

**THE COURT OF APPEALS OF
OHIO SECOND APPELLATE
DISTRICT CASE SUMMARIES
July 17, 2020**

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Case Name: *State of Ohio v. Dustin Merrick*
Case No: Greene App. No. 2019-CA-29; T.C. Case No. 2017-CR-56
Panel: Donovan, Froelich, Hall
Author: Jeffrey E. Froelich
Summary: *Anders* appeal. Appellant appeals his convictions on two counts of aggravated murder with firearm specifications, two counts of aggravated burglary, and one count each of tampering with evidence and obstructing justice. Appellant pled guilty to the charged offenses, and the parties agreed to whether certain offenses merged as allied offenses of similar import. The parties jointly recommended a sentence on each offense, which the trial court imposed. No non-frivolous issues exist related to pretrial proceedings, appellant's plea, or sentencing. Judgment of conviction affirmed. The trial court's separate order imposing court costs is vacated.

Case Name: *BankUnited, N.A. v. William H. Lowe, et al.*
Case No: Montgomery App. No. 28591; T.C. Case No. 2019-CV-2184
Panel: Donovan, Froelich, Hall
Author: Jeffrey E. Froelich
Summary: The trial court's judgment in rem was a final appealable order because it adequately addressed the extent and priority of the United States' lien interest in the subject real property by ordering that such interest be paid from foreclosure sale proceeds remaining after prior lienholders were paid. Property owner's appeal based on his claimed lack of knowledge of second mortgage held by the United States raises an issue not presented to the trial court and thus is not properly before the appellate court. Judgment affirmed.

Case Name: *State of Ohio v. Michael S. McCarty*
Case No: Miami App. No. 2019-CA-16; T.C. Case No. 2019-CR-51
Panel: Froelich, Hall, Welbaum
Author: Michael T. Hall
Summary: The appellant's conviction for operating a vehicle while under the influence was based on legally sufficient evidence and was not against the manifest weight of the evidence. Multiple witnesses testified that they observed the appellant displaying various indicia of intoxication at a fast-food restaurant drive through and later at the police station. In addition, the State presented evidence that the appellant made an admission to being intoxicated and later an implied admission to the same. Judgment affirmed.

Case Name: *State of Ohio v. T.J.D.*
Case No: Montgomery App. No. 28592; T.C. Case No. 2018-CR-3663
Panel: Froelich, Hall, Welbaum
Author: Jeffrey M. Welbaum
Summary: The trial court erred by overruling appellant's motion to dismiss the indictment charging him with one count of having weapons while under disability. The weapons disability at issue was relieved in 1994, when appellant's conviction from which the disability arose was sealed pursuant to R.C. 2953.32. Accordingly, the trial court should have dismissed the indictment on that basis. Judgment reversed and remanded.

Case Name: *Matthew Tye, et al. v. T. Jeffrey Beausay, et al.*
Case No: Montgomery App. No. 28383; T.C. Case No. 2015-CV-4852
Panel: Froelich, Hall, Welbaum
Author: Jeffrey M. Welbaum
Summary: The trial court did not err in granting summary judgment against one adult son in a legal malpractice action, because that son admitted that, even if he had been properly informed of the claims he was waiving, he would have signed a release of his claims in his father's underlying medical malpractice action. However, the court did err in granting summary judgment against the guardian representing the interests of the other son, who was physically and intellectually disabled. While the guardian stated, in response to a speculative question, that she did not know what she would have done if she had been properly informed of the ward's claim, the record contained substantial evidence indicating that she would not have agreed to waive his claim. Because a genuine issue of material fact existed, the court erred in granting summary judgment as to the ward's claim. Finally, the trial court did not err in granting summary judgment in favor of a law firm on the basis of respondeat superior. There was

no evidence that the law firm controlled the actions of the attorney who obtained releases without properly notifying the sons about their claims. Furthermore, the record contains no evidence of apparent authority. Judgment affirmed in part and reversed in part; remanded for further proceedings. (Hall, J., concurring.) (Froelich, J., concurring in part and dissenting in part.)

Case Name: *In re A.A.V.*
Case No: Champaign App. No. 2019-CA-30; T.C. Case No. 2014-JG-23
Panel: Tucker, Donovan, Hall
Author: Michael L. Tucker
Summary: Appellant Father asserts that the trial court forced him to agree to continued shared parenting and to the dismissal of a contempt motion during the course of a contested hearing on motions to modify shared parenting and for findings of contempt. The parties' agreement, which was read into the record, was followed by the filing of an Agreed Judgment Entry – Shared Parenting Decree and an Agreed Entry which dismissed competing contempt motions. Appellant signed each document. Appellant has not submitted a transcript of the hearing that preceded the filing of the shared parenting decree and the agreed entry. As such, the regularity of the trial court proceedings must be presumed. Judgment affirmed.