

## CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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February 3, 2022

**109421** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v MICHAEL J. JENKINS

Affirmed in part, reversed in part, and remanded.

Emanuella D. Groves, J.; Mary Eileen Kilbane, J., concurs in part and dissents in part (with separate opinion); Sean C. Gallagher, A.J., dissents (with separate opinion).

**KEY WORDS:** *Preindictment delay; actual prejudice; justifiable delay; law-of-the-case doctrine; ineffective assistance of counsel.*

*Trial court erred in finding that defendant failed to establish actual and substantial prejudice based on the period of preindictment delay. Defendant established that he suffered actual prejudice in the form of a deceased witness who was present for a portion of the incident and would have provided testimony that minimized or eliminated the impact of the state's witness. Nevertheless, even though the trial court erred in finding no prejudice, the trial court was correct, given its finding, in deciding not to address the issue of the state's reason for the delay. The case is thus affirmed in part and reversed in part and remanded for the trial court to determine whether the state provided sufficient reason to justify the period of preindictment delay.*

**109434** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v OSCAR DICKERSON

Affirmed in part, reversed in part, and remanded.

Emanuella D. Groves, J.; Mary Eileen Kilbane, J., concurs in part and dissents in part (with separate opinion); Sean C. Gallagher, A.J., dissents (with separate opinion).

**KEY WORDS:** *Preindictment delay; actual prejudice; justifiable delay; law of the case; ineffective assistance of counsel.*

*Trial court erred in finding that defendant failed to establish actual and substantial prejudice based on the period of preindictment delay. Defendant established that he suffered actual prejudice in the form of a deceased witness who was present for a portion of the incident and would have provided testimony that minimized or eliminated the impact of the state's witness. Nevertheless, even though the trial court erred in finding no prejudice, the trial court was correct, given its finding, in deciding not to address the issue of the state's reason for the delay. The case is thus affirmed in part and reversed in part and remanded for the trial court to determine whether the state provided sufficient reason to justify the period of preindictment delay.*

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**110214** DOMESTIC RELATIONS F CIVIL C.P.-JUV, DOM, PROBATE  
KEVIN SMITH v CSILLA SMITH

**110245** DOMESTIC RELATIONS F CIVIL C.P.-JUV, DOM, PROBATE  
KEVIN A. SMITH v CSILLA E. SMITH

**110274** DOMESTIC RELATIONS F CIVIL C.P.-JUV, DOM, PROBATE  
KEVIN A. SMITH v CSILLA E. SMITH

Affirmed.

Emanuella D. Groves, J., Mary J. Boyle, P.J., and Eileen A. Gallagher, J., concur.

**KEY WORDS:** *Domestic relations cases; abuse of discretion; de facto termination date of marriage; equitable division of marital property; spousal support.*

*We review a trial court's determination in domestic relations cases for an abuse of discretion. Since it is axiomatic that a trial court must have discretion to do what is equitable upon the facts and circumstances of each case, it necessarily follows that a trial court's decision in domestic relations matters should not be disturbed on appeal unless the decision involves more than an error of judgment.*

*Appellant's main argument is that the trial court erred and abused its discretion when it determined that the de facto termination date of the marriage was November 23, 2015. Generally, a trial court uses a de facto date for termination of marriage only in cases where the parties have separated; have made no attempts to reconcile; and have continually maintained separate residences, separate business activities, and separate bank accounts.*

*In this matter, the record indicates that during the five-plus years since the parties' separation on November 23, 2015, they ceased to vacation together, did not socialize together, or attend business events together. The parties made no attempts to reconcile, but instead, bilaterally attempted to terminate the marriage, first through mediation, and then through a collaborative divorce process, both of which were unsuccessful. In addition, the parties began filing separate tax returns in 2015, and continued this practice in the ensuing years, and maintained separate bank accounts. All these actions underscores that the parties lived separate lives after their separation on November 23, 2015. As such, the trial court did not err or abuse its discretion when it used the date of separation as the de facto termination date of the marriage.*

*Appellant also takes issue with the trial court's division of the marital estate and the amount of and duration of spousal support. Our review indicates that the trial considered the appropriate statutory factors to equitably divide the marital assets and to award spousal support.*

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**110272** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v CALVIN PITTMAN, JR.

Affirmed.

Mary Eileen Kilbane, J., Eileen A. Gallagher, P.J., and Lisa B. Forbes, J., concur.

**KEY WORDS:** *Manifest weight of the evidence; witness credibility; sufficiency of the evidence; court witnesses; cruel and unusual punishment.*

*The defendant's conviction was not against the manifest weight of the evidence. The weight to be given the evidence and the credibility of witnesses are primarily for the finder of fact. The finder of fact is in the best position to weigh witness credibility. The defendant's conviction was supported by sufficient evidence. The state presented sufficient evidence that the defendant acted alongside the codefendant with the same purpose.*

*A trial court's decision to treat a witness as a court's witness is reviewed for abuse of discretion. It is not an abuse of discretion for a court to call a witness where the record demonstrates that the witness was not going to abide by his or her plea agreement to testify truthfully and consistent with prior statements.*

*The defendant's sentence did not constitute cruel and unusual punishment. He was sentenced within the statutory range for each of his convictions, the sentences were not ordered to be served consecutively, and he did not receive the maximum sentence on any one particular count.*

**110433** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
TREASURER OF CUYAHOGA COUNTY, OHIO v SHAWN HOLLOWAY, ET AL.

Dismissed.

Mary J. Boyle, J., Michelle J. Sheehan, P.J., and Emanuella D. Groves, J., concur.

**KEY WORDS:** *R.C. 323.25; R.C. 5721.18; foreclosure; R.C. 5723.01 forfeiture; R.C. 5723.03 redemption; Civ.R. 62(B); stay upon appeal; supersedeas bond.*

*Appellant's appeal dismissed as moot because appellant did not obtain a stay or post a bond to prevent execution of the court's foreclosure and forfeiture decrees, the property was sold to a third party, and the proceeds were distributed, extinguishing the matter through satisfaction of the judgment.*

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**110440** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
JAMES GERACE v BIOTHERANOSTICS, INC., ET AL.

Affirmed.

Lisa B. Forbes, J., Michelle J. Sheehan, P.J., and Emanuella D. Groves, J., concur.

**KEY WORDS:** *Wrongful discharge in violation of public policy; Civ.R. 12(B)(6) motion to dismiss; choice of law; place of injury; tort action; tortious interference with employment relationship; prohibiting deceptive trade practices.*

*The trial court did not err by dismissing plaintiff's California-law-based claims when Ohio law controlled the case. In a wrongful termination case, the place where the plaintiff lost his or her employment is the place of injury, and the place of injury presumptively controls the choice of law. In this case, Gerace lived and worked in Ohio when he was terminated from his job. The trial court did not err by dismissing plaintiff's claim for wrongful discharge in violation of Ohio public policy because he failed to allege facts that jeopardized a clear public policy.*

**110508** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v GREGORY TUTTLE

Reversed and remanded.

Kathleen Ann Keough, J., and Frank D. Celebrezze, P.J., concur; Lisa B. Forbes, J., concurs in judgment only (with separate opinion).

**KEY WORDS:** *Speedy trial; R.C. 2945.71; toll; R.C. 2945.72; COVID-19; Administrative Orders; dismiss.*

*Trial court erred in finding that the state violated the defendant's right to a speedy trial and thus, dismissing the indictment. The Administrative Orders issued by the Administrative Judge of the common pleas court, general division, in response to the COVID-19 pandemic, tolled the speedy trial time pursuant to R.C. 2945.72.*

**110540** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
TREASURER OF CUYAHOGA COUNTY, OHIO v  
UNKNOWN HEIRS OF WILLIAM W. RUSSELL JR., ET AL.

Affirmed.

Michelle J. Sheehan, P.J., Emanuella D. Groves, J., and Mary J. Boyle, J., concur.

**KEY WORDS:** *Motion to intervene; foreclosure; distribution of*

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(Case 110540 continued)

**excess sale proceeds.**

**Appellant, a third party who was assigned the mortgage after Deutsche Bank defaulted on a tax foreclosure complaint and the property was sold in a sheriff's sale pursuant to a decree of foreclosure, cannot claim any interest in the excess sale proceeds to be protected by Civ.R. 24 through a motion to intervene. The trial court did not abuse its discretion in denying appellant's motion to intervene.**

**110544** COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO  
LOK HOME v ROBBINS COMPANY, ET AL.

Affirmed.

Eileen T. Gallagher, J., Eileen A. Gallagher, P.J., and Cornelius J. O'Sullivan, Jr., J., concur.

**KEY WORDS: Civ.R. 60(B); relief from judgment; excusable neglect; procedural outcomes; adjudication on the merits.**

***Trial court properly denied a motion for relief from judgment where the moving party failed to demonstrate excusable neglect.***

**110600** COMMON PLEAS COURT A CRIMINAL C.P.  
STATE OF OHIO v ALEX CINTRON

Reversed in part, vacated, and remanded.

Eileen T. Gallagher, J., Eileen A. Gallagher, P.J., and Cornelius J. O'Sullivan, Jr., J., concur.

**KEY WORDS: Misdemeanor; conviction; community-control sanction; condition; child support; reasonably related; rehabilitation.**

***The trial court abused its discretion by ordering the defendant to establish a child-support order as a condition of his community-control sanctions. The condition was not reasonably related to the goals of rehabilitation and shared no relationship with the underlying conviction.***