

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 1 of 10

September 19, 2019

106714 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
RAYCO MANUFACTURING, INC. v MURPHY, ROGERS, SLOSS & GAMBEL

Affirmed in part, reversed in part, and remanded.

Decision En Banc:

Eileen A. Gallagher, P.J., Mary Eileen Kilbane, A.J., Mary J. Boyle, Frank D. Celebrezze, Jr., Raymond C. Headen, Larry A. Jones, Sr., and Kathleen Ann Keough, JJ., concur.

Michelle J. Sheehan, J., dissents with separate opinion, with Patricia Ann Blackmon, Eileen T. Gallagher, Sean C. Gallagher, and Anita Laster Mays, JJ.

Decision of the Merit Panel:

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

KEY WORDS: *En banc review; recovery of attorney fees incurred to enforce settlement agreement as compensatory damages; American Rule; advisory jury; Civ.R. 39(C)(1); standard of proof; presumption of regularity; witness-advocate rule; Prof.Cond.R. 3.7(a).*

Decision En Banc: *Attorney fees can be awarded as compensatory damages to the prevailing party on a motion to enforce a settlement agreement when the attorney fees are incurred as a direct result of a breach of the settlement agreement.*

Decision of the Merit Panel: *Regardless of whether a preponderance of the evidence or a clear and convincing evidence standard applied, trial court's finding that parties entered into an enforceable settlement agreement that resolved client's legal malpractice claim against attorneys was supported by sufficient competent, credible evidence. Trial court did not err in allowing appellees' counsel to serve as both witnesses and advocates at the hearing on motion to enforce settlement agreement where the jury had only an advisory role, matters as to which counsel testified were not in dispute and trial court was well aware of the different roles assumed by appellees' counsel at the hearing and was not likely to be confused or misled by the lawyers' dual capacities. Trial court erred in denying appellees' motion to recover attorney fees incurred to enforce settlement agreement.*

106874 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
COMMUNICARE D/B/A NORTHWESTERN HEALTHCARE CENTER v
OHIO DEPARTMENT OF JOB AND FAMILY SERVICES

Affirmed.

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

CASE DECISION LIST

(Case 106874 continued)

KEY WORDS: Authorized representative; administrative appeal; application for Medicaid benefits; countable resources; eligibility limit; real property.

A trial court does not abuse its discretion where it applies the definition from the applicable provision of the Administrative Code rather than a definition from an unrelated federal regulation, and thereby finds the agency's decision was supported by reliable, probative and substantial evidence. Where the value of applicant's real property exceeds the Medicaid resource limit the application is properly denied.

Regardless of whether a trial court errs by determining that an applicant's authorized representative does not have standing to challenge denial of Medicaid benefits, where there is no prejudice the error is harmless.

A trial court does not abuse its discretion where it affirms the agency's denial of an application for Medicaid benefits where the applicant owns resources that exceed the Medicaid eligibility limit, regardless of whether the applicant has outstanding property that has not been verified. Where an applicant for Medicaid benefits owns resources that exceed the Medicaid eligibility limit the status of any incomplete verification is moot.

107312	DOMESTIC RELATIONS	F	CIVIL C.P.-JUV, DOM, PROBATE
ELIA A. WOYT v LAURA M. WOYT			

107321	DOMESTIC RELATIONS	F	CIVIL C.P.-JUV, DOM, PROBATE
ELIA O. WOYT v LAURA M. WOYT			

107322	DOMESTIC RELATIONS	F	CIVIL C.P.-JUV, DOM, PROBATE
ELIA WOYT v LAURA WOYT			

Affirmed in part, reversed in part and remanded.

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

KEY WORDS: R.C. 3109.04; R.C. 3105.171; R.C. 3105.18; R.C. 3119.04; R.C. 3105.73; parenting time schedule; property division; separate property; premarital equity; support obligation; attorney fees; sealing of record.

A trial court errs where under the facts of the case, it orders a parenting time schedule that fails to comply with statutory requirements. A trial court does not err where under the facts of the case, it requires the parties to continue enrollment in case management services to facilitate implementation and adherence to the parenting time schedule. A trial court errs where it determines a party established a separate property claim that was against the manifest weight of the evidence. A party fails to demonstrate that the trial court erred in valuing property where it presents no evidence in support of its claimed value. A trial court does not err where it orders spousal support in compliance with R.C. 3105.18. A

CASE DECISION LIST

(Case 107322 continued)

trial court errs where its child support order fails to comply with R.C. 3119.04. A trial court does not err where it determines and orders an equitable award of attorney fees for a party pursuant to R.C. 3105.73. A trial court errs where it inequitably distributes marital assets. A trial court errs where it seals the entire record of a case rather than by using the least restrictive means available to limit public access.

107454 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v NICHOLAS FRANKLIN

Affirmed.

Eileen T. Gallagher, P.J., and Eileen A. Gallagher, J., concur; Larry A. Jones, Sr., J., dissents with separate opinion.

KEY WORDS: *Aggravated robbery; involuntary manslaughter; sentence; consecutive; findings; record; support; clearly; convincingly; criminal history; mitigate; recidivism; seriousness; conduct; harm; public.*

The trial court made the necessary findings for imposing consecutive sentences under R.C. 2929.14(C)(4). In addition, we cannot clearly and convincingly find that the record fails to support the trial court's findings.

107482 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v MALICKE FRANKLIN

Affirmed.

Eileen T. Gallagher, P.J., and Eileen A. Gallagher, J., concur; Larry A. Jones, Sr., J., dissents with separate opinion.

KEY WORDS: *Due process; juvenile; bindover; transfer; amenability hearing; mandatory; ineffective assistance; counsel; allied offense; merger; dissimilar import; consecutive sentence; purposes and principles; felony; sentence; findings; consider; recidivism; seriousness; subjective; factors; clear and convincing; deferential.*

Defendant's transfer to the general division was not in violation of the Ohio Revised Code. Defendant's convictions were not allied offenses of similar import because they were committed against separate victims. Counsel was not ineffective for failing to raise an allied offense argument. The trial court made the necessary findings for imposing consecutive sentences. The trial court imposed individual prison terms within the applicable statutory ranges and carefully considered the relevant factors set forth under R.C. 2929.11 and 2929.12. Defendant's sentence is clearly and convincingly supported by the record. R.C. 2929.11 and 2929.12 do

CASE DECISION LIST

(Case 107482 continued)

not violate the due process clause of the United States Constitution.

107717 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
LAURA WARITH v GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY, ET AL.

Affirmed.

Patricia Ann Blackmon, J., Mary Eileen Kilbane, A.J., and Sean C. Gallagher, J., concur.

KEY WORDS: Summary judgment; res judicata; federal court; R.C. 4112.02; statute of limitations; retaliation; breach of contract; R.C. 4117.02; State Employment Relations Board.

Trial court properly awarded transit authority and union summary judgment where plaintiff's discrimination claims were previously rejected in federal court, retaliation and breach of contract claims were barred by the statute of limitations, claims for breach of rights set forth in collective bargaining agreement were not filed with the State Employment Relations Board, and were also outside the statute of limitations.

107752 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v SHAVONE PIERCE

Affirmed.

Raymond C. Headen, J., Mary Eileen Kilbane, A.J., and Anita Laster Mays, J., concur.

KEY WORDS: Pro se motion to withdraw guilty plea; hybrid representation; Crim.R. 11(C); ineffective assistance of counsel; restitution; R.C. 2929.18.

Where defendant-appellant was represented by counsel at all relevant times, the trial court did not err when it denied defendant-appellant's pro se motion to withdraw her guilty plea. Defendant-appellant's claim that her plea was not intelligently and knowingly provided due to her mental health was unsupported by the record. The record indicates defendant-appellant wished to withdraw her guilty plea due to a change of heart, which is not a permissible basis to withdraw a plea. The trial judge complied with Crim.R. 11(C) and defendant-appellant's plea was made knowingly, intelligently, and voluntarily. Defense counsel did not demonstrate ineffective assistance of counsel. The trial court did not err when it rendered restitution to the victims based upon the victims' itemization of the losses.

CASE DECISION LIST

107802 DOMESTIC RELATIONS F CIVIL C.P.-JUV, DOM, PROBATE
KEVIN A. GRISAFO v GERALDINE A. HOLLINGSHEAD

Affirmed.

Mary J. Boyle, J., Eileen T. Gallagher, P.J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *Dissolution; separation agreement; division of property order; pension benefits; disability benefits; attorney fees; R.C. 3105.73(B).*

The trial court's judgment denying appellant's motions (1) for relief from judgment, (2) to amend the division of property order, and (3) to order the Ohio Police & Fire Pension Fund to provide appellee's personal information was affirmed. Appellant did not meet her burden of establishing that appellee was receiving disability benefits in lieu of age and service retirement benefits. Further, the trial court did not abuse its discretion when it awarded appellee attorney fees because the trial court properly considered the factors under R.C. 3105.73(B) in determining that the award was reasonable.

107808 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v QUINCY HOLLINGSWORTH

Conviction reversed and remanded.

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

KEY WORDS: *R.C. 2919.22(A)/child endangering; sufficiency.*

The record does not show that the father acted recklessly in dealing with his son's acting out or that he failed to properly supervise his sons. There was insufficient evidence to support the conviction.

107833 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV, DOM OR PRO
ROBERT ZUBEK v AARON DEARBORN, ET AL.

Reversed and remanded.

Michelle J. Sheehan, J., Eileen T. Gallagher, P.J., and Mary J. Boyle, J., concur.

KEY WORDS: *Arbitration; procedural and substantive unconscionability; CSPA.*

The arbitration clause contained in a contract for home insulation is neither procedurally nor substantively unconscionable. The trial court's judgment denying appellant's motion to stay proceedings pending arbitration is reversed.

CASE DECISION LIST

107847 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ALVIN WILLIAMS

Dismissed.

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

KEY WORDS: *Motion to withdraw; dismissed; Anders.*

Counsel's motion to withdraw granted and appeal dismissed pursuant to Anders where there were no meritorious grounds for appeal.

107870 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JORDAN THOMAS

Affirmed.

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

KEY WORDS: *Rape; R.C. 2907.02(A)(2); force; threat of force; inferred; fear or duress.*

The state presented sufficient evidence of force or threat of force where the victim's testimony demonstrated that the defendant-appellant had used physical force in the past to the extent that the victim was instilled with such fear that she could not exercise her will.

107894 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v TIMOTHY NORRIS

Reversed and remanded.

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

KEY WORDS: *Postsentence motion to withdraw guilty plea; Crim.R. 32.1; manifest injustice; ineffective assistance of counsel; knowing, intelligent and voluntary plea; misinformation regarding sentencing exposure; intellectual limitations; self-serving affidavit; evidentiary hearing.*

Trial court abused its discretion in denying defendant's postsentence motion to withdraw his guilty plea without a hearing. Defendant presented sufficient supporting evidence to warrant an evidentiary hearing on his motion where defendant alleged that defense counsel misled him regarding his sentencing exposure and there was no indication defendant's intellectual limitations were explored or taken into account during the plea process.

CASE DECISION LIST

107956 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v KEYON SMITH

Vacated and remanded.

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

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

Guilty plea vacated. Defendant's guilty plea was invalid where court failed to ensure that the defendant understood all of his constitutional rights but it never expressly stated or inquired as to whether the defendant understood that by pleading guilty, he was waiving his constitutional rights. The strict compliance standard requires not only an explanation of each of the constitutional rights, but also an explanation that by entering a guilty plea, the defendant is waiving those rights.

108019 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v THOMAS TEWELL

Affirmed.

Raymond C. Headen, J., Larry A. Jones, Sr., P.J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *Sufficiency of the evidence; R.C. 2913.04(C); LEADS; Ohio Adm.Code 4501:2-10-01(A).*

Defendant-appellant's access to his police department's LEADS database was for personal reasons rather than to further a law enforcement purpose. Because defendant-appellant's access to the LEADS system was (1) knowing and (2) beyond the express consent of the chair of the LEADS steering committee, defendant-appellant's conviction for violating R.C. 2913.04(C) for unauthorized use of a computer was supported by sufficient evidence.

108047 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DAMON CHRISTOPHER CRIM

Affirmed.

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

KEY WORDS: *Crim.R. 11(C)(2)(a); maximum penalty; consecutive sentences; ineffective assistance of counsel.*

The defendant's conviction and sentence were affirmed. Although

CASE DECISION LIST

(Case 108047 continued)

the trial court and defense counsel's explanation of consecutive sentences was somewhat confusing, the trial court substantially complied with Crim.R. 11(C)(2)(a) because it properly informed the defendant of the maximum penalty that he could receive for each offense, as well as the total amount of prison time that he could receive if the court ran all of the offenses consecutively. Further, the defendant's argument that his trial counsel provided ineffective assistance for not properly explaining consecutive sentences to him is without merit because there was no prejudice to the defendant.

108049 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v KHALED NASSER MORRA

Affirmed.

Patricia Ann Blackmon, J., Sean C. Gallagher, P.J., and Frank D. Celebrezze, Jr., J., concur.

KEY WORDS: *Importuning; possession of criminal tools; manifest weight of the evidence.*

Defendant's convictions for importuning and possession of criminal tools is affirmed as being supported by the weight of the evidence. Defendant used his cell phone and arranged to meet an undercover law enforcement officer posing as a 14-year-old girl for a sexual encounter.

108063 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v CARLOS M. BROWN

Affirmed.

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

KEY WORDS: *Motion to withdraw plea; postsentence; change of heart; manifest injustice; consecutive sentences; R.C. 2929.14(C)(4).*

Trial court did not abuse its discretion in denying defendant's postsentence motion to withdraw his guilty plea where the motion was due merely to defendant's change of heart in light of the sentence imposed by the court, and the defendant failed to demonstrate a manifest injustice; trial court did not err in imposing consecutive sentences where the record supported the findings made under R.C. 2929.14(C)(4).

CASE DECISION LIST

108077 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
PAULA J. SNYDER v ORANGE BOARD OF EDUCATION

Affirmed.

Frank D. Celebrezze, Jr., J., Mary J. Boyle, P.J., and Anita Laster Mays, J., concur.

KEY WORDS: *Summary judgment; Civ.R. 56; gender discrimination; prima facie case; disparate treatment; similarly situated nonprotected employee; comparator.*

The employee did not present evidence establishing a genuine issue of material fact as to her disparate treatment claim because she failed to identify a similarly situated, nonprotected employee treated more favorably than her. As such, the employee failed to establish a prima facie case of gender discrimination. The trial court did not err when it granted summary judgment in favor of the employer.

108146 CLEVELAND MUNI. G CIVIL MUNI. & CITY
CITY OF CLEVELAND v PENTAGON REALTY LLC

Reversed and remanded.

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

KEY WORDS: *Purposes of misdemeanor sentencing; R.C. 2929.21; community control sanctions; building code violations; goals; reasonable relation; past tax returns; bank statements; financial means; abuse of discretion.*

The trial court abused its discretion in ordering defendant-appellant property owner to provide previous years' tax returns and the prior year's monthly bank statements as additional conditions of community control for misdemeanor building code violations where the property owner's past financial information bears no relation to its convictions or its likelihood of future criminality.

108195 CLEVELAND MUNI. G CIVIL MUNI. & CITY
CITY OF CLEVELAND v US BANK NATIONAL ASSOCIATION

Modified and remanded.

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

KEY WORDS: *Housing court; individual corporate capacity; trustee; community control; jurisdiction.*

CASE DECISION LIST

(Case 108195 continued)

The housing court abused its discretion in ordering the bank to provide a list of all properties it owns or controls in both its individual corporate capacity and as trustee, and by ordering the bank to provide a list of all properties outside the housing court's jurisdiction.

108197 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
ROBERT ALSFELDER v RICHARD C. ALKIRE, ET AL.

Affirmed.

Patricia Ann Blackmon, J., Sean C. Gallagher, P.J., and Frank D. Celebrezze, Jr., J., concur.

KEY WORDS: Frivolous conduct; R.C. 2323.51; abuse of discretion.

The trial court did not abuse its discretion in granting appellee-attorney's motion for sanctions under R.C. 2323.51 where the appellant-client's malpractice claim lacked a good faith basis, did not have evidentiary support, and caused the attorney to incur a malpractice insurance deductible of \$10,000.