

R E L E A S E

OCTOBER 5, 2001

ASHTABULA

2001-A-0045 TERENCE BREWER, Petitioner v. RICH GANSHEIMER, WARDEN OF LAKE ERIE CORRECTIONAL INSTITUTION, Respondent.

Petition dismissed. See *Per Curiam* Opinion and Judgment Entry. (O'NEILL) (CHRISTLEY) (NADER)

EXTRAORDINARY WRIT:

The failure of the trial judge to sign the sentencing judgment does not deprive the trial court of jurisdiction over a criminal defendant. As a result, such a failure cannot form the basis of a claim in habeas corpus.

GEAUGA

2000-G-2305 THOMAS J. BARBER, Appellant v. BUCKEYE MASONRY & CONSTRUCTION CO., et al., Appellees.

Judgment affirmed. O'Neill, P.J., dissents with Dissenting Opinion. See Opinions and Judgment Entry. [GRENDALL] (O'NEILL) (CHRISTLEY)

WORKERS' COMPENSATION:

Pursuant to the "coming and going" rule, a fixed-situs employee is generally not entitled to participate in the Workers' Compensation Act for injuries sustained while commuting to and from his assigned place of employment. A fixed-situs employee is one who begins his employment duties once he arrives at his designated work place, regardless of the fact that he may be reassigned to a different work place monthly, weekly, or even daily.

In rare circumstances, a fixed-situs employee may overcome the "coming and going" rule by demonstrating the existence of a "special hazard." This requires a showing that the employee's travel serves a function of his employer's business and creates a risk that is distinctive in nature or quantitatively greater than the risk common to the general public during commutes. The risk of driving moderate distances on a public road is not in and of itself a

special hazard because such risk is common to all individuals who commute daily to work. There must exist additional extenuating factors that make the commute a "special hazard."

LAKE

2000-L-157 WICKLIFFE COUNTRY PLACE, Plaintiff-Appellant v. JOAN A. KOVACS, et al., Defendant-Appellee.

Judgment reversed and remanded. See Opinion and Judgment Entry. [GRENDALL] (FORD) (CHRISTLEY)

APPELLATE REVIEW:

When reviewing the grant of a Civ.R. 12(B)(6) motion to dismiss for failure to state a claim upon which relief can be granted, an appellate court must independently review the complaint to determine whether dismissal was proper. Dismissal of a complaint, pursuant to Civ.R. 12(B)(6), is appropriate only when it appears beyond doubt that the plaintiff cannot prove a set of facts to support his claim, entitling him to relief. A court must presume all factual allegations contained in the complaint as true and must make all reasonable inferences in favor of the nonmoving party.

2001-L-085 CAROLYN B. KEAGLER, et al., Plaintiffs-Appellees v. RAY BARISIC, et al., Defendants, WAUSUA BUSINESS INSURANCE COMPANY, Defendant-Appellant.

Appeal dismissed. See Memorandum Opinion and Judgment Entry. [FORD] (CHRISTLEY) (NADER)

APPELLATE REVIEW:

The denial of a motion for summary judgment is not a final appealable order, as it does not conclude the case.

PORTAGE

2000-P-0072 VIOLA E. BOYLES, Plaintiff-Appellant v. STEPHEN R. BOYLES, Defendant-Appellee.

Judgment affirmed in part; reversed in part and remanded. See Opinion and Judgment Entry. [CHRISTLEY] (FORD) (GRENDALL)

DOMESTIC RELATIONS/PROPERTY:

A trial court does not abuse its discretion in determining the value of a marital asset when it employs the values provided by the parties.

The party seeking to establish the separate property has the burden of proof by a preponderance of evidence. This burden was not satisfied when no evidence was presented tending to show that the mortgages, which encumber the

alleged separate properties, were not directly used to finance those properties.

Where the trial court determines that the parties are entitled to an equal share of the marital estate, the court is not required to make findings of facts to support such a determination. Only when a trial court makes an unequal division must the reasons for deviance from equal be set forth so as to enable appellate review.

2000-P-0078 JOHN McCANN, et al., Plaintiffs-Appellants v. CONCETTA ANASTASIO, Defendant-Appellee.

Judgment affirmed in part, reversed in part, and remanded. See Opinion and Judgment Entry. [GRENDALL] (FORD) (CHRISTLEY)

FRAUD:

Trial court erred by granting defendant's Civ.R. 12(B)(6) motion to dismiss plaintiffs' fraudulent concealment claim because set of facts exists under which plaintiffs could recover. Trial court correctly dismissed fraudulent misrepresentation claim because "as is" clause in contract precludes recovery for passive non-disclosure.

2000-P-0086 STATE OF OHIO, Plaintiff-Appellant v. JASON A. SMOLIC, Defendant-Appellee.

Judgment reversed and remanded. See Opinion and Judgment Entry. [NADER] (O'NEILL) (GRENDALL)

CRIMINAL LAW:

Despite a presumption for prison, a trial court may impose a community control sanction instead of a prison term if the following findings are made on the record:

(1) the community control sanctions would adequately punish the offender and protect the public from future crime, and (2) the community control sanctions would not demean the seriousness of the offense.

TRUMBULL

2000-T-0153 STATE OF OHIO ex rel. THOMAS L. ALTIERE, Relator v. TRUMBULL COUNTY BOARD OF ELECTIONS, Respondent, J. KENNETH BLACKWELL, SECRETARY OF STATE, Intervening-Respondent.

Petition for Writ of Mandamus dismissed as moot. See Judgment Entry.

2001-T-0042 STATE OF OHIO, Plaintiff-Appellee v. CLYDE BUSH, Defendant-Appellant.

Judgment affirmed. See Opinion and Judgment Entry. [O'NEILL] (CHRISTLEY) (NADER)

CRIMINAL/PUBLIC RECORDS:

Pursuant to R.C. 149.43(B), a person seeking access to public records must first make his request to the public office responsible for maintaining the record in question. If that person is wrongfully denied access to the record, recourse may be sought through the court system by way of a mandamus action.

2001-T-0091 CHRISTINA E. SWICK, Plaintiff-Appellant v. BOARD OF TRUMBULL COUNTY COMMISSIONERS, et al., Defendants-Appellees.

Appeal dismissed. See Memorandum Opinion and Judgment Entry. [FORD] (CHRISTLEY) (GRENDALL)

APPELLATE PROCEDURE:

Pursuant to App.R. 4(A), a notice of appeal must be filed with the trial court within thirty days of the entry or order appealed. When the notice is filed beyond the thirty days, and the appellant has failed to file any submissions in accordance with Loc.R. 5(B), the appeal will be *sua sponte* dismissed for lack of jurisdiction.