

THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CASE SUMMARIES
November 23, 2022

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Case Name: *Elaine Smith v. Carolyn Farmer*
Case No: Montgomery App. No. 29524; T.C. Case No. 2021-CV-1991
Panel: Tucker, Donovan, Lewis
Author: Michael L. Tucker
Summary: The trial court did not err in granting summary judgment in favor of deceased pension plan participant's second wife/widow and denying first wife's motion for summary judgment on her claims based on second wife's receipt of survivor benefits. The 1988 divorce decree provided that first wife was to receive one-half of participant's gross monthly benefits and, if the plan were later modified to provide for surviving spouse benefits, that she would be the "surviving spouse." The surviving spouse provision remained valid after the domestic relations court issued an entry vacating the domestic relations court's subsequent QDRO and converting the gross monthly pension benefits to a spousal support order.

However, first wife is not entitled to the benefits second wife is receiving. Second wife is receiving statutory surviving spouse benefits, which are limited to the spouse at the time of the participant's death; the plan was not "modified" to allow those benefits to be paid to a former spouse, and the divorce decree cannot require the plan to provide a survivor benefit to a former spouse under R.C. 742.37(D) and R.C. 742.58 when such benefits are not authorized by statute. In addition, assuming the divorce decree required the plan participant to designate first wife as his beneficiary if he were to select a different annuity option, no change to his plan was made following the divorce, and second wife is not receiving a survivorship payment under an annuity plan. Accordingly, first wife has no right, equitable or otherwise, to the payments second wife is receiving. Judgment affirmed.

Case Name: *State of Ohio v. Antwan Jermaine Reid*
Case No: Montgomery App. No. 29495; T.C. Case No. 2001-CR-00243/1
Panel: Tucker, Donovan, Lewis
Author: Michael L. Tucker
Summary: In 2002, appellant was convicted of aggravated murder and aggravated robbery; the trial court's judgment entry stated that the aggravated murder sentence was a "life sentence," without stating that appellant would be eligible for parole after 20 years. In 2022, appellant filed a motion asserting that the omission from the judgment entry rendered his sentence void. Because the defect only made the sentence voidable, not void, and a voidable sentence must be challenged on direct appeal, the trial court did not err in overruling the motion. Moreover, appellant's parole eligibility after 20 years is presumed because the sentencing entry did not state otherwise. Judgment affirmed.

Case Name: *State of Ohio v. Brandon C. Webb*
Case No: Clark App. Nos. 2022-CA-7 & 2022-CA-8;
T.C. Case Nos. 21-CRB-1546 & 21-TRC-6930
Panel: Tucker, Donovan, Lewis
Author: Mary E. Donovan
Summary: Appellant's conviction for operating a vehicle under the influence was not against the manifest weight of the evidence; the circumstantial evidence presented by the State was sufficient to establish that appellant had operated his vehicle while under the influence of alcohol. Judgment affirmed.

Case Name: *State of Ohio v. Alex J. Fultz*
Case No: Montgomery App. No. 29434; T.C. Case No. 2021-CR-1578
Panel: Donovan, Welbaum, Epley
Author: Mary E. Donovan
Summary: The trial court abused its discretion when it overruled appellant's motion for a new trial. There was juror misconduct when a juror looked at outside information during deliberations, and it materially affected appellant's substantial rights. Judgment reversed and remanded. (Epley, J., dissenting.)

Case Name: *Kelli Vukovic-Burkhardt v. Dayton Board of Education, et al.*
Case No: Montgomery App. No. 29539; T.C. Case No. 2019-CV-5012
Panel: Tucker, Epley, Lewis
Author: Ronald C. Lewis
Summary: The trial court did not abuse its discretion in denying appellant's Civ.R. 60(B)(3) motion as untimely. The trial court also did not abuse its discretion in denying appellant's Civ.R. 60(B)(5) motion alleging a fraud upon the court. The trial court reasonably concluded that appellant had failed to present facts that would warrant relief under Civ.R. 60(B)(5) or entitle her to a hearing. Judgment affirmed.

Case Name: *State of Ohio v. Anthony L. Wilson*
Case No: Montgomery App. No. 29448; T.C. Case No. 2020-CR-370
Panel: Donovan, Welbaum, Lewis
Author: Ronald C. Lewis
Summary: Appellant's appeal is dismissed as moot; a review of the docket entries reveals that the jury returned a not guilty verdict after his trial. Appeal dismissed.

Case Name: *Jennifer Giron Sanchez v. Benny Vazques Casiano*
Case No: Montgomery App. No. 29415; T.C. Case No. 2018-DR-1121
Panel: Tucker, Donovan, Lewis
Author: Ronald C. Lewis
Summary: The trial court did not abuse its discretion in awarding custody of the minor children to their mother after considering the best interest factors in R.C. 3109.04(F)(1). The trial court also did not abuse its discretion in the division of assets; it properly considered the mortgage and equity relating to the house, and the parties failed to object to the de facto termination of marriage date used by the magistrate. The trial court did abuse its discretion in its calculation of child support and spousal support when it imputed \$60,000 of income to the father without considering the factors listed in R.C. 3119.01(C)(17). Judgment affirmed in part, reversed in part, and remanded.