

R E L E A S E

NOVEMBER 21, 2001

ASHTABULA

2000-A-0082 STATE OF OHIO, Plaintiff-Appellee v. RONNIE JOE WATSON, Defendant-Appellant.

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

CRIMINAL LAW/SENTENCING:

When imposing consecutive sentences, a trial court is required to make the findings enumerated in R.C. 2929.14(E), and to comply with R.C. 2929.12(B)(2)(c).

2001-A-0071 STATE OF OHIO, Plaintiff-Appellee v. GEORGE A. NICOL, Defendant-Appellant.

Appeal dismissed. See Memorandum Opinion and Judgment Entry. [GRENDALL] (O'NEILL) (NADER)

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. Failure to file the notice of appeal within that time will result in the dismissal of the appeal for lack of jurisdiction.

GEAUGA

2000-G-2290INDER JEET SHARMA, et al., Plaintiffs-Appellees v. JASVIR SINGH SAHOTA, et al., Defendant-Appellant.

Judgment reversed and judgment entered in favor of Appellant. O'Neill, P.J., concurs in judgment only, Nader, J., dissents with Dissenting Opinion. See Opinions and Judgment Entry. [CHRISTLEY] (O'NEILL) (NADER)

AGENCY:

Generally speaking, an agent is not personally liable on contracts entered into on behalf of a disclosed principle, absent an express agreement to the contrary.

2000-G-2322 STATE ex rel. KEITH AYRES, et al., Relators v. BURTON TWP. BOARD OF ZONING APPEALS, et al., Respondents.

Judgment granted in favor of Respondents as to the entire petition. See *Per Curiam* Opinion. (FORD) (CHRISTLEY) (NADER)

ADMINISTRATIVE APPEAL:

A township does not have the authority to enact a provision in a zoning resolution which would change the jurisdictional requirements for bringing an appeal from a decision of a township zoning inspector to the board of zoning appeals. The only jurisdictional requirements for filing such an appeal are those set forth in R.C. 509.15.

2000-G-2326 IN THE MATTER OF: CHASE CROOK, ALLEGED DEPENDENT CHILD.

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

DOMESTIC RELATIONS/CHILD CUSTODY:

A trial court's custody determination will not be disturbed absent a finding that its decision was unreasonable, arbitrary, or unconscionable.

Pursuant to R.C. 2151.33(A), the juvenile court has jurisdiction to determine the custody of an alleged abused, neglected, or dependent child, when the child is not the ward of the state. This jurisdiction includes children subject to a divorce decree granting custody pursuant to R.C. 3109.04

LAKE

98-L-219 STATE OF OHIO, Plaintiff-Appellee v. KIRK D. TENNYSON, Defendant-Appellant.

Judgment affirmed. See Opinion and Judgment Entry. [NADER] (CHRISTLEY) (GRENDALL)

CRIMINAL LAW:

A trial court has broad discretion in sentencing a defendant and a sentence will not be disturbed absent an abuse of discretion.

However, when a defendant who has not previously served a prison term is given a sentence greater than the minimum, the trial court must comply with R.C. 2929.14(B), 2929.11, and 2929.12.

99-L-177 STATE OF OHIO, Plaintiff-Appellee v. ROBERT L. ROBINSON, JR., Defendant-Appellant.

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

CRIMINAL LAW:

The Ohio rules of evidence do not strictly apply to sexual predator hearings; thus, the trial court may rely upon reliable hearsay such as presentence investigation reports.

When making a sexual predator determination, the trial court should provide at least a general discussion of the factors considered, so the appellate court can properly review the decision.

2000-L-062 and

2000-L-164 STATE OF OHIO, Plaintiff-Appellee v. SHANE R. ELERSIC,
Defendant-Appellant.

Judgement reversed and remanded. Christley, J., concurs with Concurring Opinion. See Opinions and Judgment Entry. [FORD] (CHRISTLEY) (NADER)

CRIMINAL LAW:

For a defendant to be found guilty of engaging in a pattern of corrupt activity pursuant to R.C. 2923.32, it is not necessary that the enterprise engaging in the corrupt activity have an existence separate and apart from the corrupt activity.

When a defendant questions the efficacy of his counsel during trial, the court has a duty to inquire into the complaint. If the defendant informs the court that he "has suspicions" about his counsel, then the court must provide the defendant with the opportunity to articulate good cause as to why he should be allowed to hire a new attorney.

CRIMINAL LAW/PRETRIAL:

When two crimes of a similar nature were committed on separate dates, the state may not indict the defendant for the crime that occurred on one date, and then, after the defendant has filed a notice of alibi for that date, amend the indictment and charge the defendant with the similar crime that occurred on the other date.

CRIMINAL LAW/SEARCH AND SEIZURE:

A warrantless seizure of a car from a residential parking lot is unconstitutional if the car has not been connected to any crime and if there is no indication that the car is being used for any illegal purposes at that time.

JURY TRIALS:

Where jury deliberations have progressed to the point where the jurors are in substantial agreement, and an alternate juror is substituted for one of the original jurors, the trial court must instruct the jury to begin its deliberations anew.

2000-L-086 CONNIE HILDERBRECHT, Plaintiff-Appellant v. PREMIER MACHINE PRODUCTS, INC., Defendant, ROBERT REED, et al., Defendants-Appellees.

Judgment affirmed in part; reversed and remanded in part. See Opinion and Judgment Entry. [NADER] (O'NEILL) (CHRISTLEY)

EMPLOYMENT RELATIONS:

To establish a public policy cause of action, the plaintiff must show the following: (1) a clear public policy existed and was manifested in a state or federal constitution, statute, administrative regulation, or in common law; (2) dismissing employees under circumstances like those involved in the plaintiff's dismissal would jeopardize the public policy; (3) the dismissal was motivated by conduct related to the public policy; and, (4) the employer lacked an overriding legitimate business justification for the dismissal.

PORTAGE

2001-P-0108 STATE OF OHIO, Plaintiff-Appellee v. KEITH MAYDAK, Defendant-Appellant.

This Court, *sua sponte*, dismisses the above-captioned appeal for failure to prosecute. See Judgment Entry.

TRUMBULL

2000-T-0031 CITY OF HUBBARD, Plaintiff v. WAYNE W. CAWLEY, Defendant, (CONTEMPT ORDER BY COURT AGAINST PATRICK DONLIN, ESQ., Appellant v. JUDGE MICHAEL A. BERNARD, Appellee)

Judgment affirmed in part and modified in part. See Opinion and Judgment Entry. [GRENDALL] (O'NEILL) (CHRISTLEY)

CONTEMPT:

Contempt is an act or omission that substantially disrupts the judicial process. It is described as the disobedience of a court order, conduct that brings the administration of justice into disrespect, or conduct that tends to embarrass, impede or obstruct a court in the performance of its functions. When reviewing a finding of contempt, an appellate court applies an abuse of discretion standard.

2000-T-0046 CITY OF NEWTON FALLS, OHIO, Plaintiff-Appellee v. DALE R. LEHMAN, JR., Defendant-Appellant.

Judgment affirmed. See Opinion and Judgment Entry. [CHRISTLEY] (O'NEILL) (VUKOVICH-7TH)

(Vukovich, J., Seventh Appellate District, sitting by assignment.)

CRIMINAL LAW/SENTENCING:

By explaining to the defendant why he was not entitled to credit for pretrial suspension, the trial court was not reconsidering or modifying the defendant's sentence outside the presence of counsel.

2000-T-0101 THE TRUMBULL SAVINGS & LOAN COMPANY, Plaintiff v. ROSE MARIE VACCAR, et al., Defendants-Appellees, JULIAN N. GINOCCHI, Intervenor-Appellant.

Judgment affirmed. See Opinion and Judgment Entry. [NADER] (CHRISTLEY) (GRENDALL)

MISCELLANEOUS:

Absent fraud, duress, undue influence, or lack of capacity on the part of the decedent, the opening of a joint and survivorship account is conclusive evidence of an intention to transfer the account balance to the surviving party.

2001-T-0087 DAVID TATE, Petitioner v. MICHAEL A. BERNARD, JUDGE, et al., Respondents.

Writ dismissed. See *Per Curiam* Opinion. (FORD) (CHRISTLEY) (GRENDALL)

HABEAS CORPUS:

Pursuant to R.C. 2725.04(B), a petition for a writ of habeas corpus must state the name of the individual who is in charge of the petitioner's incarceration. The writ will lie only against the individual who is directly responsible for keeping the petitioner in custody. As a result, the jailer or warden is the only person who is the proper respondent in most habeas corpus actions.