

CASE DECISION LIST

October 10, 2019

107799 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
JOSEPH G. PAULOZZI v DEREK N. RODSTROM, ET AL.

Reversed and remanded.

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

KEY WORDS: *Civ.R. 12(C), judgment on the pleadings, R.C. Chapter 2721, declaratory judgments, R.C. 2721.12(A), legally protectable interest, R.C. 1705.22(A)(1), request of limited liability company member to inspect records, R.C. 1705.17, limited liability company membership is personal property, piercing corporate veil.*

The trial court erred by granting judgment on the pleadings under Civ.R. 12(C) in this declaratory judgment action. Appellant named appellees, members of the codefendant limited liability company, as parties to an action that seeks a declaration that appellant: is an owner of the company, is entitled to inspect the company's books and records pursuant to R.C. 1705.22(A)(1) and is to receive an accounting of the company's finances. The trial court determined that appellees are not proper parties because the claims do not seek to pierce the corporate veil and impose personal liability.

R.C. 2712.12(A) requires joinder of all parties with a legally protectable interest in the action. The evidence demonstrates that appellees, as members of the limited liability company, have a legally protectable interest in the claims pursuant to R.C. 2712.12(A).

107825 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JAMES PAYNE

Affirmed.

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

KEY WORDS: *Drug trafficking; search warrant; motion to suppress; sufficiency of evidence; severance; major drug offender specification.*

The trial court did not err in denying appellant's motion to suppress because the search warrant described the multi-unit building to be searched with specificity. The trial court did not err in not severing appellant's two drug cases. The state established the weight of the drugs for major drug offender specification.

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107850 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE O.N.

Affirmed.

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

KEY WORDS: *Ineffective assistance; motion to suppress.*

Juvenile's trial counsel was not ineffective for failing to file a motion to suppress where there was no reasonable probability that the motion would have been granted; there was no basis for suppression of the evidence where the traffic stop occurred after officer observed signal violations, passenger made furtive movements, officer smelled marijuana during stop, driver admitted that he had marijuana, and a loaded gun was found beneath the passenger's seat during automobile search.

107896 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV, DOM OR PRO
ROGER BALES v FOREST RIVER, INC.

Affirmed.

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

KEY WORDS: *Attorney fees; litigation costs; Ohio Consumer Sales Practices Act; R.C. 1345.09(F); Magnuson Moss Warranty Act; 15 U.S.C. 2310(d); settlement agreement; stipulation; Prof.Cond.R. 1.5(a); basis for fee determination; duplicative time; attorney travel time and expenses.*

*Trial court's award of attorney fees and litigation costs did not constitute an abuse of discretion. Parties stipulated that plaintiff was entitled to recover his reasonable attorney fees and litigation costs as part of their settlement agreement. Trial court's explanation of its fee award was a sufficient statement of the basis for its fee determination to enable appellate court to conduct a meaningful review where trial court referenced the test in *Bittner v. Tri-County Toyota, Inc.*, 58 Ohio St.3d 143, 569 N.E.2d 464 (1991), addressed each of the specific objections raised by defendant to the amounts requested by plaintiff, and clearly explained how it arrived at the amounts it awarded for attorney fees and litigation costs, including each of the specific adjustments made to the amounts requested and why. Trial court did not act unreasonably, arbitrarily, or unconscionably in concluding that it was unreasonable for plaintiff's counsel to bill the same hourly rate for their travel time as they billed for providing substantive legal services and awarding 50 percent - and only 50 percent - of plaintiff's attorneys' duplicative time, attorney time prosecuting motion for attorney fees and litigation costs, and attorney travel time and travel expenses.*

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107965 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE S.A.

Affirmed.

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

KEY WORDS: *Legal custody; Juv.R. 13; R.C. 2151.35; due process; informal; waive; object; plain error; Sup.R. 48(D); guardian ad litem; recommendation; R.C. 2151.23(A)(2) best interest; abuse of discretion; competent, credible evidence; visitation; increase; expeditious; prejudice.*

Affirmed the decision of the trial court to award legal custody of child to father with visitation to mother. The juvenile court was permitted to conduct a hearing on father's motion for emergency temporary custody in an informal manner, and mother waived challenges not raised in the trial court. The juvenile court did not abuse its discretion in considering the guardian ad litem's recommendations or in granting legal custody to father and limiting mother's visitation with the opportunity to gradually achieve an increase in visitation.

108057 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v FREDRICK HAWKINS

Affirmed.

Raymond C. Headen, J., Anita Laster Mays, P.J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Guilty plea; Crim.R. 11(C); group-plea hearing; history of mental-health issues; incompetency hearing; purposes of felony sentencing; R.C. 2929.11; ineffective assistance of counsel.*

Defendant's plea was made knowingly, intelligently, and voluntarily. Where the trial judge complied with Crim.R. 11(C), a group-plea hearing did not adversely affect the validity of defendant's plea. The defendant's history of mental-health issues did not invalidate his guilty plea where the totality of the circumstances, including the discussions between the trial court and the defendant and defendant's behavior, indicated the plea was knowing and voluntary. The trial court was not required to hold a competency hearing where no party requested such a hearing and the defendant's behavior indicated he understood the nature of the proceedings and could assist with his own defense. The trial court considered the relevant sentencing factors of R.C. 2929.11 and the defendant did not demonstrate by clear and convincing evidence that the record did not support the sentence. Defense counsel did not demonstrate ineffective assistance of counsel by failing to request a competency hearing.

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108094 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
STATE OF OHIO v REGINALD DAY

Affirmed.

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

KEY WORDS: *R.C. 2953.21; R.C. 2953.23; postconviction relief; guilty plea; untimely; second or successive petition; jurisdiction.*

A trial court does not err by denying petition for postconviction relief where the petition failed to comply with the R.C. 2953.21 requirements on the basis of being untimely, or a second or successive petition, where the petitioner otherwise failed to comply with R.C. 2953.23(A).

108118 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
JAMES P. BREEN v OHIO REAL ESTATE COMMISSION

Affirmed.

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

KEY WORDS: *Administrative appeal; abuse of discretion; professional misconduct; real estate broker's license; R.C. 4735.18(A)(6); current address; duty to cooperate; investigation.*

Trial court's judgment affirming Commission's decision to revoke appellant's real estate broker's license was not an abuse of discretion where undisputed evidence demonstrated that he committed professional misconduct.

108122 PROBATE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE THE ESTATE OF MARCELLA E. O'TOOLE

Affirmed.

Mary J. Boyle, J., Mary Eileen Kilbane, A.J., and Eileen A. Gallagher, J., concur.

KEY WORDS: *R.C. 2321.51; Civ.R. 11; sanctions; attorney fees; frivolous conduct.*

The trial court did not err when it determined that appellant's conduct was frivolous under R.C. 2321.51 and Civ.R. 11. The trial court did not abuse its discretion when it ordered appellant to pay the estate's attorney fees as a sanction against appellant for his frivolous conduct.

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108259 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
B.A.C. v A.V.

Reversed and remanded.

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

KEY WORDS: *Accelerated appeal; CSPO; civil stalking protection order; Brady disqualifier.*

The trial court erred in denying respondent's motion for return of property because an expired protection order cannot justify the law enforcement agency's continued possession of respondent's property.

108313 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE C.K.

Affirmed.

Eileen T. Gallagher, P.J., Frank D. Celebrezze, Jr., J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *Indian Child Welfare Act; "Indian child"; motion for continuance.*

Trial court did not violate Indian Child Welfare Act by failing to further investigate child's Native American ancestry where Mother informed the court that neither she nor her child were registered members of any Indian tribe. Trial court did not abuse its discretion in denying motion for continuance where Mother's unexplained failure to appear for trial and communicate with counsel necessitated the continuance.

108445 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE M.S.

Affirmed.

Frank D. Celebrezze, Jr., P.J., and Kathleen Ann Keough, J., concur; Eileen A. Gallagher, J., concurs in judgment only with separate opinion.

KEY WORDS: *Permanent custody; best interest; paternity; R.C. 2151.414; abuse of discretion; temporary custody; extension; R.C. 2151.415.*

The trial court did not abuse its discretion in awarding permanent custody of the child to appellee. The trial court's determination that permanent custody is in the child's best interest is supported by

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clear and convincing evidence in the record.