

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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December 17, 2020

108754 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
KEYBANK NATIONAL ASSOCIATION v KATRINA ROBINSON, ET AL.

Affirmed.

Frank D. Celebrezze, Jr., J., Eileen T. Gallagher, A.J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: *Summary judgment; Civ.R. 56; foreclosure; foreclosure in rem; mortgage; promissory note; default; bankruptcy discharge; dismissal without prejudice.*

The trial court did not err in granting summary judgment in favor of appellee in the foreclosure action. Appellee demonstrated that appellant defaulted on the promissory note and, as a result, it was entitled to enforce the note by commencing foreclosure proceedings. Appellant failed to demonstrate that a genuine issue of material fact existed that precluded summary judgment in favor of appellee.

109199 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ESTARLING MELENDEZ

Affirmed.

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

KEY WORDS: *Crim.R. 32.*

Trial court properly denied motion to withdraw guilty plea filed 16 years after being entered because motion was barred by res judicata and, even if not barred, did not demonstrate a manifest injustice occurred. Argument that defendant should be released from prison because his sentence gave him an expectation of finality cannot be raised for the first time on appeal.

109212 PARMA MUNI. G CIVIL MUNI. & CITY
KEVIN EYE v SAL'S HEATING & COOLING, INC.

Affirmed.

Larry A. Jones, Sr., J., Patricia Ann Blackmon, P.J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: *Agency relationship; Ohio Adm.Code 109:-4-3-05(D)(1) and R.C. 1345.02(N)(10)/unfair or deceptive practice; OCSA violation, product warranty, exclusions, spoliation.*

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(Case 109212 continued)

Appellant failed to present sufficient evidence that an agency relationship existed between appellees and that appellant was induced to rely on the purported agency relationship to his detriment.

Appellee committed no violation of the OCSPA or breach of warranty. Because no agency relationship existed between appellees, appellee had no obligation under the product's warranty. Additionally, it was disclosed to appellant, and appellant agreed to the terms of having the repairs completed outside of normal business hours and the costs for those repairs.

Where appellant did not request to keep the old part, and appellee disposed of the old part as a normal course of action, there was no evidence to support a claim of spoliation.

109215 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ANDRE LEE

Affirmed.

Anita Laster Mays, J., Mary J. Boyle, P.J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *Batson challenge.*

The appellant's due process rights were not violated when the state did not engage in a pattern of racially discriminatory peremptory strikes against African-American jurors in violation of *Batson v. Kentucky*, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986).

109278 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
PROTERRA, INC. v CITY OF CLEVELAND BOARD OF ZONING APPEALS

Reversed and remanded.

Mary J. Boyle, P.J., Anita Laster Mays, J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *Keywords: R.C. 2506.04; administrative appeals; C.C.O. 329.03(b); Board of Zoning Appeals' authority to grant variances; "practical difficulties" standard for area variances.*

The Board of Zoning Appeals applied the "unnecessary hardship" standard for use variances instead of the "practical difficulties" standard for area variances and failed to consider the "practical difficulties" factors articulated in *Duncan v. Middlefield*, 23 Ohio St.3d 83, 491 N.E.2d 692 (1986). The trial court erred in affirming the Board of Zoning Appeal's decision. With our limited scope of review on administrative appeals, we cannot independently weigh

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the evidence to determine whether the appellant is entitled to the variances it seeks.

109310 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JOE DUNCAN

Affirmed in part, reversed in part, and remanded.

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

KEY WORDS: Ineffective assistance of counsel; knowingly; intelligently; voluntarily; sex offender; sentence; consecutive; prejudice; deficient; court cost; nunc pro tunc; no-contact order; findings; record; clear and convincing.

The trial court did not completely fail to comply with Crim.R. 11(C)(2)(a)'s maximum-penalty-advisement requirement. The defendant did not establish that he would not have entered his plea had he been more thoroughly informed of the details of the sex-offender-classification scheme. The trial court made the necessary findings for imposing consecutive sentences and the findings are not clearly and convincingly unsupported by the record. The court erred by imposing court costs and fines in the sentencing journal entry when they were waived on the record. The trial court was not permitted to issue a no-contact order when it imposed a prison term on the relevant offense; however, there is no reversible error because the no-contact order was not included in the sentencing journal entry.

109395 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
STATE OF OHIO v TERRANCE J. WALTER

109399 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
STATE OF OHIO v TERRANCE J. WALTER

Affirmed.

Sean C. Gallagher, J., Mary J. Boyle, P.J., and Anita Laster Mays, J., concur.

KEY WORDS: Crim.R. 33; new trial; successive petition for postconviction relief; R.C. 2953.21; App.R. 16(A)(7).

Nothing in the record demonstrates that a police report obtained several years following the defendant's final convictions and several postconviction challenges to those convictions constitute "newly discovered evidence" under Crim.R. 33(B).

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109470 BOARD OF TAX APPEALS H ADMIN APPEAL
NICOLE YIM, ET AL. v CUYAHOGA COUNTY BOARD OF REVISION, ET AL.

Affirmed.

Michelle J. Sheehan, J., Mary J. Boyle, P.J., and Anita Laster Mays, J., concur.

KEY WORDS: *Tax appeal; BTA; HUD sale; arm's-length sale.*

The BTA's decision rejecting a HUD sale as evidence of the property's value for taxation purposes is affirmed.

109498 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v LARRY STEWART

Affirmed.

Kathleen Ann Keough, J., Frank D. Celebrezze, Jr., P.J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: *Void; voidable; postconviction; res judicata.*

Trial court properly denied defendant's motion to vacate void sentence because defendant was attempting to challenge a voidable sentence in postconviction proceedings. Res judicata bars any challenge that could have been raised on direct appeal.

109590 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE K.G., ET AL.

Affirmed.

Anita Laster Mays, P.J., Larry A. Jones, Sr., J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *R.C. 2151.353(A)(4); permanent placement of neglected child; R.C. 2151.414(E); R.C. 2151.414(D)(1); best interest of child.*

The trial court's award of permanent custody to the social welfare agency is supported by sufficiently clear and convincing evidence and is not against the manifest weight. The appellant mother was unable to resolve issues of ongoing drug abuse and to provide a suitable home. The trial court did not abuse its discretion in determining that permanent custody is in the best interest of the child.

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109666 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: M.F., A MINOR CHILD

109667 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: M.F., A MINOR CHILD

Dismissed.

Eileen T. Gallagher, A.J., Kathleen Ann Keough, J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: *Confinement credit; juvenile; R.C. 2152.18; moot; exception to mootness.*

Appellant has completed her sentence, and her appeal of confinement credit is therefore moot.

109725 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE V.M., A MINOR CHILD

Reversed and remanded.

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

KEY WORDS: *R.C. 2152.18; confinement credit; hearing.*

The trial court erred in denying juvenile's motion for recalculation of confinement credit because the qualities of the facility and the individual's experience there established that the individual was "confined" and therefore entitled to credit for time there.