appellant, who is the child's father. The evidence supported the court's decision that returning the child to appellant would be detrimental to the child. The court therefore did not act arbitrarily, unreasonably, or unconscionably. Judgment affirmed.

DECISION AND FINAL JUDGMENT ENTRY RENDERED APRIL 26, 2021:

Case Name: *State of Ohio v. Norrel Armstrong*
Case No: Montgomery App. No. 29084; T.C. Case No. 2020-CR-02571
Panel: Hall, Welbaum, Epley
Author: Per Curiam
Summary: A notice of appeal filed only in this appellate court does not invoke our jurisdiction. Appeal dismissed.

DECISION AND FINAL JUDGMENT ENTRY RENDERED MAY 6, 2021:

Case Name: *State of Ohio v. Michael J. Baker*
Case No: Montgomery App. No. 29038; T.C. Case No. 2019-CR-01766
Panel: Tucker, Welbaum
Author: Per Curiam
Summary: State of Ohio's discretionary appeal, seeking review of a judgment of acquittal under Crim.R. 29(A), was improper. While the State may seek to appeal discrete evidentiary or substantive legal rulings underlying a final verdict, it may not appeal the final verdict itself. Here, the State's argument that the trial court used an incorrect legal standard, contrary to the one it said it was using, was in essence a challenge to the court's determination that there was insufficient evidence to sustain a conviction. Such an appeal is not permitted under R.C. 2945.67(A). Appeal dismissed.

DECISION AND ENTRY RENDERED JUNE 2, 2021:

Case Name: *State of Ohio v. Charles Davis Houston*
Case No: Montgomery App. No. 29114; T.C. Case No. 2020-CR-03190
Panel: Tucker, Epley
Author: Per Curiam
Summary: A criminal defendant seeking leave to file a delayed appeal under App.R. 5(A) is subject to a different standard than the state when it files a motion for leave to appeal under App.R. 5(C). Motion for

delayed appeal sustained.

DECISION AND FINAL JUDGMENT ENTRY RENDERED JUNE 16, 2021:

Case Name: *LEXISNEXIS, a Division of RELX, Inc. v. Patricia Murrell, et al.*
Case No: Montgomery App. No. 29018; T.C. Case No. 2017-CV-04310
Panel: Tucker, Welbaum, Epley
Author: Per Curiam
Summary: Trial court's order awarding attorney fees was entered during, and was inconsistent with, this court's jurisdiction over a previous appeal. The trial court retained jurisdiction to take action in aid of the appeal or to address collateral matters, but did not have jurisdiction to proceed on claims that could be affected by or might be subject to the issues pending on appeal. Because this court had been exercising jurisdiction over an order entering judgment and finding that attorney fees were warranted, trial court was divested of jurisdiction to proceed further and award attorney fees. The attorney fees order was therefore not a final order subject to review. Appeal dismissed.

DECISION AND FINAL JUDGMENT ENTRY RENDERED JULY 15, 2021:

Case Name: *Eric Wiggins v. Safeco Insurance Company of Indiana, et al.*
Case No: Montgomery App. No. 29034; T.C. Case No. 2019-CV-01904
Panel: Donovan, Welbaum, Epley
Author: Per Curiam
Summary: Litigant could not appeal the trial court's order resolving only one count of complaint in multi-party insurance dispute, where the court did not determine that there was no just reason for delay under Civ.R. 54(B). While the likely path of litigation may be set by the trial court's single legal determination, the remaining claims, counterclaims, and cross-claims were not all rendered moot under the exception described in *Wise v. Gursky*, 66 Ohio St.2d 241, 421 N.E.2d 150 (1981). Likewise, the remaining issues were not merely "ministerial acts" under *CitiMortgage v. Rosnowski*, 39 Ohio St.3d 299, 2014-Ohio-1984, 11 N.E.3d 1140. The underlying case was not yet complete. Appeal dismissed.