

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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June 25, 2020

108309 CLEVELAND MUNI. G CIVIL MUNI. & CITY
FEDEX CORPORATE SERVICES, INC. v BRANDES INTERNATIONAL CO.

Affirmed in part; reversed in part.

Eileen T. Gallagher, A.J., and Mary Eileen Kilbane, J., concur; Sean C. Gallagher, J., concurs with separate attached opinion.

KEY WORDS: *Summary judgment; fraud; breach of contract; customs; fees; shipment; damages; affidavit; evidence; burden; incorporated; business records; motion to strike; material fact.*

The trial court's judgment granting summary judgment in favor of the plaintiff is reversed. Plaintiff is not entitled to judgment as a matter of law on its claim for breach of contract. However, the trial court did not err in granting summary judgment in favor of plaintiff on defendant's counterclaims.

108552 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v CHANTEL BOYD

Affirmed.

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

KEY WORDS: *Endangering children; neglect; sufficiency of evidence; manifest weight.*

The state presented sufficient evidence to show appellant neglected her parental duties when she failed to timely seek medical attention for the victim child in violation of R.C. 2919.22(A) and her conviction is not against the manifest weight of the evidence.

108562 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
VICKI KENNEDY v MARK DOTTORE, ET AL.

Affirmed.

Kathleen Ann Keough, J., Anita Laster Mays, P.J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *Subject matter jurisdiction; domestic relations; general division; declaratory judgment; collateral attack; Civ.R. 12(B); Civ.R. 60(B); void; fraud; divorce decree.*

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(Case 108562 continued)

Trial court did not err in dismissing the declaratory judgment action seeking to void part of a divorce decree because the common pleas court, general division, lacked jurisdiction and the action was an impermissible collateral attack on a valid judgment. The complaint alleged fraud in the inducement, thus making the divorce decree voidable rather than void. The complaint also failed to plead common law fraud with particularity, accordingly, it was not error to dismiss the claim pursuant to Civ.R. 12(B)(6).

108686	CLEVELAND MUNI. CITY OF CLEVELAND v GINA KUHLMAN	C	CRIMINAL MUNI. & CITY
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Reversed.

PER CURIAM

KEY WORDS: R.C. 4511.19(A)(1)(a); Cleveland Codified Ordinances 431.34(A); operating a vehicle while under the influence; failure to control; insufficient evidence.

There is insufficient evidence to sustain a conviction for operating a vehicle while under the influence in violation of R.C. 4522.19(A)(1)(a) where the state failed to present evidence that the defendant was under the influence of alcohol or a specific drug of abuse where the defendant's medical records further confirm that her toxicology screening for drugs and alcohol were negative.

108700	COMMON PLEAS COURT STATE OF OHIO v TIMOTHY BENNETT	A	CRIMINAL C.P.
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108749	COMMON PLEAS COURT STATE OF OHIO v TIMOTHY B. BENNETT, II	A	CRIMINAL C.P.
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Affirmed.

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

KEY WORDS: Consecutive sentences; R.C. 2929.14(C)(4); jail-time credit.

The trial court did not err when it imposed discretionary consecutive sentences because it supported its findings as required by R.C. 2929.14 with evidence and facts from the record. The trial court did not err when it assigned jail-time credit to the appellant's sentence because the cases were unrelated. The trial court assigned the correct number of jail-time credit to the appellant's sentences.

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108708 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v BRANDON M. SMITH

Affirmed.

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

KEY WORDS: *Competency; stipulation; R.C. 2945.38; finding; consecutive sentences; agreed sentencing range; R.C. 2953.08(D); authorized by law; not reviewable.*

Where the parties stipulated to the expert's competency report and the court noted the parties' stipulation on the record and in the journal entry, the absence of the court's specific "finding" of competence in the journal entry was not required. Smith's consecutive sentence was within the agreed sentencing range and authorized by law and therefore not reviewable under R.C. 2953.08(D)(1).

108823 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
KIMBERLEE A. GERSTON, TRUSTEE v PARMA VTA, LLC, ET AL.

Affirmed.

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

KEY WORDS: *Arbitration; motion for stay of proceedings; waiver of arbitration.*

In light of the totality of the circumstances, the trial court did not abuse its discretion where it denied appellants' motion for partial stay of proceedings. The failure to reserve the right to arbitrate constituted a waiver.

108848 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v TREVON READ-BATES

108849 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v TREVON READ-BATES

108850 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v TREVON READ-BATES

108851 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v TREVON READ-BATES

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Affirmed.

Michelle J. Sheehan, J., Sean C. Gallagher, P.J., and Frank D. Celebrezze, Jr., J., concur.

KEY WORDS: *Guilty plea; Crim.R. 32.1; presentence motion to withdraw; hearing; abuse of discretion; judicial factfinding; consecutive sentences; R.C. 2929.14(C).*

The trial court gave appellant's motion to withdraw the consideration the motion warranted, and therefore, the trial court did not abuse its discretion in denying appellant's presentence motion to withdraw the guilty plea. The trial court also properly considered the requisite statutorily mandated factors before imposing consecutive sentences and it did not engage in improper judicial factfinding.

108881 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
SHANELL GOREE v NORTHLAND AUTO ENTERPRISES INC., ET AL.

Affirmed.

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

KEY WORDS: *Class action certification; Civ.R. 23; Ohio Adm.Code 109:4-3-16(B)(21); Ohio Consumer Sales Practices Act; R.C. 1345.01; R.C. 1345.02; 1345.03; R.C. 1317.07; misrepresentation; fraud; civil conspiracy; deceptive trade practices; Cleveland Codified Ordinances 643.02; personal jurisdiction; Civ.R. 12(B)(2); automobile lease; undisclosed fees; justifiable reliance.*

Class action certification affirmed. Plaintiff alleged that defendant auto dealers failed to properly disclose certain fees and costs in customers' auto lease documents. The class allegations raised four causes of action: (1) violation of Ohio's Consumer Sales Practices Act; (2) misrepresentation and fraud; (3) civil conspiracy; and (4) violation of Cleveland's Unfair, Deceptive, and Unconscionable Trade Practices Ordinance. The trial court certified two classes. Both class definitions satisfied the requirements of Civ.R. 23. Whether the trial court had personal jurisdiction over the defendants was not so intertwined with the issue of class certification to permit review.

108892 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
ACE PROPERTY GROUP OF OHIO, LLC v L&M ESTATES, LLC, ET AL.

Reversed and remanded.

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

KEY WORDS: *Cognovit; note; guaranty; loan; judgment;*

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(Case 108892 continued)

subject-matter jurisdiction; vacate; void; abuse of discretion; warrant of attorney; confess judgment; language; form; reverse.

The guaranty failed to comply with the strict requirements of R.C. 2323.13(D). As a result of this deficiency, the trial court lacked subject-matter jurisdiction to enter cognovit judgment against the guarantor; the judgment is void.

108962	COMMON PLEAS COURT STATE OF OHIO v QUASHAUN MOORE	A	CRIMINAL C.P.
108963	COMMON PLEAS COURT STATE OF OHIO v QUASHAUN MOORE	A	CRIMINAL C.P.
108964	COMMON PLEAS COURT STATE OF OHIO v QUASHAUN MOORE	A	CRIMINAL C.P.

Affirmed.

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

KEY WORDS: Failure to hold competency hearing; R.C. 2945.37; R.C. 2945.371; waiver; indicia of incompetence; harmless error; ineffective assistance of counsel; presentence motion to withdraw guilty plea; consecutive sentence findings; R.C. 2929.14(C)(4); clearly and convincingly unsupported by the record.

Where issue of defendant's competency was not maintained and there was nothing in the record to suggest that defendant exhibited any outward signs of incompetency, trial court did not commit reversible error in failing to hold a competency hearing before accepting defendant's guilty pleas. Defendant made no showing that defense counsel was deficient in withdrawing his motion for a competency evaluation or that defendant was prejudiced by defense counsel's withdrawal of the motion. Trial court did not abuse its discretion in denying defendant's presentence motion to withdraw his guilty pleas. In setting forth its findings in support of the imposition of consecutive sentences, trial court was not merely reciting "buzz words." Trial court complied with its obligations under R.C. 2929.14(C)(4) where record showed that trial court's consecutive sentence findings were the result of a thorough, carefully considered analysis and findings were set forth in trial court's sentencing journal entries. Trial court's consecutive sentence findings were not clearly and convincingly unsupported by the record.

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108983 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v KEVIN BRADLEY

Affirmed.

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

KEY WORDS: *Manifest weight of the evidence; sufficiency of the evidence; felonious assault; firearm specifications; and complicity.*

Defendant's convictions for multiple counts of felonious assault with associated firearm specifications affirmed. Credible witness testimony that defendant was one of three men who fired guns into a group of people is enough to overcome challenges to the sufficiency and manifest weight of the evidence.

109003 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE A.W.

Affirmed.

Michelle J. Sheehan, J., Eileen T. Gallagher, A.J., and Eileen A. Gallagher, J., concur.

KEY WORDS: *Legal custody; best interest of the child; abuse of discretion; R.C. 2151.353(A)(3).*

The trial court did not abuse its discretion by finding that an award of legal custody to the child's caregivers would be in the child's best interests where the child had been in the agency's temporary custody more than two years, the child was bonded with the caregivers and fully integrated into their family, the home was appropriate, the child's basic needs are met, and the caregivers satisfied the child's need for a permanent home.

109044 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v MAURICE WATSON

Affirmed.

Mary Eileen Kilbane, J., Mary J. Boyle, P.J., and Anita Laster Mays, J., concur.

KEY WORDS: *Video evidence, jail telephone call, prearrest silence, ineffective assistance of counsel, manifest weight, Evid.R. 901, self-incrimination.*

Defendant-appellant appealed his convictions stemming from a shootout and robbery at a gas station. Appellant presented four assignments of error. He first argued that the state failed to

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(Case 109044 continued)

authenticate a jail call of the appellant that was played for the finder of fact, in this case the trial judge. We found that the evidence had been authenticated.

Second, the appellant argued that the state used the fact that he had an attorney before he was arrested as evidence of his guilt and therefore violated his right against self-incrimination. We found that the state did not use this fact for this purpose because it was just a casual reference.

Finally, we found that there was no ineffective assistance of counsel and that the weight of the evidence was not against the conviction in this case.

109150 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
STATE OF OHIO v CHARLES C. HUNDLEY

Affirmed.

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

KEY WORDS: *Res judicata, motion for new trial; motion for leave; Crim.R. 33(B).*

Appellant's claims that his convictions were not supported by sufficient evidence and that he was denied his right to effective assistance of counsel were barred by res judicata since he raised, or could have raised, these issues on direct appeal.

Trial court did not abuse its discretion in denying appellant's motion for new trial where appellant filed the motion outside the time period provided in Crim.R. 33(B), failed to request leave to file a motion for new trial, and failed to demonstrate by clear and convincing evidence that he was unavoidably prevented from discovering the grounds relied upon to support the motion for new trial within the time period provided by the rule.