

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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January 9, 2020

107184 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
WELLS FARGO BANK, N.A. v CYNTHIA LUNDEEN, ET AL.

Affirmed.

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

KEY WORDS: *Foreclosure; summary judgment; magistrate's decision; plain error; sufficiency of service; affidavit; attached documents; copies.*

No plain error found in trial court's judgment that adopted the magistrate's decision granting summary judgment in a foreclosure action where appellant never objected to the magistrate's decision and thus waived all but plain error, appellant was properly served with the third amended complaint, and the affidavit attached to appellee's motion for summary judgment properly authenticated the copies of documents attached to the summary judgment motion.

108190 CLEVELAND MUNI. C CRIMINAL MUNI. & CITY
CITY OF CLEVELAND v KENNETH GREER

Vacated and remanded.

Frank D. Celebrezze, Jr., J., and Raymond C. Headen, J., concur; Sean C. Gallagher, P.J., concurs in judgment only.

KEY WORDS: *Evid.R. 901(A); authentication; admissibility; hearsay; Evid.R. 801(C); present sense impression; Evid.R. 803(1); excited utterance; Evid.R. 803(2); prior inconsistent statement; Evid.R. 607.*

The trial court abused its discretion in admitting the victim's statements in the 911 tape and the body camera video because the statements were inadmissible hearsay. The victim's statements did not fall under the present sense impression or excited utterance hearsay exceptions, and were not properly admitted as prior inconsistent statements.

108294 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v YAPHET J. BRADLEY

Affirmed.

Sean C. Gallagher, J., Mary Eileen Kilbane, P.J., and Kathleen Ann Keough, J., concur.

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(Case 108294 continued)

KEY WORDS: Crim.R. 32.1; motion to withdraw plea.

The trial court did not abuse its discretion. The record demonstrates that the defendant was represented by competent counsel during the change-of-plea hearing and that the trial court complied with all the requirements of Crim.R. 11 and gave full consideration to the motion to withdraw after a hearing.

108310 ROCKY RIVER MUNI. C CRIMINAL MUNI. & CITY
CITY OF WESTLAKE v BRITTANY M. DUDAS

Affirmed and remanded.

Anita Laster Mays, J., Patricia Ann Blackmon, P.J., and Larry A. Jones, Sr., J., concur.

KEY WORDS: *Motion to suppress, Fourth Amendment, warrantless entry, implied consent.*

The trial court did not err when it adopted the magistrate's decision to deny the appellant's motion to suppress. The appellant's Fourth Amendment rights against an unlawful, warrantless entry were not violated. The appellant gave implied consent to officers to enter her hotel room by opening the door and going back to bed.

108526 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
U.S. BANK NATIONAL ASSOCIATION v TERRENCE ROBINSON, ET AL.

Affirmed.

Kathleen Ann Keough, J., Mary J. Boyle, P.J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *Foreclosure; note; mortgage; bankruptcy; assignment.*

Trial court did not err in granting a decree of foreclosure to the bank. Debtor's bankruptcy discharge of his personal obligation under the note did not preclude the bank from seeking an equitable remedy of foreclosure to satisfy the debt. The bank was properly assigned the mortgage through a corrective assignment despite the fact that the original lender was no longer in existence.

108560 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
CLEVELAND ELECTRIC ILLUMINATING COMPANY v CITY OF CLEVELAND, ET AL.

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Reversed and remanded.

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

KEY WORDS: *Summary judgment; Civ.R. 56; Ohio Constitution, Article XVIII, Sections 4 and 6; municipality's purchase of electricity for resale outside municipal boundaries; fifty percent limitation; surplus product; artificial surplus; entire amount; purchase solely for resale; genuine issue of material fact.*

Based on the Ohio Supreme Court's interpretation of Sections 4 and 6 of Article XVIII of the Ohio Constitution in Toledo Edison Co. v. Bryan, 90 Ohio St.3d 288, 288, 737 N.E.2d 529 (2000), a municipality violates the Ohio Constitution if it purposely purchases more electricity than it needs for its inhabitants solely so that it can resell electricity to customers outside its municipal boundaries regardless of whether the municipality's extraterritorial sales exceed fifty percent of the total service or product supplied within the municipality or the municipality purchased excess electricity in order to resell the entire amount of the purchased electricity outside its municipal boundaries. Trial court erred in granting summary judgment in favor of city on utility's claims against city premised on alleged violations of Sections 4 and 6. Genuine issue of material fact exists as to whether city purchased excess electricity solely for the purpose of selling it to others outside municipal limits. Judgment reversed and case remanded for further proceedings.

108568 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE R.K.

Affirmed.

Frank D. Celebrezze, Jr., J., Sean C. Gallagher, P.J., and Raymond C. Headen, J., concur.

KEY WORDS: *Civil protection order; R.C. 2951.34; menacing by stalking; R.C. 2903.211; manifest weight; pattern of conduct; mental distress.*

The trial court's judgment granting appellees' petition for a protection order is supported by competent and credible evidence in the record, and not against the manifest weight of the evidence. The trial court did not abuse its discretion in determining the persons to be protected under the order or the duration the order would remain in effect.