

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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August 22, 2019

107059 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE C.T-T., ET AL.

Affirmed.

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

KEY WORDS: *Emergency temporary custody; temporary order; R.C. 3127.15(A)(1); jurisdiction; shared parenting plan; fraud; duress; undue influence.*

Appellant's arguments related to a temporary order are moot because that order is merged into the trial court's final decree. The shared parenting plan is a binding settlement agreement. Appellant presented no evidence of fraud, duress, or undue influence in her assent to the shared parenting plan.

107102 CLEVELAND MUNI. C CRIMINAL MUNI. & CITY
CITY OF CLEVELAND v SCOTT R. TURNER

Affirmed in part, vacated in part, and remanded.

Michelle J. Sheehan, J., and Anita Laster Mays, P.J., concur; Eileen A. Gallagher, J., concurs in part and dissents in part.

KEY WORDS: *Bestiality; R.C. 959.21(B); extrajudicial statement; corpus delicti; sufficient evidence; manifest weight of the evidence; community control conditions; home inspections; random; reasonable grounds; R.C. 2951.02(A); APL.*

The state satisfied the minimal burden of providing some evidence tending to prove that the crime of bestiality was committed and, thus, the court's admission of the appellant's extrajudicial statement was proper. The state provided sufficient circumstantial evidence demonstrating the appellant engaged in sexual conduct with a dog where the appellant discussed sexual acts with a dog; he identified the breed, age, and gender of the dog about which the dog's owner testified; the dog's owner testified concerning the dog's uncharacteristically strange behavior exhibited immediately after staying with the appellant, in the appellant's bed, including excessively licking her genitals and her discomfort during veterinarian exams. The conviction is not against the manifest weight of the evidence. The appellant's explanation that his statements concerning the sexual act with the dog were designed to distract his boyfriend from desiring sex with children was not credible. The trial court abused its discretion in imposing random home inspections as a condition of community control sanctions, because R.C. 2951.02(A) authorizes searches of real property where probation officers have reasonable grounds to believe the offender

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is not abiding by the law or otherwise not complying with the conditions of misdemeanor community control. The trial court did not abuse its discretion in allowing the APL to conduct searches of the appellant's home.

107134 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
FIREFIGHTERS COMMUNITY CREDIT UNION v WOODSIDE MORTGAGE SERVICES, INC.

Affirmed.

Sean C. Gallagher, P.J., and Kathleen Ann Keough, J., concur; Eileen A. Gallagher, J., dissents with separate opinion.

KEY WORDS: Enforceable contract; summary judgment.

An enforceable contract exists based on the disputed fact that the parties operated under the terms of an unsigned agreement for nearly a decade, and the trial court did not err in granting summary judgment.

107400 COMMON PLEAS COURT F CIVIL C.P.-JUV, DOM, PROBATE
MATTHEW PALNIK v KRISTEN CRANE

Affirmed in part, reversed in part, and remanded.

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

KEY WORDS: Temporary; spousal support; child support; civil contempt; modification; service; hearing; defense; impossibility; comply; purge; good faith; local rules; tax return; income; motion to dismiss.

Because the trial court has yet to enter a final divorce decree, the validity of the temporary order is not subject to appellate review at this time. The trial court committed reversible error by considering the merits of a motion to show cause absent proper service. The motion was mistakenly delivered to an inaccurate address. The trial court did not commit reversible error by denying Husband's motion to dismiss for failure to comply with Loc.R. 20 of the Court of Common Pleas of Cuyahoga County, Domestic Relations Division. The trial court did not abuse its discretion in finding Husband in contempt for failing to comply with court's temporary support order. The purge conditions of the contempt judgment are not unreasonable or impossible for Husband to meet.

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107823 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v GREGORY NELSON, JR.

Affirmed.

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

KEY WORDS: *Ineffective assistance of counsel; sentence; allied offense; merger; separate harm; plea; guilty; knowingly; intelligently; voluntary; substantial compliance; prejudice; maximum penalty.*

Defendant's guilty plea was knowingly, intelligently, and voluntarily made. Defense counsel's mistaken prediction about the likelihood of a particular sentence was insufficient to demonstrate ineffective assistance of counsel. The trial court did not err by failing to merge the offenses and imposing separate concurrent sentences. Defendant's offenses were not allied offenses of similar import.

107829 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v REGINALD POOLE

Affirmed.

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

KEY WORDS: *Sufficiency; manifest weight; rape; kidnapping.*

Sufficiency; manifest weight; rape; kidnapping. Sufficiency was established where there was a finding that the manifest weight of the evidence supported appellant's convictions. Scientific evidence supported appellant's rape conviction. Documented evidence showed injuries to the victim's body. A conviction of first-degree — rather than second-degree — kidnapping was warranted. Appellant left the victim on a public street, injured and without shoes, not unharmed in a safe place.

107881 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v MICHAEL TAYLOR

Affirmed.

Eileen T. Gallagher, P.J., and Michelle J. Sheehan, J., concur; Mary J. Boyle, J., concurs in judgment only.

KEY WORDS: *Sentence; recidivism; factors; clearly; convincingly; considerations; finding; seriousness; contrary to law; deferential; felony; principles; purposes.*

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The sentence was not contrary to law, the trial court considered the sentencing factors in R.C. 2929.11 and 2929.12, and the sentence was supported by the record.

107893 LYNDHURST MUNI. G CIVIL MUNI. & CITY
MAUREEN DIEMERT v LILLY BINSTOCK

Affirmed.

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

KEY WORDS: Civ.R.41(B)(2)/motion for dismissal; manifest weight.

Although the property was sold “as is,” appellant had the opportunity to hire a private home inspector but failed to do so. Further, appellant failed to submit any evidence that appellee knowingly knew of and withheld knowledge of a preexisting condition. No fraud was established. The trial court’s dismissal of appellant’s complaint with prejudice was proper. The dismissal was not against the manifest weight of the evidence.

107901 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
JANICE CHISHOLM v CLEVELAND CLINIC FOUNDATION

Affirmed.

Eileen T. Gallagher, P.J., Frank D. Celebrezze, Jr., J., and Kathleen Ann Keough, J., concur.

KEY WORDS: Racial discrimination; disparate treatment; disparate impact; statistical evidence; pretext.

The trial court properly granted summary judgment in favor of defendant on plaintiff’s disparate-treatment-discrimination claim where the undisputed evidence showed that plaintiff was replaced by an individual from the same class, and plaintiff failed to show that a similarly situated comparator from a nonprotected class was treated more favorably.

Trial court properly granted summary judgment in favor of defendant on plaintiff’s disparate-impact-discrimination claim where plaintiff failed to present significant statistical evidence of disparate effects caused by the adverse-employment action.

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107945 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ANTHONY METZ

Affirmed.

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

KEY WORDS: *R.C. 2981.11(A)(1); motion for return of property.*

Under R.C. 2981.11(A)(1), any property that has been seized pursuant to a search warrant, or otherwise lawfully seized and that is in the custody of a law enforcement agency shall be kept safely by the agency, pending the time it no longer is needed as evidence or for another lawful purpose.

Based on the above statute, if an item is potentially needed for evidence or for some other lawful purpose, it may be held. Alternatively, if the item is no longer needed, it may be returned or otherwise disposed.

Metz's direct appeal remains pending in this court and the cell phone is potential evidence should a new trial be ordered. As a result, Metz's cell phone, which is a piece of evidence that could be used during a potential retrial, may be held under R.C. 2981.11(A). Therefore, we find no abuse of discretion in the trial court's denial of Metz's motion for the return of his cell phone.

107946 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
DARRELL BAON, EXECUTOR OF ESTATE SUE ANN BAON v FAIRVIEW HOSPITAL, ET AL.

Affirmed.

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

KEY WORDS: *Civ.R. 60(B), motion for relief from judgment, nonattorney, pro se litigant, R.C. 4705.01, statute of limitations, savings statute.*

The trial court did not err in denying the appellant's motion for relief from judgment because he did not have a meritorious claim. The appellant, a nonattorney, impermissibly filed a complaint for wrongful death on behalf of the decedent's next of kin in violation of R.C. 4705.01. Because of this, appellant's complaint was a nullity - it was as if he never filed a complaint. Therefore, the appellant failed to commence or attempt to commence an action for wrongful death within the statute of limitations, and his claim for wrongful death is time-barred.

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108446 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE L.B.

Affirmed.

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

KEY WORDS: *Permanent custody; best interest of the child; clear and convincing evidence; R.C. 2151.353(A)(3)/motion for legal custody.*

There was no abuse of discretion where the trial court denied appellant's motion to continue the permanent custody hearing. There was no motion for legal custody pending before the trial court prior to the final hearing for permanent custody as required under R.C. 2151.353(A)(3). Mother made no effort to participate in the case-plan services made available to her and also admitted to her continual use of drugs. Granting permanent custody to the agency was based on competent, credible evidence and was in the best interest of the child.