

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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August 8, 2019

107166 DOMESTIC RELATIONS F CIVIL C.P.-JUV, DOM, PROBATE
T. A. v R. A.

Affirmed.

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

KEY WORDS: *Divorce proceedings; R.C. 3105.171(B); subject matter jurisdiction; R.C. 3105.171(E)(4); financial misconduct; third-party defendant; Civ.R. 75(B)(1).*

The trial court had jurisdiction to order appellant to release the mortgages he owed on two properties because the trial court determined these properties to be marital property, and therefore was able to award and distribute the property accordingly. Pursuant to Civ.R. 75(B)(1), the trial court had jurisdiction to order appellant to stay in the proceedings until compliance with all of its orders occurred.

107489 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
KW BV, LLC, ET AL. v CITY OF EUCLID, OHIO

Affirmed.

Anita Laster Mays, J.; Michelle J. Sheehan, J., concurs in judgment only with separate opinion; Sean C. Gallagher, P.J., dissents with separate opinion.

KEY WORDS: *Judgment as a matter of law; summary judgment.*

The trial court did not err in finding that the condominium units were single-family dwellings under Euclid Codified Ordinances 1761.05(1) & (2). The appellee was entitled to judgment as a matter of law, as the nonmoving party, where the trial court found that there was no genuine issue of material fact, and summary judgment did not prejudice the appellants' due process rights where all relevant evidence was before the court.

107495 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: A.M.S., ET AL.

Affirmed.

Anita Laster Mays, P.J., Michelle J. Sheehan, J., and Raymond C. Headen, J., concur.

KEY WORDS: *Nonparent visitation, R.C. 3109.051(B), juvenile court*

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(Case 107495 continued)

jurisdiction, R.C. 2151.23.

The juvenile court correctly determined that it lacked subject matter jurisdiction over a nonparent complaint for visitation filed by a former husband seeking visitation with the children of the former wife pursuant to R.C. 3109.051(B). The statute requires that the nonparent file a motion “during the pendency of the divorce, dissolution of marriage, legal separation, annulment, or child support proceeding or, if a motion was not filed at that time or was filed at that time and the circumstances in the case have changed, at any time after a decree or final order is issued in the case.” R.C. 3109.051(B)(2). In the absence of a child-support action vesting jurisdiction in the juvenile court under R.C. 2151.23, the court lacks jurisdiction to entertain an action under R.C. 3109.051(B).

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| 107545 | COMMON PLEAS COURT | A | CRIMINAL C.P. |
| STATE OF OHIO v SLATTER HOWELL, III | | | |

Affirmed.

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

KEY WORDS: *Ineffective assistance; witness bolstering; consecutive sentences; life sentence.*

Defense counsel were not ineffective in their response to witness allegation of improper defense contact; court did not improperly bolster witness testimony; challenge to sentences ordered to be served consecutively to life sentence was moot.

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| 107556 | JUVENILE COURT DIVISION | F | CIVIL C.P.-JUV, DOM, PROBATE |
| IN RE: A.B.M. | | | |

Affirmed.

Anita Laster Mays, J., Mary Eileen Kilbane, A.J., and Raymond C. Headen, J., concur.

KEY WORDS: *Shared parenting, R.C. 3109.04(F), best interest of child, Civ.R. 52, findings of fact.*

The trial court’s decision to award equal parenting time, designate mother as the residential parent for school purposes, and to allow mother to relocate upon filing a notice of intent to do so was based on competent, credible evidence. A trial court is not required to detail the factors underlying the best-interest-of-the-child analysis under R.C. 3109.04(F) absent a motion for findings of fact under Civ.R. 52. In the absence of such findings and absent evidence to the contrary, we presume that the trial court considered the requisite factors.

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107674 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DEL RICCO D. MORRIS

Affirmed.

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

KEY WORDS: *Jury trial; waiver; signed; writing; open court; identification; witness; bench trial; sufficient; manifest weight; aggravated robbery; robbery; firearm; kidnapping; consistent.*

Defendant knowingly, intelligently, and voluntarily waived his right to a jury trial in writing. Defendant's convictions are supported by sufficient evidence and are not against the manifest weight of the evidence.

107790 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v RAYMOND A. ERKER

Affirmed.

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

KEY WORDS: *Sufficiency; manifest weight; prosecutorial misconduct; other-acts evidence; curative instruction; misleading jury instructions.*

Defendant's convictions for burglary, telecommunications harassment, and menacing by stalking were supported by sufficient evidence and were not against the manifest weight of the evidence. The prosecutor did not engage in misconduct during closing argument. The trial court did not err by allowing the state to present text messages that defendant sent to the victim. Further, testimony concerning defendant's ankle bracelet was not prejudicial, was unsolicited by the state, and the trial court gave a curative instruction. Finally, the trial court did not mislead the jury in its jury instructions.

107866 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JEFFREY W. SCULLIN, JR.

Affirmed.

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

KEY WORDS: *Motion to suppress; search warrant; affidavit; probable cause; consent; confession; police misconduct; coercion; apology letter; R.C. 2933.81; Miranda; custodial interrogation;*

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(Case 107866 continued)

harmless error; Crim.R. 52; motion to compel; polygraph examination; Crim.R. 16; Brady violation.

The trial court did not err in denying appellant's motion to suppress his confession and the evidence obtained during the execution of search warrants. The trial court did not err in denying appellant's motion to compel discovery.

107922 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v CHARLES BAGWELL

Affirmed.

Mary J. Boyle, P.J., Patricia Ann Blackmon, J., and Eileen A. Gallagher, J., concur.

KEY WORDS: Sufficiency, manifest weight, Crim.R. 29, domestic violence, harassment by an inmate.

Defendant's convictions for domestic violence and harassment by an inmate were supported by sufficient evidence and were not against the manifest weight of the evidence because the victim testified that defendant slapped her across the face and the police officer testified that defendant spit on him in the jail.

107948 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v TIMMON GOHAGAN

Affirmed.

Mary J. Boyle, P.J., Patricia Ann Blackmon, J., and Eileen A. Gallagher, J., concur.

KEY WORDS: Maximum sentence; consecutive sentences; R.C. 2953.08(G)(2); R.C. 2929.11; R.C. 2929.12; R.C. 2929.14(C)(4); consecutive-sentence findings; purposes and principles of felony sentencing; seriousness and recidivism factors; judicial bias.

The defendant's sentence was affirmed. The record establishes that the trial court considered the purposes and principles of felony sentencing, the seriousness and recidivism factors, and made the required findings under R.C. 2929.14(C)(4) before imposing consecutive sentences. The record also supports the trial court's consecutive-sentence findings. Finally, the defendant did not overcome the presumption that the trial court was not biased against him.

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107966 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: S.B.

Reversed and remanded.

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

KEY WORDS: *Legal custody; abuse of discretion; best interest of the child; reunification.*

Trial court's decision granting custody to father is reversed. Reunification with mother was goal, mother complied with case plan, and court abused its discretion by granting custody to the father.

108096 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
LABORERS' INTL. UNION OF N. AM., LOCAL UNION 860 v
CUYAHOGA CTY. COMMON PLEAS COURT, JUV. COURT DIV.

Affirmed.

Stephen R. Shaw, J., Vernon L. Preston, P.J., and William R. Zimmerman, J., concur.*

*(Sitting by Assignment: Judges of the Third District Court of Appeals.)

KEY WORDS: *R.C. 2711.03; arbitration; compelling arbitration; scope of arbitration clause.*

108233 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DEBRA HAGER

Vacated in part and remanded.

Eileen A. Gallagher, J., Sean C. Gallagher, P.J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *Conceded error; failure to hold hearing; restitution order.*

Where state conceded error, admitting that sufficient evidence was not presented to support restitution ordered by trial court, case remanded to trial court to conduct a restitution hearing.