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Court of Appeals, Eighth Appellate District

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August 29, 2019

107493 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
GALLAGHER SHARP LLP v MILLER GOLER FAEGES LAPINE LLP, ET AL.

Affirmed.

Raymond C. Headen, J., and Kathleen Ann Keough, J., concur; Mary J. Boyle, P.J., concurs in judgment only.

KEY WORDS: *Summary judgment; "of counsel"; professional liability insurance; breach of contract; unjust enrichment; moot; defense costs; Civ.R. 54; judgment on less than all of the claims.*

Plaintiff-appellant law firm was retained under defendant law firm's professional liability insurance policy to provide a defense in a legal malpractice case to the defendant law firm's "of counsel" attorney (defendant-appellee). Following the conclusion of the legal malpractice case, plaintiff-appellant law firm was not paid for its defense costs and filed suit under breach of contract and unjust enrichment against the law firm, in a companion case, and the "of counsel" attorney (defendant-appellee). The trial court did not err when it denied plaintiff-appellant's motion for summary judgment against the "of counsel" attorney (defendant-appellee) and found the claim against that party moot.

107550 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
JOHN T. AVERY v ACADEMY INVESTMENTS, LLC, ET AL.

Affirmed.

Eileen A. Gallagher, J., Patricia Ann Blackmon, P.J., and Frank D. Celebrezze, Jr., J., concur.

KEY WORDS: *R.C. 2711.01; R.C. 2711.02; operating agreement; membership interest; arbitration clause; stay pending litigation; abuse of discretion.*

Where a limited liability company's operating agreement requires subject parties to submit to arbitration any dispute that "arises out of or in connection with" that agreement, the agreement's terms so control. Where a subject party does not comply with the agreement and, instead attempts to adjudicate such a dispute before a trial court, the court does not abuse its discretion by staying proceedings pending arbitration as the operating agreement requires.

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107653 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v CORNELL RUSSELL GRAYER

Affirmed.

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

KEY WORDS: *Guilty plea; knowingly, intelligently, and voluntarily; waiver of constitutional rights; de novo standard of review; totality of the circumstances; Crim.R. 11; ineffective assistance of counsel.*

The trial court's acceptance of defendant's guilty plea complied with Crim.R. 11(C) and was a valid waiver of his constitutional rights. Although the trial court (1) did not ask whether the defendant understood the constitutional rights he was being asked to waive, (2) did not stop after identifying each constitutional right and ask the defendant whether he waived each right, and (3) utilized a group-plea hearing, defendant's guilty plea was valid. The trial court referenced and explained the constitutional rights delineated in Crim.R. 11(C) as well as their waiver in a manner reasonably intelligible to the defendant.

107700 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
JANINE LYCAN, ET AL. v CITY OF CLEVELAND, ET AL.

107737 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
JANINE LYCAN, ET AL. v CITY OF CLEVELAND

Affirmed.

Mary Eileen Kilbane, A.J., and Patricia A. Blackmon, J., concur; Sean C. Gallagher, J., concurs (see separate concurring opinion attached).

KEY WORDS: *Class action; Cleveland Codified Ordinances ("CCO") 413.031; automated traffic camera; lessee; vehicle owner; class certification; summary judgment; Civ.R. 56; administrative remedies; standing; res judicata; unclean hands; voluntary payments; law of the case; claims administrator expenses; time-value of the funds; prejudgment interest.*

Judgment affirmed. The trial court's grant of summary judgment in favor of the class was proper. The trial court's denial of class's request for time-value (prejudgment interest) was proper. The class was not afforded an adequate forum to dispute any citation issued under CCO 413.031. Therefore, any participation in the City's administrative hearing process would have been futile. As a result, the class was not required to exhaust administrative remedies prior to pursuing the current judicial remedy. The class's standing argument was addressed in a previous appeal and affirmed by the Ohio Supreme Court. Therefore, we are bound by the law of the case and cannot address the City's standing argument. The City waived its res judicata argument because it failed to raise it before the trial court. We do not find the trial court's denial of time-value

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for wrongfully collected funds (prejudgment interest) to be an abuse of discretion because this court has previously determined that a judgment based on unjust enrichment rather than a contractual obligation will not support the recovery of prejudgment interest.

107774 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
PARAMJOT KAUR v RAJBINDER SINGH

Affirmed.

Eileen A. Gallagher, J., Sean C. Gallagher, P.J., Kathleen A. Keough, J., concur.

KEY WORDS: *App.R. 16; trial court's adoption of magistrate decision; abuse of discretion.*

Pursuant to a trial court's order adopting a magistrate's decision granting a motion to modify a shared parenting plan, this court reviews whether the court abused its discretion in adopting the decision. Where an appellant does not challenge the court's order adopting such a decision on appeal, but instead challenges the proceedings on a basis outside of our scope of review, this court will not find error.

107793 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
KILEY WILSON, ET AL. v SPENCER PRIDE, ET AL.

Reversed and remanded.

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

KEY WORDS: *Motion to enforce settlement agreement; motion to vacate settlement agreement; attorney statements; binding contract/particularity/insufficient evidence.*

Appellant's argument that the trial court only considered appellee's motion to enforce fails. The trial court in a hearing called for arguments from both appellant and appellee. Appellant's motion to vacate was given consideration.

Although appellant's counsel filed a motion to vacate the settlement agreement, counsel declined to testify at the hearing. Statements made in a motion are not evidence. There was no error where the trial court did not consider appellant's counsel's statements.

Appellant's counsel had full authority to settle the matter, however, additional clarification was needed regarding disbursement of medical payments. The terms of the settlement agreement were not stated with sufficient particularity and, therefore, there was no meeting of the minds to form a valid contract.

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107865 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
L.I. DEVELOPMENT-OHIO, LLC v 6150 SOM CENTER ROAD, LLC, ET AL.

Affirmed.

Mary Eileen Kilbane, A.J.; Larry A. Jones, Sr., J., concurs; Raymond C. Headen, J., dissents (see separate dissenting opinion).

KEY WORDS: *Commercial lease; breach of contract; lease guaranty; lease extension; ambiguous; meeting of minds; summary judgment; Civ.R. 56.*

Judgment affirmed. Trial court's grant of summary judgment in favor of personal guarantors was proper when the lease extension was ambiguous as to whether the lease guaranty for the initial lease term also applied to the lease extension.

107932 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ARTHUR STOREY

Affirmed in part, vacated in part, and remanded.

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

KEY WORDS: *Ineffective assistance of counsel; invalid guilty plea.*

Defense counsel's failure to request the transfer of a pending case to either the mental health docket or inpatient drug treatment did not amount to ineffective assistance of counsel.

Defendant-appellant's guilty plea for burglary was not invalid where the prosecutor, rather than the trial judge, explained the plea agreement and the maximum penalty. However, defendant-appellant's plea to breaking and entering and vandalism was not knowingly, intelligently, and voluntarily provided where the defendant-appellant was not informed of the maximum penalties associated with the offenses.

107933 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DASHAWN BROWN

Reversed, vacated, and remanded.

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

KEY WORDS: *Plea; guilty; constitutional; nonconstitutional; waive; understand; knowingly; intelligently; voluntarily; mandatory; prison; firearm specification; substantial compliance; prejudice.*

Defendant's plea was not knowingly, intelligently, and voluntarily

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made. The trial court completely failed to comply with its responsibility under Crim.R. 11(C)(2)(a) to inform the defendant of the mandatory nature of his sentence.

107934 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
BELINDA GILBERT v CITY OF CLEVELAND

Affirmed.

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

KEY WORDS: Political subdivision immunity; R.C. Chapter 2744; recreational-user statute; R.C. 1533.181; liability; summary judgment.

Pursuant to R.C. 1533.181, the city was immune from liability because the park where the plaintiff was injured was municipally owned and the plaintiff was a recreational user of the park; summary judgment was properly granted in favor of the city.

107979 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v STACY SHEREE REED

Affirmed.

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

KEY WORDS: Felony sentencing; statutory range; contrary to law; R.C. 2953.08(G)(2); R.C. 2929.11(A); and R.C. 2929.12.

Our review of felony sentences is governed by R.C. 2953.08(G)(2). Pursuant to R.C. 2953.08(G)(2), an appellate court may vacate or modify a felony sentence on appeal only if it determines by clear and convincing evidence that the record does not support the trial court's findings under relevant statutes or that the sentence is otherwise contrary to law.

A sentence is contrary to law if (1) the sentence falls outside the statutory range for the particular degree of offense, or (2) the trial court failed to consider the purposes and principles of felony sentencing set forth in R.C. 2929.11 and the sentencing factors in R.C. 2929.12.

In this case, Reed does not dispute that the sentence is within the statutory range. Although the trial court did not specifically state at the sentencing hearing that it considered the purposes and principles of felony sentencing as set forth in R.C. 2929.11 and 2929.12, the trial court's statements throughout demonstrate that it considered the required statutory factors and fulfilled its obligations under the sentencing statutes. Thus, we find that the trial court's sentence is not contrary to law.

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108024 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v OLIVER SALNAVE

Affirmed.

Patricia Ann Blackmon, P.J., Frank D. Celebrezze, Jr., J., and Raymond C. Headen, J., concur.

KEY WORDS: Felony sentencing; consecutive sentences.

Prison sentence is affirmed because the record clearly and convincingly supports the court's statutory findings.