

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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July 25, 2019

107258 DOMESTIC RELATIONS F CIVIL C.P.-JUV, DOM, PROBATE
S. H. B. v M. W. L., ET AL.

Affirmed.

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

KEY WORDS: *Domestic violence civil protection order; contempt; purge; abuse of discretion; ambiguous; reasonable time for compliance.*

Where the court's contempt order was unambiguous, the appellant's subjective misinterpretation of the court's order is not a defense in a contempt proceeding. Even if the court accepted the appellant's interpretation of the order, the appellant failed to satisfy his burden that he complied with the conditions that would prevent the imposition of a jail sentence. The record reflects the appellant did not purge his contempt, nor did he perform 200 hours of community service within a reasonable time of the issuance of the court's contempt order. The trial court's imposition of sentence is therefore not an abuse of discretion.

107476 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
STATE OF OHIO v MICHAEL HILTON

Affirmed.

Kathleen Ann Keough, J., Sean C. Gallagher, P.J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *Res judicata; consecutive sentences; maximum; findings; H.B. 86; retroactive.*

Appellant's appeal challenging his sentence as void because no findings were made prior to imposing maximum or consecutive sentences is barred by res judicata; appellant could have made this argument on direct appeal or appeal after resentencing. H.B. 86 reviving judicial fact-finding was not retroactive.

107687 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
HAYES W. ROWAN v MICHAEL SCHAFFER

Affirmed.

Sean C. Gallagher, P.J., Kathleen Ann Keough, J., and Michelle J. Sheehan, J., concur.

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(Case 107687 continued)

KEY WORDS: Defamation; negligent infliction of emotional distress; statute of limitations; Civ.R. 12(B)(6); App.R. 23; Loc.App.R. 23; vexatious litigator; sanctions.

The complaint for defamation was time-barred based on the allegations advanced therein, and although the current appeal was not warranted based on existing law or a good faith attempt to extend or modify that law, financial sanctions beyond the court costs are not warranted.

107757 ROCKY RIVER MUNI. G CIVIL MUNI. & CITY
GREGORY A. JONES, ET AL. v KARL DLUGOS, ET AL.

Dismissed.

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

KEY WORDS: *Failure to state a claim upon which relief can be granted; forcible entry and detainer.*

Appellees have been restored to the property; appellants' issues regarding the forcible entry and detainer action therefore are moot upon appeal.

107827 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v RICARDO LOZADA

Reversed and remanded.

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

KEY WORDS: *Crim.R. 11(C)(2)(c); guilty plea; waiver; constitutional rights; strict compliance.*

A trial court fails to strictly comply with Crim.R. 11(C)(2)(c) where the court does not ensure that a defendant understands that by pleading guilty, the defendant thereby waives his or her constitutional rights at trial.

107841 CLEVELAND MUNI. G CIVIL MUNI. & CITY
CITY OF CLEVELAND v GILDA F. SPEARS

Dismissed.

Sean C. Gallagher, P.J., Kathleen Ann Keough, J., and Michelle J. Sheehan, J., concur.

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(Case 107841 continued)

KEY WORDS: R.C. 715.261; demolition costs; Civ.R. 60(B); stay; mootness doctrine.

The appeal is moot and dismissed based on the appellee's suggestion that the final judgment has been satisfied through an action to execute on the judgment.

107853 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
BANK OF NEW YORK MELLON v KARLEAN MAGBY, ET AL.

Affirmed.

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

KEY WORDS: *Foreclosure; validity of mortgage; leave to amend pleading; Civ.R. 15; fictitious entity; Civ.R. 56.*

Summary judgment was appropriate because the undisputed evidence demonstrates that Countrywide Home Loans registered to operate in Ohio under the "d.b.a." designation America's Wholesale Lender and the defendant has not presented any authority to demonstrate that such a practice invalidated the mortgage instrument under Ohio law.

107860 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v GREGORY SCRUGGS, JR.

Affirmed.

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

KEY WORDS: *Manifest Weight; factfinder's determination of witness credibility.*

In considering a manifest weight challenge, the trier of fact is in the best position to take into account inconsistencies, along with the witness's manner, demeanor, gestures, and voice inflections, in determining whether the proffered testimony is credible. Therefore, we afford great deference to the factfinder's determination of witness credibility.

The jury was in the best position to view T.M. and Scruggs, to observe their demeanor, gestures, voice inflections, and then conclude who was more credible. As a result, the jury was free to accept or reject any or all of the parties' testimony, but decided to accept T.M.'s testimony that she did not and was not able to consent to sexual conduct with Scruggs because she was asleep and drunk.

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107867 PROBATE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
JOHN COOK v MAXINE EVERHART, ET AL.

Affirmed.

Kathleen Ann Keough, J., Sean C. Gallagher, P.J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *Motion for summary judgment; interested person, R.C. 2107.71(A); HIPPA authorization.*

Trial court did not err in granting executor's motion for summary judgment and dismissing plaintiff's complaint challenging the validity of the testator's will where the plaintiff was not an interested person under R.C. 2107.71(A) and thus had no standing to challenge the will. Plaintiff's motion for a HIPPA authorization allowing the release of the testator's medical records was rendered moot by the ruling on the motion for summary judgment.

107947 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: T. H.

Affirmed.

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

KEY WORDS: *Legal custody; permanent custody; best interest of the child.*

Despite paternal aunt's willingness to assume legal custody of the child, clear and convincing evidence supports the trial court's determination that permanent custody is in the best interest of the child.

108055 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: D.F., ET AL.

Reversed and remanded.

Eileen A. Gallagher, J., and Michelle J. Sheehan, J., concur; Frank D. Celebrezze, Jr., P.J., dissents with separate opinion.

KEY WORDS: *Motion to modify temporary custody to permanent custody; termination of parental rights; R.C. 2151.414; clear and convincing evidence; best interest of the child.*

Juvenile court abused its discretion in granting agency's motion for permanent custody. Termination of mother's parental rights and granting permanent custody to agency was not shown by clear and

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(Case 108055 continued)

convincing evidence to be in the best interest of the children. Where mother completed all case plan services required of her, secured suitable housing and was allowed to maintain custody of her two youngest children, agency's criticisms of mother's parenting did not support a finding by clear and convincing evidence that termination of mother's parental rights as to her other seven children was in the best interest of the children.