

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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July 12, 2018

104888 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v HECTOR MANUEL PEREZ

Reversed and remanded.

Eileen A. Gallagher, A.J. and Mary Eileen Kilbane, J., concur; Tim McCormack, J., dissents (with separate opinion attached).

KEY WORDS: *Rejection of a plea. The trial court abused its discretion in rejecting the plea set forth on the record without explaining its reasons for the rejection.*

105849 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
PAUL J. BROBST, ET AL. v CITY OF LYNDHURST

Affirmed in part, reversed in part, and remanded.

Eileen T. Gallagher, P.J.; Melody J. Stewart, J., concurs in judgment only; Patricia Ann Blackmon, J., dissents with separate attached opinion.

KEY WORDS: *Summary judgment; ordinance; home occupation; retail store; sale of goods; abuse of discretion; statutory construction; unambiguous, clear meaning; expressio unius est exclusio alterius.*

The trial court erred by granting summary judgment in favor of the city. The trial court's finding is not supported by the broad definition of a "home occupation" set forth in L.C.O. 1150.09(c)(73). However, the trial court did not abuse its discretion by denying the city's motion to submit additional evidentiary materials in support of its motion for summary judgment.

105971 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
AIDS TASKFORCE OF GREATER CLEVELAND v OHIO DEPARTMENT OF HEALTH, ET AL.

Affirmed.

Tim McCormack, P.J., Larry A. Jones, Sr., J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Preliminary injunction; final appealable order; meaningful or effective remedy; R.C. 2505.02(B)(4); substantial likelihood of success; irreparable harm; abuse of discretion.*

Because appellant would be deprived of a meaningful and effective remedy if it could not have appealed the trial court's denial of its

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motion for preliminary injunction before a final judgment, the trial court's order is a final, appealable order. The trial court did not abuse its discretion in denying appellant's motion for preliminary injunction where the injunction factors weighed in favor of denial.

106007 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
1229 SUMMIT, LLC v LAWRENCE CATER, ET AL.

Affirmed.

Anita Laster Mays, J., Patricia Ann Blackmon, P.J., and Larry A. Jones, Sr., J., concur.

KEY WORDS: Sufficient evidence, judgment of ejectment, damages, plain error.

The trial court's judgment and opinion are supported by sufficient evidence. The trial court did not improperly deny the appellant's demand for judgment of ejectment because they are not the lawful owners of the property in question. The trial court did not improperly disregard the parties' liquidated damages agreement by issuing an order to the breached party to make them whole. The trial court's reconsidered opinion was issued pursuant to the appellate court directive.

106116 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DANIEL J. GREEN

Affirmed in part, vacated in part, and remanded.

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

KEY WORDS: R.C. 2929.14(C)(4), consecutive sentences, sentencing, nunc pro tunc.

The trial court made the correct findings in accordance with R.C. 2929.14(C)(4). The trial court sentenced the appellant to nine years imprisonment, but stated at the sentencing hearing that he was sentenced to eight years. The journal entry reflected the mistake the trial court made by stating the appellant was sentenced to eight years, but the aggregate sentence was actually nine years. A nunc pro tunc order can only be used to correct what the trial court actually did.

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106123 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v WAYNE C. TURNER

Reversed and remanded.

Eileen A. Gallagher, A.J., Melody J. Stewart, J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Revocation of community control, allied offenses, res judicata, sentencing anew.*

Appellant's allied offense challenge was barred on appeal from his community-control-revocation hearing by res judicata. The trial court erred by failing to sentence appellant anew following the revocation of his community control.

106153 LAKEWOOD MUNI. C CRIMINAL MUNI. & CITY
CITY OF LAKEWOOD v JOHN A. TATE III

Reversed and remanded.

Larry A. Jones, Sr., J., Tim McCormack, P.J., and Anita Laster Mays, J., concur.

KEY WORDS: *municipal court jurisdiction, Ohio Uniform Traffic Ticket, driving under financial responsibility law suspension, limited driving privileges.*

The municipal court had jurisdiction over a uniform traffic ticket.

The evidence did not support the driving under suspension conviction; appellant had limited driving privileges and the record demonstrates that he was driving within the privileges.

106218 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v PHILIP J. CARTY

106302 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v PHILIP J. CARTY

Affirmed.

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

KEY WORDS: *OVI; guilty plea, Crim.R. 11; ineffective assistance of counsel; Veterans Treatment Court.*

Judgment affirmed. Defendant's pleas were knowingly, intelligently, and voluntarily made. Defense counsel was not ineffective. The trial court did not abuse its discretion when it denied defendant's request for a transfer to Veterans Treatment

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Court when the defendant was subject to mandatory prison time and has a lengthy criminal record, including several OVIs.

106383 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
CINDY SHINGLER v PROVIDER SERVICES HOLDINGS L.L.C., ET AL.

Affirmed.

Eileen A. Gallagher, A.J., and Tim McCormack, J., concur; Mary Eileen Kilbane, J., dissents (with separate opinion attached).

KEY WORDS: *Dismissal of complaint; motion for judgment on pleadings; common-law tort for wrongful discharge in violation of public policy; Greeley claim; unlicensed practice of nursing; R.C. 4723.03; reporting; Ohio Board of Nursing; retaliatory discharge; R.C. 4723.341; R.C. 4113.52; jeopardy; adequate statutory remedy.*

Trial court did not err in dismissing employee's complaint for failure to state a claim for wrongful discharge in violation of public policy where jeopardy element of claim was not satisfied. Adequate statutory remedy existed under R.C. 4723.33 and 4723.341 — incorporating the rights and duties granted "whistleblowing" employees under R.C. 4113.52 — that addresses society's interest in protecting employees who report violations of R.C. Chapter 4723. Employee's failure to comply with the requirements for statutory relief for wrongful discharge did not render statutory remedy inadequate.

106544 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
LATOYA CEASOR, INDIVIDUALLY AND AS ADMINISTRATRIX v
CITY OF EAST CLEVELAND, ET AL.

Affirmed.

Tim McCormack, P.J., Anita Laster Mays, J., and Larry A. Jones, Sr., J., concur.

KEY WORDS: *Summary judgment; wrongful death; R.C. 2744.02; R.C. 2744.03; immunity; willful and wanton misconduct; wanton or reckless manner; final appealable order; motion to strike.*

The trial court's denial of summary judgment for the city was appropriate because there were genuine issues of material fact as to whether the city was immune from liability for the decedent's death. The trial court did not abuse its discretion in denying the city's motion to strike.

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106607	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v MICHAEL ROLLING			

Affirmed.

Anita Laster Mays, J., Eileen A. Gallagher, A.J., and Mary J. Boyle, J., concur.

KEY WORDS: Res judicata.

Rolling's claims are barred by res judicata because these assigned errors were already decided by this court.