

THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CASE SUMMARIES
June 21, 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: *Trinity Financial Services v. Unknown Heirs, Fiduciaries, Beneficiaries, Devisees and Donees of Brenda King, et al.*
Case No: Montgomery C.A. No. 30066; T.C. Case No. 2023 CV 01389
Panel: Epley, Tucker, Lewis
Author: Christopher B. Epley
Summary: The trial court erred in granting summary judgment to plaintiff-appellee in a residential foreclosure case. The trial court abused its discretion in failing to compel appellee to produce the original note for inspection and to give an additional opportunity for discovery, pursuant to Civ.R. 56(F), prior to granting summary judgment. Genuine issues of material fact existed as to whether appellee had satisfied all conditions precedent prior to filing its action. Judgment reversed and remanded.

Case Name: *State of Ohio v. Walter Simpson*
Case No: Clark C.A. No. 2023-CA-51;
T.C. Case Nos. 22-CR-0702; 22-CR-0767
Panel: Epley, Tucker, Huffman
Author: Christopher B. Epley
Summary: Appellant's convictions for rape, kidnapping, aggravated burglary, and violation of a protection order were based on sufficient evidence and were not against the manifest weight of the evidence. Additionally, the trial court did not err when it imposed consecutive sentences. The court's findings with respect to the consecutive sentences were not clearly and convincingly unsupported by the record. Judgments affirmed.

Case Name: *State of Ohio v. Brandon Michael Dean*
Case No: Champaign C.A. No. 2023-CA-31; T.C. Case No. 2023 CR 089
Panel: Welbaum, Lewis, Huffman
Author: Ronald C. Lewis
Summary: The trial court did not commit plain error when it failed to merge appellant's convictions for possessing criminal tools and aggravated

trafficking in drugs where the two offenses involved separate conduct. Judgment affirmed

Case Name: *Richard Barry v. Maxim Roofing Company LLC*
Case No: Montgomery C.A. No. 30038; T.C. Case No. 2022 CV 00540
Panel: Epley, Tucker, Lewis
Author: Ronald C. Lewis
Summary: The trial court did not err in granting summary judgment to employer-appellee on employee-appellant's intentional tort claims based on appellant's fall from a ladder during a roofing job. Appellant was not entitled to the presumption of intent to injure contained in R.C. 2745.01(C) because, as a matter of law, the safety feet of the ladder did not constitute "an equipment safety guard" within the meaning of that section. Judgment affirmed.

Case Name: *Kevin L. Shehee v. Kings Furniture et al.*
Case No: Montgomery C.A. No. 29902; T.C. Case No. 2021 CV 03582
Panel: Welbaum, Lewis, Huffman
Author: Jeffrey M. Welbaum
Summary: The trial court erred in dismissing appellant's complaint based on his failure to serve appellees within the time specified in Civ.R. 3(A). Appellant requested service to be made on appellees within the statute of limitations for several claims, and the court should have considered this as a refiling of the complaint pursuant to *Goolsby v. Anderson Concrete Corp.*, 61 Ohio St.3d 549, 575 N.E.2d 801 (1991), which would have made failure to comply with Civ.R. 3(A) irrelevant. Judgments reversed and remanded.

Case Name: *State of Ohio v. Kelly Ann Moore*
Case No: Champaign C.A. No. 2023-CA-32; T.C. Case No. 2023 CR 132
Panel: Welbaum, Lewis, Huffman
Author: Jeffrey M. Welbaum
Summary: The trial court did not commit either plain error or any error in considering whether appellant had the ability to pay financial sanctions. Judgment affirmed.

Case Name: *State of Ohio v. Donnie D. Tunstall*
Case No: Montgomery C.A. No. 29946; T.C. Case No. 2021 CR 02112
Panel: Epley, Tucker, Lewis
Author: Michael L. Tucker
Summary: Appellant was convicted of felony murder and obstructing official business, among other charges. The jury's determination that appellant did not act in self defense was not against the manifest weight of the evidence. The obstructing official business conviction included a finding that appellant's conduct had created a risk of physical harm to any person; this finding was supported by sufficient

evidence and was not against the manifest weight of the evidence.
Judgment affirmed.

Case Name: *B.B. v. O.D.*
Case No: Darke C.A. No. 2023-CA-30; T.C. Case No. 21540043
Panel: Epley, Tucker, Huffman
Author: Michael L. Tucker
Summary: The trial court did not abuse its discretion when it found appellant in contempt of court for her failure to obey an agreed custody order.
Judgment affirmed.