

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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November 7, 2019

107751 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
INTERNATIONAL TOTAL SERVICES, INC., ET AL. v ESTATE OF ROBERT NICHOLS

Affirmed.

Kathleen Ann Keough, J., Frank D. Celebrezze, Jr., P.J., and Raymond C. Headen, J., concur.

KEY WORDS: *Civ.R. 60(B)(5); inexcusable neglect; evidentiary hearing; docket.*

The trial court did not abuse its discretion in granting the defendant's motion for relief from judgment where the trial court relied solely on its own docket and determined that the docket reflects that the movant set forth sufficient allegations entitling him to relief under Civ.R. 60(B)(5). The motion was timely, set forth meritorious defenses, and demonstrated that the conduct of defendant's original counsel constituted inexcusable neglect and resulted in the entry of a default judgment against him.

107855 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DASHAWN STROWDER

Affirmed and remanded.

Patricia Ann Blackmon, P.J.; Anita Laster Mays, J., concurs; Larry A. Jones, Sr., J., dissents with separate opinion attached.

KEY WORDS: *Cruel and unusual punishment; parole eligibility; juvenile offenders.*

Where defendant, a juvenile offender bound over from juvenile court then convicted of nonhomicide offenses and designated a sexually violent predator, was eligible for parole at age 61, he did not receive a functional life sentence and was not subject to cruel and unusual punishment.

107992 DOMESTIC RELATIONS F CIVIL C.P.-JUV, DOM, PROBATE
D.L.M. v D.J.M.

Reversed and remanded.

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

KEY WORDS: *Motion for sanctions; Civ.R. 11; hearing; arguable basis.*

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(Case 107992 continued)

The trial court erred in not holding a hearing on plaintiff's motion for sanctions because the parties' agreed parenting plan and resulting judgment entry did not resolve the motion for sanctions, and there was an arguable basis for an award of sanctions.

108006 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE M.L.H.

Reversed and remanded.

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

KEY WORDS: Child support modification; motion for continuance.

The court abused its discretion by denying appellant's motion for continuance.

108032 PARMA MUNI. C CRIMINAL MUNI. & CITY
CITY OF PARMA v MOHAMED GREYSSA

Dismissed.

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

KEY WORDS: Final, appealable order; magistrate's sentencing recommendation; Crim.R. 19(C)(1)(c)(ii); Traf.R. 14(A).

Appeal dismissed for lack of a final, appealable order where magistrate's recommended sentence was not adopted by the trial court and set forth in a judgment entry.

108060 GARFIELD HTS. MUNI. C CRIMINAL MUNI. & CITY
CITY OF MAPLE HEIGHTS v RASHID MOHAMMAD

Reversed and remanded.

Michelle J. Sheehan, J., Patricia Ann Blackmon, P.J., and Kathleen Ann Keough, J., concur.

KEY WORDS: No contest plea; misdemeanor; petty offense; Crim.R. 11(B)(2); effect of the plea.

Where the trial court failed to properly advise the defendant-appellant of the effect of his no contest plea under Crim.R. 11(B)(2), the conviction must be vacated.

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108090 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
THE SCOTT FETZER COMPANY v RAYMOND MILEY, JR., ET AL.

Affirmed as modified.

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

KEY WORDS: *Motion to compel arbitration; motion to stay proceedings pending arbitration; R.C. 2711.02(B); R.C. 2711.03(A); arbitrability; tort and statutory claims; waiver.*

Trial court did not err in granting appellees' motion to compel arbitration and to stay proceedings pending arbitration. Based on the language of the arbitration provision and the factual allegations of appellant's complaint, appellant's claims for tortious interference with contract, unfair competition, violation of the Ohio Uniform Trade Secrets Act and breach of loyalty against its former employees were within the scope of arbitration provision. Appellant waived the issue of whether it had the right to bring a court action for preliminary injunctive relief where it did not mention the injunctive relief provision in its filings below and never otherwise pursued its request for preliminary injunctive relief below. Trial court's judgment modified to clarify that it was only parties to the arbitration agreement who were compelled to arbitrate their claims.

108095 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DEON BOUIE

Affirmed.

Mary J. Boyle, P.J., Sean C. Gallagher, J., and Larry A. Jones, Sr., J., concur.

KEY WORDS: *Manifest weight; felonious assault; R.C. 2903.11(A)(2); self-defense, jury instructions; offense of an inferior degree; aggravated assault; ineffective assistance of counsel.*

The defendant's conviction for felonious assault was not against the manifest weight of the evidence. The facts of the case did not warrant an instruction on the inferior offense of aggravated assault because there was no evidence that the defendant was under a sudden passion or fit of rage, and therefore, the trial court did not commit plain error in not instructing the jury on aggravated assault, and the defendant's trial counsel was not ineffective for failing to request an instruction on the inferior offense of aggravated assault.

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108097 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v SANTOS CEDENO-GUERRERO

Affirmed.

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

KEY WORDS: *R.C. 2311.14; Sup.R. 88; interpreter; credentials; excessive sentence.*

Defendant failed to demonstrate prejudice or plain error in the trial court's failure to certify the credentials of the foreign-language interpreter prior to sentencing. Defendant's sentence was not deemed excessive where the sentence was within the appropriate statutory range and the trial court considered the relevant statutory factors.

108127 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v EDDIE J. HENDERSON, III

Affirmed.

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

KEY WORDS: *Manifest weight of the evidence; self-defense; felonious assault.*

The defendant's conviction for felonious assault with a deadly weapon was not against the manifest weight of the evidence where the evidence showed that the defendant shot the victim three times, and the defendant was unable to establish by a preponderance of the evidence that he shot the victim in self-defense.

108177 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
MICHAEL GRGAT v GIANT EAGLE, INC.

Affirmed.

Eileen T. Gallagher, P.J., Anita Laster Mays, J., and Eileen A. Gallagher, J., concur.

KEY WORDS: *Consumer Sales Practices Act; deceptive act or practice; specific price advantage; "multi-unit price" promotions; strict liability; falsity; material.*

Summary judgment affirmed where undisputed evidence showed that the defendant did not engage in a deceptive practice even though it did not expressly disclose to consumers the fact that the purchase of lesser quantities than the total number indicated in

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multi-unit price promotions would be charged the pro-rata price per individual item.

108444 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: M.H., ET AL.

Affirmed.

Eileen A. Gallagher, J., Anita Laster Mays, P.J., and Kathleen Ann Keough, J., concur.

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

A mother's challenge to the court's R.C. 2151.414(D)(2)(a) determination as being against the manifest weight of the evidence and not supported by clear and convincing evidence fails where the record reflects that mother has failed to meet case plan requirements by failing to secure adequate housing and failing to provide for the children's basic needs. In such a case, the court does not abuse its discretion by finding that an award of permanent custody to the agency is in children's best interest.

Alternatively, a mother's challenge to the court's determination that permanent agency custody is in the children's best interests pursuant to R.C. 2151.414(D)(1) as being not supported by clear and convincing evidence fails where the record reflects that mother has failed to meet case plan requirements by failing to secure adequate housing and provide for the children's basic needs. In such a case, the court does not abuse its discretion by finding that an award of permanent custody to the agency is in children's best interest.

108479 PROBATE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE GUARDIANSHIP OF DOUGLAS A. GELSINGER, JR.

Reversed and remanded.

Anita Laster Mays, J., Eileen T. Gallagher, P.J., and Eileen A. Gallagher, J., concur.

KEY WORDS: R.C. 2111.03, guardianship, Civ.R. 5(A), service, motion for visitation, due process.

Appellant's due process rights were violated by the trial court's adjudication of appellee's motion for visitation filed the day of the guardianship hearing. The motion had not been served on appellant pursuant to Civ.R. 5(A), the trial court had not received the filing, and appellee indicated that the motion would be filed. Thus, appellant was not afforded reasonable notice and a reasonable opportunity to be heard.