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Court of Appeals, Eighth Appellate District

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August 9, 2018

105721 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
SUSAN LLOYD v ROOSEVELT PROPERTIES, LTD.

Affirmed in part, reversed in part, and remanded.

Frank D. Celebrezze, Jr., J., Eileen T. Gallagher, P.J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Breach of warranty of habitability; constructive eviction; breach of contract; R.C. 5321.04; R.C. 5321.16; R.C. 5321.07; security deposit; damages; attorney fees; manifest weight.*

The trial court's findings in favor of tenant for breach of the implied warranty of habitability, breach of contract, and constructive eviction were not against the manifest weight of the evidence. Landlord violated R.C. 5321.16(B) by withholding tenant's security deposit. Further, the trial court abused its discretion when it awarded excessive attorney fees pursuant to R.C. 5321.07 and in awarding compensatory damages to tenant.

106022 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
PERSEY TIGGS C/O INDIANHILLS HEALTHCARE GROUP, INC. v
OHIO DEPT. OF JOB AND FAMILY SERVICES

Affirmed in part; dismissed in part.

Frank D. Celebrezze, Jr., J., and Eileen A. Gallagher, A.J., concur; Melody J. Stewart, J., concurs in part and dissents in part with separate opinion.

KEY WORDS: *R.C. 5101.35; R.C. 119.12; R.C. Chapter 5163; medicaid eligibility requirements; administrative appeal; 42 C.F.R. 435.923; Ohio Adm.Code 5160-1-33; authorized representative; standing.*

The trial court did not err in its statutory interpretation when it found an authorized representative had standing to appeal the denial of an individual's medicaid eligibility to the trial court. The administrative agency lacked statutory authority pursuant to R.C. 119.12 to bring its appeal, and this court lacks jurisdiction to consider the agency's appeal.

106056 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v SONYA CAMMON

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Reversed and remanded.

Larry A. Jones, Sr., J., Mary Eileen Kilbane, P.J., and Melody J. Stewart, J., concur.

KEY WORDS: *Sufficiency; manifest weight; carrying a concealed weapon; obstruction of justice; tampering with evidence.*

The state's evidence was insufficient to sustain appellant's convictions.

106256 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
UBS FINANCIAL SERVICES, INC., ET AL. v ALBERT V. LACAVA, JR., ET AL.

Affirmed.

Frank D. Celebrezze, Jr., J., Mary J. Boyle, P.J., and Larry A. Jones, Sr., J., concur.

KEY WORDS: *Summary judgment; Civ.R. 56; charging order; R.C. 1705.19; fraudulent transfer; venue; statute of limitations; R.C. 1336.09; R.C. 1336.04; R.C. 1336.07; standing; R.C. 1336.08; transferee; operating agreement; attorney fees; R.C. 1705.18; R.C. 1705.081; Civ.R. 3; Civ.R. 12; waiver; interested party; due process.*

The trial court properly granted summary judgment in favor of appellee. The trial court did not err in ordering appellant to comply with the charging order. Appellant lacks standing to assert the rights of third parties or to challenge the trial court's judgment in order to protect their rights. Because appellant was not the prevailing party, the trial court did not err in determining that appellee was not required to pay appellant's attorney fees. The trial court did not abuse its discretion in denying appellant's motion to transfer venue because the record reflects that appellant waived the defense of improper venue. Appellant was an interested party in the trial court proceedings, and thus, the trial court did not err in denying appellant's motion to be removed as a defendant. The trial court's orders on summary judgment did not violate appellant's due process rights.

106275 PARMA MUNI. C CRIMINAL MUNI. & CITY
CITY OF PARMA v DANIEL J. TREANOR

Reversed and remanded.

Kathleen Ann Keough, J., Eileen A. Gallagher, A.J., and Eileen T. Gallagher, J., concur.

KEY WORDS: *Aggravated menacing, domestic violence, threats, self-defense, Castle Doctrine.*

Trial court erred in refusing to give the jury an instruction on self-defense and the Castle Doctrine. Both defenses are affirmative defenses to offenses where the threat of harm is an element of the

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offense. The evidence was sufficient to warrant the instructions because the defendant, who was inside his own home, had a reasonable belief of great bodily harm, and that he used a reasonable threat of force to repel what he perceived to be an imminent threat.

106311 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v MELINDA MCCAUGHEY

Affirmed.

Frank D. Celebrezze, Jr., J., Eileen A. Gallagher, A.J., and Patricia Ann Blackmon, J., concur.

KEY WORDS: Indictment delay; Crim.R. 5(B); motion to dismiss; speedy trial; R.C. 2945.71(C)(2).

Trial court did not err by dismissing indictment on speedy trial grounds. The statutory time for defendant's subsequent felony indictment began to run on the date of defendant's arrest, and the subsequent indictment 13 months after the date of arrest, with no other additional facts, violated defendant's constitutional rights.

106340 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v STEVEN HENDERSON, JR.

107334 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v STEVEN HENDERSON, JR.

Affirmed in part, reversed in part, and remanded.

Frank D. Celebrezze, Jr., J., Sean C. Gallagher, P.J., and Anita Laster Mays, J., concur.

KEY WORDS: Jail-time credit; R.C. 2967.191; confinement; community-based correctional facility; consecutive sentences; R.C. 2953.08; R.C. 2929.14(C)(4).

The trial court erred by failing to award appellant jail-time credit for the time he spent in the community-based correctional facility. The trial court did not err in imposing consecutive sentences because the court complied with R.C. 2929.14(C)(4) and made the requisite consecutive sentence findings.

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106341 CLEVELAND MUNI. C CRIMINAL MUNI. & CITY
CLEVELAND METROPARKS v MATTHEW L. SFERRA

Affirmed.

Anita Laster Mays, J., Mary Eileen Kilbane, P.J., and Tim McCormack, J., concur.

KEY WORDS: *R.C. 1547.41, operating a watercraft after sunset, R.C. 2921.29, failure to produce identification, Fifth Amendment right to travel, law enforcement jurisdiction on Lake Erie, R.C. 2301.33 and 4705.01, judicial practice of law, code of judicial conduct, Crim.R. 11(A), R.C. 1901.20, municipal court jurisdiction, manifest weight and sufficiency of the evidence.*

Interstate travel is a fundamental right but the right to intrastate travel, whether by motor vehicle or watercraft, is a privilege. The CMRD Unit has authority to enforce the law on Lake Erie within Cuyahoga County extending to the international boundary line between the United States and Canada. Crim.R. 11(A) allows a trial court to enter a not guilty plea on behalf of a defendant that refuses to plead. Appellant's convictions are supported by the manifest weight of the evidence, subsuming the sufficiency challenge.

106407 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
PAMELA PANTAGES v MICHAEL F. BECKER, ET AL.

Affirmed and remanded.

Sean C. Gallagher, J., and Melody J. Stewart, J., concur; Eileen A. Gallagher, A.J., concurs in judgment only with separate opinion.

KEY WORDS: *Arbitration; motion; compel; stay; de novo; contract; whole; context; language; intent; arbitration clause; placement; subsection; fee disputes; Rules of Professional Conduct; Ohio Prof.Cond.R. 1.5(f).*

Affirmed trial court's decision that denied defendants-appellants' motion to compel arbitration pursuant to R.C. 2711.03, to stay proceedings pursuant to R.C. 2711.02 and/or for order of dismissal. Upon examining the contract as a whole and reading the words of the arbitration clause in context, it was determined that the clear intent of the contracting parties was to limit the arbitration clause to disputes involving the division of attorney fees after termination of the employment agreement. The arbitration clause was placed within a subsection to the section of the agreement pertaining to the division of attorney fees, and the language referenced the Rules of Professional Conduct and any other requirements mandated by the Ohio Supreme Court for resolution of disputes between attorneys, which is consistent with arbitrating fee disputes pursuant to Ohio Prof.Cond.R. 1.5(f). Parties cannot be compelled to arbitrate a dispute they have not agreed to submit to arbitration.

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106423 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v BELVIN MCGEE

Affirmed.

Eileen T. Gallagher, P.J., Mary J. Boyle, J., and Patricia Ann Blackmon, J., concur.

KEY WORDS: *Megan's Law; Adam Walsh Act; de novo; resentencing; limited; classification; sexual predator; void; plea; stipulation; automatic; remedial; jurisdiction.*

When a defendant stipulates as part of his plea bargain that he is to be classified as a sexual predator, such classification is automatic and there is no need for the trial court to conduct a hearing. The trial court had jurisdiction to automatically impose the civil and remedial classification based on the defendant's stipulation at the time of his plea.

106465 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: C.W.

Affirmed.

Frank D. Celebrezze, Jr., J., Mary J. Boyle, P.J., and Larry A. Jones, Sr., J., concur.

KEY WORDS: *R.C. 2923.13(A)(2); having weapons while under disability; juvenile adjudication; motion to dismiss.*

The trial court did not err in denying a juvenile's motion to dismiss. The Ohio Supreme Court's decision in Hand does not ban the use of a prior juvenile adjudication as the disability element of the offense of having weapons while under disability.

106494 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
TUROCZY BONDING COMPANY v DONNELL MITCHELL

Affirmed.

Eileen T. Gallagher, J.; Anita Laster Mays, J., concurs; Tim McCormack, P.J., dissents (with separate opinion).

KEY WORDS: *Settlement agreement; enforce; manifest weight; email; contract; mutual assent; offer; acceptance; written contract; intent; terms; definite; consideration; dismissal with prejudice.*

The trial court did not err in granting plaintiff's motion to enforce the settlement agreement. Defendant agreed to the terms and

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conditions of a valid settlement agreement, only to subsequently change his mind. The email communications clearly reflect a definite offer and acceptance concerning the parties' agreement to mutually dismiss their claims with prejudice at their own cost. There is no evidence in this record to suggest that the parties did not intend to be bound by the terms of the settlement until formalized in a written document and signed by both parties.

106526 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
WOODS COVE III, LLC v FRANCESCA DIBLASI, ET AL.

Dismissed.

Tim McCormack, P.J., Frank D. Celebrezze, Jr., J., and Larry A. Jones, Sr., J., concur.

KEY WORDS: *Foreclosure; default judgment; void; service of process; Civ.R. 4.1; reasonably calculated; presumption; R.C. 2329.45; mootness.*

The judgment in foreclosure was not void because appellant failed to overcome the presumption of proper service pursuant to Civ.R. 4.1. Because the property has been sold, the proceeds were distributed, and appellant had not obtained a stay of the proceedings, the appeal is moot.

106633 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
DANA STALLWORTH v DOUG WOODS, ET AL.

Reversed and remanded.

Mary Eileen Kilbane, P.J., Mary J. Boyle, J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Motion for sanctions; vexatious litigant; abuse of discretion; findings of fact. Judgment reversed and remanded.*

The matter proceeded to trial before a visiting judge, who found in favor of defendants. The court entered judgment for the defendants on October 3, 2017. Three days later, the plaintiff moved the court for findings of fact and conclusions of law. On October 27, 2017, the defendants each filed respective motions for sanctions and vexatious conduct against the plaintiff. On November 20, 2017, the assigned judge, not the visiting judge, denied the respective motions. Nine days later, the visiting judge issued his findings of facts and conclusions of law. Without the benefit of these findings, the originally assigned judge lacked all of the necessary evidence to determine whether an award of sanctions was appropriate or whether plaintiff is a vexatious litigant. Because the trial court lacked all of the necessary evidence to make these determinations, the assigned judge's determination was premature.

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106789 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: A.M., ET AL.

Dismissed.

Eileen T. Gallagher, P.J., Sean C. Gallagher, J., and Anita Laster Mays, J., concur.

KEY WORDS: *Permanent custody; clear and convincing evidence; temporary custody; best interest; parental rights; permanent; withdraw; custody; factors; substance abuse; mental health; due process; abuse of discretion; frivolous; Anders; continuance; service; summons; complaint.*

With respect to an appeal by a mother from a juvenile court order that awarded permanent custody of her minor children to the county social service agency, her counsel's motion to withdraw had merit under Ohio Eighth Dist. Loc.R. 16(C) because upon review of the proceedings, the court found that there were no arguably meritorious issues. The appeal is frivolous because there was clear and convincing evidence to prove that termination of the mother's parental rights was warranted under R.C. 2151.414(E), and termination was in the child's best interests. Proper service of the permanent custody motion and hearing was accomplished under the Ohio Civil Rules. Mother's due process rights were not disregarded as to service. The trial court properly exercised its discretion in not granting the requested continuance.

106796 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DALE REED

Affirmed.

Frank D. Celebrezze, Jr., J., Tim McCormack, P.J., and Larry A. Jones, Sr., J., concur.

KEY WORDS: *Court costs; harmless error; indigency; R.C. 2947.23; continuing jurisdiction.*

The trial court erred by imposing court costs in its sentencing journal entries without advising appellant of the court costs in open court at sentencing. However, there is no need to remand the case to the trial court because the trial court retains continuing jurisdiction to waive, suspend, or modify the payment of court costs at any time after sentencing, and thus, appellant can file a motion to waive court costs in the trial court at any time.

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106852 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: RA. R., ET AL.

Affirmed.

Larry A. Jones, Sr., J., Melody J. Stewart, P.J., and Anita Laster Mays, J., concur.

KEY WORDS: *R.C. 2151.413(D)(3)(b)/temporary custody/permanent custody; manifest weight; best interest of the children.*

The trial court's decision that it was in the best interest of the children to award permanent custody to CCDCFS was not against the manifest weight of the evidence. The trial court considered the mother's mental and emotional illness, her incarceration and ability to regularly visit and support the children and the GAL's report and recommendation.

106939 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v TARISHA ROUSE

107333 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v TARISHA ROUSE

Sentence vacated; remanded for resentencing.

Patricia Ann Blackmon, J., Tim McCormack, P.J., and Eileen T. Gallagher, J., concur.

KEY WORDS: *Consecutive sentences, conceded error.*

Case remanded for resentencing after trial court failed to make statutory findings required for consecutive sentences.

107508 CLEVELAND MUNI. D ORIGINAL ACTION
STATE OF OHIO, EX REL., THE ESTATE OF ROBERT NICHOLS v
THE HONORABLE JUDGE NANCY M. RUSSO

Complaint dismissed. See journal entry and opinion of same date.

KEY WORDS: *Writ of prohibition; writ of mandamus; adequate remedy at law; law of the case; ambiguity.*

Relator's complaint for writs of prohibition and mandamus were sua sponte dismissed where an arguable ambiguity in an opinion of this court did not lead to the conclusions the respondent judge lacked jurisdiction to conduct a hearing on remand, or that relator was entitled to judgment as asserted. Relator also has an adequate remedy at law by way of appeal.