

R E L E A S E

NOVEMBER 2, 2001

GEAUGA

2001-G-2375 LINDA KINGERY, Plaintiff-Appellant v. JASON FINK, et al.,
Defendant-Appellee.

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

LAKE

99-L-015 STATE OF OHIO, Plaintiff-Appellee v. DATONE D. WASHINGTON,
Defendant-Appellant.

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

CRIMINAL LAW/CONSTITUTIONAL:

Unless there is evidence of sexual motivation, there is no rational basis for categorizing an abduction of a victim who is less than eighteen years old as being a sexually oriented offense. Rather, in such instances, a trial court should have some discretion in determining whether a defendant is a sexually oriented offender.

PORTAGE

99-P-0012 STATE OF OHIO, Plaintiff-Appellee v. WILLIAM PLYMALE,
Defendant-Appellant.

Judgment affirmed. Christley, J., dissents with Dissenting Opinion. See Opinions and Judgment Entry. [FORD] (CHRISTLEY) (GRENDALL)

CRIMINAL LAW/EVIDENCE:

In a trial for rape, the trial court does not abuse its discretion in ruling that evidence that the victim had previously been sexually abused as a young child was inadmissible when the state's legitimate interest in excluding the proffered evidence outweighs its minimal probative value.

2000-P-0070 LISA M. CAITO, Plaintiff-Appellee v. JAMES A. ZUCALLO,
Defendant-Appellant.

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

APPELLATE REVIEW:

Because the party challenging the magistrate's decision failed to file timely objections to the magistrate's decision, he has now waived his right to appeal the trial court's adoption of those findings of fact and conclusions of law. Despite the party's failure to present the trial court with objections, Civ.R. 53(E)(4)(a) provides that a trial court must determine whether there is any error of law or other defect on the face of the magistrate's decision before adopting it as its own.

CIVIL:

In accordance with R.C. 2903.214, Ohio's stalking civil protection order statute, a party can seek a continuance of a full hearing if under the circumstances, a need for discovery arises in order to properly prepare for the upcoming hearing.

2001-P-0092 MICHAEL G. MONDS, Plaintiff-Appellee v. WENDY D. MONDS, Defendant-Appellant.

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

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.

2001-P-0094 STATE OF OHIO, Plaintiff-Appellee v. MONTY SMITH, Defendant-Appellant.

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

2001-P-0097 COLLEEN E. HARTLEY, et al., Plaintiffs-Appellants v. DAVID C. BOWSER, et al., Defendants, ALL AMERICAN INSURANCE COMPANY, Defendant-Appellee.

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

2001-P-0101 THE CHASE MANHATTAN BANK, Plaintiff-Appellee v. MANOUCHER SALEHI, a.k.a. MANOUCHEHR SALEHI, et al.,

Defendants-Appellants, SYLVESTER PLAZA LIMITED PARTNERSHIP, et al., Third Party Defendants.

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

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.

TRUMBULL

2000-T-0069 FAMOUS SUPPLY CO. OF WARREN, Plaintiff-Appellant/Cross-Appellee v. A.B. COLE, INC., et al., Defendants-Appellees/Cross-Appellants.

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

CONTRACTS:

A personal guarantee clause contained in a single page credit application is not, as a matter of law, a separate and distinct contract from the credit application, where the granting of any credit whatsoever is contingent upon the corporate debtor assenting to the personal guaranty clause. Although the terms of a guaranty clause may be internally consistent and unambiguous, such a clause is part and parcel to the credit contract, and the contract must be interpreted as a whole.

2000-T-0074 STATE OF OHIO, Plaintiff-Appellee v. VERNON TURNER, Defendant-Appellant.

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

CRIMINAL LAW/EVIDENCE:

A statement by a detective that he had been informed that appellant was a "significant drug dealer" was not properly admitted into evidence because it was not necessary for the detective to repeat that statement in order to explain why he had chosen to investigate appellant. However, admission of the statement was harmless beyond a reasonable doubt because there was overwhelming evidence of appellant's guilt.

2000-T-0143 STATE OF OHIO, Plaintiff-Appellee v. ORSON PROVITT, Defendant-Appellant.

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

CRIMINAL/APPELLATE REVIEW:

Res judicata presents the consideration of any claim that was raised or could have been raised in an earlier appeal.