

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 1 of 8

June 14, 2018

105248 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
ARNOLD BLACK v DET. RANDY HICKS, ET AL.

Reversed and remanded.

Frank D. Celebrezze, Jr., J., Anita Laster Mays, P.J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Jurisdiction; jury trial; final appealable order; notice of appeal; memorandum in support of jurisdiction; motion for stay; S.Ct.Prac.R. 7.01.*

The trial court entered the May 9, 2016, June 3, 2016, and July 7, 2016 orders, commenced a jury trial on May 25, 2016, and accepted the jury's verdict on May 31, 2016, after the court had been divested of jurisdiction because of pending appeals in this court and the Ohio Supreme Court. These orders and the jury's verdict are null and void, and therefore, must be vacated.

105450 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
BLISSWOOD VILLAGE HOME OWNERS ASSOCIATION v
CLEVELAND COMMUNITY REINVESTMENT, LLC, ET AL.

Dismissed in part; affirmed in part.

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

KEY WORDS: *Foreclosure; discovery sanctions; confirmation of sale; R.C. 2329.45; mootness; attorney fees.*

The debtor's failure to seek a stay rendered his appeal from the order confirming the sale moot because the property had been sold and the proceeds were distributed. Therefore, the proceeds of the sale are no longer under this court's jurisdiction and there is no effective relief available. The trial court's award of attorney fees was not an abuse of discretion.

105591 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v EDDIE JAMES BRISBON

Affirmed.

Kathleen Ann Keough, J., Anita Laster Mays, P.J., and Frank D. Celebrezze, Jr., J., concur.

KEY WORDS: *rape, gross sexual imposition, sexual battery, complete defense, lesser included, felonious assault, assault, allied*

CASE DECISION LIST

(Case 105591 continued)

offenses.

The evidence was insufficient to warrant lesser included instructions of gross sexual imposition and sexual battery on the rape offense, or assault on the felonious assault offense. Defendant offered a complete defense to rape and based on the evidence, the jury could not reasonably find the defendant not guilty of rape and only guilty of gross sexual imposition or sexual battery. The victim's injuries and the defendant's threats were sufficient to prove serious physical harm; thus, an acquittal on the felonious assault charge was not reasonable, and a lesser included instruction of assault was not warranted. Rape and kidnapping are not allied offenses where multiple acts of kidnapping resulted in the increase risk of harm to the victim, the restraint was prolonged, the confinement was secretive, and movement was substantial.

105825	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v SHARON D. FIPS			

Affirmed as modified and remanded for resentencing.

Eileen A. Gallagher, A.J., and Anita Laster Mays, J., concur; Melody J. Stewart, J., dissents (with separate opinion attached).

KEY WORDS: *Assault on a peace officer, manifest weight.*

The weight of the evidence did not support appellant's conviction for assault. Appellant's conviction was reduced to the lesser included offense of disorderly conduct.

106023	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v NEEKO GORDON			

Affirmed.

Patricia Ann Blackmon, J., and Mary Eileen Kilbane, J., concurs; Eileen A. Gallagher, A.J., concurs with attached separate opinion.

KEY WORDS: *Murder; identity of the accused; sufficiency of the evidence; manifest weight of the evidence; admission of evidence; authentication of evidence; jail calls; social media posts; other acts evidence; harmless error; flight instruction.*

Murder and associated convictions affirmed. There was sufficient evidence that defendant was the person who shot and killed the victim. One eyewitness identified defendant as the shooter, and two other eyewitnesses saw someone wearing clothes similar to defendant running away from the scene. A social media post was not properly authenticated, and other weapons testimony was improperly admitted. However, these errors were harmless in light

CASE DECISION LIST

(Case 106023 continued)

of the substantial evidence in favor of defendant's convictions.

106081 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
LEWIS C. MERLETTI v E-MERGING TECHNOLOGIES GROUP, INC., ET AL

Affirmed.

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

KEY WORDS: *Civ.R. 56/summary judgment; bankruptcy jurisdiction.*

The trial court did not err in granting appellees summary judgment. Appellant participated in and reached what was considered a complete settlement with appellees in the bankruptcy proceedings. In the bankruptcy context, res judicata applied and appellant cannot file a derivative claim outside of the bankruptcy.

106126 CLEVELAND MUNI. G CIVIL MUNI. & CITY
ANTOINETTE MCCALL v LIANA SAGE

Affirmed; remanded.

Sean C. Gallagher, J., Mary J. Boyle, P.J., and Larry A. Jones, Sr., J., concur.

KEY WORDS: *Small claims; Civ.R. 60(B); R.C. 1925.14; relief from judgment.*

The trial court did not abuse its discretion in granting a motion for relief from the final judgment that was entered based on a mistake in fact.

106144 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ANTHONY FREEMAN

Affirmed.

Eileen A. Gallagher, A.J., Mary Eileen Kilbane, J., and Tim McCormack, J., concur.

KEY WORDS: *Promoting prostitution, consecutive sentences, R.C. 2929.12, motion to withdraw plea.*

Trial court considered the appropriate sentencing factors under R.C. 2929.12 when imposing sentence on appellant. The trial court did not err in denying appellant's post-sentence motion to withdraw his guilty pleas and was not required to hold a hearing on the

CASE DECISION LIST

(Case 106144 continued)

motion. Appellant was not denied effective assistance of counsel. Appellant's consecutive sentences were not contrary to law.

106167 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v LEON ROSS III

Affirmed.

Anita Laster Mays, J., Mary J. Boyle, P.J., and Patricia Ann Blackmon, J., concur.

KEY WORDS: Consecutive sentences, R.C. 2929.14(C)(4), plain error, allied offenses.

The trial court did not err when it sentenced the appellant to serve consecutive sentences because it made the necessary findings on the record pursuant to R.C. 2929.14(C)(4). The trial court did not commit plain error when it did not merge the aggravated robbery and theft counts because the appellee has not demonstrated that the two offenses were committed with the same conduct and without a separate animus.

106176 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DEVONTAE WARE

Affirmed.

Eileen A. Gallagher, A.J. and Anita Laster Mays, J., concur; Mary J. Boyle, J., concurs in judgment only.

KEY WORDS: R.C. 2929.11(B); inconsistent and disproportionate sentence; clearly and convincingly contrary to law; R.C. 2929.12(B), (E); seriousness and recidivism factors.

Defendant's sentence did not violate consistency or proportionality requirements under R.C. 2929.11(B) where defendant received a longer sentence than his codefendant arising out of a bank robbery. Defendant and codefendant pled guilty to different offenses and had different roles in the robbery. Trial court's statements at the sentencing hearing and in its sentencing journal entry that it had considered required factors were sufficient to comply with trial court's obligation to consider seriousness and recidivism factors under R.C. 2929.12 when sentencing defendant.

CASE DECISION LIST

106232 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
ERIC RAUDINS, ET AL. v WILLIAM HOBBS, ET AL.

106233 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
ERIC RAUDINS ET AL v WESTFIELD INSURANCE COMPANY ET AL

106236 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
ERIC J. RAUDINS, ET AL. v WILLIAM HOBBS, ET AL.

106238 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
ERIC J. RAUDINS, ET AL. v WESTFIELD INSURANCE CO., ET AL.

Affirmed.

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

KEY WORDS: *Insurance coverage; businessowners policy; non-owned auto liability endorsement; contract interpretation; definition of insured; complicated policy provisions; ambiguity; policy exclusion.*

Trial court did not err in entering summary judgment on the issue of insurance coverage. Although policy provisions were complicated and involved, policy when read as a whole was not ambiguous. Trial court properly concluded that under a plain reading of the relevant provisions, driver responsible for accident was entitled to liability coverage under the family auto insurance policy that insured his vehicle but was not an insured for purposes of the non-owned auto liability endorsement of a businessowners policy purchased by two business entities of which he was an officer and director. Trial court properly found that employee exclusion in family auto insurance policy did not eliminate coverage.

106245 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
SUNSHINE LIMITED PARTNERSHIP v C.A.S.T.L.E. HIGH SCHOOL, INC.

Reversed and remanded.

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

KEY WORDS: *Default judgment; answer; complaint; Civ.R. 60(B).*

Trial court abused its discretion in denying defendant's Civ.R. 60(B) motion for relief from default judgment where the defendant's motion was timely, the defendant had demonstrated it had a meritorious defense by filing an answer to the complaint, and defendant demonstrated it was entitled to relief under Civ.R. 60(B)(5) because the trial court had improperly granted default judgment even though the defendant had filed an answer.

CASE DECISION LIST

106287 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DAVID E. EICHELSERFER

Affirmed.

Anita Laster Mays, J., Tim McCormack, P.J., and Eileen T. Gallagher, J., concur.

KEY WORDS: *Restitution, economic loss, R.C. 2929.18(A)(1).*

The trial court did not abuse its discretion when it ordered the appellant to pay the costs of replacing a damaged VTM unit because the order of restitution did not exceed the amount of economic loss in accordance with R.C. 2929.18(A)(1).

106295 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
HAWKEN SCHOOL v NANCY NORSTROM

Reversed.

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

KEY WORDS: *Summary judgment; res judicata; collateral attack; dismissal; with prejudice; without prejudice; statute of limitations; legal error; clerical error; Civ.R. 60; final order; void; nullity; motion for reconsideration.*

Motions for reconsideration of a final judgment in the trial court are a nullity and trial courts do not have jurisdiction to address them. The court's order granting plaintiff's motion for reconsideration is null and void. Thus, the reconsideration order is treated as if it did not occur. The trial court erred in granting summary judgment in favor of plaintiff and denying defendant's Civ.R. 56(B) motion for summary judgment.

106343 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v SAYE'QUEE L. HALE

Affirmed.

Tim McCormack, P.J., Eileen T. Gallagher, J., and Anita Laster Mays, J., concur.

KEY WORDS: *Judicial release; R.C. 2929.20; eligible offender; premature.*

Hale's claim that the court erred when it ordered he was not eligible for judicial release in stating "no judicial release" in its sentencing entry was premature. The appeal is not ripe for review until Hale

CASE DECISION LIST

(Case 106343 continued)

becomes an eligible offender and files a motion for judicial release.

106362 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JARON SOLOMON

Affirmed.

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

KEY WORDS: Motion to withdraw guilty plea; res judicata.

Court did not err by denying appellant's second motion to withdraw guilty plea. Res judicata barred his arguments, which were identical to those he made in his direct appeal.

106433 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: T.H.

Affirmed.

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

KEY WORDS: Juvenile; delinquency; manifest weight; ineffective assistance of counsel; cold-stand identifications

Appellant did not establish the prejudice prong of an ineffective assistance of counsel claim regarding failure to seek suppression of a cold-stand identification because the victim identified appellant from a photo array, the validity of which appellant does not dispute on appeal.

106481 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
NORMAN MILLSTEIN v KEVAN MILLSTEIN, ET AL.

Affirmed.

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

KEY WORDS: Trust; equitable relief, equitable reimbursement, income taxes, Civ.R. 12, motion to dismiss, R.C. 5804.16, R.C. 5804.10.

Trial court did not err in granting defendants motion to dismiss for failure to state a claim where appellant's petition sought equitable reimbursement for income taxes he paid on trusts he created for the benefit of defendants. The equitable remedy sought by

CASE DECISION LIST

(Case 106481 continued)

appellant directly contradicted the limitations on trust modification set forth by the legislature in R.C. 5804.16 and 5804.10. No court may employ equitable principles to circumvent valid legislative enactments.

106487 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: J.M., ET AL.

Affirmed.

Anita Laster Mays, J., and Eileen T. Gallagher, P.J., and Melody J. Stewart, J., concur.

KEY WORDS: R.C. 2151.414(B)(1), best interest of the child, clear and convincing evidence, abuse of discretion.

The juvenile court did not abuse its discretion when it awarded permanent custody of the children to CCDCFS. The court considered the factors in R.C. 2151.414(B)(1) when it determined by clear and convincing evidence that it is in the best interest of the children to grant permanent custody of the children to the agency that filed the motion for permanent custody.