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Court of Appeals, Eighth Appellate District

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February 1, 2018

103555 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
EVANGELOS STAMATOPOULOS, ET AL. v ALL SEASONS CONTRACTING, ET AL.

Reversed and remanded.

Eileen T. Gallagher, P.J., and Frank D. Celebrezze, Jr., J., concur; Patricia Ann Blackmon, J., dissents (with separate opinion).

KEY WORDS: *Remand; scope; verdict; damages; specific performance; note; settlement agreement; possession; final entry; judgment; clarify.*

The trial court's judgment is reversed and remanded for the trial court to clarify portions of its final entry of judgment.

104788 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
FORCE INDOOR SPORTS LLC, ET AL. v DOMESTIC LINEN SUPPLY COMPANY, INC.

Affirmed.

Mary Eileen Kilbane, P.J., Eileen T. Gallagher, J., and Frank D. Celebrezze, Jr., J., concur.

KEY WORDS: *Arbitration; unconscionable; loser pays; motion to stay. Judgment affirmed.*

Trial court's denial of motion to stay pending arbitration was proper where the complaint contained an action for declaratory relief seeking a declaration that the arbitration agreement was unconscionable. The declaratory judgment issue should be resolved before proceeding with arbitration.

104919 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v KRISTLE A. KENDALL

Affirmed in part, reversed in part, and remanded.

Mary J. Boyle, J., Eileen A. Gallagher, A.J., and Melody J. Stewart, J., concur.

KEY WORDS: *Aggravated robbery; complicity; R.C. 2923.03(A)(2); sufficiency and manifest weight of the evidence; court costs; Crim.R. 43(A).*

Defendant's conviction for aggravated robbery was affirmed because there was sufficient evidence that defendant was complicit in the aggravated robbery and the conviction was not against the

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manifest weight of the evidence. The trial court failed to orally notify the defendant at the sentencing hearing that it was imposing court costs, which violated Crim.R. 43(A). Accordingly, the case was reversed for resentencing for the sole purpose of allowing the defendant to move for a waiver of court costs.

104981 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v RAYSHAWN GURLEY

Affirmed in part, vacated in part, and remanded.

Eileen T. Gallagher, J., Mary Eileen Kilbane, P.J., and Tim McCormack, J., concur.

KEY WORDS: Mandatory postrelease control; third-degree felony; substantial risk; serious physical harm; crime of violence.

Trial court erred by imposing discretionary postrelease control in the sentencing entry after properly imposing mandatory postrelease control on a crime of violence in open court and on the record.

105111 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v CARLTON JUNIOR SHAW

Affirmed in part, modified in part, and remanded.

Eileen T. Gallagher, J., and Tim McCormack, P.J., concur; Sean C. Gallagher, J., concurs in part and dissents in part (with separate opinion).

KEY WORDS: Sufficient evidence; tampering with evidence; knowingly; unmistakable crime; jury instruction; discharging firearm on or near prohibited premises; verdict form; misdemeanor; ineffective assistance of counsel.

Defendant's tampering with evidence conviction was supported by sufficient evidence where totality of circumstances indicated the defendant knew the police were likely to investigate a shooting incident.

Defendant's discharging a weapon on or near a prohibited premises was modified and reduced from third-degree felony to first-degree misdemeanor to conform to the verdict form that did not provide elevating language or the form of the offense.

Defendant's right to counsel was not violated even though his trial counsel did not request special jury instructions because the court's charge was a complete and accurate statement of Ohio law.

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105294 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
LUANN MITCHELL v AUSRA BABICKAS, ET AL.

Affirmed.

Mary Eileen Kilbane, J., Eileen A. Gallagher, A.J., and Larry A. Jones, Sr., J., concur.

KEY WORDS: *Motion for summary judgment; de novo; Civ.R.56; service; rebuttable presumption; Civ.R. 5(D), vexatious litigator; R.C. 2323.52; motion to hold case in abeyance; Civ.R. 6(B)(2); abuse of discretion.*

Judgment affirmed. Trial court properly granted summary judgment in favor of defendant. Scotts' motion for summary judgment contained a certificate of service as required by Civ.R. 5(D). There is no evidence in the record that the motion had been returned to defendant indicating failure of delivery. Moreover, the evidence submitted to the trial court clearly demonstrated a pattern of conduct engaged in by plaintiff was designed to harass the defendant. Additionally, the trial court properly exercised its discretion in proceeding with the case.

105336 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: A.C., ET AL.

Affirmed.

Patricia Ann Blackmon, J., Larry A. Jones, Sr., J., concur; Eileen A. Gallagher A.J., Concur with separate opinion attached.

KEY WORDS: *Termination of parental rights. Juvenile court's granting CCDCFS's motion for permanent custody is supported by clear and convincing evidence in the record that Father failed to obtain suitable housing for three of his children and failed to engage in mental health services.*

Termination of parental rights.

Juvenile court's granting CCDCFS's motion for permanent custody is supported by clear and convincing evidence in the record that Father failed to obtain suitable housing for three of his children and failed to engage in mental health services.

105344 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: J.S., III

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Affirmed.

Eileen A. Gallagher, A.J., Patricia A. Blackmon, J., concurs;
Larry A. Jones, Sr., J., concurs in judgment only

KEY WORDS: *Permanent custody, manifest weight, best interests.*

The juvenile court did not err granting permanent custody in favor of CCDCFS where the minor child's father had a previous parental rights termination and permanent custody was in the best interests of the child.

105347 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: A.C., ET AL.

Affirmed.

Larry A. Jones, Sr., J., and Patricia Ann Blackmon, J., concur; Eileen A. Gallagher, A.J., concurs with separate opinion.

KEY WORDS: *Parental rights; R.C. 2151.353/permanent custody; manifest weight.*

Competent, credible evidence supported the trial court's finding to place the minor children in the permanent custody of the agency. Placement with Mother, either father or grandmother was not in the best interest of the minor children. The trial court's ruling was not against the manifest weight of the evidence.

105474 DOMESTIC RELATIONS F CIVIL C.P.-JUV, DOM, PROBATE
DEBORAH D. FITZGERALD v JOHN W. FITZGERALD, III

105476 DOMESTIC RELATIONS F CIVIL C.P.-JUV, DOM, PROBATE
DEBORAH D. FITZGERALD v JOHN W. FITZGERALD, III

Reversed and remanded.

Anita Laster Mays, J., Melody J. Stewart, P.J., and Mary J. Boyle, J., concur.

KEY WORDS: *Qualified domestic relations orders, property settlement agreement, R.C. 3105.171(I), void or voidable judgment, final appealable order, Civ.R. 60, relief from judgment.*

A trial court's qualified domestic relations order that does not comply with the property settlement agreement approved by the court is voidable for error and subject to appeal. Where simple error does not initially exist, but a plan administrator subsequently rejects a QDRO, the proper vehicle to address the matter is through Civ.R. 60(B).

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105581 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JONATHAN SIMS

Affirmed.

Eileen T. Gallagher, P.J., Melody J. Stewart, J., and Patricia Ann Blackmon, J., concur.

KEY WORDS: *Motion; terminate; counsel; trial strategy; effective assistance; waiver; guilty plea; pretrial; good cause; conflict of interest; breakdown of communication; irreconcilable conflict; abuse of discretion.*

Defendant waived the right to appeal all nonjurisdictional issues arising at prior stages of the proceedings by entering a plea of guilty. The trial court did not abuse its discretion by denying defendant's motion to terminate counsel. Defendant failed to demonstrate good cause to warrant the termination of counsel.

105596 ROCKY RIVER MUNI. C CRIMINAL MUNI. & CITY
CITY OF ROCKY RIVER v SCOTT L. ZORC

Reversed and vacated.

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

KEY WORDS: *Rocky River Ordinance 333.031(A)(1), failure to change lanes when approaching safety vehicle with lights activated, Crim.R. 29(A), sufficiency of the evidence, manifest weight of the evidence, R.C. 4511.213(A)(1).*

The evidence was insufficient to support appellant's conviction for failing to change lanes when approaching a safety vehicle with lights activated. The video evidence depicts several vehicles in the center lane impeding appellant's ability to move to over. Appellant was unable to change lanes safely.

105597 CLEVELAND MUNI. C CRIMINAL MUNI. & CITY
CITY OF CLEVELAND v PETER O'DONNELL

Vacated and remanded.

Frank D. Celebrezze, Jr., J., Eileen T. Gallagher, P.J., and Larry A. Jones, Sr., J., concur.

KEY WORDS: *Failure to comply; no contest plea; finding of guilt; explanation of circumstances; R.C. 2937.07; doubly jeopardy; misdemeanor; petty offense; Crim.R. 11.*

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The record from the plea hearing reflects that appellant did not expressly tender a no contest plea, and the trial court did not enter a finding of guilt. The trial court did not advise appellant of the effect of his no contest plea, and thus, failed to comply with Crim.R. 11(E). Accordingly, appellant's plea and the trial court's sentence must be vacated.

105618 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ERSА FRIERSON

Affirmed and remanded.

Mary J. Boyle, J., Eileen A. Gallagher, A.J., and Eileen T. Gallagher, J., concur.

KEY WORDS: *Ineffective assistance of counsel, manifest weight of the evidence, inconsistent verdicts.*

The appellant's trial counsel was not ineffective for failing to (1) suppress an out-of-court identification, (2) object to hearsay testimony, (3) request closing argument, and (4) obtain an eyewitness expert. Further, the appellant's conviction was not against the manifest weight of the evidence, and the verdict was not inconsistent.

105758 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
M. W. v D. M.

Affirmed.

Sean C. Gallagher, P.J., Patricia Ann Blackmon, J., and Frank D. Celebrezze, Jr., J., concur.

KEY WORDS: *Civil stalking protection order; R.C. 2903.214; Civ.R. 65.1; subject-matter jurisdiction; personal jurisdiction; manifest weight.*

The trial court had jurisdiction over the petition for a civil stalking protection order filed under R.C. 2903.214 by a Cuyahoga County resident, and the full order was based on competent, credible evidence.

105803 ROCKY RIVER MUNI. C CRIMINAL MUNI. & CITY
CITY OF ROCKY RIVER v MELISSA L. BUCCI

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Affirmed.

Patricia Ann Blackmon, J., Eileen T. Gallagher, P.J., and Melody J. Stewart, J., concur.

KEY WORDS: National Highway Traffic Safety Administration; OVI; motion to suppress.

Trial court properly suppressed the evidence of field sobriety tests that were not conducted in accordance with the requirements of the NHTSA.