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Court of Appeals, Eighth Appellate District

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September 20, 2018

106269 DOMESTIC RELATIONS F CIVIL C.P.-JUV, DOM, PROBATE
JOHN C. GUE v CHRISTINE M. GIRARDI

Affirmed.

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

KEY WORDS: *Modification of child support obligation; abuse of discretion; gross income; overtime earnings; social security wages; plain error; downward deviation.*

Trial court did not abuse its discretion in including all of father's overtime earnings in gross income when calculating parents' child support obligations where father offered no testimony or other evidence explaining what portion of his earnings constituted overtime. Trial court did not commit plain error in using the amounts listed as social security wages on the parties' W-2 forms in calculating the parties' child support obligations. Trial court did not abuse its discretion in awarding mother a downward deviation for transportation costs associated with her exercise of her parenting time. Trial court did not place an unequal value on mother's volunteer services and did not abuse its discretion in failing to order mother to pay additional child support based on father's contributions toward the children's school fees and expenses.

106358 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v LAURICE GILBERT

Affirmed.

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

KEY WORDS: *Motion for a new trial, Crim.R. 33, Crim.R. 43, right to counsel, witness recantation.*

The trial court did not violate the defendant's Sixth Amendment and due process rights when it removed him from the courtroom during the hearing on his motion for a new trial. The trial court did not err when it denied the defendant's motion for a new trial.

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106422 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: J.P., ET AL.

Affirmed.

Patricia Ann Blackmon, J., Tim McCormack, P.J., and Frank D. Celebrezze, Jr., J., concur.

KEY WORDS: *Termination of parental rights; permanent custody; clear and convincing evidence; best interest of the child; chronic intellectual disability.*

Termination of parental rights and permanent custody of three children to the agency affirmed. Mother's chronic developmental disabilities limit her ability to parent adequately, as evidenced by her poor decision-making and lack of judgment as related to the best interests of the children.

106451 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v MARVIN SCOTT

106474 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v MARVIN SCOTT

Affirmed.

Eileen T. Gallagher, J., Mary Eileen Kilbane, P.J., and Patricia Ann Blackmon, J., concur.

KEY WORDS: *Sufficiency; firearm; manifest weight; serious physical harm; attempt; knowingly; allied offenses; merger; having weapons while under disability; discharge of a firearm on or near a prohibited premises; felonious assault; improperly discharging a firearm into a habitation.*

Defendant's felonious assault conviction is supported by sufficient evidence and is not against the manifest weight of the evidence. The trial court did not error by failing to merge appellant's convictions for the purposes of sentencing.

106484 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DOMINIQUE WILLIAMS

Affirmed.

Larry A. Jones, Sr., J., Sean C. Gallagher, P.J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Hearsay testimony; Crim.R. 29; sufficiency; manifest weight.*

The trial court issued a curative instruction to the jury pertaining to the detective's hearsay testimony and appellant failed to show that

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his substantial rights were affected. The trial court did not err by denying appellant's request for a mistrial.

The video evidence presented was sufficient to sustain the element of prior calculation and design; appellant's conviction was not against the manifest weight of the evidence.

106504 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v GERELLE CROSBY

Affirmed.

Sean C. Gallagher, J., Eileen T. Gallagher, P.J., and Kathleen Ann Keough, J., concur.

KEY WORDS: Aggravated murder; R.C. 2903.01(B); complicity; sufficiency of the evidence; jury instruction; flight; jurisdiction to review sentences.

Sufficient evidence supported the conviction for complicity to commit aggravated murder under R.C. 2903.01(B), and therefore, the jury instruction on complicity was warranted and there is no appellate jurisdiction to review the sentences imposed under R.C. 2953.08(D)(4). In addition, the trial court did not err in instructing the jury on flight in light of the facts and the form of the instruction.

106557 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: D.S.

Affirmed.

Larry A. Jones, Sr., J., Eileen A. Gallagher, A.J., and Patricia Ann Blackmon, J., concur.

KEY WORDS: Legal custody; best interest of the child; reasonable efforts; reunification; manifest weight.

Mother failed to substantially comply with the case plan for reunification that included referrals to address Mother's parenting skills, anger management, substance abuse, and mental health. The agency made reasonable efforts to eliminate the reasons why the child was removed from Mother's custody. The trial court's award of legal custody to a family member was not against the manifest weight of the evidence and was in the best interest of the child.

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106560 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
SAMANTHA SKIVER v MARVIN WILSON, ET AL.

Affirmed.

Tim McCormack, P.J., Melody J. Stewart, J., and Patricia Ann Blackmon, J., concur.

KEY WORDS: *Default judgment; Civ.R. 54(C); Civ.R. 55(A); hearing on damages.*

The trial court did not abuse its discretion in holding a hearing on damages on a default judgment where there was no written agreement reflecting the duration of the agreement, payment terms, or the extent of the services provided, nor was there an itemization of hours worked. The trial court's award of damages was not against the manifest weight of the evidence.

106587 DOMESTIC RELATIONS F CIVIL C.P.-JUV, DOM, PROBATE
FOUROUGH BAKHTIAR v MEHDI SAGHAFI

Affirmed.

Patricia Ann Blackmon, J., Tim McCormack., P.J., and Melody J. Stewart, J., concur.

KEY WORDS: *Res judicata; personal jurisdiction; divorce; guardian and ward.*

The trial court properly denied appellant's motion to declare final divorce decree void for lack of personal jurisdiction over appellee, due to guardianship; claim was barred by res judicata.

106627 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ANTONIO HENDERSON

Affirmed.

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

KEY WORDS: *R.C. 2903.11(A)(2), felonious assault, criminal damaging or endangering, R.C. 2909.06(A)(1), domestic violence, R.C. 2929.25(A), manifest weight of the evidence, right to confrontation and cross-examination, ineffective assistance of counsel.*

The trial court did not violate the defendant's right to confrontation and cross-examination because it permitted defense counsel to question the victim extensively about her relationship with her girlfriend and her license to carry and conceal a weapon. The defendant's convictions were not against the manifest weight of the

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evidence because the evidence established that the defendant fired a gun at least six times in the direction of the victim. The defendant did not establish that his counsel's performance was deficient for failing to call other witnesses and for failing to argue that the victim may have committed the crimes instead of him.

106642 SOUTH EUCLID MUNI. C CRIMINAL MUNI. & CITY
CITY OF SOUTH EUCLID v CHARLES A. TURNER

Reversed and remanded.

Sean C. Gallagher, J., Eileen T. Gallagher, P.J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Crim.R. 12(C); pretrial motions; motion to dismiss; criminal trespassing; general issue; Crim.R. 48(B).*

Trial court committed reversible error in dismissing charges of criminal trespassing upon a pretrial motion to dismiss pursuant to Crim.R. 12(C) when the issues raised were matters that were not capable of determination without a trial on the general issue.

106670 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
STATE OF OHIO v ERIC JOHNSON

Affirmed.

Eileen T. Gallagher, P.J.; Sean C. Gallagher, J, concurs with separate opinion; Kathleen Ann Keough, J., concurs with majority and concurs with the separate concurring opinion.

KEY WORDS: *Successive petition for postconviction relief; attempted murder; attempted felony murder.*

Trial court properly denied motion for leave to file successive petition for postconviction relief where petitioner failed to establish that change in law that abolished attempted felony murder offenses applied to his case.

106807 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: E.G.

Reversed.

Anita Laster Mays, J., and Sean C. Gallagher, J., concur; Melody J. Stewart, P.J., concurs in judgment only.

KEY WORDS: *Juvenile court, custody proceeding, jurisdiction, nunc*

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pro tunc, alias name of mother, amend foreign birth certificate.

The juvenile court has authority and jurisdiction in a custody proceeding to enter a nunc pro tunc order recognizing the alias name of the mother as listed on the child's foreign birth certificate required by the foreign jurisdiction to execute the juvenile court's prior entry directing amendment of the birth certificate. The juvenile court's original entry was based on documents including the birth certificate containing the alias name, the juvenile court had officially recognized the mother as the child's natural mother, and the juvenile court may hold a hearing if further verification is required.

106879	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v LAWRENCE BLACK			

Dismissed.

Larry A. Jones, Sr., J., Tim McCormack, P.J., and Melody J. Stewart, J., concur.

KEY WORDS: Anders, 386 U.S. 738, 87 S.Ct. 139, 18 L.Ed.2d 493; R.C. 2929.14(B)(1(g))/sentencing.

On remand, the trial court properly resentenced appellant, and appellant has not presented any nonfrivolous issues for appeal.