

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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March 8, 2018

104962 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
AARON RIEDEL, ET AL. v AKRON GENERAL HEALTH SYSTEM, ET AL.

104968 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
AARON RIEDEL, ET AL. v AKRON GENERAL HEALTH SYSTEM, ET AL.

Affirmed.

Anita Laster Mays, J., Tim McCormack, P.J., and Frank D. Celebrezze, Jr., J., concur.

KEY WORDS: *Patient Protection and Affordable Care Act, 42 U.S.C. 18001, R.C. 2315.18, 2323.43, and 2343.41, economic and noneconomic damages, offset of future economic damages, collateral source benefit offsets, Civ.R. 59, new trial, R.C. 2744.05, political subdivision collateral source benefit offsets, Civ.R. 50, directed verdict, judgment notwithstanding the verdict, respondeat superior, agency by estoppel.*

The trial court properly granted appellees a new trial on the issue of noneconomic damages only where substantial medical damages were awarded and there is unrefuted evidence of pain and suffering. The trial court properly denied appellants' request for reduction of future economic damages under the Affordable Care Act. As this court held in Jones v. MetroHealth Med. Ctr., 8th Dist. Cuyahoga No. 102916, 2017-Ohio-7329, the offset is applicable under R.C. 2744.05 to political subdivisions, but is properly excluded under R.C. 2323.41 which excepts collateral source benefits that stem from statutory and contractual subrogation. The trial court did not err in holding appellant hospital liable for the acts of a contractor physician under a theory of agency by estoppel where the hospital holds itself out to be a provider of medical services and, in the absence of notice or knowledge to the contrary, the patient looks to the hospital, not the physician, to provide competent medical care.

105256 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v HAROLD V. DAVIS

Affirmed.

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

KEY WORDS: *Preindictment delay, sufficiency and manifest weight of the evidence, hearsay exceptions, Evid.R. 801, 802 and 803, R.C. 2907.02(A)(1)(c), constitutionally void for vagueness.*

Appellant failed to demonstrate actual prejudice from a 16-year preindictment delay as only appellant and the victim were present and the last-minute potential witness could only provide hearsay

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testimony that was not subject to exceptions. The trial court's decision was not against the sufficiency and manifest weight of the evidence where sexual penetration was undisputed and appellant admitted that the victim was sleeping at the time. R.C. 2907.02(A)(1)(c) is not constitutionally void for vagueness because it: (1) contains ascertainable standards of guilt, (2) provides sufficient notice of the conduct proscribed, and (3) contains sufficient guidelines to avoid arbitrary or discriminatory enforcement.

105354 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v WILLIAM R. LOOBY

Reversed, vacated, and remanded.

Eileen T. Gallagher, J.; Kathleen Ann Keough, P.J., concurs; Melody J. Stewart, J., dissents (with separate opinion).

KEY WORDS: Guilty plea; Crim.R. 11(C)(2)(c); constitutional rights; waiver; strict compliance.

Defendant's guilty plea was invalid where court failed to explain that by pleading guilty, the defendant was waiving all constitutional rights associated with trial.

105363 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v SHAWN M. MILLER

Reversed, vacated, and remanded.

Eileen T. Gallagher, J.; Kathleen Ann Keough, P.J., concurs; Melody J. Stewart, J., dissents (with separate opinion).

KEY WORDS: Guilty plea; Crim.R. 11(C)(2)(c); constitutional rights; waiver; strict compliance.

Defendant's guilty plea was invalid where court failed to explain that by pleading guilty, the defendant was waiving all constitutional rights associated with trial.

105403 CLEVELAND MUNI. G CIVIL MUNI. & CITY
CITY OF CLEVELAND v TATIONA CUNNINGHAM

Affirmed.

Tim McCormack, P.J., and Frank D. Celebrezze, Jr., J., concur; Mary J. Boyle, J., concurs in judgment only.

KEY WORDS: *OVI; field sobriety tests; motion to suppress; findings of fact and conclusions of law; Crim.R. 12(F); R.C. 4511.19(D)(4); NHTSA standards; substantial compliance; police officer's observations; cross-examination; relevance; confrontation; abuse of discretion.*

Appellant's request during the morning of trial for a "written ruling" does not amount to a timely request for findings and conclusions. Because the record contained a sufficient basis for review, the appellant was not prejudiced by the court's failure to issue findings and conclusions, and we are able to address the merits of her claims. The trial court properly considered the testimony of the arresting police officers where such testimony consisted of the officers' observations made during the appellant's performance during the field sobriety tests. Where the city presented competent testimony concerning the NHTSA standards and the officer testified as to numerous instructions he gave to the appellant in administering the walk-and-turn test, the trial court did not err in finding substantial compliance. The results of the walk-and-turn test were therefore properly admitted. The trial court did not abuse its discretion when it prohibited cross-examination regarding the administration of the suppressed HGN test, and the appellant was not deprived of her right of confrontation.

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| 105590 | COMMON PLEAS COURT | A | CRIMINAL C.P. |
| STATE OF OHIO v KINYATAE WILLIAMS | | | |

Affirmed and remanded.

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

KEY WORDS: *Kidnapping; gross sexual imposition; competency to testify; speedy trial; sufficiency; court costs.*

Seven-year old was competent to testify where the record reflected that she appreciated her responsibility to tell the truth. Defendant's constitutional speedy trial rights were not violated where the claimed delay was not presumptively prejudicial. Appellant's convictions were supported by sufficient evidence in the record. Trial court did not err in considering a prior felony rape conviction appellant committed as a juvenile as part of the sexually violent predator analysis under R.C. 2971.01(H)(2). The trial court's failure to impose court costs at the sentencing hearing was not reversible error pursuant to State v. Beasley, Slip Opinion No. 2018-Ohio-493.

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105604 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
CITY OF CLEVELAND, OHIO v OHIO BUREAU OF WORKERS' COMPENSATION

Affirmed.

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

KEY WORDS: *Ohio Bureau of Workers' Compensation; excessive workers' compensation insurance premiums; premium overcharges; public employers; group-rating program; unjust enrichment; equitable restitution; R.C. 4123.29; R.C. 4123.34; R.C. 4123.39; subject matter jurisdiction; failure to exhaust administrative remedies; R.C. 4123.291; Ohio Adm.Code 4123-14-06; summary judgment; Ohio Adm.Code 4123-17-17(C); statute of limitations; R.C. 126.01; R.C. 2307.05; accrual of statute of limitations on unjust enrichment claim; voluntary payment doctrine; competing expert testimony; manifest weight of the evidence.*

Trial court did not err in granting partial summary judgment as to liability in favor of city and against the Ohio Bureau of Workers' Compensation ("BWC") and thereafter awarding city over \$4.5 million in restitution on the city's claim that it was unlawfully charged excessive workers' compensation insurance premiums in order to subsidize overly generous premium discounts to public employers who participated in the BWC's group rating program. Trial court did not err in refusing to dismiss city's amended complaint for lack of subject matter jurisdiction or failure to exhaust administrative remedies. Trial court properly determined that it had subject matter jurisdiction over city's unjust enrichment claim for equitable restitution to recover amount of premium overcharges. City was not required to comply with the administrative review process set forth in R.C. 4123.291 and Adm.Code 4123-14-06 prior to filing suit because adjudication of the lawfulness of the BWC's rating system and the relief sought by the city were outside the scope of the administrative review process. Trial court did not err in rejecting BWC's affirmative defenses. Ohio Adm.Code 4123-17-17(C)'s two-year limitation on premium adjustments and the five-year statute of limitations set forth in R.C. 126.301 did not apply to the city's unjust enrichment claim. City's cause of action for unjust enrichment was not barred by the applicable six-year statute of limitations. Voluntary payment doctrine did not apply because there was no evidence city had knowledge of all of the relevant facts when making premium payments. Restitution award was supported by substantial competent, credible evidence and was not against the manifest weight of the evidence.

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105719 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v LEONTAE JONES

Affirmed.

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

KEY WORDS: *Court costs; R.C. 2947.23; plain error; indigency; R.C. 5145.16; Ohio Adm.Code 5120-3-05; Ohio Adm.Code 5120-3-08; R.C. 5120.133(A).*

The trial court did not err when it ordered the defendant to pay court costs or perform community service in prison in lieu of paying court costs. Defendant was going to serve four years in prison. Under R.C. 5145.16, there is a work program in prison. Inmates receive compensation for their services, which is placed in their personal institutional accounts. See Ohio Adm.Code 5120-3-05 and 5120-3-08. R.C. 5120.133(A) permits the Department of Rehabilitation and Correction to deduct payments toward a certified judgment from a prisoner's account. Furthermore, Ohio Adm.Code 5120-5-03(D) authorizes the garnishment of an inmate's account to satisfy the inmate's obligations to the court as long as the account retains \$25 for inmate expenditures.

105756 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v WILLIAM E. JACKSON

Affirmed and remanded.

Patricia Ann Blackmon, J., Melody J. Stewart, P.J., and Larry A. Jones, Sr., J., concur.

KEY WORDS: *Consecutive sentences for rape convictions affirmed.*

Court made the proper statutory findings at the sentencing hearing and the findings were supported by evidence in the record. Case remanded for the limited purpose of issuing a nunc pro tunc journal entry incorporating findings.

105762 CLEVELAND MUNI. C CRIMINAL MUNI. & CITY
CITY OF CLEVELAND v FRANK D. BOONE

Reversed and vacated.

Anita Laster Mays, J., and Mary Eileen Kilbane, P.J., concur; Kathleen Ann Keough, J., concurs in judgment only.

KEY WORDS: *R.C. 2919.27, violation of protection order, Crim.R. 29, judgment of acquittal, sufficiency of the evidence, Evid.R. 902(4),*

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certified journal entry, Evid.R. 201, judicial notice.

The trial court erred in denying appellant's Crim.R. 29 motion for judgment of acquittal and finding appellant guilty of violating a temporary restraining order where the city failed to produce a certified copy of the order, the parties did not stipulate to the terms of the order or that the order was in effect on the date of the alleged violation. A trial court may not take judicial notice of the docket of another court.

105801 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v LEE JONES

Affirmed and remanded.

Tim McCormack, J., Eileen A. Gallagher, A.J., and Frank D. Celebrezze, Jr., J., concur.

KEY WORDS: Consecutive sentence; R.C. 2929.14(C)(4); rape; statutory findings; journal entry

The trial court made the statutorily required findings necessary to impose consecutive sentences under R.C. 2929.14(C)(4). Because the findings were not incorporated in the sentencing journal entry, the case is remanded for the limited purpose of incorporating the findings into a journal entry.

106096 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: S.J.

Affirmed.

Kathleen Ann Keough, J., Melody J. Stewart, P.J., and Larry A. Jones, Sr., J., concur.

KEY WORDS: Parental rights, permanent custody, best interest, manifest weight

Trial court did not abuse its discretion in granting permanent custody to CCDCFS where the record supports that the trial court weighed all the relevant factors and made a decision in the best interest of all the children, individually and collectively.

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106254 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v RICHARD WILLIAMS

Affirmed.

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

KEY WORDS: *Res judicata.*

Void sentences are not precluded from appellate review by principles of res judicata and may be reviewed at any time, on direct appeal or by collateral attack. However, the appellant's sentence is not void. Appellant's claims are barred by res judicata because he could have raised this issue in his 2011 appeal as the issue concerned the same matter.