

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 1 of 5

July 19, 2018

105940	COMMON PLEAS COURT STATE OF OHIO v TERRANCE TIMMONS, JR.	A	CRIMINAL C.P.
105941	COMMON PLEAS COURT STATE OF OHIO v TERRANCE TIMMONS, JR.	A	CRIMINAL C.P.
105942	COMMON PLEAS COURT STATE OF OHIO v TERRANCE TIMMONS	A	CRIMINAL C.P.

Affirmed.

Sean C. Gallagher, J., Eileen T. Gallagher, P.J., and Melody J. Stewart, J., concur.

KEY WORDS: *Drugs; heroin; Crim.R. 11; plea; voluntary; maximum; consecutive; sentence; clear and convincing; R.C. 2929.11; R.C. 2929.12; ineffective assistance.*

Appellant's convictions for drug-related offenses and the sentences imposed in three underlying cases were upheld. The record reflected that the trial court complied with Crim.R. 11 and that appellant's guilty pleas were knowing, intelligent, and voluntary. Trial court did not err in the imposition of maximum, consecutive sentences, and it could not be determined by clear and convincing evidence that the record did not support the trial court's findings or the sentence imposed. Appellant failed to demonstrate ineffective assistance of counsel.

106132	JUVENILE COURT DIVISION IN RE: G.J.A.	F	CIVIL C.P.-JUV, DOM, PROBATE
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Affirmed.

Mary Eileen Kilbane, J., Eileen A. Gallagher, A.J., and Patricia A. Blackmon, J., concur.

KEY WORDS: *Custody; shared parenting plan; contempt; purge order; magistrate's decision; abuse of discretion.*

Defendant-appellant mother's appeal from the juvenile court's order adopting the magistrate's decision is affirmed. The juvenile court did not abuse its discretion in adopting an order in furtherance of and providing clarification of a nearly three-year-old order finding her in contempt of her shared parenting plan with plaintiff-appellee father ordering her to purge her contempt.

CASE DECISION LIST

106151 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
UH RAINBOW BABIES & CHILDREN'S HOSPITAL v CARESOURCE

Affirmed.

Kathleen Ann Keough, J., Eileen A. Gallagher, A.J., and Mary J. Boyle, J., concur.

KEY WORDS: *Arbitration, nonsignatory, compel, insurance coverage.*

Trial court did not abuse its discretion in finding that the nonsignatory to the contract containing a mandatory arbitration provision did not seek to benefit from the contract. The claim was an insurance coverage dispute that would be determined by relevant Ohio law and the insured's certificate of coverage, which does not contain an arbitration provision. The trial court did not abuse its discretion in denying the motion to stay the proceedings and compel arbitration.

106170 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DUSTIN J. BEAVER

Affirmed as modified.

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

KEY WORDS: *Conceded error; consecutive sentence; harmless; moot; served sentence; modified.*

Although the parties concede that the trial court did not make the requisite findings prior to imposing consecutive sentences, the error is harmless. The sentence that the trial court ordered the new sentence consecutive to was already served at the time of sentencing.

106194 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v MAISHA L. THOMAS

Affirmed.

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

KEY WORDS: *Assault; R.C. 2903.13(A); felony; caretaker; developmentally disabled; hearsay; Evid.R. 801(C); Evid.R. 802; exceptions; Evid.R. 804(B)(5); unavailable; incompetent; Evid.R. 803(3); state of mind; Evid.R. 803(2); excited utterance; Confrontation Clause; harmless error; reasonable probability; conviction.*

CASE DECISION LIST

(Case 106194 continued)

Appellant's conviction for assault of a developmentally disabled person was affirmed. Trial court's allowance of hearsay testimony and alleged Confrontation Clause violation concerning statements made by nontestifying physically and mentally impaired victim was determined to be harmless because there was no reasonable possibility that the improperly admitted evidence contributed to the conviction. The jurors heard other evidence of the assault, including testimony from an eyewitness who described the assault in detail and testimony from another witness, whom the appellant called, who testified appellant admitted to the assault. Photographs of the victim depicted an injury to his inner lip that was consistent with being slapped across the face.

106219 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ISRAEL D. LUGO

Reversed and remanded.

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

KEY WORDS: Sexual predator classification; criminal history; recidivism.

As a result of the limited proceedings, the sexual predator classification is reversed and the matter remanded for the purpose of conducting a proper sexual offender classification hearing in accordance with State v. Eppinger and with full consideration of all factors enumerated in former R.C. 2950.09(B)(2).

106226 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DAVID FONTANEZ

Affirmed as modified.

Tim McCormack, P.J., Eileen T. Gallagher, J., and Melody J. Stewart, J., concur.

KEY WORDS: Proportionate sentence; rape; kidnapping; recommended sentence; R.C. 2929.11; R.C. 2953.08(D)(1).

Defendant-appellant's nine-year sentence was within the range of his recommended sentence. Because the sentence was authorized by law, had been recommended jointly by the defendant and the prosecutor, and was imposed by a sentencing judge, it was not subject to appellate review.

CASE DECISION LIST

106234 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
RESCO HOLDINGS, LLC v AIU INSURANCE CO., ET AL.

Affirmed.

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

KEY WORDS: *Equitable contribution; pro rata time-on-risk; “all sums” approach; allocation; insurance coverage; fair share; equity; joint claims; interest; prejudgment interest; postjudgment interest.*

Trial court properly applied all sums approach to determining an insurer’s equitable share of insurance coverage liability.

Two insurance plaintiffs may jointly prosecute equitable contribution claim against another insurer who has not paid its fair share of insurance coverage liability.

Where judgment entry ordered interest but did not make any findings necessary for prejudgment interest, the judgment entry authorizes postjudgment, rather than prejudgment interest.

106337 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
KAREN RIMMER, ET AL. v CITIFINANCIAL, INC.

Affirmed.

Eileen T. Gallagher, P.J., Anita Laster Mays, J., and Larry A. Jones, Sr., J., concur.

KEY WORDS: *Intervention as of right; permissive intervention; class action; class notice; discovery; affidavit; Civ.R. 24; explanation; abuse of discretion; untimely; final judgment.*

Civ.R. 24 does not require trial courts to make findings of fact or conclusions of law. Appellants’ motions to intervene were untimely. Consequently, the trial court did not abuse its discretion in denying appellants’ separate motions to intervene.

106365 CLEVELAND MUNI. C CRIMINAL MUNI. & CITY
CITY OF CLEVELAND v JOSHUA OKE

Sentence vacated and defendant discharged.

Patricia Ann Blackmon, J., and Mary Eileen Kilbane, P.J. concur; Sean C. Gallagher, J., concurs with separate opinion.

KEY WORDS: *Double jeopardy; drug court.*

The Cleveland Municipal Drug Court’s imposition of two successive

CASE DECISION LIST

(Case 106365 continued)

sentences violated the prohibition against double jeopardy.

106471 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
SHER SMILEY v CITY OF CLEVELAND

Affirmed.

Mary Eileen Kilbane, P.J., Sean C. Gallagher, J., and Patricia A. Blackmon, J., concur.

KEY WORDS: *Slip and fall; R.C. 2744.02; immunity; political subdivision; employee; negligence; physical defect.*

The trial court properly granted summary judgment in favor of the political subdivision on the basis that it was immune from liability for plaintiff-appellant's personal injury claim. Plaintiff-appellant failed to establish the physical defect exception to immunity under R.C. 2744.02(B)(4). Apart from her testimony that she fell after stepping on a metal door strip at a recreation center pool complex where it was "wet all over," she introduced no evidence that the metal strip was in any way defective.

106541 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
H.P. MANUFACTURING COMPANY, INC. v WESTFIELD INSURANCE COMPANY, ET AL.

Affirmed.

Kathleen Ann Keough, J., Melody J. Stewart, P.J., and Frank D. Celebrezze, Jr., J., concur.

KEY WORDS: *Employer liability insurance; bodily injury; intentionally caused; equipment safety guard; breach of contract; professional negligence.*

Where the employer liability insurance policy at issue specifically excluded coverage for an employee's bodily injury intentionally caused or aggravated by the employer, and the jury in the employee's workplace intentional tort case found that the employer had removed an equipment safety guard with the intent to injure its employee, the trial court properly granted summary judgment to the insurer on the employer's claims for declaratory judgment and breach of contract, and to the agency that sold the insurance to the employer on the employer's claim for professional negligence.