

THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CASE SUMMARIES
December 15, 2023

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: *FIG20, LLC FBO SEC PTY v. Miguel Aldana, et al.*
Case No: Montgomery C.A. No. 29852; T.C. Case No. 2023 CV 01360
Panel: Welbaum, Tucker, Huffman
Author: Michael L. Tucker
Summary: Appellees obtained service of process upon appellant in this foreclosure action, and appellant failed to file an answer or other responsive pleading. The trial court did not err by granting a default judgment against appellant. Judgment affirmed.

Case Name: *Rick Stephan, Sr., et al. v. Connie Wacaster, et al.*
Case No: Miami C.A. No. 2023-CA-9; T.C. Case No. 21 CV 211
Panel: Welbaum, Tucker, Huffman
Author: Michael L. Tucker
Summary: The trial court's partial summary judgment ruling finding appellees entitled to partition of real estate and its writ of partition were interlocutory and not appealable absent Civ.R. 54(B) certification, which does not exist. Appeal dismissed for lack of an appealable order.

Case Name: *Kyle Seaquist v. City of Dayton, et al.*
Case No: Montgomery C.A. No. 29821; T.C. Case No. 2022 CV 4341
Panel: Welbaum, Tucker, Huffman
Author: Mary K. Huffman
Summary: The trial court did not err in affirming the decision of the City of Dayton Civil Service Board upholding appellant's termination for disciplinary reasons. There were clear instances of violations of the City's mask policy, insubordination when appellant actively ignored and refused to comply with the City's mask policy following direct orders, conduct unbecoming an employee, and absence without leave. Judgment affirmed.

Case Name: *State of Ohio v. Christopher L. Smith*
Case No: Montgomery C.A. No. 29597; T.C. Case No. 2019 CR 04182
Panel: Welbaum, Epley, Huffman
Author: Christopher B. Epley
Summary: Appellant was convicted of two counts of murder, one count of felonious assault, and two counts of having weapons while under disability stemming from two shootings occurring approximately seven hours apart. The trial court did not abuse its discretion in denying appellant's motion for relief from prejudicial joinder, his motion for disclosure of the identity of a confidential informant, and his motion to suppress evidence from eyewitness identifications, the pinging of his phone under the exigent circumstances exception, and the search of his home pursuant to a warrant. Appellant's convictions were not based on insufficient evidence or against the manifest weight of the evidence; the jury reasonably concluded that appellant was the perpetrator of both shootings. The trial court did not abuse its discretion in denying appellant's motion for a mistrial due to a disturbance in the gallery during the trial and, later, based on alleged jury misconduct. Appellant's rights were not violated when the trial court met with jurors before deliberations without appellant or his counsel present. Finally, no prosecutorial misconduct was established. Judgment affirmed.

Case Name: *Harborside of Dayton Limited Partnership et al. v. Safety National Casualty Corporation et al.*
Case No: Montgomery C.A. No. 29621; T.C. Case No. 2019 CV 05584
Panel: Epley, Lewis, Huffman
Author: Ronald C. Lewis
Summary: The trial court did not err in granting summary judgment to a third-party administrator on the self-insured employers' breach of contract claims where: (1) the claims were brought more than a year after the claims accrued; (2) the contract provided that any claims must be brought within one year of when they accrued; and (3) the contract stated that the administrator would not assume any liability for the employers' obligation to report claims to an excess insurer. Judgment affirmed.

Case Name: *John Anthony Shutway v. Matthew Melvin, et al.*
Case No: Champaign C.A. No. 2023-CA-17; T.C. Case No. 22 CV 0029
Panel: Welbaum, Tucker, Epley
Author: Jeffrey M. Welbaum
Summary: Appellant appeals six judgments that granted appellees either judgment on the pleadings or summary judgment on all of appellant's civil claims. Appellant claims that all those judgments should be reversed due to alleged procedural deficiencies in the visiting judge's assignment to his case. Because the Supreme Court of Ohio

previously ruled on that issue and determined that there were no improprieties related to the visiting judge's assignment, under the law of the case doctrine, this court is bound follow the supreme court's decision on the matter. Appellant also claims that the judgments at issue should be reversed due to certain errors committed by the clerk of court; however, we find no prejudicial error was committed. Judgments affirmed.

Case Name: *Kristina Rene Frost, and Gary Allen Mays, Individually and as Co-Personal Representatives of the Estates of Shawna Rene Mays, and Tristian Allen Mays, Deceased v. Evenflo Company, Inc.*

Case No: Miami C.A. No. 2022-CA-29; T.C. Case No. 20 CV 109

Panel: Welbaum, Lewis, Huffman

Author: Jeffrey M. Welbaum

Summary: Appellants claimed a defective crotch buckle in a child car seat caused the deaths of their two children following a car fire. The trial court properly granted summary judgment to the car seat manufacturer because there were no genuine issues of material fact concerning whether the alleged defect proximately caused the children's injuries and deaths. The trial court did not err in rejecting the affidavits of appellants' medical experts under the sham affidavit rule; the affidavits contradicted or were inconsistent with the experts' former testimony, and the experts did not sufficiently explain the reasons for the contradictions. Furthermore, appellants' argument that expert testimony was not needed to demonstrate conscious pain and suffering was not well-taken; the fact that injuries may be obvious in certain situations is not the same as proving that an opposing party's acts proximately caused those injuries. Finally, given the failure of their other arguments, appellants' challenge to the trial court's decision on their failure to warn claim is moot. Judgment affirmed.