June 6, 2019

107078 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v TAMESHA BENNETT

Reversed and remanded.

Anita Laster Mays, J., and Eileen A. Gallagher, J., concur; Sean C. Gallagher, P.J., concurs with separate opinion.

KEY WORDS: R.C. 2945.37(B), R.C. 2945.371, competency and sanity at the time of the act.

Defendant's right to a fair trial was prejudiced by the ineffective assistance of counsel. The charges arose as the result of an altercation at the medical center where defendant was seeking admission to have her mental health medications adjusted. Defendant had a documented history of mental health concerns. Counsel did not address the docketed pretrial order requesting for a competency and sanity at the time of the act evaluation and did not conduct a reasonable inquiry.

107163 PARMA MUNI. C CRIMINAL MUNI. & CITY
CITY OF PARMA HEIGHTS v CHRISTOPHER F. BROOKS

Affirmed.

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

KEY WORDS: R.C. 4511.43; Evid.R. 601(A); sufficient evidence; manifest weight of the evidence; witness competency; voir dire.

A conviction for failing to stop at a stop sign in violation of R.C. 4511.43 is based on sufficient evidence where a police officer testifies that he had an unobstructed view of the immediate area and observed the defendant fail to stop as required by the statute, and instead proceed through the intersection without stopping. Further, such a conviction is not against the manifest weight of the evidence where the defendant, in his self-serving testimony, admits he violated the statute.

A trial court commits error when conducting a voir dire examination of a child of tender years where the court fails to determine whether the child is capable of receiving just impressions of facts and events and accurately relate them. However, the error is harmless where the defendant otherwise admitted he was guilty of the offense charged, failed to proffer what the child's testimony would have been for the record and even assuming the testimony would have been consistent with his account, it would have been merely duplicative.

107268 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
DWIGHT GOODMAN v MCDONALD'S CORPORATION, ET AL.

Affirmed.

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

KEY WORDS: Slip and fall; sidewalk; summary judgment; open and obvious.

The trial court did not err in granting summary judgment in favor of a McDonald's restaurant in a slip-and-fall case where plaintiff alleged that when he left the restaurant, he slipped and fell on a sidewalk that had been cleaned earlier. The summary judgment was proper because plaintiff did not provide testimony as to the nature of the hazard on the sidewalk causing his fall. Furthermore, any potential hazard on the sidewalk was open and obvious because the evidence presented by plaintiff did not reveal his view of the sidewalk was blocked in any way. In addition, plaintiff's own testimony shows he had travelled on the same sidewalk and "might have slipped a little bit" when he entered the restaurant, which indicates that he had been alerted to any potential hazard on the sidewalk and may reasonably be expected to take appropriate measures to protect himself.

107286 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v CHRISTIAN WASHINGTON

Affirmed.

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

KEY WORDS: Manifest weight; credibility; bench trial.

Appellant's convictions for aggravated burglary, kidnapping, domestic violence, endangering children, menacing by stalking, and disrupting public services were not against the manifest weight of the evidence.

107392 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DAPRI CROSBY

107551 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DAPRI CROSBY

Affirmed.

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

KEY WORDS: Amenability hearing; R.C. 2152.12; discretionary transfer; applicable factors.

The juvenile court did not abuse its discretion when it found that defendant was not amenable to rehabilitation in the juvenile justice system. The juvenile court properly considered the relevant factors under R.C. 2152.12. The defendant had a long history of delinquencies in the juvenile justice system. The juvenile court had overseen defendant's cases for four years and had given him many opportunities in the juvenile justice system.

107418 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v CHRISTOPHER R. DANSBY-EAST

Affirmed.

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

KEY WORDS: Ineffective assistance of counsel; motion to suppress; window tint violation; probable cause; consecutive sentences.

Counsel was not ineffective for not filing a motion to suppress where the record was unrefuted that the police had probable cause to stop defendant's vehicle for a window-tint violation; trial court did not err in imposing consecutive sentences where it made the necessary statutory findings under R.C. 2929.14(C)(4), and the record supported consecutive sentences.

107460 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v TEQUILA CRUMP

Affirmed in part, reversed in part and remanded.

Patricia Ann Blackmon, J., Mary J. Boyle, P.J., and Sean C. Gallagher, J., concur.

KEY WORDS: Jury instructions on reckless homicide; Crim.R. 31(A); child endangering; aiding and abetting.

Jury instructions on reckless homicide did not deprive Crump a unanimous verdict pursuant to Crim.R. 31(A); child endangering convictions did not deprive Crump of a unanimous verdict; trial court did not err in instructing on reckless homicide as a lesser included offense of aggravated murder; aiding and abetting instruction was not erroneous; convictions were supported by sufficient evidence; convictions were not against the manifest weight of the evidence; reckless homicide conviction merged with endangering children conviction under R.C. 2919.22(B) pertaining to the same incident; endangering counts from different dates do not merge; trial court properly denied motion to sever; Crump was not denied effective assistance of counsel; there was no cumulative error.

107475 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
AE OWNER LLC, ET AL. v CITY OF EAST CLEVELAND, ET AL.

Affirmed.

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

KEY WORDS: Motion for summary judgment; de novo review; Civ.R. 56; enjoin; R.C. 2723.01 et seq.; R.C. 2721.01 et seq.; occupancy fee; fee disguised as a tax; unconstitutional; Equal Protection; Home Rule Authority.

The trial court correctly granted a motion for summary judgment finding defendant-municipality's occupancy fee was a tax disguised as a fee and, therefore, illegal and unconstitutional. Pursuant to R.C. 2723.02, the defendant-municipality was enjoined from imposing the illegal tax.

107494 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v URSULA OWENS

Affirmed.

Sean C. Gallagher, J., Mary J. Boyle, P.J., and Patricia Ann Blackmon, J., concur.

KEY WORDS: Manifest weight; sufficiency of the evidence; felony murder; R.C. 2903.02(B); reckless homicide; lesser included offenses; joinder; Crim.R. 8; Evid.R. 404(B); independent-felony/merger doctrine; allied offenses.

The convictions are affirmed: (1) the trial court did not err in refusing to sever the trials for separate and distinct conduct; (2) the evidence of injuries occurring before the events underlying the convictions was not connected to either defendant so as to implicate Evid.R. 404(B); (3) reckless homicide is not a lesser-included offense of felony murder under R.C. 2903.02(B); (4) Ohio does not recognize the independent-felony/merger doctrine; and (5) the convictions are not against the weight of the evidence and are based on sufficient evidence.

107517 CLEVELAND MUNI. G CIVIL MUNI. & CITY
5106 FRANKLIN INC. v A&A INC.

107544 CLEVELAND MUNI. G CIVIL MUNI. & CITY
5106 FRANKLIN, INC. v A&A, INC., ET AL.

107712 CLEVELAND MUNI. G CIVIL MUNI. & CITY

5106 FRANKLIN, INC. v A&A, INC.

Affirmed.

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

KEY WORDS: Civ.R. 60(B)/relief from judgment; Civ.R. 56/summary judgment; declaratory judgment; forcible entry and detainer; breach of contract.

Trial court did not err in denying appellant's motion for relief from judgment in a commercial lease case because motion was untimely, appellant could not show meritorious defense, and appellant could not show that counsel was negligent for failing to respond to motion for summary judgment. Former counsel did not abandon its client. Appellant waived argument that the trial court erred in granting summary judgment in favor of appellee because appellant did not respond to summary judgment motion. Appellant failed to comply with appellate rules by supporting its arguments with authority and citations to the record; therefore, appellant waives its arguments on appeal.

107526 SOUTH EUCLID MUNI. C CRIMINAL MUNI. & CITY

CITY OF SOUTH EUCLID v BRENDA V. BICKERSTAFF

Affirmed in part; modified in part; and remanded.

Kathleen Ann Keough, J., and Anita Laster Mays, J., concur; Mary J. Boyle, P.J., concurs in part and dissents in part with separate opinion.

KEY WORDS: Misdemeanor; sentencing; abuse of discretion; contrary to law; community control; jail.

The trial court abused its discretion for imposing an unsuspended five-day jail sentence for a fourth-degree misdemeanor offense of failing to display a front license plate. The trial court did not abuse its discretion in ordering the defendant to serve a period of community control with sanctions, which based on the entire circumstances of the case, were appropriate. However, the imposition of a community control sanction that was entirely unrelated to the case was an abuse of discretion.

107542 BEREA MUNI. C CRIMINAL MUNI. & CITY

CITY OF BROOK PARK v DAVID GANNON

Affirmed.

Mary J. Boyle, J., Eileen T. Gallagher, P.J., and Patricia Ann Blackmon, J., concur.

KEY WORDS: Driving under the influence of alcohol; R.C. 4511.19(A)(1)(a); driving under suspension; R.C. 4510.21; failure to control; R.C. 4511.202; sufficient evidence; circumstantial evidence; sudden-emergency defense; affirmative defense; manifest weight of the evidence.

The defendant's convictions for OVI, driving under suspension, and failure to control were affirmed. The city presented sufficient evidence of OVI and failure to control. Although police found defendant in a bar, circumstantial evidence established beyond a reasonable doubt that he had been driving under the influence. A witness testified that defendant hit a tree and left the scene. Within approximately 30 minutes, police found defendant in a bar. Although defendant claimed that he did not start drinking until he got to the bar, he smelled strongly of alcohol, had "red, watery and glossy eyes," could not maintain his balance, needed assistance walking, and was swaying back and forth as he tried to walk. The witness's testimony that defendant hit a tree was also sufficient evidence to establish that defendant failed to control his vehicle. Defendant's argument that his girlfriend kicking him was a sudden emergency that caused him to lose control was without merit. Defendant's convictions were also not against the manifest weight of the evidence.

107555 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v HENRY NORMAN

Affirmed.

Raymond C. Headen, J.; Eileen T. Gallagher, P.J., concurs with the lead opinion and with the separate concurring opinion; Eileen A. Gallagher, J., concurs with a separate concurring opinion.

KEY WORDS: Aggravated robbery; firearms; evidence; abuse of discretion; hearsay; Evid.R. 801; Evid.R. 803; excited utterance; harmless error.

The trial court did not abuse its discretion in admitting firearms into evidence when they were directly related to the crime with which the defendant was charged. Testimony that a declarant was "a little nervous" and "edgy" was insufficient to establish that her statement was an excited utterance pursuant to Evid.R. 803(2). The admission of this statement was harmless error where there otherwise was significant evidence of defendant's guilt.

107594 EAST CLEVELAND MUNI. C CRIMINAL MUNI. & CITY
CITY OF EAST CLEVELAND v ANITA M. HARRIS

Reversed, vacated, and remanded.

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

KEY WORDS: No contest plea; R.C. 2937.07; explanation of circumstances.

Conviction vacated where trial court accepted defendant's guilty plea and found her guilty without an explanation of the facts supporting the conviction.

107627 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
AGATHA MARTIN WILLIAMS v WARDEN BRADENSHAWN HARRIS

Affirmed.

Larry A. Jones, Sr., J., Mary Eileen Kilbane, A.J., and Mary J. Boyle, J., concur.

KEY WORDS: Petition for habeas corpus; jurisdiction; community control; Civ.R. 12(B)(6) — motion to dismiss; failure to timely respond.

Sentencing errors cannot be attacked through an action in habeas corpus.

Appellee's motion to dismiss went unopposed where appellant failed to respond in a timely manner; the motion was not treated as a motion for summary judgment and the trial court's granting appellee's motion to dismiss was proper.

107640 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v CARLTON HILL

Affirmed.

Sean C. Gallagher, J., Mary J. Boyle, P.J., and Patricia Ann Blackmon, J., concur.

KEY WORDS: Guilty plea; sex-offender classification; maximum sentence; R.C. 2929.12; mitigating; manifest weight; Crim.R. 11(B)(1); waive; ineffective assistance.

Appellant's convictions and sentence were affirmed. The record reflected that the trial court considered mitigating factors under R.C. 2929.12 when sentencing appellant. Appellant's guilty plea waived his right to raise a manifest-weight challenge, and a review of the record showed that appellant's guilty pleas were knowingly, voluntarily, and intelligently entered. Appellant failed to demonstrate ineffective assistance of counsel.

107643 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JOHN PRUITT

Affirmed and remanded.

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

KEY WORDS: Clerical error; plea; prejudice; R.C. 2953.08(D); agreed sentencing; knowing; voluntary; intelligent; substantial compliance.

Defendant's guilty plea was knowingly, voluntarily, and intelligently entered because the trial court substantially complied with all nonconstitutional advisement requirements and the agreed sentences cannot be reviewed under R.C. 2953.08(D).

107670 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
PROFESSIONAL BANK SERVICES, ET AL. v GROSSMAN DT, INC.

Affirmed.

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

KEY WORDS: Civ.R. 56(C); summary judgment; Civ.R. 56(E); Evid.R. 803(6); object; waive.

Trial court did not err in granting defendant's Civ.R. 56(C) motion for summary because no genuine issue of material fact existed for trial whether a judgment debtor was employed by the defendant when the defendant was served with the order of garnishment. The plaintiff failed to object to the affidavit and thus waived the argument on appeal, and the defendant's affidavit attached to its motion for summary judgment was proper under Civ.R. 56(E) and properly authenticated the attached business records pursuant to Evid.R. 803(6).

107677 CLEVELAND MUNI. C CRIMINAL MUNI. & CITY
CITY OF CLEVELAND v SETH MERCER

Dismissed.

Frank D. Celebrezze, Jr., J., Eileen T. Gallagher, P.J., and Anita Laster Mays, J., concur.

KEY WORDS: Final, appealable order; want of prosecution; dismissal without prejudice.

The trial court's dismissal of the complaint for "want of prosecution" was a dismissal without prejudice and, therefore, not a final, appealable order.

107696 DOMESTIC RELATIONS F CIVIL C.P.-JUV, DOM, PROBATE
ZACHARY B. BURKONS v STACY L. BEUGEN

Affirmed.

Patricia Ann Blackmon, J., Mary J. Boyle, P.J., and Sean C. Gallagher, J., concur.

KEY WORDS: Domestic relations; attorney fees.

Trial court did not abuse its discretion in awarding wife $5,000 in attorney fees, where she sought $197,000 but received, inter alia, $98,000 in bank account and other "significant assets."

107743 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
STATE OF OHIO v SAMUEL S. JONES

Affirmed.

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

KEY WORDS: R.C. 2945.71, preliminary hearing, grand jury indictment, res judicata, R.C. 2953.21, R.C. 2953.23, postconviction petitions.

The trial court correctly determined that defendant was not entitled to postconviction relief. The trial court had subject matter jurisdiction to impose the conviction because the grand jury's indictment for the felony charges rendered any irregularities in the municipal court proceedings moot. The trial court denied the defendant's pretrial motion to dismiss the indictment on the same grounds advanced in the petition, and the defendant did not offer the issue as error during the direct appeal so the doctrine of res judicata applies. Defendant's petition was untimely filed under R.C. 2953.21, and defendant failed to demonstrate that the filing met the exceptions of R.C. 2953.23 that toll the filing period.

107753 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: N.J.V.

Affirmed and remanded.

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

KEY WORDS: Shared parenting; abuse of discretion; manifest weight of the evidence; best interest of the child; findings of fact and conclusions of law.

Judgment granting shared parenting and designating Father as the residential parent for school enrollment purposes was not an abuse

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of discretion where court's findings that shared parenting and Father's designation as residential parent were in child's best interest.

Trial court's judgment properly made findings of fact and conclusions of law as required by statute.

Omission of one page of a standard parenting time schedule from the court's judgment was clerical error that may be corrected by nunc pro tunc journal entry on remand.

107754 DOMESTIC RELATIONS F CIVIL C.P.-JUV, DOM, PROBATE
MICHELLE CHAMPOIR v DOUGLAS CHAMPOIR

Reversed and remanded.

Frank D. Celebrezze, Jr., J., and Eileen A. Gallagher, J., concur; Patricia Ann Blackmon, P.J., concurs in judgment only.

KEY WORDS: Final, appealable order; R.C. 2505.02; motion to disqualify counsel; Prof.Cond.R. 3.7; necessary witness.

An order granting a motion to disqualify opposing counsel is a final, appealable order. The trial court abused its discretion in granting appellee's motion to disqualify appellant's counsel because appellant's counsel was not a necessary witness.

107769 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
ROYAL FLEET AUTO SALES, LLC v ANNA CHAMBERS, ET AL.

Dismissed.

Frank D. Celebrezze, Jr., J., Eileen T. Gallagher, P.J., and Anita Laster Mays, J., concur.

KEY WORDS: Motion to dismiss appeal; satisfaction of judgment; mootness doctrine.

The issues raised on appeal were rendered moot by appellant's failure to seek a stay of the execution of judgment and appellee's satisfaction of the judgment.

107770 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
KERTES ENTERPRISES LLC v STEVE SANDERS, ET AL.

Affirmed in part, reversed in part, and remanded.

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

KEY WORDS: Breach of contract; counterclaim; declaratory relief; summary judgment; purchase; property; real property; agreement; void; unenforceable; proper party.

Trial court's decision to grant summary judgment in favor of defendant-appellee on counterclaim for declaratory relief and to declare an agreement void was reversed. A seller of real property is not required to own the property at the time of execution of a purchase agreement, and is only required to have title at the time of property conveyance. Because no cross-appeal was filed, the trial court's decision to grant summary judgment in plaintiff's favor on the remaining counterclaims was affirmed. Trial court's decision to deny summary judgment on the breach-of-contract claim was not reviewable because there was no longer a final appealable order upon finding declaratory relief on the counterclaim was not warranted.

107805 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
JANE SHICK v RITE AID, ET AL.

Affirmed.

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

KEY WORDS: Summary judgment; slip and fall; wet floor; melted snow; snowy conditions; open and obvious; attendant circumstances.

Trial court properly granted summary judgment on plaintiff's slip-and-fall claim where undisputed evidence showed the slippery wet floor was an open-and-obvious condition under the circumstances, and she was not distracted by attendant circumstances.

107957 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
STATE OF OHIO v LELAND WOODS

Affirmed.

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

KEY WORDS: Motion to correct sentence; motion for postconviction relief; R.C. 2953.21; R.C. 2953.23; due process; unconstitutional; res judicata.

Appellant claims he was denied due process when the trial court sentenced him under statutes that were subsequently found

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unconstitutional. Although the motion was titled a motion to correct sentence, appellant sought postconviction relief that was untimely and barred by res judicata.

108058 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
CLEVELAND STATE UNIVERSITY v THOMAS SIMPSON

Reversed and remanded.

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

KEY WORDS: Motion for summary judgment; breach of contract; student; university; attendance.

Trial court erred in granting the plaintiff-university's motion for summary judgment on its complaint for monies due from the student-defendant where it was undisputed that the university breached its obligations under its policy to determine the student's attendance before returning the student's financial aid; because the university breached its policy, it could not sue for monies due from the student under the policy.