

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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January 10, 2019

102920 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
PAULETTE KOLOSAI v HAITHAM MOUAID AZEM, MD, ET AL.

Affirmed and remanded.

Anita Laster Mays, J., concurs; Mary Eileen Kilbane, A.J., and Melody J. Stewart, J.,* concur in judgment only.

*(Judge Melody J. Stewart participated in this ruling before her resignation from this court).

KEY WORDS: *Enforcement of arbitration agreement, law-of-the-case doctrine, Civ.R. 60(B), Evid.R. 702, expert witness, manifest weight of the evidence.*

A trial court's reversal and remand places the parties in the same position they were in prior to the error. A trial court's determination of an expert witness's qualification will not be reversed unless the trial court clearly abused its discretion. The trial court's finding that the signature on the arbitration agreement was valid is not against the manifest weight of the evidence.

106597 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JAMES UNDERWOOD

Affirmed.

Sean C. Gallagher, J., Mary J. Boyle, P.J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Felony sentence; R.C. 2953.08(G)(2); R.C. 2929.11; R.C. 2929.12; minimum.*

Judgment affirmed where appellant failed to demonstrate by clear and convincing evidence that the record does not support his sentences under the relevant statutes or that his sentences were contrary to law. The record reflected that the trial court considered the purposes and principles of felony sentencing set forth in R.C. 2929.11 and the seriousness and recidivism factors in R.C. 2929.12. Appellant failed to show that the trial court erred by imposing more than the minimum sentence.

106788 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: K.A.Y.

Reversed and vacated.

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

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KEY WORDS: *Motion to vacate restraining order; juvenile court custody proceeding; Civ.R. 65.*

Juvenile court erred in denying motion to vacate restraining order that precluded paternal grandmother from having contact with mother. Even assuming juvenile court had authority to issue a restraining order in custody action under Civ.R. 65, restraining order at issue did not comply with Civ.R. 65(D). Restraining order did not set forth the reasons for its issuance, was unlimited in time, and was not sufficiently specific as to its terms. Further, there were issues both with the manner in which juvenile court joined grandmother as party for purposes of issuing the restraining order and the manner in which the restraining order was issued.

Mother conceded that juvenile court erred in ordering grandmother to pay mother's attorney fees and legal expenses associated with grandmother's motion to vacate the restraining order.

106820 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
STATE OF OHIO v JERMAINE WILLIAMS

Affirmed.

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

KEY WORDS: *Habitual sexual offender; Megan's Law; retroactive application constitutional; former R.C. 2950.06; State v. Bodyke, 126 Ohio St.3d 266, 2010-Ohio-2424, 933 N.E.2d 753; State v. Cook, 83 Ohio St.3d 404, 407, 1998-Ohio-291, 700 N.E.2d 570.*

Judgment affirmed. Defendant presented no evidence of any judgment that he was required to register under the registration laws that preceded Megan's Law. The Ohio Supreme Court has repeatedly rejected claims that the retroactive application of Megan's Law is unconstitutional. As a result, the trial court was within its authority to classify the defendant as an habitual sex offender with a twenty-year registration requirement.

106859 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
JUDY ADKINS, ET AL. v WOMEN'S WELSH CLUB OF AMERICA, ET AL.

Reversed and remanded.

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

KEY WORDS: *Civ.R. 10(D)(2); affidavit of merit; medical claim; refiled action; extension; good cause; dismiss; Civ.R. 12(B)(6); Civ.R. 41(B)(1); notice; opportunity to respond.*

Although the trial court did not abuse its discretion in finding

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appellant failed to demonstrate good cause warranting an extension of time to file an affidavit of merit in a refiled medical malpractice action, the court erred by dismissing the action without affording appellant notice and an opportunity to respond. Case was remanded with instructions to grant plaintiff-appellant an opportunity to respond by filing an affidavit of merit as required by Civ.R. 12(D)(2)(a), or by providing further information to show “good cause” warranting an extension pursuant to Civ.R. 10(D)(2)(b) and (c).

106864	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v DUANE ALLEN KILTON			

Affirmed.

Sean C. Gallagher, P.J., Kathleen Ann Keough, J., and Peter M. Handwork, J.,* concur.
*(Sitting by assignment: Judge Peter M. Handwork, Retired, of the Sixth District Court of Appeals.)

KEY WORDS: *Intimidation of a witness; obstructing official business; domestic violence; sufficiency; manifest weight; credibility.*

Appellant’s convictions for kidnapping, intimidation of a witness, and obstructing official business were affirmed. The evidence was legally sufficient to support the verdicts, and the convictions were not against the manifest weight of the evidence.

106877	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v CORY PERKINS			

107155	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v CORY PERKINS			

Affirmed.

Kathleen Ann Keough, J., Eileen T. Gallagher, P.J., and Patricia Ann Blackmon, J., concur.

KEY WORDS: *Consecutive sentences; R.C. 2929.14(C)(4); supported by the record.*

Imposition of consecutive sentences affirmed where trial court’s findings under R.C. 2929.14(C)(4) were supported by the record.

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106911 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
LOUIS PARRISH v CAVALIERS HOLDING, LLC

Affirmed.

Frank D. Celebrezze, Jr., J.; Sean C. Gallagher, P.J., concurs with separate opinion; Anita Laster Mays, J., concurs with majority and with separate concurring opinion.

KEY WORDS: *Civ.R. 56; summary judgment; R.C. 4123.01(C); workers' compensation benefits; "coming-and-going rule"; "zone of employment"; totality of the circumstances.*

The trial court correctly found that Parrish was not entitled to workers' compensation benefits, and properly granted appellee's motion for summary judgment and denied Parrish's partial motion for summary judgment. Parrish was not within the "zone of employment" when he was injured. Further, there is no causal connection between Parrish's injury and his employment based upon the totality of the circumstances surrounding the accident.

106964 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DEANGELO FROST

Affirmed.

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

KEY WORDS: *Sufficiency; manifest weight.*

A claim of insufficient evidence raises the question whether the evidence is legally sufficient to support the verdict as a matter of law. In reviewing a sufficiency challenge, the relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt.

In contrast to a sufficiency argument, a manifest weight challenge questions whether the state met its burden of persuasion. A reviewing court weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. A conviction should be reversed as against the manifest weight of the evidence only in the most exceptional case in which the evidence weighs heavily against the conviction.

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106972 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
RALPH JUERGENS v THE HOUSE OF LAROSE, INC., ET AL.

Affirmed.

Kathleen Ann Keough, J., Sean C. Gallagher, P.J., and Peter Handwork, J.,* concur.
*(Sitting by assignment: Judge Peter Handwork, retired, of the Sixth District Court of Appeals).

KEY WORDS: *Summary judgment; opportunity to arbitrate grievance; collective bargaining agreement; agreement to arbitrate; statutory age discrimination claim; statute of limitations; R.C. 4112.02; 180 days; grievance procedure; tolling; R.C. 4112.14; alternative pleading; Civ.R. 56(F) motion.*

Trial court properly granted summary judgment to defendant-employer where plaintiff-employee's age discrimination claim under R.C. 4112.02 was barred by the 180-day statute of limitations; the allegation in plaintiff's complaint that he was a member of a protected class under R.C. 4112.14 did not alternatively plead a cause of action under R.C. 4112.14; plaintiff's use of the grievance procedure set forth in the collective bargaining agreement did not toll the statute of limitations.

106982 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DAVID D. ERCOLI, JR.

Affirmed.

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

KEY WORDS: *R.C. 2953.21; res judicata.*

Trial court did not abuse its discretion in denying petition to vacate conviction for aggravated robbery and other charges where the claims in support of the petition raised issues that were previously raised or could have been raised in petitioner's direct appeal.

106985 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v GERALD OLIVER

Affirmed.

Kathleen Ann Keough, J., Eileen T. Gallagher, P.J., and Patricia Ann Blackmon, J., concur.

KEY WORDS: *R.C. 2950.05(F)(1); failure to report change of address; sufficiency of evidence; manifest weight of the evidence.*

Defendant's conviction for failing to report his change of address to

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(Case 106985 continued)

the sheriff in violation of R.C. 2950.05(F)(1) was supported by sufficient evidence and not against the manifest weight of the evidence because the evidence at trial established that defendant had moved to a new residence but did not report his new address to the sheriff.

107002 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
ROBERT LUKACEVIC v CLINTON DANIELS

Affirmed in part; reversed in part; vacated in part; and remanded.

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

KEY WORDS: Summary judgment; Civ.R. 56; deed reformation; fraud; unjust enrichment; default judgment; Civ.R. 55; request for admissions; Civ.R. 36.

The trial court erred by dismissing appellant's claims for deed reformation and fraud. Based on the evidence appellant submitted in support of his motion for summary judgment and the admissions that were conclusively resolved against appellee and in favor of appellant, judgment should have been entered in appellant's favor on the deed reformation and fraud claims. The trial court's judgment awarding appellant \$5,500 on his unjust enrichment claim is vacated because appellant only asserted his claim for unjust enrichment as an alternative basis for relief to the deed reformation and fraud claims. Appellant was not entitled to default judgment.

107012 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
JAMES PERK v TOMORROWS HOME SOLUTIONS, ET AL.

Affirmed.

Mary J. Boyle, P.J., Frank D. Celebrezze, Jr., J., and Stephen A. Yarbrough, J.,* concur.

*(Sitting by assignment: Retired Judge Stephen A. Yarbrough of the Sixth District Court of Appeals.)

KEY WORDS: Summary judgment; res judicata; compulsory counterclaims; Civ.R. 13(A); Civ.R. 41(A).

Plaintiff was barred by res judicata from bringing his second complaint against defendant after voluntarily dismissing it in the first action because the trial court issued a judgment on defendant's counterclaims in the first action. Therefore, although there was not a final judgment on plaintiff's claims in the first action, plaintiff's second action was barred by res judicata because plaintiff's claims were compulsory counterclaims that arose out of the same occurrence or transaction.

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107023 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v CARLOS FLORENCIO

Affirmed in part, reversed in part, and remanded.

Sean C. Gallagher, J., Mary Eileen Kilbane, A.J., and Larry A. Jones, Sr., J., concur.

KEY WORDS: *Felonious assault; kidnapping; manifest weight; scope of redirect examination; R.C. 2929.14(B); void sentence; merger.*

The convictions are not against the weight of the evidence, and trial counsel did not render a deficient performance in failing to object to the scope of the redirect examination. The imposition of concurrent service of firearm specifications was void under R.C. 2929.14(B)(1)(g); however, the trial court plainly erred in not inquiring into whether the two offenses merged as allied offenses of similar import.

107038 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v RODNEY A. HARDNETT

Affirmed.

Sean C. Gallagher, J., Mary Eileen Kilbane, A.J., and Larry A. Jones, Sr., J., concur.

KEY WORDS: *Felonious assault; improper discharge of a firearm; allied offenses; R.C. 2941.25; firearm specifications; R.C. 2929.14(B)(1)(g).*

Felonious assault and improper discharge of a firearm are not allied offenses subject to merger because the two offenses are of dissimilar import.

107157 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v TERRY CANADY

Affirmed in part, modified in part, and remanded.

Sean C. Gallagher, J., Mary Eileen Kilbane, A.J., and Larry A. Jones, Sr., J., concur.

KEY WORDS: *Discharge of a firearm; public road or highway; R.C. 2923.162(A)(3); conceded error; least degree; double jeopardy; plain error; lesser included; enhancement; modified; misdemeanor; resentencing.*

Trial court improperly entered appellant's conviction for discharge

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(Case 107157 continued)

of a firearm on or over a public road or highway, in violation of R.C. 2923.162(A)(3), as a felony of the third degree. Upon conceded error, conviction was modified to a misdemeanor of the first degree and the case was remanded for resentencing on that offense only. Appellant's conviction did not violate double jeopardy, and no plain error occurred when he was found not guilty of the first-degree offense as charged, but guilty of the basic form of the offense because it was simply a matter of a failed enhancement.

107292 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: J.C.

107294 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: G.C.

Reversed and remanded.

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

KEY WORDS: *Modification of allocation of parental rights; shared parenting order; change in circumstances; residential parent; best interest of the children; manifest weight of the evidence; prior custody decree; prejudicial effect; notice of intent to relocate.*

Court erred by denying Mother's motion for reallocation of parental rights, because it failed to consider evidence dating back to prior custody decree to determine whether a change in circumstances occurred. Court further erred by issuing an order regarding notice of intent to relocate that did not comply with R.C. 3109.051(G)(1). Case remanded to the trial court for a new hearing on Mother's motion for reallocation of parental rights and responsibilities and to issue a new order complying with said statute.

107340 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v MARQUIS D. JONES

Affirmed.

Mary J. Boyle, P.J., Frank D. Celebrezze, Jr., J., and Stephen A. Yarbrough, J.,* concur.

*(Sitting by assignment: Retired Judge Stephen A. Yarbrough of the Sixth District Court of Appeals.)

KEY WORDS: *Consecutive sentences; R.C. 2929.14(C)(4); R.C. 2953.08.*

The record supports the trial court's imposition of consecutive sentences.