

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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December 24, 2020

108450 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
WILLIAM TRaine v CITY OF OLMSTED FALLS, ET AL.

Affirmed.

Anita Laster Mays, J., Eileen T. Gallagher, A.J., and Larry A. Jones, Sr., J., concur.

KEY WORDS: *Civ.R. 12(C), judgment on the pleadings, civil service certification.*

The trial court's grant of partial judgment on the pleadings pursuant to Civ.R. 12(C) is affirmed. Construing the material allegations in the complaint as true in favor of the nonmoving party with all reasonable inferences to be drawn therefrom, this court finds that appellant is unable to prove a set of facts in support of appellant's claims that would entitle appellant to relief as a matter of law.

109155 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
GRAFTECH INTERNATIONAL LTD., ET AL. v
PACIFIC EMPLOYERS INSURANCE COMPANY, ET AL.

Affirmed.

Kathleen Ann Keough, J., Anita Laster Mays, P.J., and Frank D. Celebrezze, Jr., J., concur.

KEY WORDS: *Duty to defend; declaratory judgment; summary judgment; attorney affidavit; implied authentication; motion to strike.*

The trial court did not err in declaring that the insurer did not owe the insured a duty to defend and did not err in granting summary judgment on all the insured's claims. The trial court did not abuse its discretion in denying the insured's motion to strike an uncertified, partial copy of an insurance policy attached to the insurer's motion for summary judgment and incorporated by reference through an attorney affidavit. The totality of the circumstances surrounding the document's production revealed that the policy was implicitly authenticated, and sufficient indicia of reliability existed that the policy produced was what the proponent claimed it to be.

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109281 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
STATE OF OHIO v JAMES AUSTIN

Affirmed.

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

KEY WORDS: *Petition for postconviction relief; R.C. 2953.21; substantive grounds for relief; res judicata; findings of facts and conclusions of law; ineffective assistance of counsel; failure to introduce exhibits; failure to call witnesses; failure to investigate; defense strategy; self-serving allegations; knowing, intelligent and voluntary guilty pleas.*

Trial court correctly held that, to the extent defendant could have raised his ineffective assistance of counsel claims in his direct appeal, those claims were barred by the doctrine of res judicata. To the extent that defendant's claims were not barred by res judicata, trial court did not abuse its discretion in denying defendant's petition for postconviction relief without a hearing because the affidavits and other materials defendant submitted with his petition did not set forth sufficient operative facts to establish substantive grounds for relief. Trial court's findings of fact and conclusions of law were sufficiently comprehensive to allow for meaningful appellate review and to comply with R.C. 2953.21.

Defendant's affidavits and other materials submitted with petition did not show that trial counsel's performance was deficient, that defendant was prejudiced by defense counsel's performance or that but for alleged deficiencies in trial counsel's performance defendant would not have entered his guilty pleas. Self-serving allegations in affidavit and petition did not establish that defendant's guilty pleas were unknowing, unintelligent or involuntary and did not constitute evidence of sufficient operative facts to establish substantive grounds for relief under R.C. 2953.21.

109301 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v CHRISTOPHER A. HARVATH

Dismissed.

Michelle J. Sheehan, J., Patricia Ann Blackmon, P.J., and Frank D. Celebrezze, Jr., J., concur.

KEY WORDS: *Anders; guilty plea; sentence.*

Upon an independent review, the court finds no meritorious arguments exist. Appellant counsel's motion to withdraw is granted, and the appeal is dismissed.

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109318 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
CROWN ASSET MANAGEMENT LLC v SMARAGDA KARAKOUDAS

Affirmed

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

KEY WORDS: *Summary judgment; statute of limitations; partial payment on account; request for admissions.*

Trial court properly deemed plaintiff's request for admissions as admitted because the defendant failed to respond to the request; trial court properly granted summary judgment to the plaintiff debt collector because defendant admitted she was responsible for the debt, the debt was due, and plaintiff had the authority to collect and settle the account; plaintiff's suit was not barred by the six-year statute of limitations for contracts not in writing because plaintiff's partial payment on the account revived the statute of limitations, and plaintiff's suit was filed within the six-year time period.

109341 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
STATE OF OHIO v F.D.S.

Reversed and remanded.

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

KEY WORDS: *Sealing; expungement; R.C. 2953.31; R.C. 2953.32; R.C. 2953.36; eligible offender; R.C. 2953.52; de novo; abuse of discretion.*

Denial of appellant's request to seal records of convictions and no bill is reversed, and the matter remanded for further proceedings. Evidence was required to determine whether an out-of-state offense was an offense of violence under Ohio law. Further, appellant was not given the opportunity to present evidence regarding his rehabilitation and interest in having the records sealed. Accordingly, appellant is entitled to a hearing on remand.

109385 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
ANTHONY SHELTON v UNIVERSITY MANOR HEALTH AND REHABILITATION, ET AL.

Affirmed.

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

KEY WORDS: *Summary judgment; motion for relief from judgment;*

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(Case 109385 continued)

Civ.R. 60(B); electronic filing; statute of limitations; R.C. 2305.113(A); medical claim; R.C. 2305.113(E)(3); R.C. 2305.10; ordinary negligence; discovery rule; abuse of discretion; time barred.

Affirmed trial court's decision to deny the appellant's motions for relief from judgment. Although the motions were timely filed and arguably presented grounds for relief due to electronic filing mistakes, the trial court did not abuse its discretion in denying the motions when the action was barred by the statute of limitations.

109803 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
STATE OF OHIO v J.J.

Vacated and remanded.

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

KEY WORDS: Seal convictions, R.C. 2953.31, eligible offender, R.C. 2953.32, subject-matter jurisdiction, restitution, final discharge, voidable judgment.

The trial court lacked subject-matter jurisdiction to seal the record in this case because the applicant was not an eligible offender under R.C. 2953.32. The three-year waiting period in R.C. 2953.32(A)(1) does not commence until the applicant has satisfied all sentence obligations, which includes payment or settlement of restitution.