

THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CASE SUMMARIES
May 10, 2024

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Case Name: *Candace Lynn Etter nka Turner v. Michael Larry Etter*
Case No: Miami C.A. No. 2024-CA-2; T.C. Case No. 21 DR 30
Panel: Welbaum, Tucker, Huffman
Author: Mary K. Huffman
Summary: The trial court did not err in adopting the magistrate's decision finding that service of process was perfected when appellee received the service packet for appellant from a commercial carrier at the parties' shared address and credibly testified that she provided the packet to appellant, who waited more than 20 months to seek relief from judgment for improper service. Additionally, the trial court did not err in giving deference to the magistrate's credibility determinations while also independently considering the evidence before it. Judgment affirmed.

Case Name: *Catherine A. (Clack) East v. Richard A. Clack, Jr.*
Case No: Darke C.A. No. 2023-CA-27; T.C. Case No. 17-DIV-00358
Panel: Epley, Lewis, Huffman
Author: Ronald C. Lewis
Summary: The trial court abused its discretion by denying a motion to reduce or terminate a spousal support obligation without considering the factors in R.C. 3105.18(C)(1), where the undisputed evidence showed a substantial change in circumstances due to the fact the spousal support obligor was no longer able to be employed. Judgment affirmed in part, reversed in part, and remanded.

Case Name: *State of Ohio v. Marc Mayes*
Case No: Darke C.A. No. 2023-CA-18; T.C. Case No. 23-CR-00027
Panel: Welbaum, Tucker, Huffman
Author: Jeffrey M. Welbaum
Summary: The trial court did not commit plain error by failing to merge appellant's convictions for robbery and theft at sentencing because the record indicates that those offenses were committed separately and thus were not allied offenses. Appellant's robbery and theft

convictions were not against the manifest weight of the evidence; there was an abundance of evidence establishing that appellant was the shoplifter in question, and the jury was free to believe witness testimony indicating that appellant threatened a store employee while fleeing the scene. Appellant waived his claim challenging the composition of the jury array given that appellant raises the claim for the first time on appeal. Judgment affirmed.

Case Name: *John McManus as Treasurer of Montgomery County, Ohio v. Adrienne Nicole Clements, subject to life estate of Oscar G. Clements, et al.*
Case No: Montgomery C.A. No. 29999; T.C. Case No. 2023 CV 03658
Panel: Welbaum, Tucker, Huffman
Author: Jeffrey M. Welbaum
Summary: Appellant failed to challenge the validity of the trial court's foreclosure order. Instead, appellant asked that she be permitted to redeem the foreclosed property. Because a foreclosure order is final and appealable and is separate from confirmation proceedings, there is no basis for reversing the trial court. Judgment affirmed.

Case Name: *State of Ohio v. Rene A. Vargas, Jr.*
Case No: Greene C.A. No. 2023-CA-46; T.C. Case No. 2022-CR-0581
Panel: Welbaum, Tucker, Huffman
Author: Michael L. Tucker
Summary: The trial court did not err in revoking community control based on appellant's positive drug test. The trial court did not err in imposing a 30-month prison sentence upon revoking community control because appellant's violation, methamphetamine use, was not a "technical" one. Judgment affirmed.

Case Name: *State of Ohio v. Chuckie M. Lee*
Case No: Montgomery C.A. No. 29796; T.C. Case No. 2017 CR 00785/1
Panel: Epley, Welbaum, Tucker
Author: Michael L. Tucker
Summary: Appellant was retried within a reasonable time following our prior reversal of his convictions and remand for retrial; his constitutional right to a speedy trial was not violated. Appellant was not prejudiced by the trial court's ruling that the State could present the video testimony of a deceased witness from the first trial in the second trial, because the State ultimately did not present that testimony at the second trial. Appellant was repeatedly advised of his constitutional right to be present at all critical stages of his trial, but he knowingly and voluntarily waived that right when he adamantly refused to leave his cell to attend the trial. The trial court erred by relying on appellant's jury waiver executed prior to the first trial on having weapons under disability counts in deciding to try those counts to the

court in the second trial. Judgment reversed and remanded with respect to the weapons under disability counts; judgment affirmed in all other respects.

Case Name: *B.H. v. C.H.*
Case No: Champaign C.A. No. 2023-CA-38; T.C. Case No. 2023 DR 145
Panel: Epley, Tucker, Lewis
Author: Michael L. Tucker
Summary: After a hearing, a magistrate granted a domestic violence civil protection order, and the trial court adopted the magistrate's decision under Civ.R. 65.1(F)(3)(c)(ii). Appellant appealed the order without first filing objections with the trial court as required by Civ.R. 65.1(G). Because the filing of objections was required prior to filing an appeal, appellant cannot challenge the protection order on appeal. Judgment affirmed.

Case Name: *Thomas Casey v. Jennifer Casey, nka Bair*
Case No: Greene C.A. No. 2023-CA-71; T.C. Case No. 2016 DR 0031
Panel: Welbaum, Tucker, Huffman
Author: Michael L. Tucker
Summary: Neither the parties' separation agreement, which was incorporated into their divorce decree, nor a subsequent agreed order resolving a motion for contempt gave the trial court the authority to modify the parties' agreed-upon property division, which contemplated that appellant would receive the proceeds of the sale of the marital residence. When appellant failed to refinance the marital residence within the five-year period specified in the decree or within the 60 days provided in the agreed order and also did not list the home for sale, the trial court acted reasonably in granting appellee possession of the home to effectuate its sale and make any repairs necessary for the sale, for which she would be reimbursed. However, the trial court's order included language that seemed to give appellee the option to retain the home and required appellant to litigate his right to receive any of the sale proceeds by motion and proof of his entitlement to the proceeds; such language was an improper, unauthorized modification to the divorce decree and the agreed order. Judgment reversed and remanded.