

THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CASE SUMMARIES
January 26, 2024

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: *State of Ohio v. Selemani A. Said*
Case No: Miami C.A. No. 2023-CA-2; T.C. Case No. 22CR45
Panel: Epley, Welbaum, Huffman
Author: Mary K. Huffman
Summary: The trial court did not err in excluding appellant from a child's witness competency hearing; the witness was presumed to be competent, no request to be present was made by appellant, and appellant's counsel, who was present at the hearing, did not object to appellant's absence. Appellant's numerous claims of ineffective assistance of counsel are meritless and therefore, when considered together, do not demonstrate cumulative error. There was no error in sentencing appellant under the Reagan Tokes Act. Judgment affirmed.

Case Name: *Capital One, N.A. v. Gino P. Howard*
Case No: Miami C.A. No. 2023-CA-25; T.C. Case No. 2023CVF00559
Panel: Epley, Welbaum, Lewis
Author: Christopher B. Epley
Summary: The trial court did not err when it granted appellee's motion for summary judgment. Appellee met its burden under Civ.R. 56 to demonstrate that no genuine issue of material fact existed to warrant a trial. Appellant did not respond to the motion, and hence did not meet his burden. Judgment affirmed.

Case Name: *U.S. Bank National Association, not in its individual capacity but solely as trustee for the NRZ Pass-Through Trust VIII v. Elizabeth M. Clarke, aka Marion E. Clarke, aka M. Elizabeth Clarke, et al.*
Case No: Greene C.A. No. 2023-CA-29; T.C. Case No. 2021 CV 0161
Panel: Welbaum, Lewis, Huffman
Author: Ronald C. Lewis
Summary: The trial court erred in granting summary judgment to appellee-mortgagee in a foreclosure action where mortgagee failed to establish that it had sent a notice of default to appellant-mortgagor. The record does not establish that the trial court erred by overruling

mortgagor's motion to enforce a settlement agreement where mortgagor was unable to make the payment required by the settlement agreement, the trial court rescinded the settlement agreement, the trial court reactivated the case on the active trial docket, and the case was then voluntarily dismissed without prejudice pursuant to Civ.R. 41. The record does not establish that the mortgagee failed to file its foreclosure action within the applicable statute of limitations. Judgment reversed and remanded.

Case Name: *Anthony T. Head v. Chinequa N. Taylor Head*
Case No: Montgomery C.A. No. 29846; T.C. Case No. 2020-DR-889
Panel: Epley, Welbaum, Huffman
Author: Jeffrey M. Welbaum
Summary: The trial court did not abuse its discretion by: (1) failing to award appellant a particular automobile; (2) failing to find appellee in contempt and liable for financial misconduct in connection with damage to the marital residence; (3) failing to let appellant question appellee about discrepancies in her income tax returns after she had asserted Fifth Amendment rights; (4) awarding sole custody of the parties' children to appellee; or (5) awarding appellee the tax exemptions for the parties' two minor children. The court did abuse its discretion by finding that appellee was not liable for one-half of a marital debt to the Internal Revenue Service. Contrary to the court's finding, an eviction judgment appellee paid was not a premarital debt and was instead owed by both parties. Judgment affirmed in part, reversed in part, and remanded to the trial court for recalculation of the amounts each party will be credited against the IRS debt and the eviction judgment, with an order for reimbursement as needed.

Case Name: *State of Ohio v. Donavon Bennett*
Case No: Montgomery C.A. No. 29669; T.C. Case No. 22CRB3640
Panel: Tucker, Lewis, Huffman
Author: Michael L. Tucker
Summary: The trial court erred in concluding that appellant's jury demand was untimely, when it was filed on or before the third day following appellant's receipt of notice of the continued trial date, and in denying him a jury trial based on the untimeliness of the request. The Ohio Supreme Court has exclusive jurisdiction over a party's request that a judge be removed from a case for bias, prejudice, or any other reason. As such, this court is without jurisdiction to rule upon appellant's assertion that the trial judge should have recused herself from the case. Judgment reversed and remanded.