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Court of Appeals, Eighth Appellate District

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June 18, 2020

108174 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
CLINT YOBY v CITY OF CLEVELAND, ET AL.

Affirmed in part; reversed in part; and remanded.

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

KEY WORDS: *Summary judgment; municipal utility; electricity; billing; C.C.O. 523.17; environmental and ecological adjustment; interpretation; class action; fraud; immunity; R.C. 2744.02; statute of limitations; goods; services; breach of contract; R.C. 2305.06.*

Trial court erred in its interpretation of C.C.O. 523.17 because the ordinance only allows for adjustments to a customer's electricity bill that are related to environmental and ecological purposes. The trial court erred in granting summary judgment in favor of the city on the class plaintiffs' claims for breach of contract, declaratory judgment, injunction, unjust enrichment, and restitution because genuine issues of material fact exist whether the adjustments by the city were recouped through its base rates. The trial court did not err in granting summary judgment in favor of the city on the fraud claim because the city is immune. Electricity in the context of the case is a service, not a good, thus subject to the statute of limitations for breach of contract pursuant to R.C. 2305.06.

108371 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v MELVIN JONES

Affirmed.

Eileen A. Gallagher, J., Patricia Ann Blackmon, P.J., and Frank D. Celebrezze, Jr., J., concur.

KEY WORDS: *Crim.R. 29(A); sufficiency of the evidence; manifest weight of the evidence; inference stacking; self-defense; R.C. 2901.05; verdict form; Crim.R. 52(B); plain error; ineffective assistance of counsel; R.C. 2929.14(B)(1)(g); R.C. 2929.14(C)(1)(a); consecutive sentences; firearm specifications; R.C. 2947.23; imposition of costs.*

Convictions for murder, evidence tampering, drug trafficking and having a weapon while under disability and guilty findings for felonious assault and involuntary manslaughter were not shown to be the result of improper inference stacking and were supported by sufficient evidence. Jury did not lose its way in finding that defendant did not act in self-defense. Trial court did not commit plain error in failing to give jury a separate verdict form on self-defense. Defendant was not denied effective assistance of counsel based on counsel's failure to request a separate verdict form on self-defense. Trial court did not err in imposing statutorily

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mandated consecutive sentences on firearm specifications. Although trial court imposed costs in sentencing journal entry of which defendant was not advised at the sentencing hearing, a remand was not required to address the issue because defendant could move the trial court at any time to waive the payment of court costs.

108578 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v MICHAEL DELMONICO

Affirmed.

Raymond C. Headen, J., Eileen T. Gallagher, A.J., and Patricia Ann Blackmon, J., concur.

KEY WORDS: Sufficiency of the evidence; manifest weight of the evidence; R.C. 2913.02(A)(2); theft; elderly person; exceed scope of consent; intent to deprive; minimal performance.

The state presented evidence which, if believed, was sufficient to show that the defendant-appellant knowingly acted with purpose to deprive his clients of their money by exerting control over such property beyond the scope of the owners' express or implied consent and in violation of R.C. 2913.02(A)(2). The verdict was not against the manifest weight of the evidence where the evidence introduced at trial supported the conclusion that defendant-appellant intended to deprive the victims of their money when their contracts were entered, in violation of R.C. 2913.02(A)(2). The trial court did not err when it sentenced the defendant-appellant to consecutive sentences because the imposition of consecutive sentences comported with the requirements of R.C. 2929.14(C)(4).

108788 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
STATE OF OHIO v JEFFREY TALANI

Affirmed.

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

KEY WORDS: Sexual predator; Megan's law; clear and convincing evidence.

The trial court's designation of Talani as a sexual predator was supported by the manifest weight of the evidence even though his age and Static-99R score indicated that he was at a very low risk of recidivism.

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108833 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
BIANCA DELITOY v I. STYLEZ HAIR AND NAILS DESIGN, INC., ET AL.

Affirmed.

Michelle J. Sheehan, J., and Anita Laster Mays, P.J., concur; Larry A. Jones, Sr., J., dissents (with separate opinion attached).

KEY WORDS: *Default judgment; Civ.R. 60(B) motion to vacate a default judgment; excusable neglect; service.*

While excusable neglect may exist when a party has neither knowledge nor actual notice of the lawsuit, it was undisputed in this case the address to which the complaint was sent was appellant hair salon's place of business and the record reflects the delivery of the complaint by Federal Express in compliance with Civ.R. 4.2(F) and 4.1(A)(1). While appellant claimed it was unaware of the litigation, it did not provide any explanations for its claim. Unsworn allegations of operative facts contained in a motion for relief from judgment or in a brief attached to the motion are not sufficient evidence upon which to grant a motion to vacate judgment. The trial court's judgment denying appellant's Civ.R. 60(B) motion to vacate the default judgment is affirmed.

109084 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v RANAU D. JOHNSON

Affirmed.

Raymond C. Headen, J., Sean C. Gallagher, P.J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *Aggravated arson; postconviction relief; motion for new trial; res judicata; waiver of jury trial.*

The trial court did not abuse its discretion in denying defendant's motion for leave to file a motion for a new trial, or defendant's amended petition for postconviction relief where both were based on a claim that has been unsuccessfully litigated in a prior appeal.

109085 PROBATE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
DANIEL B. GODDARD v LAURENCE V. GODDARD

Affirmed.

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

KEY WORDS: *Summary judgment; trust; breach of fiduciary duty;*

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statute of limitations; R.C. 5810.05(C); affidavit; self-serving; reciprocal burden.

Affirmed the trial court's decision to grant summary judgment in favor of defendant on complaint for breach of fiduciary duties relating to three trusts. Plaintiff conceded there were no genuine issues of material fact in regard to two of the trusts, and the trial court properly found the four-year statute of limitations under R.C. 5810.05(C) also barred any claims regarding those trusts. The plaintiff failed to set forth sufficient evidence supporting his remaining claims. A nonmovant may not rely on his own unsupported and self-serving assertions, offered by way of affidavit and without corroborating materials, to defeat a well-supported motion for summary judgment.

109239 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE A.W., ET AL.

Affirmed.

Michelle J. Sheehan, P.J., Raymond C. Headen, J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: Permanent custody; continuance of permanent custody hearing.

Under the factors set forth in State v. Unger, 67 Ohio St.2d 65, 67, 423 N.E.2d 1078 (1981), the trial court was within its discretion to deny counsel's request for a continuance after appellant mother, who had notice of the permanent custody hearing, unexpectedly failed to show up for the hearing without communicating with the trial court or her counsel regarding the circumstances of her absence.

109307 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV, DOM OR PRO
EARL HATTO v THOR D. MCLAUGHLIN

Affirmed.

Frank D. Celebrezze, Jr., J., Anita Laster Mays, P. J., and Larry A. Jones, Sr., J., concur.

KEY WORDS: Summary judgment; Civ.R. 56; negligence; negligence per se; duty of care; slip and fall; open and obvious hazard; attendant circumstances.

The trial court properly granted summary judgment in favor of defendant. Appellant's common law negligence claim fails as a matter of law under the open and obvious danger doctrine. Appellant failed to demonstrate the existence of a genuine issue of material fact regarding his claim that appellee was negligent per se.