

CASE DECISION LIST

August 1, 2019

106930 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
STATE OF OHIO v GEORGE COLE

Reversed and remanded.

Frank D. Celebrezze, Jr., P.J., Kathleen Ann Keough, J., and Raymond C. Headen, J., concur.

KEY WORDS: *Petition for postconviction relief; R.C. 2953.21; affidavit.*

The trial court abused its discretion in denying appellant's petition for postconviction relief without considering the supporting affidavits that appellant submitted in support of his claim for relief.

107161 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
SIMBO PROPERTIES, INC. v M8 REALTY, LLC

Affirmed.

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

KEY WORDS: *Commercial real estate lease agreement; directed verdict; causation; breach of contract; expert testimony; jury instruction; alternative pleading; erroneous jury instruction; Civ.R. 8; prejudgment interest; R.C. 1343.03; accrual date; due and payable; prevailing party; American rule; fee-shifting clause; "main issue" standard; "some relief" standard; award of attorney fees and expenses; judicial estoppel; fixed-fee agreement.*

Judgment affirmed. Directed verdict was correctly granted where plaintiff-landlord failed to introduce evidence showing causation of alleged property damages. A jury instruction on alternative pleadings was a correct statement of law and did not mislead the jury so as to prejudice the complaining party's substantial rights. Where the jury awarded landlord damages for a flag pole and real estate taxes, landlord sought prejudgment interest or late charge on those awards. Landlord was not entitled to an award of prejudgment interest or late charges for the flag pole because the matter was not raised at the lower court and, therefore, was waived on appeal. Regarding the real estate taxes, the trial court did not err when it found prejudgment interest and late charges could not be assessed where the underlying obligation was not due and payable prior to the court's judgment. The "main issue" doctrine is applied to define the prevailing party where consenting, sophisticated parties, represented by counsel, knowingly and willingly negotiated a commercial lease agreement. As the prevailing party, tenant was entitled to receive all reasonable attorney fees and costs where the lease agreement allowed for this award. Where the prevailing party introduced evidence supporting the reasonableness and payment

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of its attorney fees and expenses, that party was not required to show that it had made the actual payment of the attorney fees and expenses before receiving an award for those amounts.

107417 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DEONTYE WILEY

Affirmed.

Patricia Ann Blackmon, P.J., and Kathleen Ann Keough, J., concur; Eileen A. Gallagher, J., dissents with attached separate opinion.

KEY WORDS: Drug trafficking; drug possession; having weapons while under disability; sufficiency of the evidence; firearm specification; felony sentencing.

Defendant's convictions were supported by sufficient evidence in the record when they found him in a room with drugs, drug paraphernalia, five cell phones, cash, a loaded firearm, and ammunition. No plain error occurred when the court sentenced defendant to prison for a firearm specification and having weapons while under disability, because defendant failed to show that his sentence was prejudicial.

107439 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
CHARLES HARPER, ET AL. v WELTMAN WEINBERG AND REIS CO. L.P.A., ET AL.

Affirmed.

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

KEY WORDS: Motion; dismiss; Civ.R. 12(B)(6); failure to state a claim; relief; facts; conclusions; elements; Fair Debt Collection Practices Act; Ohio Consumer Sales Practices Act; consumer; debt; collector; fraud; transaction; cognovit; instrument; Civ.R. 8.

The trial court did not abuse its discretion by granting the defendant's motion to dismiss for failure to state a claim on which relief can be granted. The complaint failed to allege sufficient facts to support essential elements of the plaintiffs' claims under the FDCPA and the OCSA.

107474 DOMESTIC RELATIONS F CIVIL C.P.-JUV, DOM, PROBATE
DONNA M. TAYLOR v ANDREW D. HEARY

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Affirmed.

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

KEY WORDS: *Motion to modify spousal support; show cause; discovery; protective order.*

Trial court's judgment holding husband in contempt of court was not an abuse of discretion where husband admitted he stopped paying premiums for ex-wife's long-term care insurance and there was no evidence that the court ever relieved husband of that obligation.

Trial court's order granting protective order to preclude husband from taking wife's deposition was not an abuse of discretion where wife, who was physically disabled and lived in an assisted living facility, agreed to submit to a deposition in her residence, but husband refused to accommodate her.

Order to modify, but not eliminate, spousal support was not an abuse of discretion where wife's recent receipt of social security benefits justified a reduction in spousal support, but husband's failure to pay long-term care insurance premiums, which resulted in insufficient funds to cover cost of assisted living, required him to continue supporting ex-wife.

107576 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
S. E. J. v C. S. J.

Affirmed.

Patricia Ann Blackmon, P.J., Larry A. Jones, Sr., J., and Raymond C. Headen, J., concur.

KEY WORDS: *Civ.R. 36; R.C. 3119.01(C)(12); R.C. 3121.03.*

Trial court did not abuse its discretion in denying father's motion to deem requests for admissions admitted; father's workers' compensation benefits were properly considered as gross income in the trial court's child support order; the trial court did not err in imputing income to father representing 20 hours of minimum wage employment per week.

107597 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV, DOM OR PRO
WINDSOR REALTY AND MANAGEMENT, INC., ET AL. v
NORTHEAST OHIO REGIONAL SEWER DISTRICT, ET AL.

Affirmed.

Raymond C. Headen, J., Frank D. Celebrezze, Jr., P.J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Additional party-plaintiff; standing.*

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A party must demonstrate an injury or damages to establish standing. A party that lacks standing cannot invoke the Civil Rules to file a motion to add a party-plaintiff.

107599 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: V.H., ET AL.

Reversed and remanded.

Raymond C. Headen, J., and Eileen A. Gallagher, J., concur; Eileen T. Gallagher, P.J., concurs in judgment only.

KEY WORDS: *Adjudicatory hearing; object to magistrate's decision; plain error; Juv.R. 40; transcript of the magistrate's hearing; ineffective assistance of counsel; Strickland test; substantial probability; abused child; neglected child; R.C. 2151.031; endangered child; R.C. 2919.22; reckless; substantial risk.*

Trial court's decision to adopt the magistrate's decision was not against the manifest weight of the evidence. Because (1) appellant did not object to the magistrate's decision, and (2) appellant failed to file a copy of the magistrate's hearing transcripts with the trial court, the matter is reviewed for plain error. When appellant does not file a copy of the magistrate's hearing transcripts with the trial court, appellate courts are precluded from considering the transcript. Even where the transcripts are filed with the appeal, appellate courts may not consider the transcript on appeal regarding factual findings because the transcript was not properly before the trial court. The transcript can be reviewed to assess an ineffective assistance of counsel argument. Based upon the facts presented in this case, the trial counsel's failure to file objections to the magistrate's decision is deficient and satisfies the first prong of the Strickland test. The second Strickland prong is met when there is a substantial probability that the record does not support a finding of neglect or abuse and, therefore, the trial court would not have adopted the magistrate's decision if trial counsel had filed objections to that decision.

107652 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: J.L., ET AL.

Affirmed.

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

KEY WORDS: *Denial of motion to continue; Lack of standing to challenge alleged error. It is well settled that an appeal lies only on behalf of an aggrieved party.*

An appellant may not challenge an alleged error committed against a nonappealing party unless the appealing party can show prejudice

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from the alleged error. Consequently, Mother may only challenge the denial of Father's motion for continuance if she can show that she has been prejudiced by the alleged error.

The record reveals that Mother was represented by counsel, was present for the hearing, and had the opportunity to fully participate in the hearing. Thus, Mother fails to show prejudice. Absent a demonstration of prejudice caused by the alleged error, Mother does not have standing to challenge the denial of Father's motion to continue.

107771 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
FRANK M. SMITH v CITY OF EUCLID

Affirmed.

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

KEY WORDS: *Motion for summary judgment; Civ.R. 56; political subdivision immunity; R.C. Chapter 2744; breach of easement contract; interlocutory appeal. Judgment affirmed.*

R.C. Chapter 2744 does not apply to contract claims against a political subdivision. As a result, we do not have jurisdiction to review the breach of easement-contract claim in the interlocutory appeal. Genuine issues of material fact exist as to whether the City exercised ordinary care in its repair of the sinkhole. Therefore, the court's denial of the City's motion for summary judgment was proper.

107813 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DAESHAWN SIMMONS

Affirmed.

Raymond C. Headen, J., Patricia Ann Blackmon, P.J., and Larry A. Jones, Sr., J., concur.

KEY WORDS: *R.C. 2929.14; R.C. 2953.08(G)(2); consecutive sentences; robbery; burglary, breaking and entering.*

The defendant's sentence was valid where the trial court made the required findings under R.C. 2929.14(C)(4) and the record does not clearly and convincingly fail to support the findings.

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107872 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DIMITRIC AUSTIN

Affirmed.

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

KEY WORDS: *Motion to vacate; Crim.R. 11; guilty plea; res judicata; postconviction relief; App.R. 9; ineffective assistance of counsel.*

The trial court did not err in denying appellant's motion to withdraw his 1980 convictions. Appellant's ineffective assistance of counsel claim and his challenge to the knowing, intelligent, and voluntary nature of his guilty pleas are barred by res judicata, and appellant failed to provide this court with a transcript of the change-of-plea proceedings.

107897 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v WENDALL HARRIS

Affirmed in part and dismissed in part.

Patricia Ann Blackmon, P.J., and Raymond C. Headen, concur; Larry A. Jones, Sr., J., concurs in judgment only.

KEY WORDS: *Scope of consent; theft; sufficiency of the evidence; felony sentencing.*

Defendant's theft conviction is affirmed. Appeal of sentence is dismissed. Sentence already served is rendered moot.

107917 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v MAURICE JACKSON

Affirmed.

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

KEY WORDS: *Motion to vacate void judgment; postconviction relief; res judicata.*

The trial court did not err by denying appellant's motion to void judgment. Appellant could have raised his argument in direct appeal of his 1994 conviction.

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107920 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE

IN RE: D.W.

Affirmed.

Frank D. Celebrezze, Jr., P.J., Kathleen Ann Keough, J., and Raymond C. Headen, J., concur.

KEY WORDS: *Out-of-court statements; inadmissible hearsay; Confrontation Clause; harmless error; independent evidence of guilt; Evid.R. 602; personal knowledge; Evid.R. 701; opinion testimony; ineffective assistance of counsel; sufficiency; Crim.R. 29; manifest weight.*

The trial court erred in admitting out-of-court statements that were inadmissible hearsay and were admitted in violation of the Confrontation Clause. However, the trial court's error is harmless beyond a reasonable doubt because there existed overwhelming independent evidence of appellant's guilt. The detective testified to information provided to him by appellant, and thus, the detective's testimony was not improper pursuant to Evid.R. 602 and 701. Appellant was not denied the effective assistance of counsel. Appellant's adjudications were supported by sufficient evidence and were not against the manifest weight of the evidence.