

R E L E A S E

SEPTEMBER 14, 2001

ASHTABULA

2001-A-0034 STATE OF OHIO, Plaintiff-Appellee v. DANIEL JACKSON, Defendant-Appellant.

This Court dismisses the appeal for failure to prosecute. See Judgment Entry.

GEAUGA

2000-G-2293 GRANGE MUTUAL CASUALTY COMPANY, Plaintiff-Appellee v. HARRIETT E. SMOCK, INDIVIDUALLY AND AS EXECUTRIX OF THE ESTATE OF EDGAR V. SMOCK, DECEASED, Defendant-Appellant.

Judgment affirmed. O'Neill, P.J., dissents with Dissenting Opinion. See Opinions and Judgment Entry. [NADER] (O'NEILL) (CHRISTLEY)

INSURANCE:

A provision in an insurance contract that requires prompt notice to the insurer requires notice within a reasonable time in light of all surrounding facts and circumstances. A delay of three years and ten months from the date of an accident is unreasonable.

It is essential to the application of the principles of equitable estoppel that the person claiming to have been influenced by the conduct or declarations of another party to his injury should have been destitute of knowledge of the facts or at least of any convenient and available means of acquiring such knowledge.

In insurance contracts, a waiver may occur when the insurer, by acts or declarations, evidences a recognition of liability under the policy, and the evidence shows that the expressed recognition of liability led the insured to delay in bringing an action on the insurance contract.

LAKE

2000-L-142 IN RE: NAME CHANGE OF KATE LYNN PAQUETTE

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

CIVIL:

Upon review of a name change application, an appellate court may only reverse a trial court's decision upon a finding of abuse of discretion. Pursuant to R.C. 2717.01, a trial court must consider the "best interest of the child" in determining whether the requisite requirement of "reasonable and proper cause" has been established for a name change.

2000-L-147 ALLEN R. DEFRANCO, Plaintiff-Appellant v. CONNI L. DEFRANCO, Defendant-Appellee.

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

CIVIL:

In determining whether a trial court abused its discretion in granting or denying a motion for a continuance, a reviewing court must balance the interests of judicial economy and justice against any potential prejudice to the defendant.

2001-L-148 STATE OF OHIO, Plaintiff-Appellee v. JAY A. SWOPE, Defendant-Appellant.

Appeal dismissed. O'Neill, P.J., dissents. See Memorandum Opinion and Judgment Entry. [NADER] (O'NEILL) (GRENDALL)

APPELLATE PROCEDURE:

A motion for delayed appeal will not be granted when the appellant has not offered adequate reasons in his motion for a delay of four years in attempting to perfect an appeal.

2001-L-149 STATE OF OHIO, Plaintiff-Appellee v. JAY A. SWOPE, Defendant-Appellant.

Appeal dismissed. O'Neill, P.J., dissents. See Memorandum Opinion and Judgment Entry. [NADER] (O'NEILL) (GRENDALL)

APPELLATE PROCEDURE:

A motion for delayed appeal will not be granted when the appellant has not offered adequate reasons in his motion for a delay of four years in attempting to perfect an appeal.

PORTAGE

2000-P-0095 DANIEL J. GARGAS, Plaintiff-Appellant/Cross-Appellee v. CITY OF STREETSBORO, et al., Defendants-Appellees/Cross-Appellants.

Judgment affirmed in part and reversed in part. Nader, J., dissents. See Opinion and Judgment Entry. [GRENDALL] (O'NEILL) (NADER)

CONSTITUTIONAL LAW:

When dealing with a “liberty” and/or “property” right in one’s employment, an individual must have more than an abstract need, desire, or unilateral expectation of continued employment. Rather, an individual must have a legitimate claim of entitlement to continued employment. R.C. 124.11(A)(3) provides that unclassified public employees include all department heads appointed by the mayor. Unclassified public employees do not have a property right in continued employment, nor are unclassified employees entitled to a due process hearing.

EMPLOYER/EMPLOYEE/EMPLOYMENT RELATIONS:

Under the at-will employment doctrine, absent facts and circumstances which indicate that the employment is for a specific duration or term, either side may terminate the employment relationship for any reason, not contrary to law. There exists a public policy exception, allowing an at-will employee to bring a cause of action in tort for wrongful discharge that violates a “clear public policy.”

MISCELLANEOUS:

When the language of a municipal charter is plain, clear, and unambiguous, such language must be given its usual and ordinary meaning. In matters of construction, courts have an obligation to give effect to the words used, not to delete words used or to insert words not used. In other words, where the intent of a city charter provision is clear, it may not be enlarged, restricted, or abridged.

2000-P-0102 STATE OF OHIO, Plaintiff-Appellee v. LARRY R. DEAN, Defendant-Appellant.

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

DRUNK DRIVING:

The right to counsel associated with the protection against self-incrimination does not apply at the stage at which an officer requests a chemical test for alcohol content.

Regardless of whether the law enforcement officer has complied with R.C. 2935.20, a refusal to submit to blood-alcohol testing contingent upon consulting with counsel constitutes a refusal under R.C. 4511.191, Ohio’s implied consent statute. Thus, the requirement of submitting to a test for blood-alcohol content or accepting an administrative license suspension, pursuant to R.C. 4511.191, is not affected by an arrestee’s request to consult with an attorney.

2001-P-0054 CATHERINE COCHRANE, Plaintiff-Appellee v. JOHN COCHRANE, Defendant-Appellant.

Upon the request of Appellant, the appeal is hereby dismissed. See Judgment Entry.

2001-P-0068 WILLIAM A STEVENS, Plaintiff-Appellee v. CYNTHIA MARIE POWELL-STEVENSON, Defendant-Appellant.

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

APPELLATE PROCEDURE:

The time requirements for filing a notice of appeal in App.R. 4(A) are jurisdictional. App.R. 14(C) does not provide for extending the time for the filing of a notice of appeal.

TRUMBULL

2000-T-0029 and

2000-T-0057 CLEMENS BORUCKI, Plaintiff-Appellee v. JAMES J. SKIFFEY, JR., D.D.S., Defendant-Appellant.

Judgment affirmed. O'Neill, P.J., dissents with Dissenting Opinion. See Opinions and Judgment Entry. [GRENDALL] (O'NEILL) (CHRISTLEY)

JURY TRIALS:

Jury verdict was not result of passion and prejudice stemming from plaintiff's closing argument. Appellant did not object to most of the argument. No plain error is found in the closing argument. The jury's award of less than one-half of the amount requested by plaintiff's attorney in closing argument shows the jury was not swayed by the remarks.