

R E L E A S E

MARCH 1, 2002

ASHTABULA

2000-A-0081 ATLANTIC MORTGAGE & INVESTMENT CORPORATION,
Plaintiff-Appellant v. RICHARD L. SAYERS, et al., Defendants,
BRENDA LIPPS, Intervening Defendant-Appellee.

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

MISCELLANEOUS:

Once an appeal is filed, unless a stay of execution has been obtained, the trial court has jurisdiction over its judgments and proceedings in aid of the same. Further, the decision whether to confirm or set aside a sheriff's sale is left to the sound discretion of the trial court and will not be disturbed absent an abuse of that discretion. The primary purpose of a foreclosure sale is to protect the interests of the mortgagor/debtor while ensuring that secured creditors receive payment for unpaid debts.

2001-A-0089 TONEY L. WNOROSKI, Plaintiff-Appellant v. WILLIAM M. NORTON,
III, et al., Defendants, CANDACE DURNFORD, A MINOR, Defendant-
Appellee.

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

GEAUGA

2001-G-2371 STATE OF OHIO, Plaintiff-Appellee v. EDWARD HUCKABEE,
Defendant-Appellant.

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

APPELLATE REVIEW:

The denial of a postconviction relief motion to vacate payment of court costs is not a final appealable order.

LAKE

2001-L-035 and

2001-L-080 TERRY NEELY, Plaintiff-Appellee v. MARINO CAPRA, Defendant-Appellant.

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

CONTRACTS:

Trial court correctly granted summary judgment on appellant's counterclaim for breach of contract because incorrect address shown on the counterclaim was never addressed by appellant in his brief in opposition to the summary judgment motion. Trial court did not abuse its discretion by denying appellant's Civ.R. 60(B) motion because appellant's various attorneys never corrected the mistake and appellant never addressed the issue of whether he had a meritorious claim.

2001-L-083 JERRY P. SHELL, Plaintiff-Appellee v. DIANE L. CRYER, et al., Defendant-Appellant.

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

CIV.R. 60:

To prevail on a motion for relief pursuant to Civ.R. 60(B), the movant must demonstrate a meritorious claim or defense if relief is granted, entitlement to relief under a ground stated in Civ.R. 60(B)(1) through (5), and timeliness of the motion. Some courts have held that unjustified delays of various amounts less than a year were untimely. The determination as to what constitutes a reasonable time is left to the sound discretion of the trial court.

PORTAGE

2000-P-0059 and

2000-P-0129 STATE OF OHIO, Plaintiff-Appellee v. WILLIAM W. LINTON, II, Defendant-Appellant.

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

CRIMINAL LAW:

A sexual offender classification hearing, conducted pursuant to R.C. 2950.09(C)(2), must take place prior to the offender's release from a state correctional institution. It makes no difference that the offender is incarcerated in a state correctional institution for a parole violation as opposed to the underlying sexually oriented offense.

The notice requirement of R.C. 2950.09(B)(1) is mandatory. A defendant has a fundamental right to receive

adequate notice of a sexual offender classification hearing so that he has sufficient time to prepare a defense and present evidence and witnesses if he chooses. It is plain error to fail to provide a defendant with notice of a sexual offender classification hearing. Absent compliance with the mandatory notice provision, a defendant's classification must be vacated and the matter remanded for the trial court to conduct a new sexual offender classification hearing with proper advance notice of the hearing to all parties.

2001-P-0120 BOARD OF DEERFIELD TOWNSHIP TRUSTEES, Plaintiff-Appellee v. PACIFIC FINANCIAL SERVICES OF AMERICA, INC., et al., Defendants-Appellants.

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

2001-P-0126 ROBERT K. LIESE, Plaintiff-Appellee v. KENT STATE UNIVERSITY, et al., Defendants-Appellants.

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

APPELLATE REVIEW:

The denial of a motion to dismiss is not a final appealable order.

TRUMBULL

2000-T-0037 CITIBANK (SOUTH DAKOTA) N.A., Plaintiff-Appellant v. JOSEPH OHLIN, Defendant-Appellee.

Judgment reversed and remanded. See Opinion and Judgment Entry. [O'NEILL] (CHRISTLEY) (GRENDALL)

CIV.R. 60:

To prevail on a motion brought under Civ.R. 60(B), the movant must demonstrate that: (1) the party has a meritorious defense or claim to present if relief is granted; (2) the party is entitled to relief under one of the grounds stated in Civ.R. 60(B)(1) through (5); and (3) the motion is made within a reasonable time, and, where the grounds for relief are Civ.R. 60(B)(1), (2), or (3), not more than one year after the judgment, order, or proceeding was taken.

CIVIL:

Unless notice and an opportunity to be heard are given to opposing parties, a trial court has no authority to vacate its own judgment, whether upon motion of a party or *sua sponte*.

