

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 1 of 3

December 31, 2020

108920 DOMESTIC RELATIONS F CIVIL C.P.-JUV, DOM, PROBATE
AMIE DIMALANTA v ERNIE C. DIMALANTA

Affirmed.

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

KEY WORDS: *Civil contempt; spousal support; child support; temporary support order; service; purge condition.*

A trial court does not err by finding a party in contempt for failure to comply with the terms of a temporary support order where the party failed to comply with the terms, regardless of whether the court subsequently makes an unrelated modification to the temporary order.

A magistrate's decision finding a party in civil contempt is not effective unless it is adopted by the trial court. Where the record otherwise reflects that a party violated a temporary support order twice, and the trial court contemporaneously considers the two violations, the trial court does not err by finding that both violations constitute a "first offense" and imposing a sentence accordingly.

Proper service is not required where a party has actual notice of the contempt charges pending against him. A party does not establish that service was defective based on vague and unsubstantiated claims.

A trial court does not abuse its discretion by imposing an unreasonable or impossible purge condition where the contemnor failed to present evidence that established the condition is unreasonable or impossible.

109072 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v MAURICE NELSON

109073 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v MAURICE NELSON

109260 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v MAURICE NELSON

Affirmed in part, reversed in part, remanded.

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

KEY WORDS: *R.C. 2929.14; R.C. 2929.15; R.C. 2967.28; Crim.R. 11; community control sanction; community control violation; prison term; split sentence; postrelease control; consecutive sentence;*

(Case 109260 continued)

maximum penalty; tolling.

It is error for the trial court to impose both a prison sentence and a community control sanction for the same felony offense.

A court may require consecutive service for a prison sentence imposed for a community control violation. Where the court makes the requisite consecutive-sentence findings that are supported by the record, and incorporates them into its journal, it may order consecutive sentences. A reviewing court will not reverse an order of consecutive service unless it clearly and convincingly finds that the record does not support the court's findings in support of consecutive sentences.

The Crim.R. 11(C)(2)(a) requirement that the trial court inform a defendant pleading guilty to a felony of the maximum penalty involved does not require the court to use specific language when so doing. Where the maximum penalty involved includes a mandatory term of postrelease control, a trial court does not fail to substantially comply with its obligation where it does not use the specific word "mandatory," but otherwise clearly advises the defendant that such a term would not be optional.

The Crim.R. 11(C)(2)(a) requirement that the trial court inform a defendant pleading guilty to a felony of the maximum penalty involved does not require the court to inform the defendant that pleading guilty in the subject case may result in a violation of community control imposed in a separate case and may increase the penalty in that case.

Pursuant to R.C. 2929.15, where a capias is issued prior to the expiration of a community control term and the defendant is taken into custody on said capias prior to the expiration of the term, initiation of revocation proceeding is not untimely. Where a trial court journal entry reflects that a defendant pleaded guilty to specifications to which the defendant did not actually plead guilty, the court may correct its journal nunc pro tunc to reflect what actually occurred.

Where a trial court is required to impose a mandatory three-year postrelease control term, and announces at sentencing that such a term was discretionary, but correctly journalizes the term as mandatory, where the defendant shows no prejudice such an error is harmless.

109229 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
CARLTON BARTON, JR., ET AL. v COUNTY OF CUYAHOGA, ET AL.

Affirmed.

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

KEY WORDS: Loc.R. 3(B)(1); requirement to attach journal entry to

CASE DECISION LIST

(Case 109229 continued)

notice of appeal; App.R. 12(A)(2); failure to cite to the record; Civ.R. 56(C); evidence in support of summary judgment; R.C. 2923.32; engaging in a pattern of corrupt activity; R.C. 2923.34(A); civil proceeding for relief from pattern of corrupt activity; R.C. 2923.34(M)(1); right to property criminally forfeited; replevin; conversion; R.C. 2744.04(A); statute of limitations for tort actions against political subdivisions.

We deny the County's motion to dismiss the appeal because appellants supplemented the record with the judgment entries from which they are appealing, and we have discretion to review an assignment of error despite limited citations to the record. Appellants have no private right of action to bring a statutory claim against the County to recover funds criminally forfeited to the state. Appellants' tort claims are barred by the two-year statute of limitations for tort actions against political subdivisions for monetary damages.

109364 DOMESTIC RELATIONS F CIVIL C.P.-JUV, DOM, PROBATE
MICHELLE THERIOT v GERALD HETRICK

Reversed and remanded.

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

KEY WORDS: *Timeliness of appeal; App.R. 4(B)(2)(d); appropriateness of request for findings of fact and conclusions of law; App.R. 4(B)(2); divorce proceedings; request for spousal support; R.C. 3105.18(B); division of property; R.C. 3105.171(B); marital property; R.C. 3105.171(A)(3)(b) separate property; R.C. 3105.171(A)(6)(a).*

Plaintiff's request for findings of fact and conclusions of law was appropriate and tolled the running of the time to appeal. The trial court erred by awarding spousal support when the defendant did not request it before trial. The trial court erred in finding the \$50,000 from the Freedom Mortgage loan was marital property.

109463 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v MICHAEL WILLIAMSON

Affirmed.

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

KEY WORDS: *Delayed motion to quash indictment; subject matter jurisdiction; doctrine of res judicata.*

Appellant's claims of sufficiency of the indictment could have been raised on direct appeal and are now barred by the doctrine of res judicata.