

THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CASE SUMMARIES
February 2, 2024

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Case Name: *Robert C. Fabian v. City of Kettering, et al.*
Case No: Montgomery C.A. No. 29848; T.C. Case No. 2023CV00135
Panel: Epley, Welbaum, Lewis
Author: Christopher B. Epley
Summary: The trial court erred in granting appellees' Civ.R. 12(C) motion for judgment on the pleadings on all counts; after consideration of res judicata and immunity, there remained one viable claim. However, because appellant did not respond to the motion for judgment on the pleadings and did not raise any issues for the trial court to consider, he waived any potential errors that could have been brought to the trial court's attention. We decline to find plain error on the trial court's part for dismissing the case for want of prosecution. Judgment affirmed. (Welbaum, J., dissenting.)

Case Name: *Jeremi Warman v. Select Auto*
Case No: Montgomery C.A. No. 29839; T.C. Case No. 2021 CV 00303
Panel: Tucker, Lewis, Huffman
Author: Ronald C. Lewis
Summary: The trial court did not abuse its discretion in denying appellant-car dealership's motion to set aside the default judgment on liability and to file its answer out of time. In calculating the amount of appellee-car buyer's damages, the trial court reasonably used a subsequent appraisal value, as offered by appellee, as the actual value at the time of the sale. However, the trial court erred in its calculation of actual damages by using the total cost of the vehicle, including finance charges and other costs, as the vehicle's represented value. Judgment affirmed in part, reversed in part, and remanded for recalculation of actual and treble/punitive damages.

Case Name: *State of Ohio v. Jeffrey A. Rumbaugh, Jr.*
Case No: Miami C.A. No. 2023-CA-8; T.C. Case No. 2022 TRD 08255
Panel: Epley, Welbaum, Lewis
Author: Ronald C. Lewis
Summary: Appellant's convictions for failure to stop after an accident and failure to maintain an assured clear distance ahead were supported by sufficient evidence and were not against the manifest weight of the evidence where an eyewitness identified appellant as the driver of the vehicle that crashed into the back of a stationary car on an exit ramp of an interstate and left the scene of the accident. Judgment affirmed.

Case Name: *State of Ohio v. Michael O. Fowler, Jr.*
Case No: Miami C.A. No. 2022-CA-28; T.C. Case No. 22CR113
Panel: Epley, Welbaum, Huffman
Author: Jeffrey M. Welbaum
Summary: The trial court did not err by failing to suppress appellant's statements to detectives where appellant validly waived his *Miranda* rights and where appellant's statements were not the product of impermissible, coercive police conduct. In addition, the trial court properly admitted certain records from Google at trial as self-authenticating documents under Evid.R. 902(11). Because the Google records were not testimonial in nature, their admission did not violate appellant's right of confrontation. Judgment affirmed.

Case Name: *State of Ohio v. Robert T. Greene*
Case No: Montgomery C.A. Nos. 29836, 29837;
T.C. Case Nos. 2019 CR 04109/1, 2019 CR 02796
Panel: Epley, Welbaum, Huffman
Author: Jeffrey M. Welbaum
Summary: The trial court was not required to make consecutive sentence findings under R.C. 2929.14(C)(4) when it revoked appellant's community control sanctions and imposed consecutive prison sentences. Appellant had previously agreed to consecutive sentences in the event of revocation and was bound by his agreement. Appellants' sentences, therefore, are not subject to review on appeal under R.C. 2953.08(D)(1). Judgments affirmed. (Epley, P.J., concurring in judgment only.)

Case Name: *Darrin Townsend v. City of Kettering, et al.*
Case No: Montgomery C.A. No. 29853; T.C. Case No. 2019 CV 02924
Panel: Epley, Welbaum, Lewis
Author: Jeffrey M. Welbaum
Summary: The trial court did not abuse its discretion in dismissing appellant's case for lack of prosecution. The litigation's history indicates that appellant was dilatory in conducting discovery, failed to comply with

court deadlines, and had received a number of continuances. Appellant's last-minute attempts to delay trial, including filing a frivolous appeal, also displayed disregard for the court system. In addition, the trial court did not abuse its discretion in refusing to continue the trial date. Under established factors governing evaluation of continuances, no factors weighed in appellant's favor. Judgment affirmed.

Case Name: *State of Ohio v. Roderick K. Young*
Case No: Greene C.A. No. 2023-CA-45; T.C. Case No. 2023-CR-0234
Panel: Welbaum, Tucker, Huffman
Author: Mary K. Huffman
Summary: The trial court did not err in finding that the offense of attempted aggravated assault is an offense of violence, thus permitting the court to impose a prison sentence. The trial court properly considered the purposes and principles of sentencing and the seriousness and recidivism factors in sentencing appellant to a prison term. Judgment affirmed.