

**THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CASE SUMMARIES
March 23, 2018**

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Case Name: *State of Ohio v. Christopher J. Tamas*
Case No.: Montgomery App. No. 27573; T.C. No. 17-CRB-1921
Panel: Donovan, Froelich, Tucker
Author: Mary E. Donovan
Summary: Because appellant has completed his sentence for his misdemeanor convictions and because he has presented no evidence from which this Court could conclude he has suffered a collateral legal disability or loss of civil rights, we dismiss appellant's appeal as moot. We therefore need not address the merits of appellant's five assignments of error.

Case Name: *State of Ohio v. Nicholas C. Moughler*
Case No.: Champaign App. No. 2017-CA-11; T.C. No. 16-CR-231
Panel: Donovan, Froelich, Tucker
Author: Jeffrey E. Froelich
Summary: Defendant appeals from the revocation of his community control and the imposition of consecutive jail sentences. Because defendant has completely served the sentences imposed, the appeal is moot. Appeal dismissed.

Case Name: *Ocwen Loan Servicing, LLC v. Ronald K. Malish, et al.*
Case No.: Montgomery App. No. 27532; T.C. No. 16-CV-178
Panel: Welbaum, Froelich, Hall
Author: Michael T. Hall
Summary: The appealed foreclosure order is a final, appealable order. The award of lawful costs and expenses incurred to enforce the note and mortgage without a specific amount is ministerial and does not prevent the order from being final and appealable. The trial court did not err by overruling Appellants' motion to strike the payment histories attached to Appellee's affidavit supporting its motion for summary judgment. The documents were admissible under the business records hearsay exception in Evid.R. 803(6). The trial court did not err by rendering a summary judgment of foreclosure

for Appellee. There is no genuine issue as to whether Appellee complied with the condition precedent to foreclosure that it send Appellants a written notice of default. And there is no genuine issue as to the amount of principal due. Judgment affirmed.

Case Name: *Gerald Dibert v. Cynthia S. Carpenter*
Case No: Champaign App. No. 2017-CA-17; T.C. No. 08-CV-01
Panel: Welbaum, Donovan, Froelich
Author: Jeffrey M. Welbaum
Summary: The trial court erred in filing an order requesting that Appellant show cause why he should not be held in contempt for failing to pay court costs, and in filing an entry reflecting that a show cause hearing for contempt had been held. Because court costs are a civil debt, the trial court could not file a show cause order, but instead was required to use only the methods provided for the collection of civil judgments. Reversed in part and remanded for further proceedings. Affirmed as to denial of a motion to correct the record and a motion seeking recusal of the trial judge.

Case Name: *David Howard, Individually and on behalf of the Wrongful Death Beneficiaries of Donald Lee Howard v. HCR Manorcare, Inc., Heartland Employment Services, LLC, HCR Manor Care Services, LLC and Heartland of Springfield, Ohio, LLC*
Case No: Clark App. Nos. 2016-CA-75 & 2017-CA-16; T.C. No. 14-CV-0210
Panel: Welbaum, Froelich, Tucker
Author: Jeffrey M. Welbaum
Summary: The trial court did not err in denying Appellants' motion for judgment on the pleadings, as Appellants admitted liability for wrongful death, and any alleged prior error with respect to Appellee's Civ.R. 10(D)(2) affidavit is irrelevant. By admitting liability, Appellants waived any error and are precluded from raising this error on appeal. Furthermore, compliance with Civ.R. 10(D)(2) does not pertain to a court's subject matter jurisdiction and can be waived. Appellants are also precluded from raising issues regarding the jury interrogatories and verdict form, as Appellants told the court its instructions were correct. Even if this issue were considered on a plain error basis, there was no error that would warrant reversal. Additionally, the trial court did not err in failing to include an instruction on negligence and proximate cause, as there was no basis for such an instruction. Appellee's closing argument was also not prejudicial, and the court did not err in failing to give a curative instruction in connection with one isolated comment that Appellee's counsel immediately corrected. Concerning Appellee's cross-assignments of error, the trial court did err in granting a motion for judgment on the pleadings in connection with the survival claims of the decedent. Based on the content of the pleadings, Appellants' corporate defendants were not

medical providers, and the survival claims were also not “medical claims” under R.C. 2305.113(E)(3). Finally, the trial court did not abuse its discretion when it refused to grant a continuance so that Appellee could conduct discovery regarding his motion for prejudgment interest. Appellee would have been well aware of his right to conduct discovery, but failed to even mention discovery until the day before the scheduled non-oral evidentiary hearing. Affirmed in part and Reversed in part, and remanded for further proceedings solely on the survival claims.

Case Name: *Amanda Sowers v. Matthew Sowers*
Case No: Miami App. No. 2017-CA-19; T.C. No. 15-DR-166
Panel: Welbaum, Donovan, Tucker
Author: Jeffrey M. Welbaum
Summary: The trial court erred in requiring Appellant to establish a 10% deviation from the prior child support obligation and to also establish a substantial change of circumstances that was not contemplated at the time of parties’ divorce decree, before the court would modify child support. In addition, the trial court erred in finding that Appellee was not earning more than the current minimum wage in Ohio, and in deviating from the calculated child support obligation without following the statutory requirements in R.C. 3119.22 and R.C. 3119.23. The court did not err in deciding the amount of Appellant’s gross income that was due to Appellant’s wages from employment. However, the court did err by including mileage reimbursements in Appellant’s gross income without considering whether the reimbursement caused Appellant, effectively, to have a higher income. Affirmed solely with respect to the court’s decision on Appellant’s gross income from wages, reversed on all other grounds, and remanded for further proceedings.

Case Name: *In Re: A.J., Jr.*
Case No: Montgomery App. No. 27808; T.C. No. 2001-2425
Panel: Welbaum, Hall, Tucker
Author: Michael L. Tucker
Summary: Appellant appeals from the juvenile court’s order granting permanent custody of his son to Montgomery County Children Services (MCCS). The record supports the juvenile court’s conclusion that an award of permanent custody to MCCS is in the child’s best interest. The juvenile court did not abuse its discretion by denying Appellant’s motion for a continuance. Finally, trial counsel’s representation, even if deficient, did not, on this record, prejudice Appellant. Judgment affirmed.

Case Name: *U.S. Home Ownership, LLC v. Collin L. Young, et al.*
Case No: Montgomery App. No. 27382; T.C. No. 15-CV-2823

Panel: Donovan, Froelich, Tucker
Author: Michael L. Tucker
Summary: The trial court, in this mortgage foreclosure cause of action, granted summary judgment in favor of the Plaintiff-appellee. The trial court correctly concluded that Plaintiff-appellee established that it has possession of the note and mortgage and that it had such possession when the complaint was filed. Plaintiff-appellee, therefore, had standing to file the complaint. The trial court, however, erred in concluding there is not a genuine dispute of fact concerning Plaintiff-appellee's satisfaction of the mortgage's notice condition precedent. Finally, the trial court, when applying R.C. 1303.38, erred in concluding there is not a genuine issue of fact concerning whether Plaintiff-appellee may rely upon the lost mortgage modification agreement. Judgment reversed and remanded.