

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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April 18, 2019

106772 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v NATHANIEL FRAZIER

106773 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v NATHANIEL FRAZIER

Affirmed.

Frank D. Celebrezze, Jr., P.J., Michelle J. Sheehan, J., and Raymond C. Headen, J., concur.

KEY WORDS: *Severance; Crim.R. 13; joinder; waiver; probable cause determination; R.C. 2152.12(A); bindover hearing; subject-matter jurisdiction; R.C. 2152.12(I); ineffective assistance of counsel; guilty plea; Crim.R. 11.*

Appellant waived any argument related to the joinder at the probable cause hearing because appellant did not object to the joinder. The state produced sufficient evidence to establish that probable cause existed to believe that appellant committed the acts charged. The adult court had jurisdiction over the entire case because the juvenile court had authority pursuant to R.C. 2152.12(I) to transfer all charges in the complaint. Appellant was not denied the effective assistance of counsel.

107156 CLEVELAND MUNI. G CIVIL MUNI. & CITY
CMHA v ANGELA MANNIS

Reversed and remanded.

Raymond C. Headen, J., Sean C. Gallagher, P.J., and Eileen A. Gallagher, J., concur.

KEY WORDS: *Eviction; nonpayment of rent; motion for relief from judgment; federally assisted public housing; serious and repeated violations; 24 C.F.R. 966.4(1).*

Public housing authority governed by federal regulations failed to make a prima facie showing for eviction under 24 C.F.R. 966.4(1) where the basis for the eviction was a single nonpayment of rent.

107222 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
CITY OF WESTLAKE OHIO v CITY OF CLEVELAND OHIO

Reversed and remanded.

Patricia Ann Blackmon, J.; and Larry A. Jones, Sr., J., concurs; Sean C. Gallagher, P.J., concurring with attached opinion.

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KEY WORDS: *Law of the case; Civ.R. 41(A)(1)(a); notice of voluntary dismissal; start of trial; motion to strike.*

This court's issuance of writ of mandamus was law of the case; this court previously held that notice of voluntary dismissal filed by a party to the underlying case was ineffective where it was filed after trial had commenced, and the trial court retained jurisdiction over the case; trial court has jurisdiction to rule on motion to strike an invalid notice of dismissal filed during trial.

107228 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
RICHARD N. READINGER, ET AL. v
MUNICIPAL CONSTRUCTION EQUIPMENT OPERATORS, ET AL.

Affirmed.

Raymond C. Headen, J., Patricia Ann Blackmon, P.J., and Anita Laster Mays, J., concur.

KEY WORDS: *Breach of fiduciary duty; breach of contract; defamation; jurisdiction; exclusive jurisdiction; collective bargaining rights; State Employee Relations Board; Unfair Labor Practices; R.C. Chapter 4117; Civ.R. 12(B)(1); Civ.R. 12(B)(6); de novo; statute of limitations; R.C. 2305.11.*

Dismissal of breach of contract and breach of fiduciary duty claims by employees against their union was proper where the claims were subject to the exclusive jurisdiction of the State Employment Relations Board because they arose from, or depended on, the collective bargaining framework and rights created by R.C. Chapter 4117. Dismissal of defamation claim was proper where the claim was asserted outside of the one-year statute of limitations.

107273 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
MALVINA ELMURR, AKA MAKDESSI v JOSEPH MAKDESSI

Reversed and remanded.

Raymond C. Headen, J., Patricia Ann Blackmon, P.J., and Anita Laster Mays, J., concur.

KEY WORDS: *Domestic violence civil protection order; protected person; scope; abuse of discretion; term; R.C. 3113.31.*

An appeal challenging the duration of a protection order is not moot when the order expires during the pendency of the appeal. The trial court abused its discretion by arbitrarily limiting the duration of the protection order and failing to include the petitioner's infant daughter as a protected person where there was sufficient credible evidence that the respondent had engaged in domestic violence against petitioner and created a substantial risk to the health and safety of his infant daughter.

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107363 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v IAN S. DOWNEY

Affirmed.

Kathleen Ann Keough, J., Sean C. Gallagher, P.J., and Frank D. Celebrezze, Jr., J., concur.

KEY WORDS: *Plea; effective assistance of counsel; consecutive sentences; timing.*

Defendant's plea will not be set aside on the basis of receiving ineffective assistance of counsel unless the defendant can show that counsel's deficiencies render his plea involuntary. The consecutive sentence findings do not need to be articulated prior to the trial court orally stating it was imposing consecutive sentences.

107375 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DAMON L. CHAPMAN, JR.

Affirmed.

Sean C. Gallagher, P.J., Anita Laster Mays, J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *Affirmed; discovery; Crim.R. 16(K); expert report; weight of the evidence; firearm specifications; R.C. 2941.25; R.C. 2929.14(B)(1)(g); vouching; plain error; Evid.R. 801(C); Confrontation Clause.*

Defendant's arguments (1) that the fingerprint examiner's report was deficient under Crim.R. 16(K); (2) that his conviction for aggravated murder, improperly discharging a firearm, and having weapons while under disability are against the weight of the evidence; (3) that the firearm specifications merged under R.C. 2941.25; (4) that witnesses impermissibly vouched for the credibility of other witnesses; and (5) that the court permitted the introduction of evidence in violation of the Confrontation Clause and Evid.R. 801(C) are all overruled.

107381 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v EDWARD E. SMITH

Affirmed.

Michelle J. Sheehan, J., Sean C. Gallagher, P.J., and Anita Laster Mays, J., concur.

KEY WORDS: *Sentence; felony sentence review under R.C. 2929.11 and 2929.12.*

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(Case 107381 continued)

Appellant's 15-month prison term for his conviction of domestic violence is affirmed because this court does not find by clear and convincing evidence that the record does not support appellant's sentence pursuant to R.C. 2929.11 and 2929.12.

107386 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v RAMSES CRESPO-NEGRON

Affirmed and remanded.

Eileen A. Gallagher, J., Mary Eileen Kilbane, A.J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *Crim.R. 11(C)(2)(a); knowing, intelligent and voluntary guilty pleas; totality of the circumstances; misstatements during plea colloquy; understanding of the nature of the charges and maximum penalty; R.C. 2929.14(C)(4); findings for the imposition of consecutive sentences.*

Under the totality of the circumstances, trial court's misstatements and alleged omissions during the plea colloquy did not preclude the trial court from properly determining that the defendant entered his guilty pleas knowingly, intelligently and voluntarily and that defendant understood the nature of the offenses to which he pled guilty and the maximum penalties associated with his guilty pleas. Trial court did not err in imposing consecutive sentences. Trial court's findings that consecutive sentences are necessary to protect the public from future crime and punish defendant and are not disproportionate to the seriousness of defendant's conduct were not clearly and convincingly not supported by the record.

107412 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
RONALD LURI v NATIONAL UNION FIRE INSURANCE CO. OF PITTSBURGH, PA, ET AL.

Affirmed.

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

KEY WORDS: *Final judgment; R.C. 3929.06; vacated; void; summary judgment.*

Trial court did not err in granting summary judgment to insurers on appellant's R.C. 3929.06 supplemental petition because appellant did not have a final judgment as required by R.C. 3929.06 where the trial court's judgment rendered after jury trial was vacated after appeal.

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107431 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
WORLDWIDE ASSET PURCHASING, LLC v KAREN L. SHUSTER

Affirmed.

Raymond C. Headen, J., Mary Eileen Kilbane, A.J., and Larry A. Jones, Sr., J., concur.

KEY WORDS: *Motion for revivor; dormant judgment; assignment of interest; real party in interest; right to trial by jury.*

Judgment to grant plaintiff-creditor's motion for revivor of a dormant judgment was not in error where the plaintiff was the real party in interest and defendant offered no evidence that the judgment had been paid, settled, or barred by the statute of limitations. Defendant was not entitled to a jury trial in a revivor action.

107458 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v MICHAEL R. TOWNSEND, JR.

Affirmed.

Michelle J. Sheehan, J., and Anita Laster Mays, J., concur; Sean C. Gallagher, P.J., dissents (with separate opinion attached).

KEY WORDS: *Felony sentencing; R.C. 2929.11 and 2929.12.*

Appellant's 28-year sentence for voluntary manslaughter and several other felony offenses is supported by the record pursuant to the purposes and principles of felony sentencing set forth in R.C. 2929.11 and 2929.12.

107464 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
BANK OF AMERICA v BENJAMIN ROGERS, ET AL.

Affirmed.

Raymond C. Headen, J., Mary Eileen Kilbane, A.J., and Larry A. Jones, Sr., J., concur.

KEY WORDS: *Foreclosure; mortgage; standing; abuse of discretion; evidentiary rulings; assignment; privity; chain of title.*

Judgment in favor of plaintiff-bank was not in error where the bank satisfied the requirements of a foreclosure action.

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107502 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JAMES L. WAVER

Affirmed.

Frank D. Celebrezze, Jr., P.J., Michelle J. Sheehan, J., and Raymond C. Headen, J., concur.

KEY WORDS: *Civ.R. 60(B); motion for relief from judgment; Civ.R. 58(B); service; notice; App.R. 4.*

The appropriate remedy for appellant to challenge the trial court's judgment is an appeal rather than a Civ.R. 60(B) motion for relief from judgment. The trial court did not comply with Civ.R. 58(B) in serving notice of its judgment, and as a result, the 30-day time period for filing an appeal under App.R. 4(A) has neither expired nor begun to run. Because appellant failed to demonstrate that he was entitled to relief under Civ.R. 60(B)(5), the trial court did not abuse its discretion in denying appellant's motion for relief from judgment.

107536 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
RAE-ANN SUBURBAN, INC. v ARNOLD WOLFE, ET AL.

Dismissed.

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

KEY WORDS: *Final, appealable order; R.C. 2505.02; partial summary judgment; Civ.R. 54(B) language; intertwined claims; failure to address request for punitive damages.*

Appeal and cross-appeal dismissed for lack of jurisdiction. Order granting partial summary judgment in favor of plaintiff on fraudulent conveyance claim against one defendant was not a final, appealable order despite the presence of Civ.R. 54(B) language. Trial court abused its discretion in certifying the case for immediate appeal under Civ.R. 54(B) where the "resolved" fraudulent conveyance claim against one defendant and the remaining claims against the remaining defendants were intertwined, were based on the same set of facts and circumstances and touched upon the same factual and legal issues. Further, trial court's order did not resolve entire claim against defendant because it did not address plaintiff's request for punitive damages.

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107589 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ANDRE B. ELLIOTT

Affirmed.

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

KEY WORDS: *R.C. 2953.08(G)(2); plea agreement.*

Unless the court involves itself in the plea negotiations or agrees to the terms of the agreement, the trial court is not bound by the plea agreement, and the court may determine the appropriate sentence for the charges to which the defendant has pled guilty or no contest.

107736 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: P.A.R.

Affirmed.

Mary J. Boyle, P.J., Anita Laster Mays, J., and Raymond C. Headen, J., concur.

KEY WORDS: *Permanent custody, R.C. 2151.414, ineffective assistance of counsel.*

Mother failed to request a written opinion that set forth the trial court's findings of fact and conclusions of law. Absent such a request, the trial court was not required to "apply the facts of the case to the statutory factors" in its judgment entry as mother argues. Instead, the trial court was only required to "enter a finding that the child [could not] be placed with either parent within a reasonable time or should not be placed with either parent" and whether permanent custody was in P.A.R.'s best interest. R.C. 2151.414. Further, the trial court's findings were supported by sufficient evidence, and mother did not object to the magistrate's decision and did not argue plain error on appeal. Mother's counsel was not ineffective because even if mother's counsel had objected to correct the minor factual mistakes in the magistrate's decision, the proceeding would have resulted in the same outcome. Further, the evidence supports the magistrate's findings.

107775 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v MICHAEL G. BARRON

Sentence reversed and modified.

Michelle J. Sheehan, J., Anita Laster Mays, P.J., and Eileen A. Gallagher, J., concur.

KEY WORDS: *Conceded error; violation of community control sanction; R.C. 2929.15.*

The trial court's 11-month prison sentence for appellant's violation of community control sanction is contrary to law because, under the amended R.C. 2929.15, the punishment for a fifth-degree felony offender who violates his or her community control sanction by committing a misdemeanor offense cannot exceed 90 days of prison.

107990 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v BRATOYA SHARNAYE BROWN

Dismissed.

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

KEY WORDS: *R.C. 2929.13; R.C. 2953.08; not subject to appellate review; mandatory community control; fifth-degree felony.*

Appeal dismissed. Appellant's sentence for fifth-degree felony theft is not subject to appellate review because the trial court found that the appellant's offense was committed while on probation for another theft offense and the appellant did not seek leave before filing her appeal.