

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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June 13, 2019

107010 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
BENESCH, FRIEDLANDER, COPLAN, & ARONOFF, LLC v TERRI JOCHUM

Affirmed.

Mary Eileen Kilbane, A.J., Larry A. Jones, Sr., J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Motion for summary judgment; Civ.R. 56; legal malpractice; attorney fees; collection action.*

Judgment affirmed. *The trial court properly granted summary judgment on plaintiff's (law firm) claim against defendant for attorney fees when legal malpractice was not established, and claims that arise out of an attorney's representation, regardless of the label attached, constitute legal malpractice claims.*

107133 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ANGELO WILLIAMS

Affirmed.

Anita Laster Mays, P.J., Michelle J. Sheehan, J., and Raymond C. Headen, J., concur.

KEY WORDS: *Motion in limine, hearsay, sufficient evidence, manifest weight of the evidence.*

The trial court did not err when it denied the appellant's motion in limine and allowed the state to introduce admissible hearsay evidence. The appellant's convictions were supported by sufficient evidence, and the convictions were not against the manifest weight of the evidence, because the jury did not lose its way and create a manifest injustice.

107209 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
STATE OF OHIO v THURMON PRYOR

Affirmed.

Patricia Ann Blackmon, P.J., Larry A. Jones, Sr., J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *App.R. 4, Civ.R. 58, Civ.R. 60(B).*

Time for appeal tolled by failure to notify parties of judgment. Civ.R. 60(B)'s relief from judgment is properly denied.

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107423 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
STATE OF OHIO v TREVON A. OSBORN

Affirmed.

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

KEY WORDS: *R.C. 2953.21/petition for postconviction relief; hearing; abuse of discretion.*

Appellant's petition was determined to be self-serving. The trial court issued its findings of fact and conclusions of law based on competent and credible evidence. It was not an abuse of discretion where the trial court denied appellant's petition.

107437 CLEVELAND MUNI. C CRIMINAL MUNI. & CITY
CITY OF CLEVELAND v DEANDREY P. WILEY

Affirmed.

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

KEY WORDS: *Domestic violence; R.C. 2919.25; sufficiency; manifest weight of the evidence; ineffective assistance of counsel.*

Defendant's conviction for domestic violence was supported by sufficient evidence, and was not against the manifest weight of the evidence. Defendant did not receive ineffective assistance of counsel.

107525 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v MELVIN BOURN

Affirmed.

Anita Laster Mays, P.J., Michelle J. Sheehan, J., and Raymond C. Headen, J., concur.

KEY WORDS: *Preindictment delay; actual prejudice; no justifiable reason for delay.*

The trial court did not err by granting the appellee's motion to dismiss the charges against him because the appellee showed actual prejudice by the state's decision to delay indicting the appellee for no justifiable reason.

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107582 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v WILLIAM REED

Affirmed.

Larry A. Jones, Sr., J., Patricia Ann Blackmon, P.J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Crim.R. 11(C)/guilty plea.*

Although the trial court did not use the exact language contained in Crim.R. 11(C), the trial court did explain appellant's rights in a reasonably intelligent manner to appellant; appellant stated that he understood all of his rights. The trial court's acceptance of appellant's guilty plea was proper.

107586 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JOHN HANDYSIDE, III

Affirmed.

Anita Laster Mays, J., Mary Eileen Kilbane, A.J., and Larry A. Jones, Sr., J., concur.

KEY WORDS: *Sufficient evidence, manifest weight of the evidence, abduction.*

The appellant's conviction for abduction was not against the manifest weight of the evidence, and there was sufficient evidence to convict him.

107598 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v MICHAEL D. ROBINSON

Affirmed.

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

KEY WORDS: *Consecutive sentences; supported by the record; findings; negotiated plea agreement; invited error.*

Appellant's consecutive sentences affirmed even though court imposed consecutive sentence on a conviction the state conceded could not be proved because the conviction was part of a negotiated plea agreement that the defendant entered into knowingly, intelligently, and voluntarily.

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107616 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v SCOTT BLACHOWSKI

Affirmed.

Kathleen Ann Keough, J., Mary Eileen Kilbane, A.J., and Larry A. Jones, Sr., J., concur.

KEY WORDS: *Improper juror communication; mistrial; child victim's credibility; manifest weight of the evidence.*

Trial court did not abuse its discretion in not questioning each juror individually where the trial court directed a question to all jurors about the alleged improper juror communication; when no one responded, court could assume no juror was affected; court did not err in not declaring a mistrial where no juror was affected by improper communication; detective's testimony was proper even if it indirectly bolstered the child victim's credibility where the detective did not directly testify regarding the victim's truthfulness; defendant's convictions for rape, gross sexual imposition, and child endangering were not against the manifest weight of the evidence.

107617 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v WILLIAM JOHNSON

Affirmed.

Mary J. Boyle, P.J., Sean C. Gallagher, J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *R.C. 2925.50; Crim.R. 32.1; res judicata; voidable.*

The trial court did not abuse its discretion when it denied defendant's motion to withdraw his plea nearly ten years after defendant pleaded guilty. Defendant's argument that his state-court drug convictions should be vacated under R.C. 2925.50 is barred by res judicata because defendant did not file a direct appeal where he could have raised this issue.

107703 LYNDHURST MUNI. C CRIMINAL MUNI. & CITY
CITY OF HIGHLAND HEIGHTS v C.C.

Affirmed in part, vacated in part, and remanded.

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

KEY WORDS: *Charging instrument; notice; Crim.R. 3; waiver of right to counsel; Crim.R. 44; sufficiency of the evidence; civil protection order; protection order violation.*

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(Case 107703 continued)

The criminal complaint complied with Crim.R. 3 where it provided the name, numerical designation, and essential elements of the offense and was signed by the complainant. The defendant did not knowingly, intelligently, and voluntarily waive his right to counsel, and his conviction for violation of a protection order was supported by sufficient evidence.

107705 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ANDRE HOWARD

Affirmed.

Mary Eileen Kilbane, A.J., Larry A. Jones, Sr., J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Res judicata.*

Under the doctrine of res judicata, a final judgment of conviction bars a convicted defendant who was represented by counsel from raising and litigating in any proceeding, except an appeal from that judgment, any defense or any claimed lack of due process that was raised or could have been raised by the defendant at the trial, which resulted in that judgment of conviction, or on an appeal from that judgment.

Further, the law of the case doctrine is rooted in principles of res judicata and issue preclusion. The decision of a reviewing court in a case remains the law of that case on the legal questions involved for all subsequent proceedings in the case at both the trial and reviewing levels.

Howard's present contention that the imposition of consecutive sentences for the three-and five-year firearm specification was improper, flows from his belief that these were allied offenses. However, because Howard raised the issue of allied offenses in a prior appeal, we are now barred from reviewing his current arguments by the doctrine of res judicata.

107748 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v MICHAEL SUELLS WILLIAMS

Affirmed.

Patricia Ann Blackmon, P.J., Larry A. Jones, Sr., J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Waiver of counsel; prosecutorial misconduct; continuance; cross-examination; sufficiency of the evidence; firearm specification; sexually violent predator specification; allied offenses; manifest weight of the evidence; rape; kidnapping; having a weapon while under disability; aggravated burglary.*

Defendant's conviction for rape and associated offense is affirmed.

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(Case 107748 continued)

Defendant voluntarily waived his right to be represented by counsel. No prejudicial errors occurred at trial, and his convictions are supported by the weight of the evidence.

107877 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: R.M., ET AL.

Affirmed.

Anita Laster Mays, J., Larry A. Jones, Sr., P.J., and Raymond C. Headen, J., concur.

KEY WORDS: R.C. 2151.414(D)(1); clear and convincing evidence; best interest of the children; R.C. 2151.414(E)(2).

Clear and convincing evidence supported the juvenile court's determination that award of permanent custody to a county children's services agency was in the best interest of the children under R.C. 2151.414(D)(1) because of the Mother's inability to have appropriate visitations with the children; Mother's refusal to take advantage of the offered mental health services; Mother's lack of explanation for the massive injuries sustained by her son; and Mother's continued relationship with her abuser. In addition, under R.C. 2151.414(E)(2), the juvenile court determined that Mother has a chronic emotional illness that is so severe that it makes the parent unable to provide an adequate permanent home for the child at the present time and, as anticipated, within one year from the time the court holds the hearing.

107878 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: Z.D.

Affirmed.

Larry A. Jones, Sr., P.J., Kathleen Ann Keough, J., and Eileen A. Gallagher, J., concur.

KEY WORDS: R.C. 2151.414(B)(1) and 2151.414(D)(1)/permanent custody/best interest of the child; hearsay testimony; plain error.

The admitted portion of the social worker's testimony from another agency regarding the Mother's lack of progress was outweighed by other evidence that showed that Mother moved out of state and had been inconsistent with visitation with the child and had not bonded with the child; the child was being cared for by maternal relatives and had bonded with them; Mother had unresolved domestic violence issues; and, Mother did not have custody of her other four children. The trial court did not commit plain error. Credible and competent evidence showed that it was in the best interest of the child to be placed in the permanent custody of CCDCFS.

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108027 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
GRAND ARCADE CONDOMINIUM OWNERS' ASSOCIATION, INC. v GA 120, L.L.C., ET AL.

Affirmed.

Mary J. Boyle, P.J., Kathleen Ann Keough, J., and Raymond C. Headen, J., concur.

KEY WORDS: *R.C. 5311.18(B)(2); receiver appointment; mootness doctrine.*

Appellant's argument that the trial court erred when it denied its motion for the appointment of a receiver in a foreclosure case is moot. The trial court entered the final decree of foreclosure and appellant did not file a stay from the judgment. Therefore, appellant's argument that it was entitled to a receiver during the pendency of the foreclosure action is moot.

108152 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
STATE OF OHIO v JAMES A. AUSTIN

Reversed and remanded.

Larry A. Jones, Sr., J., Anita Laster Mays, P.J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *R.C. 2953.21(A)(2)/time frame for filing petition for postconviction relief; conceded error.*

Appellant's petition for postconviction relief was timely filed and therefore should have been considered on its substantive grounds.