

**THE COURT OF APPEALS OF
OHIO SECOND APPELLATE
DISTRICT CASE SUMMARIES
April 24, 2020**

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>.

OPINION RENDERED ON APRIL 17, 2020:

Case Name: *In re T.S.*
Case No: Montgomery App. No. 28626; T.C. Case No. 2016-7601
Panel: Tucker, Donovan, Welbaum
Author: Jeffrey M. Welbaum
Summary: The trial court did not err in granting Montgomery County Children Services permanent custody of a minor child. When weighing the relevant factors under R.C. 2151.414(D)(1), the trial court did not abuse its discretion in finding that it was in the child's best interest to grant the agency permanent custody. The trial court also did not abuse its discretion in denying Mother a continuance of the permanent custody hearing. Judgment affirmed.

OPINIONS RENDERED ON APRIL 24, 2020:

Case Name: *State of Ohio v. John Rodriguez Rosales*
Case No: Champaign App. No. 2019-CA-21; T.C. Case No. 2019-CR-059
Panel: Tucker, Donovan, Welbaum
Author: Michael L. Tucker
Summary: Appellant, while on post-release control (PRC), pleaded guilty to domestic violence, resulting in a 12-month prison term for the domestic violence offense and an additional, consecutive prison term of 730 days for the PRC violation and resulting revocation. Appellant's sentence is not contrary to law, and it cannot be concluded by clear and convincing evidence that the record does not support the sentence. Judgment affirmed.

Case Name: *State of Ohio v. Alex Taylor*
Case No: Clark App. No. 2019-CA-62; T.C. Case No. 2019-CR-31
Panel: Tucker, Donovan, Welbaum
Author: Mary E. Donovan
Summary: The 18-month sentence imposed was within the permissible statutory range for a conviction for aggravated possession of drugs, a felony of the third degree, and therefore was not contrary to law. The record establishes that the trial court properly considered and applied R.C. 2929.11, which addresses the purposes of felony sentencing, and R.C. 2929.12, which sets forth the seriousness and recidivism factors for the court to consider in imposing sentence. Judgment affirmed.

Case Name: *In re I.W.*
Case No: Clark App. No. 2019-CA-76; T.C. Case No. 2017-0196
Panel: Tucker, Donovan, Welbaum
Author: Mary E. Donovan
Summary: The trial court's judgment terminating Mother's parental rights and awarding permanent custody of the minor child to the Clark County Department of Job and Family Services was supported by clear and convincing evidence and was in the best interest of the child. Judgment affirmed.

Case Name: *David Lomelino, Executor of the Estate of Stanley R. Lomelino, Deceased v. Christine Lomelino*
Case No: Montgomery App. No. 28530; T.C. Case No. 2018-CV-1646
Panel: Tucker, Hall, Welbaum
Author: Michael T. Hall
Summary: The trial court did not err by entering summary judgment for appellees on appellant's claim to quiet title to real property. The summary judgment submissions did not show a genuine issue of material fact regarding whether appellant met the statutory requirements to maintain a quiet-title action. Appellant, an Illinois resident who claimed to be the owner of the property by inheritance, did not have possession of or have the requisite interest in the property to bring a statutory quiet-title action regarding property occupied by the appellees. Judgment affirmed.

Case Name: *Jennifer L. Johnson v. David L. Johnson*
Case No: Greene App. No. 2019-CA-46; T.C. Case No. 2016-DR-171
Panel: Tucker, Donovan, Welbaum
Author: Jeffrey M. Welbaum
Summary: After finding appellant in contempt of an Agreed Order entered into

with appellee following their divorce, the trial court did not abuse its discretion in sentencing appellant to 30 days in jail for each violation of the Agreed Order. The trial court also did not abuse its discretion in ordering appellant to purge his contempt by either providing certain trust documents to appellee or by paying to have the trust documents redrafted. It was also not an abuse of discretion for the trial court to order appellant to pay appellee \$250 in court costs and \$350 in attorney's fees and to prohibit appellant from admitting an inventory of property into evidence at the contempt hearing. Appellant's claim that the trial court abused its discretion by imposing a 60-day jail term for his being in direct contempt of court six times during the contempt hearing is moot because appellant already completed the 60-day jail sentence. Finally, appellant's claim that the trial court prohibited him from impeaching appellee at the contempt hearing is not supported by the record, and the trial court did not abuse its discretion in finding appellee to be a more credible witness. Judgment affirmed.

Case Name: *Anne C. Harvey v. Systems Effect, LLC, et al.*
Case No: Montgomery App. No. 28497; T.C. Case No. 2017-CV-5748
Panel: Froelich, Hall, Welbaum
Author: Jeffrey M. Welbaum
Summary: The trial court did not err in rendering summary judgment in favor of appellees on appellant's false light invasion of privacy claim. A false light invasion of privacy claim involving allegations that would also support a defamation claim has the same statute of limitations applied to it as the defamation claim. This was the case here, and since appellant's false light claim was not filed within the one-year statute of limitations for defamation claims, the trial court properly concluded that it was barred. The trial court also did not err in granting summary judgment to appellees on appellant's statutory claim for use of an individual's persona under R.C. 2741.02. Appellees were exempt under R.C. 2741.09(A)(1)(b) and(A)(3). The material in question was newsworthy, and appellant's persona was also used "in connection with the * * * reporting of an event or topic of general or public interest." R.C. 2741.02 also did not apply under an exception to the statute found in R.C. 2741.02(D)(1). Specifically, appellees were not required to obtain appellant's consent to use her persona because they used it "in connection with any news, public affairs, * * * or account * * *." Finally, given the disposition of the first two issues, appellant's assignment of error concerning qualified privilege under R.C. 2317.05 is moot. Judgment affirmed. (Froelich, J., concurring.)

Case Name: *State of Ohio v. Michael Sergio Gilbert*
Case No: Clark App. No. 2019-CA-64; T.C. Case No. 2019-CRB-497
Panel: Tucker, Donovan, Welbaum
Author: Jeffrey M. Welbaum
Summary: The State appeals from the trial court's Crim.R. 29 judgment of acquittal at the end of defendant-appellee's trial for criminal trespass. The trial court erred when it found that a public transit bus is not a "premises" for the purposes of criminal trespass under R.C. 2911.21(A)(4). The bus where the defendant was located was a "place" as found in the definition of "premises" under R.C. 2911.21(F)(2). Therefore, a motor vehicle is a "premises" under the criminal trespass statute. The State's assignment of error is sustained, without affecting the trial court's judgment of acquittal in this case.